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NATIONAL REPORT ON RESEARCH CARRIED OUT IN SPAIN

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Our national report is based on three different phases: a desktop analysis, a research phase with an online survey and a third phase of interviews. Consequently, our report is divided into three sections and some final conclusions are drawn from the research carried out and included in these sections.

I. Desktop Analysis

We have prepared our desktop analysis following the methodological instructions of the main expert of the project. Consequently, we have structured it in five sections, plus a bibliographical index, which aim to cover all the questions raised for this phase of the research. Although it is necessary to point out the limited space available for its execution, which makes it difficult to have more complete information on the situation.

I. Introduction: Information on the Spanish labour market

First of all, some data on the labour market in Spain are briefly presented (taken from both EURES and the Informe del Mercado de Trabajo Estatal, produced by Observatorio de las Ocupaciones del Servicio Público de Empleo Estatal en España, 2022).

Spain is the fourth most populous country in the EU, with more than 47 million inhabitants, 85% of whom hold Spanish nationality. Spain has experienced an increase in the number of foreigners since the beginning of 2022. Foreigners come to Spain mainly from Romania, Italy and Germany and, in the case of non-EU nationals, from Morocco, Colombia and the United Kingdom.

Of the total number of workers in Spain (data from July 2023), 20,891,884.62 people; foreigners make up 13% which is 2,695,239.71 people, and of these: 33% are EU citizens, 887,531.33 and 67% are non-EU citizens, 1,807,708.38. In terms of gender, 47% of EU workers are women, 415,836, compared with 43% of non-EU workers, 781,616.24.

In terms of registered unemployment, 2022 ended with 2.84 million job seekers, 8.64% less than in 2021, maintaining the following profile of the unemployed: predominantly female, aged 55 or over, with a level of education no higher than compulsory secondary education, seeking employment in the services sector and with more than six months' seniority.

The economic upturn is highlighting the shortage of labour in certain sectors of the economy, due in particular to the acceleration of changes linked to the digitalisation of the economy, the ageing of the population, the lack of generational replacement or the lack of attractiveness of traditional occupations for young people due to working conditions.

II. Information on frontier workers in Spain

It is impossible to establish a single concept with objective criteria for defining frontier work, since this concept covers different situations depending on whether one considers the Community meaning, particularly in the field of social security, or the various definitions contained in bilateral double taxation conventions, which are applicable to the tax treatment of frontier workers.

Under Community law, the term "frontier worker" means any worker who works in the territory of one Member State and resides in the territory of another Member State (political criterion) to which he or she returns every day or at least once a week (temporal criterion). However, this definition only applies to the social protection of the workers concerned within the European Union. On the other hand, if we focus on the fiscal field, a spatial criterion is used, according to which the fact of residing and working in a border area, depending on the bilateral agreements, is considered as a constituent element of the concept of frontier work.

In terms of their labour relations, frontier workers are subject to those of the country in which they work. Thus, workers resident outside Spain but working in Spain are governed by the specific collective agreement for their sector and by Spanish legislation.

Due to its geographical location, Spain has cross-border workers with two EU Member States: France in the north and Portugal in the west; and three non-EU countries: Andorra in the north; and in the south with Gibraltar, a colony of the United Kingdom (1), and with Morocco (from the cities of Ceuta and Melilla) (2).

In the cross-border relationship between Spain and Portugal, there are three cross-border partnerships funded by the European Social Fund Plus, ESF+. Its aim is exchanging information and advising jobseekers and employers on cross-border work and recruitment, offering job opportunities and providing pre- and post-recruitment services through expert groups. These partnerships also monitor labour flows across their respective borders and labour market developments and identify obstacles that may hinder the free movement of workers in the regional cross-border labour market.

The taxation of these workers in Spain depends on their tax residence: if they are tax resident in Spain, they are subject to the personal income tax (IRPF) and are taxed on their worldwide income; if they are not, they are subject to the non-resident income tax (IRNR) on income earned in Spain, e.g. income from work performed in Spain.

