



# **Case study – gaps in access to social protection for economically dependent self-employed in Spain**

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## EXECUTIVE SUMMARY

In Spain, the figure of economically dependent self-employment (*trabajador autónomo económicamente dependiente, TRADE*) was regulated in 2007 in the Self-employed Workers' Statute (*Ley del Estatuto del Trabajador Autónomo, LETA*). The most important criterion used to establish whether a worker belongs thereto is of an economic nature, measured as the percentage of income earned from a single client. A self-employed worker is considered to be economically dependent if the income from a single client accounts for at least 75% of his/her total income (Article 11, paragraph 1 of the Self-employed Workers' Statute). Self-Employed Workers' Statute conferred TRADE status higher social protection compared to genuine self-employment.

In 2017 (2nd quarter), there were 10,530 TRADEs registered. The number of registered TRADE increased significantly in the first years after the LETA was passed. However, after the initial increase, since 2015, the number of TRADE registered has barely increased and it accounts for a very low proportion of total self-employed without employees (0.7%). Overall, social partners, self-employed organisations and experts find that the existing legal regulation of TRADE has failed to attract self-employed because it does not respond to the needs of this specific collective nor to the needs of employers.

### **Difficulties for TRADE in acquiring their own social protection rights**

Social protection rights of TRADE are almost identical to those of normal self-employed. Regarding **in-kind benefits** associated to healthcare, self-employed, included TRADEs, are entitled to the same rights as employees. As far as **cash benefits** are concerned, TRADEs are obliged to contribute to insurance for most of the contingencies that apply to employees (pensions, labour accidents, etc.). The most important in-cash benefits from which TRADE are excluded are unemployment benefits and Wage Insolvency Fund (*Fondo de Garantía Salarial, FOGASA*).

The amount of all cash benefits that TRADEs are entitled to are determined by the contribution base and the monthly contribution. As opposed to employees, self-employed and TRADE can choose the contributions they want to pay to the Social Security. Most of them (81% of self-employed and 91% of TRADE in 2017) are selecting the minimum base in order to pay lower contributions. As social protection is closely linked to the contribution bases, this leads to lower levels of protection and, especially, lower pensions, with an associated increased risk of poverty and social exclusion.

### **Possibilities of gaining access through derived social protection rights**

In Spain, the social protection system does not contain many elements which connect the social protection of an individual to his or her specific family situation. Main social security derived rights fall under the juridical category of 'in-cash benefits for dead and survival' (*prestaciones por muerte y supervivencia*). Self-employed and TRADE are entitled to the same rights as employees, as far as they contribute to the insurance against temporary incapacity which is mandatory for all self-employed workers.

### **Coverage and access by other means**

Some private funds such as health funds have been incentivised for self-employed through discounts in their direct income taxes. Regarding pensions and dead insurances, some studies (UNESPA, 2016) find that the share of self-employed having private insurances is very close to the share of employees having one.

### **Cost-benefit of cross-subsiding TRADE**

Measures favouring transition from unemployment to TRADE are cost-effective as they could contribute to save social expenditure related to unemployment benefits. However, a political strategy favouring these transitions should also consider that there is the fact a considerable gap in terms social rights (no unemployment benefits and lower retirement pensions) and a considerable gap in terms of employment rights.

## 1. LABOUR MARKET AND SOCIAL SITUATION OF ECONOMICALLY DEPENDENT SELF-EMPLOYMENT IN SPAIN

### 1.1. Origin and drivers

In Spain, the figure of economically dependent self-employment (*trabajador autónomo económicamente dependiente*, TRADE) was regulated in the Self-employed Workers' Statute (Ley del Estatuto del Trabajador Autónomo, LETA). It was approved in 2007 in response to demands from self-employed workers' organisations calling for improving and extending social security rights and drawing from a country expert report elaborated by an expert committee (Expert Commission Report for the elaboration of a Self-employed Statute. October 2005).

The institutionalisation of the TRADE figure is justified in the preamble of the Self-employed Workers' Statute as a result of the diversity of self-employed existing in Spain. Bearing this diversity in mind, the LETA stresses, however, that in Spain most of the self-employed are without employees. According to the law, this group of self-employed, which represented around 80% in 2006 (1.7 million self-employed), needed a higher level of social protection, closer to that offered to the employees. The LETA estimates further that, out of the self-employed without employees, **285,000 worked for a unique company or client** and should thus fall within this new category of TRADE.

The creation of TRADE status has been also described as a response to the legal uncertainty existing in some relations between self-employed workers and their clients, covering a regulatory loophole. From this perspective, the main purpose was to qualify specific work relations that formerly had been solved on a case-by-case by the jurisprudence, giving rise to court disputes.

Self-Employed Workers' Statute conferred TRADE status a higher social protection compared to genuine self-employment in relation to three aspects. Firstly, it established that TRADE relationships have to be always formalised by means of a **written contract**. This contract establishes working rights related to working time, rest periods, extra-work and interruption of activity (similar to holidays' rights). Moreover, contract extinction is also regulated and must be derived from a list of causes established in the Self-Employed Workers' Statute. In case the client decides to finish the contract without justified cause, Self-Employed Workers' Statute contemplates compensations to be paid to the TRADE. As opposed to severance payment regulated through labour law (Spanish Workers' Statute), the LETA does not establish an amount or level of compensations that employers must observe. Instead, compensation relies on the conditions agreed between the TRADE and the client in the written contract or in the 'professional interest agreements', a sort of collective agreement (see next paragraph). The Self-Employed Workers' Statute only establishes some criteria to be taken into consideration when setting the compensation, in case it is not specified in the contract with the client. They are related to the initial foreseen time of the contract, the seriousness of the contract breach by the client or the investment and expenses anticipated by the TRADE to develop the work. However, the Labour Court has even considered as legal those contracts that did not contain any compensation (Pérez Rey, 2016).

