

# Stimulating and protecting self-employment and entrepreneurship in Spain (2008-2018)

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1. Autonomous work, entrepreneurship and observed phenomenology. 2. Some figures determined by the economic cycle. 3. The economic crisis does not necessarily create more autonomous workers. 4. Precarization and self-employment: entrepreneur women and part-time work. 5. Figures on the unsustainability of the social protection system of the self-employed workers. 6. Evolution of the regulatory legal framework for self-employment in Spain since 2011. 6.1. The initial impulse to self-employment as an instrument to generate employment: RD-Law 4/2013, of February 22 and Law 11/2013, of July 26. 6.2. The global commitment to entrepreneurial activity as a resource for self-employment and employment: Law 14/2013, of December 27. 6.3. The RD-Law 1/2015, of February 27, and the Law 25/2015, of July 28, of second chance mechanisms. 6.4. The reordering of incentives for self-employment and entrepreneurship: Law 31/2015, of September 9. 6.5. The intensification of measures to support self-employment: Law 6/2017, of October 24.

## Abstract

This article tries to show the transformations that have taken place in the regulatory framework of autonomous work in Spain during the decade of economic, social and financial crisis (2008-2018). We especially emphasize the fact that recessive economic cycles do not necessarily generate a redirection from unemployment to self-employment. In the same way, the change in the economic cycle encourages the hiring of salaried workers to increase and the number of self-employed workers to stabilize. The article also investigates the problem of the unsustainability of the social protection system for self-employed workers in Spain. This has been one of the most resounding failures of the regulatory regime that was born in 2007 and was reformed in 2017. Finally, we take a tour of the main actions of the legislator on the policy of incentives to the phenomenon of entrepreneurial entrepreneurship.

**Keywords:** Self-employment; unemployment; social protection; part time contracts; entrepreneurship.

## 1. Autonomous work, entrepreneurship and observed phenomenology

The analysis we are going to undertake starts from an hypothesis, determined by the observation of a series of phenomena, exhaustively investigated by Labour Law scholars

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throughout recent years of restructuring of the Spanish labour relations system. As we will demonstrate, there has been a conscious commitment on the part of the legislator to introduce a reform in the Spanish production system from within the company, promoting a new model of labor relations, much more flexible and, in the end precarious. The aim was that of reducing unemployment in traditional service sectors, by redirecting employment to self-employment. This model is especially sensitive to changes in economic cycles, and, therefore, is a precarious and unstable one.

This has been the legislative trajectory since 2001. Although in 2007, a year before the beginning of the economic and financial crisis in Europe, the idea was that of approximating autonomous work regimes to salaried workers, the structural evidence of the crisis has led to a model of separation: in the first place, from the status that was approaching, and, secondly, by a firm commitment to “entrepreneurship” as a mechanism, not only to fight against unemployment, but also as a tool for the development of other non-classical or traditional productive activities. Undoubtedly, the flexibilization of the managerial powers of the employer and the precariousness of working conditions introduced by successive labour reforms, are an incentive, even greater than the usual techniques of promotion and bonus of the hiring of employees, to a sort of spill over of the employment towards new less regulated formulas of autonomous work.

The study of these phenomena, which have never seriously investigated in Spain, allow us to consider the status quo of labour relations, and to become aware of the evolution and degradation of working conditions in collective bargaining, deeply reformed in 2011 and 2012. In particular we can understand to what extent employment standards have been reduced in strategic sectors of the Spanish economy; how the legislation on the employment relationship has influenced such degradation; in which way the enhancement of self-employment is creating a new class of workers, linked to companies through a “clientelistic” relationship, called euphemistic entrepreneurs, located in a sort of nobody’s land and who receive inadequate legal protection.

Indeed, from a conceptual point of view, a self-employed employing workers is considered in the Spanish legal system (Article 1.2 Royal Legislative Decree n. 1/1995 of 24 March 1995 Estatuto de los Trabajadores - ET) as an employer for Labour Law purposes, who is different from a commercial entrepreneur: the former is a natural person who receives and uses the work of the people that Article 1.1 ET defines as a salaried worker<sup>1</sup>. A self-employed person is subject to all the legal responsibilities and benefits of all managerial prerogatives (Article 20 ET), derived from the application of labor regulations. On December 2018, the number of self-employed workers with employed workers was 434,104, of which 225,842 had a single hired worker and 45,202 had 5 or more employed workers<sup>2</sup>. The total number of workers employed by the self-employed is currently around 890,000.

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<sup>1</sup> Supreme Court judgments 22 December 1989 and 17 July 1993.

<sup>2</sup> Source: National Federation of Autonomous Workers Associations ATA.

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## 2. Some figures determined by the economic cycle.

