

# Crisis and Social Security in Spain

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## Abstract

**This paper outlines the latest reforms introduced into the Social Security System's protective actions in order to deduce whether such intense changes allow us to conclude that a Social Security crisis exists. This concept is understood from the perspective of the Social Security being capable, or not, of undertaking its historical mission. This work takes into account the legislative reforms made to Social Security, along with the changes that are taking place, in the form of providing services in the new post-capitalist society.**

## Keywords

**Pensions, Pensions Revaluation, Sustainability Factor, Unemployment, Defined Contribution, Integration of Gaps, Minimum Supplements, Precarious Work**

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## 1. Introduction

### 1.1. The Social Security Crisis in Economic Terms

The terms “crisis” and “social security” repeatedly appear together in Spain as part of a long-standing marriage that was practically contracted when the first social security mechanisms came into being: the Occupational Accidents and Professional Diseases Act of 1900 had to resort to the compulsory security of business liability in 1932, which was established in the interests of ensuring the economic effectiveness of such protection. The progressive (subjective and objective) extension of protective action by means of social security mechanisms until the system as we know it now was set up on 1 January 1967 entailed huge difficulties and took place with constant warnings about the financial insufficiencies of what were clearly loss-making social securities. The Social Security System, implemented by the 1966 General Law on Social Security, has had to face these very same financial difficulties; despite its important and progressive subjective and objective extension, it has constantly invoked economic and financial difficulties in most reform regulations that have come into being since it began. Thus the crisis/social security association has become permanent, despite the evident changes that the Spanish society has undergone (urged on by grave demographic and unemployment problems) in the form of working

organisation (the “regularly insured career” paradigm that is no more), and also in the Social Security System itself (which has been the object of numerous reforms of many kinds), to name just a few aspects.

This permanent and old association explains the very limited impact that the recent financial crisis has had on the set of reforms that the Spanish Social Security System has had to face, whose origin lies in the 1995 Toledo Agreement, as well as parliamentary and social pacts prior to this economic crisis, but in the context of other previous employment crises. Generally speaking therefore, the reforms made to our system, some of which have coincided chronologically with this crisis, have not proven to be the legislator’s hasty response to today’s situation of economic difficulties, rather scheduled action that comes with a high level of parliamentary, and social, consensus to some structural problems, basically of a demographic kind that stem from prolonged life expectancy and low birth rates, with the resulting increase in the dependence rate, which have worsened given situational circumstances: massive job cuts and increasing costs of unemployment benefits, along with reduced tax collections because of high unemployment. This scheduled reform has been carried out for years with a high level of consensus—save some exception that has not excluded certain social, or even parliamentary, defences. Only unemployment protection escapes this categorisation because, on the one hand, this provision is not included in the Toledo Agreement context and in subsequent parliament agreements, or in social agreements, which are restricted to pensions. Nor can it be concluded that some more recent reforms—sporadic, but of singular welfare importance—do not constitute any defence of the consequences that derive from the financial crisis in order to pursue the reduction of its economic cost, a situation that does not hinder this benefit remaining in the future as these reforms clearly call for continuity.

## 1.2. Another Senses for “Social Security Crisis”. Social Security Objective as a Limit for Legal Reforms

Yet both terms (“crisis” and “social security”) also allow other different combinations, beyond the Social Security’s economic feasibility, which focus attention on the mission that the Social Security performs. As Social Security has been historically attributed the mission of offering protection through economic provisions to the circumstances of need of the subjects included in its field of application, the Social Security crisis should be considered in two different senses: 1) when a major transformation takes place in the undertaking of the system which affects precisely the mission attributed to it; and 2) when the continuation of the Social Security System as a means of social protection is in doubt.

No-one openly doubts the continuity of the Social Security System as a mechanism to protect social risks and, indeed, all Political Parties appear as defenders of the public Social Security System. With all its difficulties, and the singularities of each national Social Security System, it is an identifying mark of the European social model. Thus forms an essential part of the Social State that confirms our Constitutional Text (Art. 1 CE) and the Treaties and International Conventions ratified by Spain, which form part of the Spanish legal system and must operate as a hermeneutic criterion in interpreting fundamental rights (Art. 10 CE).