Secondly, the law recognised a specific form of collective agreement specially and exclusively addressed to TRADE, the so-called "**professional interest agreements**" which, however, is being barely used. As opposed to collective agreements, professional interest agreements are not covered by the 'general efficiency principle'. Thus, they only cover self-employed affiliated to the TRADE organisations that conclude the agreement. Also, due to this, self-employed organisations signing the agreement do not have to meet and prove representativeness criteria, as it applies to social partners. Professional interest agreements can regulate all the working conditions of TRADE. The only limitation to this regard is that they have to observe the law.

Thirdly, law regulated that **conflicts affecting TRADE are treated by Labour Court** instead of Civil Court, as occurs with genuine Self-employment. An aspect generally positively assessed by trade unions self-employed organisation, bearing in mind the most protective character associated to the Labour Court.

A relevant element of the LETA relates to the distinction between the employees and the self-employed. The Self-employed Workers' Statute (Article 1, paragraph 1) applies to 'any working activity not subject to the authority or organisation of another person, regardless of whether it involves hiring of staff'. Accordingly, dependence and the fact of being in the employ of another (so-called '*ajenidad*' in Spanish) are the most relevant criteria to distinguish between employees and self-employed. However, the abstract nature of both criteria has led courts to develop different directions to identify the dependence and the fact of being in the employ of another (Hernández, 2010). These directions are also used and tested by labour inspectors to determine the existence of bogus self-employment. As far as the TRADE category is concerned, the most important criterion used to establish whether a worker belongs thereto is of an economic nature, measured as the percentage of income earned from a single client. A self-employed worker is considered to be economically dependent if the **income from a single client accounts for at least 75% of his/her total income** (Article 11, paragraph 1 of the Self-employed Workers' Statute). In addition, Article 11, paragraph 2 sets out other conditions that have to be simultaneously fulfilled to qualify workers as TRADE<sup>1</sup>:

- **Prohibition to hire or subcontract** part or all the activity to third parties. With this criterion, the law aims to clearly distinguish TRADE from normal self-employment that do not have restrictions on this. Recently, Law 31/2015 to modify regulation on self-employment and foster self-employment, introduced an exception to this legal impediment, allowing TRADE to hire one worker due to work-life balance reasons (explained in section 2);
- The worker must not execute the activity in a way that is **not different to those dependent workers**. This criterion aims to distinguish TRADE from employees;
- The worker has to dispose the **production means and material infrastructure** for carrying out the activity independent of those of the client. This criterion also applies to the distinction between normal self-employed and employees, being one of the most relevant elements to discern if a self-employment is bogus, being de facto in employ of another;
- The worker must implement the activity with **his/her own organisational criteria**. This is also a general indication to distinguish genuine self-employment from direct employment related to the dependence criteria;
- The worker must receive an **economic compensation** as a result of his/her activity, in accordance with a contract signed with the client.

### 1.2. Level and trends

TRADE self-employed are requested to register the contracts signed with their clients with the Public Employment Service. The number of registered TRADE workers remains low. **In 2017 (second quarter), there were 10,530 TRADEs registered.** The number of registered TRADE increased significantly in the first years after the LETA was passed, since some companies (*Panrico-Bimbo*, with around 3,000 dependent self-employed) and sectors (transport) had already come to similar agreements and adapted these agreements to the LETA. However, after the initial increase, since 2015, the number of TRADE registered has barely increased and it accounts for a very low proportion of total self-employed without self-employed (0.7%).

Data on education, age and gender characteristics are not readily available.

**Table 1. Self-employed, Self-employed without employees and TRADE**

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<sup>1</sup> As included in the supplementary provision No. 11 of LETA, in transport sector, only the conditions of 75% dependency and the prohibition to hire or subcontract part or all the activity to third parties are required for self-employed to be considered TRADE. The reason behind this less restrictive requirement level is that art.1.g of the Workers' Statute does not consider as employee workers in the transport sector subject to administrative authorizations.



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	Self-employed	Self-employed without employees		TRADE	% in relation to total self-employed without employees
	Total	Total	% in relation to total self-employed		
2017	1,973,028	1,539,803	78	10,530	0.7
2016	1.984.268	1,549,871	78	10,250	0.7
2015	1.977.277	1,555,602	79	9,725	0.6
2014	1.945.572	1,531,305	79	8,274	0.5
2013	1.920.387	1,509,869	79	7,153	0.5
2012	1.945.371	1,537,022	79	6,263	0.4
2011	1.978.131	1,575,297	80	4,935	0.3
2010	2.011.986	1,605,629	80	3,729	0.2
2009	2.076.600	1,666,113	80	2,461	0.1
2008	2.221.166	1772,700	80	1,136	0,1

Source: Social Security. Self- Employed Workers 'RETA scheme. Data 2nd quarter

As detailed in annex 1, sex distribution is characterised by a clear prevalence of male TRADE (6,912 out of 10,099 in the 3rd quarter of 2017. Self- Employed Workers 'RETA scheme'). Only 6% of the TRADE are younger than 25 years of age and most of them are aged 25-39 and 40-54 (41 and 43%, respectively in the 3rd quarter of 2017. Self-Employed Workers 'RETA scheme'). With regard to the nationality of TRADE workers, 89% are Spanish and 7% are from EU Member States (3rd quarter of 2017. Self-Employed Workers 'RETA scheme'), with neglectable presence of TRADE coming from outside the EU. Data on education are not available.

### 1.3. Institutional incentives and disincentives

Whether existing regulation provides incentives to self-employed to become TRADE and to companies to recognise the TRADE self-employed working for them is an issue widely discussed among researchers and social partners. It has to be heard in mind that, according to art.11bis of LETA, it is the dependent self-employed worker who has to notify and ask his/her client to be recognised as TRADE, meaning that **it is not compulsory that a de-facto TRADE is recognised as such**, i.e. it is not considered a fraud nor illegal that a de-facto TRADE is considered a normal self-employed. Moreover, in the first moments (transitional provisions No 2 and 3) after approval of the LETA, dependent self-employed needed to communicate their clients that they were TRADE and the client could then cancel the contract without any compensation if s/he did not want to recognise this situation. The fear that the client could cancel the contract has undoubtedly refrained potential TRADEs to ask their clients to be recognised as such. At present, if, after notification, a client refuses to recognise the TRADE worker, s/he can ask the social jurisdiction to be recognised as such.