The deep economic, financial and labor market crisis explains the increase of the quantitative relevance of self-employment in Spain, even though it is not enough to understand the complexity of the phenomenon. Spain had in the second quarter of 2015, when it began to talk about recovery after the crisis for the first time in seven years, the same employed workers as in 2003, just over 17.4 million active population, taking into account employees and self-employed. The situation is clearly more favorable at the end of 2018. If the insured by the RETA (Régimen Especial de Trabajadores Autónomos) were 3.151.605 in April 2015 - increased by 0.8% since 2014, and by 2.5% since 2010 - in December 2018 they were 3.253.039 out of a total active population of 18.914.563. Almost one out of six workers in Spain is an autonomous worker<sup>3</sup>, of which 2.7 million are self-employed without salaried workers at their service. And the number continues to grow.

The working population is only 38% of the total population, compared to 46.1% in 2000. Moreover, if in 2007, 90% of the workers had a full-time job, in 2015, beginning of the recovery, that percentage was only 79%. Despite the fact that people employed are 340.000 more than in 2007. The worst figures are undoubtedly those of unemployment that goes from 1.8 million at the end of 2007, to 4.1 million according to the Labor Force Survey, in the second quarter of 2015<sup>4</sup>. Along with these figures, it is necessary to take into account the phenomenon of labor emigration, particularly of highly qualified young workers, a phenomenon that resurfaces in Spain since the massive labor immigration to our country began in 1986, reversing the existing migratory balance, and that supposes around 450,000 workers emigrated since 2009.

A numerical approximation by sector may shed some light on the redistribution of self-employed workers in the different areas of economic activity. As regards the self-employed, the most numerous groups are concentrated in the sectors of trade (25.9%), construction (11.3%), hospitality (10.3%), agriculture (8.5%), professional, scientific and technical activities (7.8%), industry (7.3%), transport and storage (6.1%), administrative activities (3.8%), of health activities (3.1%), of the education sector (2.4%), of financial and insurance activities (1.8%), of artistic activities and entertainment (1.7 %), and the information and communication sector (1.5%)<sup>5</sup>. Of all these sectors, the increases experienced in the last year, after the beginning of the economic recovery, in the education sector (3.3%), in the real estate activities (3.2%), in the artistic activities (2.0%), in the information and communication sector (1.6%) and in the hospitality sector (1.5%).

According to the EPA in April 2018 there would be about 340,000 self-employed workers who, as false self-employed, would be integrated into business structures operating as if they were employees. In fact, the phenomenon is accompanied by a significant decrease in the Trabajadores Autónomi Económicamente Dependientes (TRADE) that would be below

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<sup>3</sup> Source: National Federation of Autonomous Workers Associations ATA.

<sup>4</sup> In Spain, unemployment registered through the State Public Employment Service (SEPE) accounts for the unemployed registered in the Employment Offices, which means 5.4 million job seekers in the second half of 2015. However, The Active Population Survey (EPA) is more reliable, which is carried out through a 60,000-survey procedure that excludes registered applicants who do not seek employment from computing, such as students between 16 and 23 years of age.

<sup>5</sup> Source: National Federation of Autonomous Workers Associations ATA.

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10,000 workers (9,991 according to the register of the Ministry of Employment). Bearing in mind that the TRADE are statistically identified by the obligation to register their contracts with the main employer for whom they work, it is evident that the number of false self-employed workers could be even higher. The main organization of self-employed workers in Spain estimates that of those 340,000 self-employed workers, about 100,000 could be false self-employed workers. The reasons why they are not integrated into the system as TRADE are complex. It is estimated that about 650,000 self-employed workers would prefer to be salaried workers, according to their own organizations<sup>6</sup>.

### **3. The economic crisis does not necessarily create more autonomous workers.**

The severe economic and social recession that Spain has been going through since 2008 allows us to consider in very generic terms how the process of redirecting employment towards self-employment has behaved. We can affirm, in light of the data, that there is no cause-and-effect relationship between the employment crisis and the increase in the number of self-employed workers in Spain. The reasons are complex and diverse, and not necessarily economic. In times of prosperity, salaried employment increased remarkably, while there was no large oscillations in the number of self-employed workers. When the recession arrived, salaried employment fell noticeably as a consequence of the low structural strength of the labor intensive sectors, which is a congenital characteristic of the Spanish labor market. Self-employment has not necessarily constituted a refuge for the unemployed, since the increase of the number of autonomous workers has been little.

The redirection towards autonomous work has been an option for the Spanish legislator rather than a direct consequence of the situation of financial, economic and employment crisis that has affected the Spanish productive system since 2008. Although the favorable economic situation experienced by Spain in the period 1998-2007 allowed to begin the approximation of legal, economic and social protection regimes of self-employed workers with salaried workers, giving rise to the Statute of Autonomous Work in 2007, the depth of the crisis has diverted the attention of the State from this assimilation of regimes and has been decisive in facilitating the shift from salaried work to self-employment.