In both cases, however, the provisions of the double taxation treaties signed by Spain, as in the case of France and Portugal, must be taken into account, which take precedence over the general tax rules on earned income. Other treaties, such as those with Andorra and Morocco, do not contain specific provisions, which means that taxation is governed by the general rules.

III. Information on seasonal workers in Spain

Seasonal employment can be defined as temporary work that is carried out at more or less the same time each year and that helps companies to cover the temporary needs of a specific task during that period of the year. Seasonal workers are those who find employment in seasonal productive activities or those that are intensified at certain times of the year, such as summer or winter tourism, seasonal harvesting in agriculture, etc.

In Spain, these workers belong to two main productive sectors: those linked to tourism and related services (hotels, restaurants, sports, leisure, cultural activities, etc.) and the agricultural sector, with various agricultural campaigns that, in most of the sector, do not begin until the month of June: fruit (except for red fruit in mid-April, concentrated in the north-west of the peninsula) and vegetables (except for asparagus, broccoli and artichokes, concentrated in the region of Navarre) and major crops (except for fodder); or from August, as is the case with the grape harvest.

Both sectors form a heterogeneous and mobile workforce that is difficult to classify in a well-defined statistical category, making it difficult to quantify the number of workers, although the Labour Force Survey (EPA) would put it at around 150,000 people.

However, although both sectors use seasonal workers, the services sector linked to tourism meets its needs with Spanish workers, while most of the agricultural sector uses foreign workers. Working conditions in the agricultural sector are worse than in the service sector, with seasonal jobs dominating: precariousness (with the absence of employment contracts and exploitative situations in the case of agriculture); the high physical and psychological demands resulting from peaks in activity (and customer demands in the service sector); long working days and high rhythms; the lack of decent working conditions (wages, working hours, breaks between shifts, overcrowding in accommodation, etc.); increased health and safety accidents in the workplace.); increased health and safety accidents at work (musculoskeletal disorders, accidents at work, infections and mental health risks due to difficulties in having a regular emotional and family life, mood

disorders (anxiety, depression), high consumption of psychoactive substances (alcohol, cannabis, cocaine).

It should be remembered that seasonal workers have a legal framework within the EU that we can basically focus on: Regulation 492/2011 on the free movement of workers within the Union; Directive 2020/1057 on the posting of workers; Directive 2008/14 on temporary agency work; Regulation 883/2004 on the coordination of social security; or Directive 2014/36 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

With the appearance of COVID-19, the European Union has established a series of guidelines on the entry and free movement of seasonal workers, as well as restrictions on non-essential travel to the EU by third-country nationals. In this context, in Spain, on 7 April 2020, the government approved by Royal Decree the extension of all work permits for seasonal workers until 30 June 2020, mainly due to the arrival of around 7,000 Moroccan women to work in the red fruit harvest in the province of Huelva and to allow these women to work in the harvest of other fruits and vegetables in other Spanish regions when the borders with Morocco were closed.

Subsequently, on 26 May, the Spanish government approved three additional decrees allowing agricultural workers to extend their seasonal work permits until 30 September. An automatic renewal of all migrant work permits that expire in the period between two months before and six months after the imposition of restrictions, in order to ensure the continuity of the legal status of these seasonal workers; and finally, the third decree allows foreign migrant workers with expired documents to pass border controls and enter Spain.

Seasonal workers in the Spanish agricultural sector

In Spain there are around 810,000 people working in agriculture (70% men and 30% women), of whom 186,000 are of foreign origin, i.e. 27% of those working in the agricultural sector, far more than the 11% of the total resident population. To this figure must be added another 25.1 people without a contract. [The ILO estimates that some 61.2% of the EU agricultural workforce would be in informal employment.]

Both the ILO and various associations from different countries have denounced the situation of seasonal migrant workers in Spain with labels such as: "labour exploitation", lack of protection for seasonal workers and offences against workers' rights due to unfit accommodation. [There are many concrete examples that we could give on these aspects, but the lack of space in this desk analysis only allows us to list them].