Trade unions suggest that **the existing legal regulation has failed** because it does not respond to the needs of this specific collective, despite the fact that this regulation was introduced to protect workers in bogus self-employment. As noted by some authors (Huertas and Prieto, 2016), TRADE regulation does not provide a consistent set of rights as those provided in the Workers' Legal Statute. Representative from Union of Professionals and Self-employed Workers (UPTA) argues that the failure of this legal status is caused by employers' misunderstanding of the regulation. Employers consider the disadvantages related to severance pay, and they do not take into consideration that when a self-employed worker asks to be recognised as TRADE, s/he automatically stops claiming for a direct employment status. Moreover, a representative of the Association for the Self-employed (ATA) highlights the need for employers to consider the certainty

linked to the conditions included in the contract, as regards, for example, the compensation in case of cancellation of the contract, as opposed to the uncertainty linked to a judicially adopted compensation, should the dependent self-employed go to court after cancellation of his/her contract. In the same vein, the 'lack of success' has been explained as a result of the 'fear' and 'ignorance' of both the self-employed and companies (ABC, 2013). Finally, representative from CEOE critically notes that TRADE is an 'artificial status' that fails to attract self-employment because self-employed workers ideally want to have several clients. If they formalise their status as TRADE, they limit their capacity to grow. From this perspective, a self-employment is perceived as a genuine entrepreneur whose main priority is to diversify clients and who therefore does not obtain any benefits from the additional rights entailed by the TRADE status.

### 1.4. Transitions rates to standard employment

Transitions rates to standard employment have not been estimated. Moreover, some doubts arise on whether economically dependent self-employment jobs are or should be a stepping-stone towards permanent employment. As opposed to temporary jobs, transition from economically dependent self-employed to standard employment is not a political goal in Spain. This figure was regulated to better protect those workers that combine organisation autonomy with economic dependency regarding their clients, not as a transition path to standard employment. On the contrary, at present, (dependent) self-employment is promoted as a way to foster entrepreneurship.

### 1.5. Sectors

As far as the sectoral distribution is concerned, 89% of TRADE work in the service sector (see annex 1 for detailed information). The main economic activities where TRADE are occupied are 'transport and storage' (16%), 'wholesale, retail and repair of motor vehicles' (14%), 'financial and insurance activities' (11%) and 'construction' (8%) (3<sup>rd</sup> quarter of 2017. Self-Employed Workers 'RETA scheme').

The spread of TRADE in the transport sector is highlighted in qualitative studies (Eurofound, 2017) that inform, based on interviews conducted with social partners and self-employed organisations, that most of the TRADEs are registered in the transport sector, mainly as truck drivers. Indeed, the only "professional interest agreements" concluded in Spain was signed in the multinational bakery product manufacturing company *Panrico-BIMBO*, covering the **truck drivers**. In this sense, representative from the Union of Professionals and Self-employed Workers (UPTA) as well as the Spanish Confederation of Employers' Organisations (CEOE) points out that this figure was mainly designed to target these workers. The Self-employment Statue included an additional disposition (11) which established that those transport workers that own commercial vehicles and develop continued services for one trader, will be considered as TRADE. Moreover, these group of workers only need to fulfil two criteria to be qualified as TRADE: 1) to have an income from a single client which accounts for at least 75% of his/her total income; 2) do not hire or subcontract part or all the activity to third parties. This **favourability principle to transport workers** was probably introduced with a view to compensate the effects of the Law 11/1994 aimed to modify some aspects of the Workers' Statute, which excluded transport workers that owned commercial vehicles and developed continued services for one trader from the scope of this regulation. Thus, they started to be conceived as self-employed.

### 1.6. Linkage of expansion with digital economy

The linkage of TRADE with digital economy is currently under discussion in Spain. For instance, self-employment organisations have noted that Uber drivers should be classified as employees instead of self-employed. Moreover, labour and social security inspectorate sanctioned Uber Systems Spain for misclassification of its employees (El País, [13-06-2015](#)). This suggests that TRADE contract could be an alternative for Uber works. In this sense, it is worth noting that very recently, the platform Deliveroo has

offered the riders who offer their delivery services through this platform to be hired within the TRADE figure.

It is also worth noting that the digital economy is an emerging phenomenon in the crowdworking/freelancer marketplaces sector and that several online platforms (Lancetalent, Freelancer, Etece to mention some) enable (dependent) self-employed to find jobs. These marketplaces relate to works in a wide range of economic activities such as design computers, plumbers, electricians, etc.

Bearing this in mind, it can be argued that there is an existing debate on the extent to which collaborative economy workers could be covered by new special employment regulation or by some of the already existing figures such as TRADE. As argued by the representative of ATA, some of these activities (those related to insurance companies) do already count with TRADE workers and the increasing need of companies for reorganisation and flexibility will increase their demand for agreements similar to TRADE work in the near future.

## **2. DIFFICULTIES FOR ECONOMICALLY DEPENDENT SELF-EMPLOYED IN SPAIN IN ACQUIRING THEIR OWN SOCIAL PROTECTION RIGHTS**

Regarding social protection rights, **social protection rights of TRADE are almost identical to those of normal self-employed**. Self-employed persons (including TRADE) in Spain are required to register with the Social Security system, where they are included in the Special Scheme for Self-employed Workers, so-called 'RETA scheme' (article 24. Self-employed Workers' Statute). This scheme, which is mandatory, also includes professionals, associated workers and cooperative members. All them have similar access (subject to some specific arrangements) to social protection as those employees insured under the General Scheme of Social Security (hereafter the 'General Scheme').