In reality, the speed of job destruction in Spain has not been reduced by the numerous labor reforms undertaken after the enactment of Act n. 35/2010, of 17 September 2010<sup>7</sup>, on urgent measures for the labor market reform, prompted by the serious warning that the Troika gave the Spanish government in May 2010 to introduce deep changes into the labor relations system.

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<sup>6</sup> Diario Público, July 31, 2018, Eduardo Bayona “Autonomous reluctantly: 420,000 began against their will and 650,000 want to be wage earners.”

<sup>7</sup> Previously, the Parliament has approved Act 17/2009, of 23 November 2009, on free access to service activities and their exercise, which has transposed, partially, into Spanish Law, Directive 2006/123/EC of the European Parliament and of the Council, 12 December 2006, on services in the internal market, hereinafter the Directive. The mentioned Law adopts an ambitious approach promoting a generalized application of its principles in order to promote an overall improvement of the regulatory framework of the services sector and to obtain gains in efficiency, productivity and employment in the sectors involved, as well as an increase in the variety and quality of services available for business and citizens.

All Spanish political and economic sectors have eventually agreed that labour reforms for the promotion of employment based on the Social Security contributions relieves and the direct subsidy for the hiring of specific groups of unemployed did not provide the expected results. This translates, at present, into more than fifty contractual modalities with all kinds of fiscal and Social Security relieves that turn the contractual panorama of our labor market into an uncoordinated labyrinth of overlapping measures whose inefficiency does not manage to slow down the destruction of employment, especially in situations of economic crisis.

Despite the fact that the growth of Spanish GDP in the second quarter of 2018 points to increases close to 3%, the reality is that the number of open-ended full-time contracts in the period 2010-2018 barely reaches 10% of the total of the new hiring. Active employment policies, linked to the commitment to employability and training, require an in-depth reform of the Public Employment Service (SEPE), which currently barely satisfies 1% of the total supply and demand for employment in Spain. It is not surprising, therefore, that the redirection towards self-employment is, at the moment, a priority of the government action. Later we will see how this action has been developed in different phases.

In the previous sections, figures have been presented to illustrate the problem of false self-employed workers and TRADE. With the appearance of Act n. 20/2007, of 11 July 2007 (Ley de Estatuto del Trabajo Autónomo - LETA), the numerical reality of an important group of workers that did not appear in official statistics, integrated into what was euphemistically called the informal economy, emerged. The new jobs created by the digital economy and the so-called collaborative economy could begin to be quantified. Although before 2008 we could talk about some 700.000 self-employed workers integrated in stable business structures, until the end of 2016 the approximately 240.000 workers that could be considered unregulated TRADE, that is, false self-employed workers, were not counted. There is a trend observed with the figures of the EPA and the Ministry of Employment register that leads to peaks of 710,000 self-employed workers in this situation at the end of 2007, to decrease to 500,000 in 2009 and 280,000 in 2013, the height of the crisis, to settle at 360,000 in 2016 and fall back to 340,000 in 2018.

#### **4. Precarization and self-employment: entrepreneur women and part-time work.**

It is important to analyze how this impulse of redirection towards self-employment has taken place, together with: on the one hand, legal measures of ‘escape from Labour Law’ towards entrepreneurship (*rectius*, self-employment)<sup>8</sup>; and on the other hand, and especially for what concerns us here, the legal configuration of certain elements characteristic of some types of work contracts that are subject to business interest, to the point of making indirectly the worker’s interest in the employment relationship not superior to other contractual relationships (civil or commercial). The precarization of working conditions and the growing expansion of gray areas in a context of employment crisis, prompts to look at the self-

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<sup>8</sup> Costa Reyes A., *Impulso al emprendimiento o precarización del trabajo: incidencia (del nuevo objetivo) de las reformas laborales en materia de contratación indefinida y a tiempo parcial*, in Gómez Muñoz J.M., *Trabajo autónomo en España: Problemas y propuestas*, Bomarzo, 2019, 273.

employment or a better satisfaction of their personal and professional interests in an alternative or complementary (pluriactivity - *pluriactividad*) to the work contract<sup>9</sup>.

In this perspective, that of ‘pushing towards entrepreneurship’, it is important to underline the potential impact on it, on the one hand and precisely, that less protection of extrinsic conditions (in particular in relation to the working time and its distribution) and, on the other, connected with it, the growing formulas of work organization and business structure (which promotes greater autonomy of work, decentralization of responsibilities and high professionalization of workers)<sup>10</sup>; the combination of both factors has lead -especially during the last decades- to that the borders between work for others and work on his own are diluted<sup>11</sup>. Certainly, and as a prior idea, we must start from the progressive difficulty to exclude that, in an economy like ours (based on services and aimed at networking), the same activity can be provided in the form of a subordinate or autonomous relationship<sup>12</sup>.