In addition, since 2018, when the agricultural sector employers suspended the negotiations of the 1st State Collective Agreement of the Countryside, there are about 22 collective agreements at regional level in the sector where there are breaches in wages, establishing salaries below the minimum wage.

To try to alleviate these situations, there are various guides (which we quote in the bibliography) for both workers and employers, which aim to provide information on labour rights and answers on how to apply them.

In addition, in Spain there are several cooperation agreements between the government, through the Ministries of Labour, Social Affairs and Immigration and Migration, and the social partners to regulate migration in temporary employment campaigns. These agreements include the 2007 agreement on the control and monitoring of migratory flows of seasonal workers (3), the code of good practice for seasonal agricultural campaigns in 2019, and the agreement on the organisation, coordination and social and labour integration of migratory labour flows in seasonal agricultural campaigns, signed on 23 September 2020.

Finally, it should be pointed out that the COVID-19 pandemic has highlighted the precarious conditions to which foreign workers in the agricultural sector are exposed, as on many occasions the agricultural exploitation sites and the warehouses where migrant agricultural workers have been housed have been the origin of certain outbreaks of corona viruses, despite the existence of legal guarantees: Royal Decree 557/2011, of 20 April, approving the regulation of Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, following its reform by Organic Law 2/2009.

IV. Information on migrant workers in Spain

In Spain, foreign workers represent 13% of the total number of workers, 2,695,239.71 people (45% of them women); of these, 33% are EU citizens, 887,531.33, and 67% are non-EU citizens, 1,807,708.38.

We have an instrument, the Programme for the Management of Collective Recruitment at Origin (Gecco) of the Ministry of Integration, Social Security and Migration, the latest version of which is dated 30 December 2022, to fill vacancies in sectors where there is a high demand for labour that is not covered by the national labour market, through "circular migration with third countries". This collective management of recruitment at the point of origin makes it possible to recruit foreign workers who are not present or resident in Spain, depending on the annual employment needs forecast for our country. In this way, migratory flows are organised and channels of dialogue with third countries are established.

The labour legislation applicable to them is the same as that applicable to posted workers (workers who, for a limited period of time, work in the territory of a Member State other than the one in which they normally carry out their activities): Law 45/1999, on the posting of workers in the framework of the transnational provision of services, with the amendments and adaptations that it

has undergone over the years (the latest version is dated 02.03.2022); and, next to it, Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration.

Law 45/1999 "establishes that all employers within its scope must guarantee the minimum working conditions provided for in Spanish labour legislation, including those relating to the prevention of occupational risks" and applies to both posted workers and migrant workers with an employment contract (in a regular situation), who "enjoy the same working conditions as the workers subject to the Workers' Statute and the collective agreement in force in their sector".

V. Labour relations in Spain: Description of the right to employee participation

The model of industrial relations in Spain is a dual one, consisting of a dual representation of the workers in their companies: the unitary representation, the works councils; and the trade union representation, which represents the trade union members.

Both bodies are involved in the systems of participation, information and consultation of workers established by Directive 2002/14 and recognised as rights in the Workers' Statute.

These rights have a threefold scope: on the one hand, the right of the works council to be informed on certain matters on a quarterly, annual or, where appropriate, yearly basis; to be informed and consulted on another set of matters; and to issue a report within 15 days in another set of cases and before the employer takes a decision.

These rights to information and consultation are extended to the area of health and safety at work, recognised by Law 31/1995 on the prevention of occupational risks, which transposes Directive 89/391/EEC on the application of measures to encourage improvements in the safety and health of workers at work.

Other systems of employee participation: Social dialogue and collective bargaining

Social dialogue in Spain is identified with social consultation and has a distinctly political character. Its aim is the co-determination of public policies by governments, employers' organisations and trade union confederations through a joint and tripartite body, with the aim of reaching consensus on major economic and social policy issues considered to be of general or public interest through social pacts.