Therefore, the legislator has no letter of marque to reform, and with no restriction, the public pensions system by forgetting the constitutional framework formed, most certainly, by fundamental Art. 41 CE, but also by Art. 1 CE, and all those other precepts that confirm other Social State guarantees, such as the principle of equality and non-discrimination (Art. 14 CE), protecting the elderly (Art. 50 CE) and prohibiting arbitrariness, judicial security, juridical and prohibition of any retroactive effect of regulations (Art. 9 CE), to which the obligation of public powers must be added, that “of promoting conditions so that the liberty and equality of individuals and of the groups to which they belong are real and effective, and of removing any obstacles that hinder or make their fullness difficult” (Art. 9.2 CE).

Debate, then, moves on to identify the transformations made to the system that take place in the interests of identifying whether they are relevant enough to classify them as “critical”, or if, otherwise, we face “unsubstantial” modifications which, even if they alter the system’s features, are not that relevant. Evaluating the importance of these reforms can only be done, in my view, by analysing their incidence on the mission that is assigned to the Social Security, which is none other than conferring economic provisions in circumstances of need, and these economic provisions must, according to the Constitution (Art. 41 CE), be sufficient.

Unfortunately, the Constitutional Text does not offer many more arguments (Lopez Gandía, 2014): its lax wording, its systematic location in Chapter III of Title I, with consequences deriving from the perspective of its guarantees (Art. 53 CE), and the enshrined Constitutional Court doctrine that is a legal configuration model (among many others, STC 65/1987, of 21 May; STC 124/1987, of 15 July; STC 134/1987, of 21 July; STC

97/1990, of 24 May; STC 184/1990, of 15 November; STC 116/1991, of 23 May; STC 361/1993, of 3 December, STC 37/1994, of 10 February; STC 213/2005, of 21 July; STC 128/2009, of 1 of June; STC 205/2011, of 15 December; STC 49/2015, of 5 March), possibly hinder configuring an obligation to maintain these levels of subjective and objective protection achieved at any given time or historical stage. The only aspect of Art. 41 CE that can be possibly inferred is the Social Security System's subsistence, which would obviously exclude its elimination, but also any other action that could affect this system's sufficiency.

However, the legislator could adopt some more or less important amendments, which could affect simple parameters, or more importantly, could imply configuring the system itself, and could even affect the instrumented technique, or above all, and perhaps here lies the crux of the question, the relationship between both levels of social protection covered by the Constitution: the first public compulsory and sufficient level, and the complementary-free-level. Indeed, and in short, any diminishing-type reform of the public pillar of pensions implies a possible gain of the market share for complementary social protection, and this is how the market itself has traditionally understood it, and most certainly as has the legislator who, in a similar mission to that entrusted to the National Welfare Institution when it came into being, acts by spreading complementary or private "welfare" in this case (e.g. D.A. 19<sup>th</sup> Law 27/2011, of 1 August and, later, Preamble Law 23/2013, of 23 December).

Indeed protection in circumstances of need can be provided by several techniques from which relevant consequences can, in turn, derive; to name but a few, delimiting their field of application, determining the way to finance them, and establishing a system of liability. As it is well-known, our system, which follows the social security model of Bismarck (1884), is set up by an insurance technique. This system continues today, although it has been nuanced by various mechanisms of different types and scopes. Maintaining this technique is not altogether essential, provided this mission is set up by means of other techniques or systems that allow the public protection of social risks. Transformations could also affect this very technique, and could comprise any of the aforementioned consequences that have been conventionally associated with, or have derived from, its use. Yet this is not, in principle, the way in which the various reforms move. On the one hand, reinforcing the principles of contributory and proportionality is related, or, on the other hand, there is interest (by those who defend the development of a complementary private level) in this reinforcement deriving from the use of this insurance technique by disregarding or relaxing the Social Security System's "publicising" mechanisms.

### 1.3. Social Security in Some International Organisations: ILO and the European Union

The wide margin in which to configure Social Security Systems has also reached international organisations that have traditionally performed coordinating tasks. The 101<sup>st</sup> International Labour Conference (May-June 2012) approved Recommendation 202, about national levels of social protection, which can be perfectly interpreted as a result of ILO Convention no. 102's failure (1952), a minimum standard on social security matters which, even today, has still not been ratified by most ILO members (On 4 May 2015, OIT Agreement no. 102 was ratified by 50 Member States, but is still to be ratified by the remaining 135 Member States). Logically, although these are not the terms in which the cited international instrument is pronounced, this interpretation of a Recommendation is not altogether incorrect, whose purpose is to define the social protection levels that are restricted to including basic, yet vital, guarantees, which is far removed from the social security branches that ILO Convention no. 102 defends, and from which a standard definition of the social security concept has been inferred as a desirable protection standard.