And in this reality, it is worth wondering if the progressive precarization of the so-called extrinsic working conditions (working hours and availability, income, etc.), which traditionally were more advantageous for employees than for self-employment, together with the current employment crisis and the legal measures that facilitate self-employment makes progressively more attractive (or compensable for) other intrinsic elements that were traditionally more propitious in self-employment (greater availability of working time or the content of work itself).

In short, we intend to investigate whether in this context, in the option of ‘new entrepreneurs’ matters the fact that they have been diluting the own and historical advantages of Labor Law (stability, limits to managerial prerogatives, protection of rights, etc.)<sup>13</sup>. And in particular, if the combination of these aspects is pushing a greater entrepreneurial ‘initiative’ of those who until then have been working for someone else; or in other words, if we could think that they are people who may leave involuntarily from salaried work.

Trying to corroborate this initial approach, we are going to focus on a modality specially promoted and reformed in these years: the part-time contract (CTP)<sup>14</sup>. Our hypothesis is to consider that the rupture of the balance of interests to which -according to the community

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<sup>9</sup> Vila Tierno F., *Emprendimiento y trabajo autónomo como formas de huida del estándar de trabajo adecente*, REDTSS-EF, 421/2018, 60.

<sup>10</sup> Costa Reyes A., (8), 280; Todoli Signes A., *El trabajo en la era de la economía colaborativa*, Tirant lo Blanch, 2017, 18, 19, 44 and 45.

<sup>11</sup> Calvo Gallego F.J., *Los trabajadores autónomos dependientes: una primera aproximación*, Temas Laborales 81/2005, 45-50.

<sup>12</sup> Costa Reyes A., *Impulso al emprendimiento o precarización del trabajo: incidencia (del nuevo objetivo) de las reformas laborales en materia de contratación indefinida y a tiempo parcial*, in Gómez Muñoz J.M., (8), 282. Of particular interest is the relationship between the increasing difficulty of distinguishing such forms of work and the increase in part-time and temporary work, and of multiple jobs, as stated in the Commission Communication ‘*A European Agenda for the Collaborative Economy*’, Brussels, 2.6.2016 COM (2016) 356 final (12). Sánchez Urán Azaña M.Y., *Economía de plataformas digitales y servicios compuestos. El impacto en el Derecho, en especial, en el Derecho del Trabajo*, La Ley-Unión Europea, 57/2018.

<sup>13</sup> Costa Reyes A., (8), 287. We do not ignore that perhaps the main reason for the entrepreneurial increase in this period of crisis and reforms has more to do with the lack of opportunities in employment (what is known as ‘entrepreneurship forced or by necessity’, compared to opportunity); Gómez Sota F., Moldes Farelo R., *De la flexibilidad laboral a la identidad móvil: el modelo ‘Startups’ en el marco del emprendimiento español*, RMESS, 131, 2017, 174 - 175.

<sup>14</sup> Some data of that particular post-reformer growth in the southern countries (Italy and Spain) in Ortiz García P., Cosimi L., *Trabajo a tiempo parcial de las mujeres en España e Italia: El debilitamiento de la norma de empleo estable*, RMESS, 131/2017, 35 - 36.

regulations- should serve this contractual typology (business and social: conciliation, training, etc.), may be entailing, particularly in the case of the woman, an option for entrepreneurship (alternative or superimposed), by allowing for greater willingness and organization of their professional and personal interests, and a low opportunity cost in the short and long term (in terms of social protection even)<sup>15</sup>.

In this sense, and as an indirect reinforcement of our approach, it should not be overlooked that the only exception in which female entrepreneurship is superior to that of men “originates when considering self-employment as a means to obtain income that improve the family situation”. That is to say, when it comes to complementing income without affecting especially the family organization and starting, therefore, from the existence of another main source of income. A further noteworthy fact in this perspective, is the singular growth in recent years of autonomous work in traditionally feminized sectors, since it is interesting to put it in connection with what we have been pointing out about the possibility that the difference between being employed may no longer have a special significance in practical terms (as well as with those that we will later point out about female self-employment).

## 5. Figures on the unsustainability of the social protection system of the self-employed workers.

Every diagnosis must start from reliable data. In such a perspective, it is advisable to reflect on some numbers, illustrating the dimension and characteristics of autonomous work, as well as the special Social Security regime of these workers. The figures show insistently the fact that, in the Social Security scheme of self-employed workers, the revenue from contributions does not cover the expense derived from the payment of benefits. During the last years, the revenues from contributions has been around 10 billion euros per year, and the expenses in benefits have increased to 17 billion euros per year. The financial deficit of the system is evident. Another important fact is that the increase in the number of contributors to this Social Security scheme does not compensate for the financial gap noted<sup>16</sup>.