According to article 26 of Self-employed Workers' Statute, self-employed (including TRADE) are entitled to:

- In-kind benefits associated to healthcare in cases of maternity, common or occupational disease, and accidents (whether work-related or not).
- Cash benefits linked to: temporary incapacity, and pregnancy, maternity, paternity, risks linked to pregnancy and breastfeeding, permanent invalidity, retirement, widowhood, and having dependent children.

### **2.1. Main social protection rights (eligibility and exclusion criteria)**

Regarding in-kind benefits associated to healthcare, self-employed, included TRADEs, are entitled to the same rights as employees. In Spain, healthcare rights are universal. Provision of healthcare services is under the remit of the regional governments (*Comunidades Autónomas*). In order to guaranty that Spanish citizenships are entitled to the same rights in the different regions, the National Health System (*Sistema Nacional de Salud*) establishes a set of common services to be provided in all the regions (*Cartera de Servicios Comunes*).

As far as cash benefits are concerned, TRADEs are obliged to contribute to insurance for most of the contingencies that apply to employees (pensions, labour accidents, etc.). The most important in-cash benefits to which TRADE are excluded are unemployment benefits and Wage Insolvency Fund (*Fondo de Garantía Salarial, FOGASA*). Regarding unemployment benefits, Law 32/2010 regulated a so-called 'insurance against cessation of business activity' (*Prestación de cese de actividad*), conceived as an 'unemployment benefit' that protects self-employed workers facing an urgent situation due to the involuntary stoppage of their economic activity. This is voluntary for all self-employed workers (including TRADE). However, trade unions and self-employed organisations criticize the very restrictive application of this benefit, since only around 35% of the applications for benefits in case of suspension of activity are accepted (Eurofound, 2017).

Main in-cash benefits for self-employed and TRADE are managed by mutual insurance

organisations that cooperate with the Social Security (*Mutuas Colaboradoras con la Seguridad Social*). These are non-profit employer organisations that cooperate with the Social Security in the management of several in-cash benefits. To this aim, they need to be authorised by the Ministry of Employment and be registered in the Social Security register. Currently there are 20 mutual insurances organisations authorised. These organisations manage for self-employed and TRADE the following in-cash benefits: insurance against temporary incapacity due to common illness and due to occupational contingencies; insurance against cessation of business activity; allowances in case of pregnancy risks and risks linked to breastfeeding.

It is worth noting that the amount of all cash benefits that TRADEs are entitled to are **determined by the contribution base and the monthly contribution**. In this sense, attention should be drawn to the fact that, as opposed to employees, **self-employed and TRADE can choose the contributions they want to pay** to the Social Security. Each self-employed worker determines their contribution base and the monthly contribution, whose minimum and maximum limits are detailed below in table 2.

**Table 2. Minimum and maximum contribution base and monthly contribution affecting TRADE**

<b>Contribution base</b>	<b>Monthly contribution</b>	<b>Monthly contribution with voluntary "insurance against cessation of business activity"</b>
Minimum: €918.90	€ 288.36	€ 308.59
Maximum: €3,751.20	€ 1,176	€ 1,258.53

Source: General State Budget 2017

Overall, figures on the contribution base chosen by self-employed show that most of them are selecting the minimum base in order to pay lower contributions. According to Social Security Statistics on Self-employed (2017, 2nd quarter), 86% of self-employed workers chose the minimum contribution base. For self-employed with employees, the percentage of workers choosing the minimum contribution base is only a bit lower (81%). For TRADE, the percentage of workers choosing the minimum contribution base is even higher (91% in the 3<sup>rd</sup> quarter of 2017. Self- Employed Workers 'RETA scheme').

As social protection is closely linked to the contribution bases, these lower contributions paid by self-employed, including TRADE, leads to lower levels of protection and, especially, lower pensions (see below), with an increased risk of poverty rates.

The specificities of the main social protection cash benefits to which self-employed and TRADE are entitled within the Self-employed Workers 'RETA scheme' follow:

#### *2.1.1. Temporary incapacity and occupational contingencies*

In Spain, insurance against temporary incapacity (*incapacidad temporal*) is mandatory for all RETA workers. On the contrary, insurance against occupational contingencies (*contingencias profesionales*), including temporary incapacity due to accident at work or occupational disease, is **only compulsory for TRADE** workers, being voluntary for the self-employed. It is also worth noting that accidents 'in itinere' are only considered labour accidents for TRADE.

As previously explained, these insurances are managed by mutual insurance organisations that cooperate with the Social Security.

Temporary incapacity in case of accident at work or occupational disease entitles TRADE (and self-employed who freely decide to contribute) to a subsidy to compensate lack of incomes. The maximum period for receiving this subsidy is 12 months, which can be extended for 6 months.

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The amount of the subsidy is equal to 75% of the contribution base paid by the TRADE the month before that the medical leave is acknowledged. For instance, a TRADE who is on medical leave paying contribution within the minimum base will receive €22.95 on a daily basis. If he/she contributes within the maximum base, the daily amount to be received will be €125. Payment of social security contributions should continue in situations of temporary incapacity.

### 2.1.2. *Maternity/paternity protection*

Regarding maternity protection, **self-employed and TRADE women are entitled to the same maternity benefits as employee women** insured under the General Scheme. Maternity, the leave is available for up to 16 weeks (up to 10 of which may be transferred to the father), and implies an allowance equal to 100% of the corresponding regulatory base (around €900 per month if the self-employed mother was contributing the minimum base and around 3,700 in case she was contributing the maximum base). Conditions to be eligible are:

- To be affiliated to the RETA scheme;
- For self-employed older than 26 years: to have contributed to the Social Security at least 180 days in the last 7 years
- For self-employed between 21 and 26 years: to have contributed to the Social Security at least 90 days in the last 7 years
- For self-employed younger than 21 years: no need to have contributed
- Mothers and fathers may enjoy also part-time rest periods, but the maximum reduction for fathers is 50% (there are no limits for mothers).