The European Union, either to include social security in the Open Method of Coordination (OMC) (Treaty Art. 160) or through the silent action of "invisible hands" or visible hands (European Bank; IMF, among others), has undertaken relevant action. Despite the striking differences between the various Social Security Systems in Europe, it is true that most reforms follow community guidelines and are, thus, similar among Member States to a certain extent (García Cortazar, 2011).

### 1.4. Social Security and New Work Organisation Forms

Otherwise, we ought not to forget that Social Security Systems, including the Spanish one, are structured within the first modernity framework, and in a social reality context and, above all, had a very different working organisation than that used today, which has relevant consequences for contributory-professional systems in which employment is a fundamental element to access protection (Vicente-Palacio, 2013). From this perspective, it is worth considering whether the Social Security System is prepared to fulfill its protection mission in the face of

these new work organisation forms. It is no longer a matter of examining if the extent of the protection provided by the Social Security System has diminished for those subjects who have continuously carried out their professional activity by working normal working days, but if it could also perform the same mission with those subjects who perform interrupted or discontinuous professional activities (casual workers, part-time workers, the unemployed, etc.).

We now go on to provide a general overview of the Social Security System in the interests of concluding whether the various reforms have implied relevant enough changes to enable us to state that we face a Social Security crisis, and to such an extent that it might be unable to fulfill its mission. Our examination is limited to the objective aspect, provided that, from a subjective perspective, the system's field of application has not undergone major changes that have questioned its protective mission. Conversely, the Social Security System has extended its field of application by including previously excluded individuals, even quite questionably at times, and merely for tax collection purposes (extracurricular practices in companies). All in all from the subjective perspective, the Social Security System's protective circle has been considerably extended by including more and more previously excluded individuals in what has been a clearly expanding tendency. This must doubtlessly be evaluated positively as the materialisation of the principle of equality in the protection domain of social requirements which end up, on the one hand, in unfair situations of exclusion and, on the other hand, in privileged social protection systems that act beyond the scope of solidarity, or of both a national (non-contributory level) and professional (contributory) kind. This principle inspires the Social Security System, and we ought not to forget the major simplification that this System's structure has undergone after eliminating Special Schemes which, thus, eliminated schemes that included welfare benefits with low levels of protection in the interests of homogenising and making the system's protective action uniform (Vicente-Palacio, 2012).

## 2. Protected Circumstances of Need (or Risks)

Undoubtedly, whenever we take the long period that has elapsed since the Social Security Act (LSS-1966) was passed to the present-day as a reference for our analysis, we find that protected circumstances of need have extended. To the classic provisions of healthcare, maternity leave, temporary disability, permanent disability, retirement, death and survival—which result from common and professional risks—and unemployment, economic provisions have been added for paternity leave, risks during pregnancy and breast-feeding periods, and for caring for minors with cancer or other serious diseases. Despite their limited scope, and even though their cost is not high compared to classic provisions, especially pensions, they have extended the system's scope of protective action. Some classic provisions have also been transformed to include new social realities, such as maternity leave as it now includes being a biological or adoptive mother or, more recently (Law 40/2007), widowhood protection to common-law couples, who have been traditionally excluded from this cover. Another result of social evolution has been to acknowledge widowhood entitlements to ex-spouses, and raising the age of a child to receive an orphan's pension, and for both the general (increased to 21 years) and extraordinary assumed cases that an orphan does not undertake any professional activity, or, if orphans were professionally active, their income does not exceed 100% of the national minimum wage (increased to 25 years).

Even so, and having concluded that circumstances of need or covered risks have been positively evaluated on the whole, the opposite can be stated for some of these provisions as a tendency has emerged for unemployment protection, which has its specific peculiarities.