In accordance with the data provided by the competent Ministry, as of December 31, 2017, the number of self-employed individuals registered in the different schemes of Social Security, is 1,962,774, with the RETA being the regime with the largest number of insured. In this global number, men represent 65.1% and women 34.9% of the total. It is, however, a percentage that changes when considering variables related to the sector of activity and geographical scope. Thus, the percentage of women is very small in Industry (22.2%) and especially in construction (3.5%). On the contrary, in some autonomous communities such as Asturias and Galicia, the percentage of women exceeds 40.0%.

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<sup>15</sup> Alameda Castillo M.T., *Emprendimiento y trabajo autónomo. Su realidad como mecanismo de incorporación y de permanencia en el mercado de trabajo*, *Cinca*, 2016, 60. With the idea of verifying precisely that the dissatisfaction in employment and the availability of working time, especially in case of family obligations, is pushing towards self-employment, see the studies quoted in Costa Reyes A., (8), 290 - 291.

<sup>16</sup> Sáez Lara C., *Sostenibilidad del sistema de protección social de los trabajadores autónomos*, in Gómez Muñoz J.M., (8), 443 - 444.

Considering the age criterion, it should be noted that 72.2% of the self-employed are over 40, although this percentage drops to 56% among those from other countries. In the agriculture sector, the percentage of people over 55 is 16.8% above the national average of 11.8%. As regards finally the nationality, foreigners represent only 9.7%. This percentage increases as age decreases, in the island and Melilla communities (more than 15%) and in construction and services. The distribution of the self-employed by sector of activity has the following characteristics: only 4.4% work in industry, 10.8% in construction, 11.8% in agriculture and the group significantly larger with the 73,0% works in the service sector<sup>17</sup>.

As regards the figures on pluriactivity, these show us that only 5.5% of self-employed workers combine their activity with employment, a figure that rises to 10.3% in the case of young self-employed 25 years and up to 12.8% for self-employed with less than six months of seniority. On the other hand, the percentage of self-employed workers who are dependent on them is 21.8%, a percentage that increases as the contribution base increases, reaching 35.5% among those with bases higher than 3 times the minimum base. This average percentage is higher in Andalusia, Canary Islands and Ceuta, where it is around 25%. On the contrary, the percentage decreases to 17.4% and 14.5% in agriculture and construction, respectively. Finally, the number of family members insured Social Security amounts to 195,239, of which 87,970 are men and 107,269 are women. The vast majority works in the services sector, where it reaches 81.11%, corresponding, in particular, 76.07% of this sector to commerce and catering.

With regard to the social protection system, the data offered by the competent Ministry shows us that, on the one hand, 86.3% of self-employed workers do not exceed the minimum contribution base. In addition, this percentage of self-employed workers who contribute for the minimum base exceeds 90%, when the age is less than 40 years, when it comes to foreign workers (97.3%) and when it comes to self-employed workers with less than five years of insurance in the system<sup>18</sup>. On the other hand, these data show that after 55, 29% of self-employed workers contribute for a base above the minimum, given the proximity to retirement age. The consequence in terms of pensions when the self-employed worker reaches the age of retirement is the lowest average pension (they do not reach 700 euros per month) compared to the average pension of salaried workers that amounts to more than 1,175 euros. In addition, the percentage of self-employed workers receiving the minimum pension is 21.31%, while the percentage of employees receiving the minimum pension is around 13.55%<sup>19</sup>.

As we have already pointed out, the financial deficit of the system is evident, the difference between the income from contributions and the expense for benefits being around seven million euros per year, another important fact being that the increase in the number of contributors to this Social Security scheme does not compensate for the financial gap noted. In effect, considering data on self-employed workers in 2017/18, it would be reasonable to expect a positive evolution in the growth of the number of independent self-employed workers by 2018, a numerical increase that does not entail an increase in income. On the

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<sup>17</sup> Sáez Lara C., (16), 444.

<sup>18</sup> It should be borne in mind that only 55.4% of self-employed workers have been registered with Social Security for more than 5 years.

<sup>19</sup> Sáez Lara C. (16), 445.



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contrary, the Budget Law for 2018 foresees a reduction in the revenues from contributions to the RETA and the contribution of self-employed to the Social Security System has fallen by 1.02% in 2018, as a consequence of flat rates. In addition, in the budget of forecast there is an increase in the minimum contribution base for both self-employed as well as company managers. In short, if the trend is the increase in the number of contributors and the increase in the contribution bases, the lower figure of the revenues could be only explained by the reductions and discounts on contribution<sup>20</sup>.