Collective bargaining is a right recognised by the Spanish Constitution: "The law shall guarantee the right to collective bargaining between workers' and employers' representatives and the binding nature of the agreements"; and is developed



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through the Workers' Statute, with the participation of works councils and trade unions at national, regional, provincial, sectoral or company group level.

The product of collective bargaining is the collective agreement, which is binding on the parties and can cover any matter relating to the working conditions (professional and working) of employees: promotion, working hours, holidays, measures to reconcile work and family life, prevention of occupational risks, salary levels, etc., as well as improving information and consultation procedures.

Having established this regulation of labour relations in Spain, it is necessary to point out two situations that will define the participation of workers in our country, regardless of their nationality and with the sole condition of having an employment contract to carry out their work. Firstly, the fact that all companies with more than six employees have a works council with the above-mentioned powers. Secondly, the fact that all workers are covered by an agreement applicable to them (in the absence of which, there is the Workers' Statute as the minimum standard for regulating these terms and conditions of employment).

VI. Notes

(1). There are currently around 15,000 people living in Spain (10,000 of them Spanish) who work in Gibraltar and cross the border on a daily basis, representing 50% of the Gibraltar labour market. There is no clear information on the labour rights of these cross-border workers, nor is there transparency on existing agreements, which means that companies can violate the rights of these workers.

For example, basic rights such as health are not being met in Gibraltar because, as of 1 July 2022, the Gibraltar Government Income Tax Office has stopped issuing portable forms S1 to the group of cross-border workers resident in Spain who are not covered by the "Withdrawal Agreement between the United Kingdom and the European Union", i.e. those workers hired after 1 January 2021. There is also discrimination between British, Gibraltarian and Spanish workers in terms of recruitment (with "zero hours" contracts, where if the employer does not provide work, he does not pay) and in terms of working conditions: pay, holidays, pensions, overtime, double taxation, etc.

(2). On 15 March 2020, at the start of the COVID-19 pandemic, Morocco's borders with the two Spanish cities (Ceuta and Melilla) were closed to people with EU passports or Schengen visas until mid-May 2022 and to cross-border workers from 31 May.

The reopening of the border of the autonomous city of Melilla with Morocco allows workers to enter, but their return to their jobs depends on whether the employer has maintained the vacancy and on the renewal of their documents. In fact, according to the Spanish government delegation in Melilla, of the 1,847 cross-border workers there in 2020, at the time of the "reopening" of the border, only 80 meet all the requirements to resume their working lives where they left off, two years and two months later. This means that 1,767 frontier workers between Melilla and Morocco have lost their jobs.

(3). This agreement defines these workers as: " Spanish nationals, citizens of the European Union, resident foreigners with work permits and non-resident foreigners recruited in their country of origin, who have to carry out their work activity in seasonal or agricultural campaign jobs, in jobs previously offered, and who move within the national territory, more than 100 kilometres from their habitual residence or from the place of residence of their last job".

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II. Analysis of the survey phase

Before starting our analysis, it is necessary to point out, as a preliminary question, the difficulties we encountered in carrying out the survey, which can be specified in terms of a configuration of the proposed items that made it difficult to answer the questions and subsequently to analyse them:

- the survey was too long and repetitive, which caused many people to drop out before completing it;
- It includes several aspects that are not of interest in Spain, as they are covered by both European and national legislation;
- in general, the survey could have been shortened in several items, either because of lack of interest or because they raise issues that are already covered in other items;
- in addition, the socio-demographic data lacked questions on aspects such as professional category and sector of activity, which we believe would have provided interesting data.

a) Profile of the respondents

The profile of the respondents in Spain is as follows:

- 59% female;
- 96% persons come from Spain;
- 52% persons are between 45 and 54 years old;
- 48% are married, living with their partner (86%) and 2 children (41%) living with their partner;
- 41% with a post-secondary degree;
- 45% persons work in the health sector (followed by the service sector with 17%);
- 93% persons are member of a trade union.

b) Situations related to employment

Most employment contracts before the COVID-19 pandemic were permanent contracts, covering 86% of respondents. The employment situation at the present

time is still the permanent contract with a percentage of almost 90%, slightly higher than during the pandemic. Therefore, we can conclude that there are no differences between the two periods, nor have there been any changes in employment situations.