### 2.1.3. *Pension*

Self-employed and TRADE are generally entitled to the **same pension rights as employees**. Conditions that determine the access and calculation of the pension equally apply to employees, self-employed and TRADE. Since the last pension reform approved by means of the Royal Decree 5/2013, published on 16 March 2013, the following main conditions apply to self-employed, employees and TRADE:

- Delayed retirement age: The retirement age will be raised to 67, applied until 2027, increasing one month per year until 2018, and two months per year from 2019 to 2027.
- Computation period: The number of years of social security contributions taken to determine the regulatory basis of the pension will rise from 15 to 25 years. This rise will be applied gradually, increasing by one year each year from 2013 to 2022.
- Scale of calculation to access 100% of the regulatory basis of the pension: The scale will evolve from 50% of the regulatory basis after 15 years to 100% of the regulatory basis when a person has contributed to social security for 37 years (previously 35 years). The rise will be applied from 2013 to 2027.

A relevant specificity to understand pension rights of self-employed and TRADE (which are the same) is related to the limitations to increase the contribution base and the monthly contribution with the age. Until 2014, it was a common practice for self-employed to increase contribution base with the age. However, since the last pension reform there is a limitation. Currently, if a self-employed worker aged 47 years or more has been contributing under a contribution base lower than €1,926.60, he/she will only be able to increase its contribution base up to €1,954.80 (the maximum amount is €3,751.2).

According to the Social Security Statistics, in September 2017 self-employed received an average monthly pension of €711.13 compared to 1,211.57 for employees under the General Social Security Scheme. Thus, self-employed

pensioners receive, on average, €500 less than employees. Most of observers explain this difference due to the voluntary character of the RETA scheme. As self-employed can choose the amount they want to contribute with, they tend to choose the minimum contribution base in order to pay lower contributions. The recent reforms limiting the chances to increase contribution base with the age may also have negative consequences on pension rights for self-employed, including TRADE.

Regarding the causes that explain why self-employed chose the minimum contribution, the study commissioned by the insurance company Vida Caixa and the University of Barcelona (Guillén and Alemany, 2015) found through a survey interviewing 1,017 self-employed carried out in the first months of 2015 that 65% who were contributing the minimum base did so because they could not afford to increase their contribution base. In addition, 25% justified this decision due to the lack of trust in the public pension system.

### *2.1.4. Insurance against cessation of business activity (unemployment)*

Law 32/2010 regulated the so-called 'insurance against cessation of business activity', conceived as an 'unemployment benefit' that protects self-employed workers facing an urgent situation due to the involuntary stoppage of their economic activity. This is voluntary for all self-employed workers, being managed by private mutual insurance funds. According to Law 32/10 it must be requested to the same private mutual insurance that manages the insurance against occupational contingencies. To be eligible, the following conditions must be met:

- To be affiliated to the RETA scheme;
- to have contributed to the insurance at least 12 months in the last 48 months;
- to be in legal situation of 'cessation of business activity';
- to sign a 'commitment of activity' establishing that the person must actively seek employment, accept a suitable job and participate in specific motivational, information, training, reconversion or professional insertion activities offered by the Public Employment Service in order to increase their employability.

As stated above, it is worth noting that trade unions and self-employed organizations have criticized the insurance, noting that **only around 35% of the applications for benefits in case of suspension of activity are accepted** by the mutual insurance associations (Eurofound, 2017).

## **2.2. Recent reforms with a view to improving self-employed and TRADE social protection**

Recent reforms have been approved with a view to reinforcing or improving social protection rights of self-employed, some of which are specifically addressed to TRADE.

Law 31/2015 on Self-employed Workers, passed on September 2015, modified and updated the regulations on self-employment and adopted measures to promote self-employment and the social economy. It amended the Self-employed Workers' Statute. One of its main features is the inclusion of specific measures aimed to promote the reconciliation of professional and family life, such as **the possibility that TRADE workers can hire a worker** in cases of risk during pregnancy and breastfeeding, maternity or paternity, care of children under seven years or of other family member in a situation of dependency or disability. This is the only exception made to the requirement of not employing third parties to be considered a TRADE worker. The reason behind is to allow the continuity of the activity performed by the TRADE worker and avoid disruption of the relationship with the client with which s/he holds at least 75% of their activity.

### 3. POSSIBILITIES OF GAINING ACCESS THROUGH DERIVED SOCIAL PROTECTION RIGHTS

In Spain, as opposed to other European social protection system, the social protection system does not contain many elements which connect the social protection of an individual to his or her specific family situation. Moreover, derived rights have been progressively reformed in line with European Commission recommendations that highlighted that these rights can create disincentives for women to enter the labour market or take up jobs in the informal economy. For instance, the Law for Work and Family Life-balance (Law 39/1999) redefined different temporary leave rights that allow employees to leave their employment temporarily to provide care for someone in need of full-time care and attention as rights conceived as 'strictly individual'.

Bearing this in mind, this section will focus on the most relevant existing social rights which could be understood as derived social rights.

Firstly, the section will address the health insurance rights which, albeit formally universal since 1994, was reformed in 2012 with a view to reinforcing its linkage with Social Security affiliation. The extent to which self-employed and TRADE are covered will be explained.

Secondly, the specific derived social rights existing in Spain, associated to widowhood and orphan's allowances, will be explained, detailing how they apply to TRADE and self-employed compared to employees.