## 6. Evolution of the regulatory legal framework for self-employment in Spain since 2011.

Being true that since the Constitution of 1978 an interest of public authorities for the promotion of self-employment and entrepreneurship can be detected, it is from 2013 that it is producing an unprecedented expansion of promotional measures and protection of autonomous work and entrepreneurship, measures that affect different areas and that are characterized by their diversity. This commitment of the public powers for the promotion of self-employment and entrepreneurship is connected to the need to find an engine that drives the creation of employment hindered by the impact produced by the economic crisis. The support for self-employment and entrepreneurship not only generates employment for the individual who decides to opt for this way of activity, but also enables them to generate employment for others, a circumstance that is reflected in the regulations that we are going to present.

This is the dynamic within which the Spanish legislator acts in order to adopt a set of rules that have changed in a short time, in a substantial way, the normative regulatory framework supporting and protecting self-employment and entrepreneurship. New measures have been introduced but the existing ones have also been strengthened in an attempt to increase their effectiveness to facilitate the start of an autonomous activity. It can be seen how the possibilities of applying the measures have been broadened by easing the application and eliminating limitations on access to them that, on occasion, could be an obstacle to starting such an activity.

The Social Security system is the area in which the greatest number of regulatory measures of different nature concentrate. But we also find new measures in other areas where there has never been any interest in adopting provisions to promote self-employment and entrepreneurship. In the following, we will deal with normative development as culminated until now with Act 6/2017 of 24 October 2017, on Urgent Reforms of Autonomous Work<sup>21</sup>.

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<sup>20</sup> Sáez Lara C., (16), 446. Revenues from contributions to the RETA amount to 11,441 million euros. UPTA (*Unión de Profesionales y Trabajadores Autónomos*) has been denouncing for several years that the cost of flat rates or contribution reductions should be exclusively charged to the PGE (*Presupuestos Generales del Estado*), and more specifically to the SEPE (*Servicio Público de Empleo Estatal*). Otherwise, it is affirmed, what is being done is to damage the Social Security system, which has been already stressed in recent years, and to put at risk the pensions of future generations of self-employed.

<sup>21</sup> Gómez Caballero P. *El marco normativo del empleo autónomo y sus reformas recientes. efectos sobre la evolución del autoempleo*, in Gómez Muñoz J.M., (8), 59 – 60.

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### **6.1. The initial impulse to self-employment as an instrument to generate employment: RD-Law n. 4/2013, of 22 February 2013 and Act n. 11/2013, of 26 July 2013.**

The RD-Law n. 4/2013, of 22 February 2013, and the Act n. 11/2013, of 26 July 2013, are provisions that have been enunciated as support measures for entrepreneurship and encouragement of growth and job creation. The two provisions aim to promote entrepreneurial initiative and self-employment, considering that they are instruments that serve to boost economic activity and the creation of wealth and, therefore, with the capacity to create, at turn, self-employment and employment. Now, with these norms is also intended, and in particular, the support to the entrepreneurial initiative and to the creation of employment for a specific segment of the unemployed population: those under thirty. Among their objectives is to reduce the high levels of youth unemployment with a series of measures—as indicated in the explanatory memorandum of the aforementioned standards—that pursue the labor insertion of young people either as employees or through self-employment and entrepreneurship, in line with the objectives of the European Youth Guarantee, following the specific recommendations or lines of action that are proposed by the European Union.

To do this, the Entrepreneurship and Youth Employment Strategy 2013-2016 has been established, which includes, separately in four chapters, a set of measures that refers to different areas, in order to develop the said strategy: promotion of entrepreneurship and self-employment; tax incentives; hiring incentives; improvement of intermediation.

1.1. The measures enunciated as the promotion of entrepreneurship and self-employment operate within the scope of the Social Security System and are aimed at facilitating the employment of young workers. Reductions and contribution bonuses are foreseen in favor of workers under 30 or under 35 without family; compatibility for the under-30s of the entitlement to the unemployment benefit with the start of an activity on their own; and, the capitalization of the unemployment benefit for people under 30 or under 35 if women, in the view of starting an activity as a self-employed worker or to participate in a trade company. Some of these measures present limitation as far as the personal scope of application is concerned and must, therefore, be considered contrary to the impulse of autonomous work.

1.2. The tax incentives with reference to the Corporation Tax, for which Royal Legislative Decree n. 4/2004, of 5 March 2004, was modified, and to the Personal Income Tax, for which Act n. 35/2006, of 28 November 2006 was modified by Act n. 11/2013, 26 of July 2013. In both cases, these are measures complementary to the previous ones that are aimed at facilitating the start of an activity as a self-employed as entrepreneur. Without introducing any reference to age, these are rules that underlie the idea of helping young workers who decide to start a professional activity, if it falls within the scope of Title I of Act n.11/2013, dedicated to the regulation of the measures for the development of the Entrepreneurship and Youth Employment Strategy.