Most respondents, 41%, did not know their working conditions when they signed the contract ("they just signed it"). Only 24% of those who said they were explained these conditions in a way that they could not understand.

The remaining 34% said they were given a general explanation of the conditions. As regards the provision of professional services, in 62% of cases the terms and conditions were in line with the employment contract, while in 41% of cases the terms and conditions were not in line with the contract. 28% admitted that their terms and conditions and those in the contract were "partly the same".

c) Difficulties and employment situations experienced during COVID-19

In this respect, there is a similar proportion of those who say that the pandemic has not affected their working conditions (35%) and those who claim that they have suffered a partial suspension of work (34%). 2% had to stop working completely and the remaining 17% had to extend their working hours during the pandemic.

Working hours were only affected during the pandemic in the healthcare sector: 40% of respondents worked more than 40 hours and 33% more than 50 hours.

In terms of social security and provision of services, only difficulties in taking leave (holidays and daily and weekly breaks) during the pandemic were reported in the health sector.

In terms of financial support, 97% of respondents said they had not received any kind of support.

Finally, in this area, 38% of respondents said they had been informed about occupational health and a further 38% said they had been "partially informed". Only 4% said they had received no information and 14% said they had been badly informed.

In the area of health protection through personal protective equipment (PPE), 41% said they had received it and 31% said they had received "some", while 10% said they had not received any PPE.

From these last two figures it can be concluded that, in general, information on COVID-19 has been provided and at least some PPE has been supplied to workers.

Finally, respondents highlighted that the biggest problem identified during COVID-19 was related to health care, reported by 94%, although to varying degrees: 31% mentioned general problems, while 63% mentioned partial problems. The second problem reported was transport, recognised by 45%, although 31% had no problems at all in this area.

d) Workers' rights and information

The main source of information for workers is the trade union, in 90% of cases, followed by the Internet and public institutions, with 17% each.

Transferring this aspect of information to the information received about their rights during COVID-19, 52% say they received this information from the trade unions and 8% from the employer. In contrast, 31% of respondents said they did not receive any information about their rights during the pandemic situation.

Of those surveyed, 59% said they were well informed and 28% said they were only partially informed, compared to 11% who said they were "poorly informed" and 4% who said they had no information at all.

e) Assistance that trade unions can provide to migrant workers

Information, with 83% of responses, is the best help that trade unions can provide to migrant workers, followed by assistance and representation, with 62%, and fair treatment and access to collective bargaining, with 48% and 45% respectively.

III. Analysis of the interview phase

We conducted a total of 30 interviews, distributed as follows 10 people through a focus group that we conducted in person on 20.12.2023 (a list of participants and photos of the event are attached); and then another 20 individual interviews. In both cases we used the guide prepared for developing this phase of the research.

a) Profile of the interviewees

50% of the interviewees were women and 50% were men, thus achieving a balance in terms of gender. In terms of their "category", 11% are trade union leaders and 89% are trade union members.

In terms of economic sector, they are the same as those already mentioned in the analysis phase of the surveys, the most important being the health sector (61% of respondents) and the services sector (28%).

b) General conditions and legal framework

Overall, there is a widespread lack of knowledge about the systems for recruiting mobile workers. For example, only 55% at the general level of the country and 44% at the sectoral level acknowledge that the system is the written employment contract.

Regarding the existence of differences in rights between mobile workers and nationals (which was the subject of a broad debate in the focus group), 70% thought that there were none, since the same collective agreement applied to both, in accordance with their sector of activity and general Spanish legislation; although 15% said that the conditions of national workers were better.

When asked which sectors of activity had the worst conditions for mobile workers, 35% agreed that they were in agriculture, cleaning and social and health work.