#### 3.1. Health insurance rights

In Spain, health care rights are generally conceived as universal. Since 1994, National Health care system is exclusively financed via taxes instead of contributions paid by employees and employers to the Social Security. Thus, Nacional Health system does not depend either juridical or economically from the Social Security. Accordingly, health rights are based on citizenship or residence instead of on employment status or social security contributions. Nevertheless, The Ombudsman Institution (*Defensor del Pueblo Español*) estimated in a letter sent to the government in 2010<sup>2</sup> that around 276,000 people (0.6% of the Spanish population) lacked health rights. Among those people uncovered, the main collectives were:

- Self-employed who have ceased their activity, do not receive any in-cash benefit from the Social Security (unemployment benefit, income benefit, etc.) because have enough resources (for instance they own a dwell);
- migrants who returned to Spain and still receive any pension from the country where they were living, workers on unpaid leave of absence for child care, worker in periods of inactivity between seasonal jobs, etc.

In addition, attention should be drawn to the legislative reform approved within the austerity government strategy addressed to reduce public deficit. The Royal-decree 16/2012, recently amended in some regions such as Catalonia, decreased to some extent the universal character of the Spanish health system. According to Royal-decree 16/2012, the following groups are entitled to universal health care rights:

- Workers or self-employed affiliated to the Social Security system;
- situations assimilated to that of affiliation to the Social Security, which include a great range of situations including, for instance, those unemployed whose fare benefits are exhausted (provided they are registered in the Public Employment Service as unemployed), individuals on unpaid leave for child care, workers in period of inactivity between seasonal jobs, etc.;
- pensioners;

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<sup>2</sup> <https://www.scribd.com/doc/26994677/Carta-Defensor-Pueblo-reconociendo-falta-asistencia-sanitaria-universal-en-Espana>

- workers entitled to Social Security benefits, including unemployment benefit.

Thus, Royal-decree 16/2012 made health rights dependent on Social Security affiliation. Accordingly, any foreign individual under an irregular situation is excluded, as well as Spanish older than 26 years that do not meet any of the four criteria described above. As far as TRADE or self-employed are concerned, they have the same rights as standard or regular employees. They could only be excluded if they cease their activity and do not meet any of the criteria to be entitled to Social Security benefit or been registered within a so-called 'situations assimilated to that of affiliation to the Social Security'.

### 3.2. Widowhood and orphans derived social rights ('dead and survival' benefits)

In Spain, social security derived rights fall under the juridical category of 'in-cash benefits for dead and survival' (*prestaciones por muerte y supervivencia*).

Self-employed and **TRADE are entitled to the same in-cash benefits that employees**. This include the following allowances:

- Statutory funeral benefit of the Social Security (*Auxilio por defunción*): this allowance aims cover expenses derived from the funeral of a relative;
- widowhood pension (*pension de viudedad*): this allowance covers economic needs of a widow who was married, divorced or common-law partner, with a view to avoid economic deprotection of family in case the person dead was the only or main income winner of the household;
- orphan pension (*pensión de orfandad*): this allowance aims to cover economic needs of the sons/daughters of an individual dead, in case they are younger of 21 years or aged between 21 and 25 and do not work, are studying or receive an income lower than the National Minimum Wage;
- allowances in favour of relatives (*prestaciones en favor de familiares*): this allowance aims to cover economic needs of brothers/sisters, sons/daughters and grandchildren who were economically dependent of the person dead, provided that they are not entitled to a public pension and are studying or receive an income lower than the National Minimum Wage.

Self-employed are entitled to these derive social rights as far as they contribute to the insurance against temporary incapacity which, as previously explained, is mandatory for all RETA worker. Allowances are calculated on the basis of the contribution base to which the self-employed or TRADE was contributing.

In case of labour accident which leads to dead, self-employed will be entitled to social security orphan and widowhood rights in case they were contributing to the insurance against occupational contingencies. As for TRADE, since contribution to this insurance is mandatory, they are always entitled to these rights.

## 4. COVERAGE AND ACCESS BY OTHER MEANS

This section analyses the main characteristics of private insurance schemes and available existence data on effective take up by self-employment.

### 4.1. Private insurances against temporary incapacity

As explained in section 3, insurance against temporary incapacity, including due to accident at work or occupational disease, is compulsory for TRADE workers. Although these insurances are managed by mutual insurance organisations that cooperate with the Social Security, they are not conceived as private. TRADEs are obliged to contribute to this insurance but can choose the contributions they want to pay to the Social Security (the contribution base).

In this context, coverage by other private means can be a way to complement Social Security coverage but, due to its mandatory character for TRADE, cannot replace that coverage.

Bearing this in mind, TRADE can choose to complement their coverage with private



labour accidents insurances. Many insurance companies offer insurances schemes addressed to self-employed which cover labour accidents as well as widowhood and orphans.

There are not figures available on the number of TRADE workers taking up private insurance on occupational contingencies

#### **4.2. Maternity/paternity protection**

As self-employed and TRADE women are entitled to the same maternity benefits as women insured under the General Scheme, private insurances on maternity/paternity do not seem very spread.

#### **4.3. Private health funds**

As previously explained, in Spain health care rights are generally conceived as universal and self-employed and TRADEs are entitled to the same rights than employees. However, health private funds have been incentivised for self-employed. As opposed to employees, self-employed who hire a private health insurance are entitled to discounts in their direct income taxes (Impuesto de la Renta de las Personas Físicas, IRPF). Self-employed covered by a private insurance fund can save up to €500 per year in their direct income taxes. This amount rises up to €1,500 in case of disabled self-employed.

Due to these fiscal advantages, self-employed are becoming an important target group for the private insurance companies. Thus, private insurances currently offer several specialised private health funds addressed to self-employed which, in some cases, include the possibility to cover additional contingencies such as labour accident or even unemployment.

#### **4.4. Private retirement pension funds**

As explained in section 2, Self-employed and TRADE are entitled to the same pension rights as employees. Conditions that determine the access and calculation of the pension equally apply to employees, self-employed and TRADE. However, self-employed receive in Spain lower pensions than employees, as a great share of them chose to contribute for the minimum base. Based on this, the question of whether self-employed and TRADE are or should be covered by other means is at stake in Spain.