1.3. The RDL n. 4/2013 and the Act n. 11/2013, establish a set of hiring incentives from which both companies and self-employed can profit, being the age under 30 of the worker and in some cases, of the hiring person an essential requirement for the access to incentives, which, as a rule are, reductions and bonuses as for the Social Security contribution. These

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incentives, although they all pursue the same goal of stimulating hiring, fall within different regulative regimes.

We can distinguish three groups of incentives: for the employment of young people under 30; for the implementation of young entrepreneurship projects, whose peculiarity is that the entrepreneur must be a youth under 30 without employees who hires an unemployed person aged 45 or over; for the membership of young people into social economy entities.

## **6.2. The global commitment to entrepreneurial activity as a resource for self-employment and employment: Act n. 14/2013, of 27 December 2013.**

Act n. 14/2013, of 27 September 2013, on support for entrepreneurs and their internationalization, is the clearest proof of the firm commitment to self-employment and entrepreneurship as instruments of job creation. Again, in this provision, it is clear the special concern of the legislator for the employment of young people, which identifies as one of the most serious problems of the Spanish economy, then, not in vain, in the case of young people under 25 as double as the EU-27 average. For the Spanish legislator, the causes that have given rise to this situation must be looked for, in addition to some deficiencies that have been characterizing our model of labor relations, in the absence of a greater entrepreneurial initiative among the youngest that has led, in the absence of employment opportunities to higher levels of self-employment capable, in turn, of generating more employment.

In order to achieve this objective, the legislator intends to undertake a radical change in the mentality of Spanish society so that it may value more the entrepreneurial activity and the assumption of risks. For this reason, it is expressly stated that the cornerstone of such change is in the education system. It seems that the Spanish legislator has come to the conviction that the problem of unemployment, particularly that of young people, will only be solved by getting citizens to assume an entrepreneurial spirit and in society by establishing an authentic entrepreneurial culture. And this is to achieve, as has happened in other areas, through the transmission of the entrepreneurial spirit and its understanding as a necessary instrument, through the educational system at all levels<sup>22</sup>.

Along with the previous new measures, other measures have been introduced that have effects in the field of trade, and which also represent a novelty in supporting self-employment and entrepreneurs. It has to do with the creation of the figures of the *Emprendedor individual de responsabilidad limitada* and the *Sociedad Limitada de Formación Sucesiva*.

But the Act goes a step further in extending to workers over 30 the subjective scope of incentives that were applied by way of reductions or bonuses in the Social Security contribution, until now applicable only to male workers under 30 years and to women under 35. To this end, art. 29 Act n. 14/2013, of 27 September 2013 on support for entrepreneurs and their internationalization, introduces a new additional provision, 35<sup>th</sup>-bis, in the TRLGSS-1994 (*Texto Refundido de la Ley General de la Seguridad Social-1994*). This provision establishes the possibility of making reductions in the Social security contributions, to self-employed who are 30 or older, and who have applied for a benefit or who had not applied within the five years before, counting from the date of registration, in the RETA. The reductions to

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<sup>22</sup> Gómez Caballero P., (21), 65.

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contribution are granted according to a scale, for a maximum period of 18 months. This system of reductions does not apply to self-employed who employ employees. It applies, however, to working partners of *Cooperativas de Trabajo Asociado* that fall within the scope of the RETA.

### **6.3. Royal Decree-Law n. 1/2015, of 27 February 2015, on second chance mechanisms.**

In the deployment of modifications tending to expand support for self-employment and entrepreneurship, Royal Decree-Law n. 1/2015, of 27 February 2015, contains provisions that are applicable to the promotion of self-employment and entrepreneurship.

Art. 9 of Royal Decree-Law n. 1/2015 introduces a new art. 30 in Act n. 20/2007 of 11 July 2007 (*Estatuto del trabajo autónomo*) in order to recognize a bonus for workers insured by RETA in order to reconcile work and family life. The measure consists of the attribution to the worker, for a period of twelve months, of the right to a relief of 100% of the social security contribution, in a series of commitments related to family care. On the other hand, art.8(8) of Royal Decree-Law n. 1/2015 provides for the application of a minimum relief from social security contributions for those who join a cooperative as working or simple members, provided that they have opted for a Social Security scheme for employees.