In terms of the challenges faced by mobile workers during their posting, the debates raised a wide range of issues, which we have ranked according to the number of opinions received:

- temporariness and poorer working conditions, 35%;
- job insecurity, 20%;
- unknown or poorly understood of legal framework, 15%;

- lack of specific support, 5 %.

c) Collective bargaining

Only 25% of respondents to COVID-19 said that they were aware of the legal provisions for mobile workers, and 80% of them thought that they were not effective. However, the majority of respondents, 60%, said that they were not aware of these regulations at both national and European level.

On employment conditions

Job insecurity (25%) and lack of mobility due to border closures (25%) are the main trends related to the provision of services by mobile workers during the pandemic.

Lack of coverage and information (25% of respondents), legal loopholes (25%) and the need to work to obtain certain rights (15%) were identified as the greatest legal uncertainties during the pandemic.

On the measures taken

In general, respondents agreed that the most important measures adopted during COVID-19 for mobile workers were improving working conditions through collective bargaining (35%); improving information on workers' rights (15%); and improving social protection (15%).

The unions' responses to these measures were that they were implemented through collective bargaining (40%) and through some form of mobilisation (20%).

In the same section, in relation to the unions' contribution to helping mobile workers, the opinions were as follows:

- through agreements and supportive requests from these workers, 40%;
- by providing better information on rights and legislation, 35%;
- by lobbying employers and governments, 15%;
- through more and better action at centralised EU level, 10%.

On the treatment of collective bargaining

The majority (50%) of respondents said that they were not aware of the existence of collective bargaining measures for mobile workers.

25% of respondents mentioned the inclusion of job guarantees for these groups.

In terms of medium-term measures that could be included to improve collective bargaining for mobile workers, the most popular opinions were inclusion of more and better information for these workers in their employment contracts (45%); and inclusion of social rights to improve working conditions (40%).

Our conclusions

Finally, we summarise our research phase, the joint analysis of the surveys and the interviews conducted, by drawing the following ten conclusions, in which we have concretised these analyses.

1. There were no significant differences between the type of contract before and after the pandemic, the permanent contract being maintained in more than 80% of cases, nor were there any changes in the working situations of those who did not suffer a cessation of work.
2. There is a high level of ignorance of the working conditions of the contract when it is signed. It is worth noting that in up to 40% of cases these contractual conditions do not correspond to those actually carried out.
3. The health sector was the sector that suffered the most unfavourable situations in terms of working conditions during the pandemic: an increase in working hours (over 50 hours for up to 33% of workers), difficulties in taking leave (holidays and daily and weekly breaks) and various problems with health care.
4. In general, information on COVID-19 was available and at least some PPE was provided to workers during this phase of the pandemic.
5. Access to healthcare, lack of mobility and difficulties in accessing transport, and job insecurity were highlighted as the main problems during the pandemic.

In this sense, respondents identified the lack of coverage and information, the existence of legal loopholes and the need to work to obtain certain rights as the greatest legal insecurities created during the pandemic.

6. Most workers acknowledged that they had received information about their rights during COVID-19 and about the pandemic situation itself, and that this information was mainly received through the trade unions (although they also mentioned the Internet and official bodies as sources of information).
7. In terms of trade union action to support mobile workers, information is seen as the best help they can provide, followed by assistance and representation, and fair treatment and access to collective bargaining.
8. The contribution of trade unions to helping mobile workers is seen as being through agreements and supporting petitions from mobile workers (40%), improving information on rights and legislation, lobbying employers and governments, and more and better action from the centralised EU level.
9. Improving working conditions through collective bargaining, improving information on workers' rights and improving social protection are

generally recognised as the most important measures taken during COVID-19 for mobile workers.

10. There is a widespread lack of knowledge about the measures taken in the framework of collective bargaining for mobile workers; it is recognised that there is a need to strengthen the information for mobile workers in their employment contracts and the inclusion of social rights to improve working conditions in collective agreements.