The above mentioned study commissioned by the insurance company Vida Caixa and the University of Barcelona (Guillén and Alemany, 2015), based on a survey to 1,017 self-employed, found that 25% of unemployed justified the decision of contribution to the minimum base on the lack of trust in the public retirement pension system, and that 43% uses any 'saving instrument' to complement the public pension.

According to the 2016 Annual Activities Report carried out by the Employers' Organisation of Insurance Companies (UNESPA, 2016), the share of self-employed having private retirement pension and dead insurances is very close to the share of employees having one (40.6% vs. 39.7%). However, the median value of retirement pensions and life insurance assets owned is higher for self-employed (€13,800, compared to €8,600 among employees).

#### **4.5. Private dead and survival insurances**

As explained in section 3, self-employed and TRADE are entitled to the same in-cash benefits that employees in relation to widowhood and orphans allowances. As far as life insurances are concerned, the UNESPA report found that self-employed account for 6% of total life insurance clients while employees account for 51% (other categories covered are employers, managers, farmers, pensioners, etc.).

### **5. COST-BENEFIT OF CROSS-SUBSIDING TRADE**

In Spain TRADE are not cross-subsidised by any particular group. Rather, they have been entitled to discounts in their Social Security contributions, which have been especially targeted at young self-employed.

## Case study on economically dependent self-employment in Spain

In March 2013, the Spanish Government launched the so-called Strategy for Entrepreneurship and Youth Employment, conceived as an initiative to tackle youth unemployment. A relevant element of this strategy was the promotion of entrepreneurship and self-employment among young people. To this aim, the government introduced two relevant measures.

Firstly, a flat rate of social security contributions for young self-employed people was approved. Young self-employed people registering with the Special Self-Employment Regime (RETA) are therefore able to pay a minimal contribution for common contingencies during the first six months equal to 80% reduction in their normal payments. A self-employed person under the age of 30 may pay an approximate contribution of €50 during this first period. For the following six months, a further reduction of 50% is applied to the minimum base rate. One year after registration with the RETA regime, men under 30 years of age and women under 35 can benefit from reduced rates and a 30% discount on their contributions over the following 18 months.

Secondly, the Strategy aimed to help the self-employed by allowing them to claim unemployment benefits while they are starting up their business. To this aim, it was approved that contributory unemployment benefits are paid for nine months to those under 30 who are entitled to such benefit (i.e. the person has been previously working as employee and contributing to the social security during the established period of time) and who have been registered with RETA. The government gave also young people the chance of capitalising unemployment benefits to help them start up their new business. Recipients of unemployment benefit are thus now able to maximise up to 100% of their benefits (80% before the law) in order to make a capital contribution to any type of newly-created business. Capitalising unemployment benefits is also available for self-employed of different ages, under certain conditions. A further strand of the initiative is the continuation of unemployment benefits payment after a young person has become self-employed. Those entitled to contributory unemployment benefit before registering as self-employed may continue to receive it after deregistering with the RETA scheme, provided that five years have not passed since registration as a self-employed worker.

Law 31/2015 also introduced discounts in Social Security contributions (100% of the contribution base) to those self-employed and TRADE who are replaced through subsidized interim contracts of unemployed workers during periods of maternity, paternity, adoption, foster care, risk during pregnancy and breastfeeding. This is also applicable to members of cooperative societies who are replaced during the above-mentioned circumstances (not only by unemployed workers). The recent Law of Urgent Reform to Self-employment Work (*Ley de Reformas Urgentes del Trabajo Autónomo*) passed by the Parliament on 13 October 2017 introduced that the 100% discount can be applied without the need to replace the self-employed or TRADE.

The recent Law of Urgent Reform to Self-employment Work has also introduced two new Social Security discounts: 1) discount equal to 100% during one year in the contribution base to those self-employed and TRADE who take care of children younger than 12 years and of depended people, provided that they are replaced through subsidized interim contracts of unemployed workers; 2) flat rate of social security contributions for self-employed mothers who stopped their business and wish to re-start it.

Finally, it is worth mentioning those discounts in the Social security that apply to disabled self-employed (with a disability degree equal or higher than 30%). They are entitled to 80% reduction in their normal payments during the first 12 months and to 50% from the month 13 to the month to the month 60.

All in all, as presented in Table 3 below, according to Social Security economic report on the 2017 General State Budget, the Social Security did not collect in 2015 (last year for which information is available) €645,570 due to the effect of these discounts in the Social Security to self-employed. In addition, regional governments establish economic aids and subsidies through the budget line 'economic aids to self-employed, cooperatives and labour societies', which amount to EUR 24 million in 2017. Further, the budget allocated to the capitalisation of unemployment for self-employed amount to EUR 3.1 million in 2017.

Table 3 provides the funds allocated for the three budget lines targeted at self-employed

and an estimation of the cost that these measures suppose for TRADEs. The estimation is based on the assumption that the budget is equally distributed among the self-employed and TRADEs existing in Spain in 2017, thus TRADE would receive 0.7% of these quantities. Accordingly, it is estimated that the cost of cross-subsidising TRADE in 2017 was €194,030.55. It must be stressed that this is an estimation that must be read cautiously. On the one hand, figures from budget lines covering two different years (2015 and 2017) are taken into consideration. On the other hand, the third budget line considered in the table includes measures addressed to other groups beyond self-employed such as cooperatives and labour societies. Thus, the cost could be overestimated.

**Table 3. Budget allocated to regional governments to aid self-employed**

Budget line	Total (in €)	Cost estimated for TRADEs
Social Security discounts (2015, last year with info available)	645,570	4,518.9
Capitalisation unemployment benefits (2017)	3,073,080	21,511.56
Economic aids to self-employed, cooperatives and labour societies' (regional governments) (2017)	24,000,000	168,000
Total	27,718,650	194,030.55

Source: Order ESS/621/2017 and Social Security economic report on the 2017 General State Budget.