### **6.4. The consolidation of incentives for self-employment and entrepreneurship: Act n. 31/2015, of 9 September 2015.**

The Royal Decree-Law n. 4/2014, of 4 July 2014, on the application of urgent measures for growth, competitiveness and efficiency<sup>23</sup>, delegates the Government to proceed to the consolidation, as appropriate, of all the incentives to self-employment in the field of work and social security as provided by Title V of Act 20/2007 (LETA) and by Act 5/2011, of 29 March on Social Economy (Ley de Economía Social - LES). To this end, all incentives, bonuses and reductions in the Social Security contribution in force should be included in a single provision, harmonizing, where appropriate, the requirements and obligations legally or statutorily provided.

The rule that saw the light to fulfill this task was Act n. 31/2015, of 9 September 2015, which modifies and updates the self-employment regulations and the measures to promote self-employment. Art. 1 contains the modifications to the LETA and art. 3 those that refer to the LES. Act 31/2015 is based on the conviction of the legislator of the need to promote self-employment, both individually and collectively, as instrument for the creation of self-

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<sup>23</sup> The 8<sup>th</sup> Final Disposition of Royal Decree-law 16/2013, of 20 December 2013, providing measures to favor stable hiring and improve the employability of workers, states that “In order to provide greater legal certainty, the Government will proceed to a regulatory reorganization of the incentives to hire in relation to the Social Security contribution, to which end it will include in a provision the reductions in the security contribution in force on the date of entry into force of this royal decree-law, and shall proceed, where appropriate, to the harmonization of the requirements and obligations provided by law or regulations.”. While in this provision the regulatory reordering is expressed, limiting it to the “bonuses and reductions in the Social Security contribution”, art. 121 Royal Decree-Law n. 4/2014 and Act n. 18/2014, seems to cover a broader scope for the reordering of incentives than that limited to bonuses and reductions in the contribution to Social Security.

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employment and, in addition, of employment. It is based on the assumption that self-employment brings together enormous potential in terms of job creation, and that Social Economy entities are a source of stable, quality and non-relocatable employment creation, as they have demonstrated an important capacity for the creation and maintenance of employment<sup>24</sup>.

Act n. 31/2015 reorders the existing support measures in a strong support for self-employment and entrepreneurship, as it is clearly stated in its Preamble when it indicates that the measures contained in it contribute to consolidate the roadmap undertaken in the last years in the field of self-employment, which is structured around three axes: promoting self-employment, individual and collective; support those who are already in self-employment, so that they can consolidate and develop their projects; and to enhance the social protection of the self-employed with the objective of bridging the gap that exists between self-employed and employees.

The consolidation carried out by Act n. 31/2015 is a decision of the legislator, correct as necessary, given the normative dispersion that had occurred in a short time in the previous years, in which various modifications had been made in support of self-employment and to entrepreneurship, which advised their reordering. Act n. 31/2015 can distinguish support measures that are common to self-employed workers and Social Economy entities (although for this group, not in all cases) and measures that are of exclusive application to each of these groups. It should be noted that, although in separate regulation, there is a certain parallelism in terms of the support measures that are regulated for both groups, but the regulation is different, even if it is of the same nature. Act n. 31/2015 is not only limited to reordering the incentives, but also makes use of modifications that broaden the possibilities of application of the measures, eliminating restrictions that could be considered contrary to the support for self-employment and entrepreneurship. As a result, Act n. 31/2015 is a further step that makes it possible to move forward with policies that promote self-employment and entrepreneurship.

### **6.5. The intensification of measures to support self-employment: Act n. 6/2017, of 24 October 2017.**

Act n. 6/2017, of 24 October 2017 is entitled as “Urgent Reforms of Autonomous Work”, although in its Preamble, at no time is the urgency of the reform justified by the support of any political group. Like all the previously mentioned provisions, this act starts from the importance of autonomous work and entrepreneurial activity as instruments for the creation of wealth and the generation of employment, which justifies the conviction of the Spanish legislator in the need to continue moving forward in the development of new support measures.

Act n. 6/2017, modifies the regulation of measures that already existed, expanding its possibilities of application, eliminating or reducing previous restrictions, but also incorporating other new measures. These are measures that mostly operate within the scope of the Social Security System, but also in the fiscal area. This has not prevented the legislator

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<sup>24</sup> Gómez Caballero P., (21), 67.

from taking advantage of this rule to introduce modifications to improve the collective rights of self-employed workers and vocational training for employees.

With the entry into force of Act n. 6/2017, there is no doubt that a very relevant level of support for self-employment and entrepreneurial activity has been achieved, not only at the time of starting an activity but also for the maintenance of a level of self-employed protection that must be assessed very positively. In Act n. 6/2017, up to fifteen measures can be counted specifically applicable to self-employed workers who improve their situation, together with others of a general nature that also apply to them. A different question is whether the normative efforts made have achieved the expected results.

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