Cost-effectiveness of existing measures addressed to TRADE is difficult to assess. A comparison of the annual expenditure on unemployment related benefits per person unemployed with an estimation of the annual expenditure on self-employed per TRADE could illustrate to some extent the cost-effectiveness of favouring transition from unemployment to TRADE. According to the official statistics on unemployment from the Ministry of Employment, Spain spent in 2016 (last year available) on unemployment related benefits (including contributory and assistance incomes) per person €9,272, while the estimation of the cost spent by TRADE in 2017 is €2,632. Bearing this in mind, it could be argued that measures favouring transition from unemployment to TRADE are cost-effective as they could contribute to save social expenditure related to unemployment benefits. However, this exercise must be, again, read very cautiously. Moreover, it is worth considering that although TRADE and employees have to some extent similar Social Security rights, as the report has proved, there is the fact a considerable gap in terms of social rights (no unemployment benefits and lower retirement pensions) and a considerable gap in terms of employment rights.

## 6. FINAL REMARKS

As described throughout this document, the TRADE legal figure is failing to attract self-employment. Although praised by self-employed organisations as an interesting instrument to improve social protection of a very vulnerable group of self-employed, a large share of potential TRADE is not registered as such. Indeed, since 2009, the Spanish Labour Force Survey has included a question targeted at the self-employed on the extent to which they 'exclusively or almost exclusively' work for a single client. Based on this, figures from 2016 show that around 250,000 self-employed people fell into this category, of which 90,000 said they worked exclusively for only one client. Compared to the current 10,500 TRADE registered, the Labour Force Survey figures suggest that around additional 240,000 self-employed could be recognised as TRADE.

Moreover, the prospects for such a flexible though with higher social protection legal figure are interesting, taking into account the increasing demand for companies of

flexibility in the organisation of work. According to the representative of ATA, three measures could be undertaken to promote TRADE: first, **information for employers** clarifying that TRADE does not mean a labour relationship and warning against the risk of not recognising the TRADE nature of their dependent self-employed. Indeed, if these decide to go to court claiming compensations costs in case of contract cancellation and the court decides that the worker is indeed a TRADE, in these cases, depending on the specific situation, the court may decide a high compensation for the TRADE. This compensation could have been previously negotiated and agreed upon in the contract, eliminating thus the uncertainty.

Second, **TRADEs should unionise** and register with self-employment representatives so that their collective interests can be better protected and more "professional interest agreements" be signed.

Third, **normative changes are needed** to make compulsory the recognition by employers of the TRADE nature of the dependent self-employed, since today it is not a fraud that a dependent self-employed is not registered as TRADE. Indeed, the labour inspection has no competences to act if it finds such a case, because it does not involve a specific fraud in terms of social security contributions paid nor in terms of taxes paid (both TRADE and normal self-employed pay the same social security contributions and taxes).

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## ANNEX. RAW DATA ON TRADE (2017)

Table 1. Number of TRADE by age

Age	Men	Women	Total
16-24	368	210	578
25-39	2,641	1,506	4,147
40-54	3,074	1,235	4,309
55 or more	829	236	1,065
<b>Total</b>	<b>6,912</b>	<b>3,187</b>	<b>10,099</b>

Source: Social Security. Self- Employed Workers 'RETA scheme'. Data 3<sup>rd</sup> quarter 2017

Table 2. Number of TRADE by nationality

Nationality	Men	Women	Total
Spain	6,189	2,795	8,984
EU	420	266	686
Europe (non-EU)	101	51	152
Africa	41	12	53
Central America	7	8	15
North America	14	12	26
South America	129	39	168
Asia	8	4	12
Oceania	1	0	1
Unknown	2	0	2
<b>Total</b>	<b>6,912</b>	<b>3,187</b>	<b>10,099</b>

Source: Social Security. Self- Employed Workers 'RETA scheme'. Data 3<sup>rd</sup> quarter 2017

Table 3. Number of TRADE by contribution base

Contribution base	Men	Women	Total
Minimum base (MB)	6,144	3,022	9,166
Between MB and 1.5 MB	298	92	390
Between 1.5 MB and 2 MB	223	40	263
Between 2 MB and 3 MB	197	22	219
More than 3 times MB	50	11	31
<b>Total</b>	<b>6,912</b>	<b>3,187</b>	<b>10,099</b>

Source: Social Security. Self- Employed Workers 'RETA scheme'. Data 3<sup>rd</sup> quarter 2017

Table 4. Number of TRADE by sector

Sector	Men	Women	Total
Agriculture	28	7	35
Industry	280	39	319
Construction	735	28	763
Services	5,869	3,113	8,982
<b>Total</b>	<b>6,912</b>	<b>3,187</b>	<b>10,099</b>

Source: Social Security. Self- Employed Workers 'RETA scheme'. Data 3<sup>rd</sup> quarter 2017

**Table 5. Number of TRADE by main activity**

<b>Sector</b>	<b>Men</b>	<b>Women</b>	<b>Total</b>
Agriculture, forestry and fishing	27	7	35
Mining and quarrying	3	0	3
Manufacturing	271	39	310
Electricity, gas, steam and air-conditioning supply	0	0	0
Water supply, sewerage, waste management and	6	0	6
Construction	735	28	763
Wholesale and retail	1041	386	1427
Transportation and storage	1,591	56	1,647
Accommodation and food service activities	6	8	14
Information and communication	380	117	497
Financial and insurance activities	515	617	1,132
Real estate activities	226	211	437
Professional and scientific activities	1,103	804	1,907
Administrative and support service activities	441	295	736
Public administration and defence, compulsory social	3	3	5
Education	98	91	189
Human health services	164	378	542
Arts, entertainment and recreation	118	64	182
Other services	182	82	264
Activities of households as employers	0	0	0
Activities of extra-territorial organisations and bodies	2	1	3
<b>Total</b>	<b>6,912</b>	<b>3,187</b>	<b>10,099</b>

Source: Social Security. Self- Employed Workers 'RETA scheme'. Data 3<sup>rd</sup> quarter 2017

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