Widowhood protection has been the object of some restrictive reforms in the aforementioned extended protection context. This restriction is appreciated in not only the expected economic dependence of the surviving partner, compared to the deceased, in common-law partners, a requirement that is not expected of married people, but also in the requirements to access a widow's/widower's pension, which have tightened for the specific alleged case of the deceased dying expectedly of a common disease before having married. This alleged case now expects this marriage to have lasted a minimum of 1 year or, alternatively, having had offspring. As we all know, not complying with the requirement implies a much lower level of protection, which reduces from a classic pension for life to a temporary 2-year provision. Another restrictive character, with a greater subjective impact, is the requirement of an ex-spouse being the beneficiary of a compensatory allowance, which is eliminated with the deceased's death. In both cases, and despite being sporadic reforms—the latter being nuanced by provisional regulations (D.T.18<sup>a</sup> LGSS) in the face of social protest—they indicate the way forward that the legislator shall foreseeably take when the reform to protect widowhood, which has long since been proposed (since 2005), is finally embarked on, which is none other than restricting protection by this eventuality of a circum-

tance of need that derives from the deceased's death. These amendments are framed within a "redefinition" of the protected risk in an attempt to adapt it to social reality but, unlike protection for unemployment, this redefinition does not intend to protect a risk that differs from the original ones already protected within the old social securities framework, but it is precisely the surviving partner's economic dependence, compared with the deceased, that is a risk which lost its essentiality as protection developed.

Reforms to unemployment matters have a completely different scope, and it is perhaps in this circumstance of need or covered risk where a greater weakening of the mission that this provision has recognised is appreciated; and it is precisely one of the provisions that is considered basic in the context of the new work organisation form, and also in a highly segmented labour market, with many casual workers or, more generally, where there are more workers with irregular career-related insurance. Except for the amendments made to the amount and provisional duration of the contributory provision, among other matters, protection for unemployment at the contributory level has clearly transformed this covered risk from classic job loss into today's employability guarantee, but also within the restrictive framework of an insurance-based regulation. Considering that loss of a previous job as a guaranteed risk—which constitutes a legal unemployment situation—has weakened, but progress has been made to form a gradual link to active employment policies, this risk has become a grant or subvention (conditioned, nevertheless, at the contributory level to the concurrence of former contribution requirements) while looking for a job: commitment to work is a fundamental requirement for protection [Art. 231.1. h) and i) LGSS]. The unemployed individual is expected to register as a job seeker, which makes the worker fully available to accept a job offer [Art. 27 LE], and who cannot reject an adequate job offer [Art. 207. c) LGSS]. This concept is the object of a redefinition of what is clearly a "tightening up" trend that also affects workers' mobility possibilities [Art. 231.3 LGSS], and the participation of beneficiaries in actions to improve their employability is compulsory as of the first 30 days [Art. 231.1 LGSS], to name but a few aspects. Doubtlessly, however, none of these reforms have contemplated what, in my opinion, is the fundamental issue, which is none other than today's system for protecting unemployment being absolutely incapable of facing a situation in which someone needs a job (even in the more restrictive sense, when someone loses their job) in the new labour market context where a wide margin of flexibility in managing labour already seems irrefutable, especially when this margin actually exists in the present-day, either because the legislator has made several of the mechanisms from which it derives flexible—for both entering and leaving the labour market—or because the labour market itself has actually found its own channels (multiservice companies). Although classical regulations, based on the insurance technique, have been complemented by the welfare protection configured beyond it, but are clearly and subjectively limited to those from this first level, it has been proven insufficient to face new forms of work organisation. It is not a case of it being ineffective at facing new forms of providing services or work, but the whole productive system is organised in such a way that it is necessary to talk about new forms of work organisation because traditional techniques are now rendered insufficient. It is true that this statement is not exclusively limited to employment protection, but it is here where we can possibly and more urgently realise the need to arbitrate solutions as loss of this job also conditions obtaining protection when faced with social risks, especially when facing retirement.

It is feasible to think that it is precisely the link between unemployment protection and active employment policies, a link that began with reforms at the beginning of this century, which have been examined more deeply in the reforms that remain with us today, that abounds in this idea of a change in paradigm. But we could not be much wronger: the various measures that have connected—to condition it—unemployment protection with employment policies, specifically with workers' willingness to, through training, improve their employability and to reinforce their compromise to work, have been taken from a mean use of this link as control and/or, if applicable, sanction mechanisms. These clearly more "securable" aspects of unemployment protection, based on principles of contributory and proportionality, have not been amended. It is even worth pointing out that abandoning these principles has been done backwardly as welfare-based limits have been introduced without extending protected situations; nor the subjective protection domain; nor has any improvement been made in protection when faced with a unemployment circumstance of need; nor, for our particular case, have efficient mechanisms been set up that do not allow unemployment situations to negatively affect future social security entitlements of those who support this flexibility required by the new forms of work organisation. In short, a systemic reform of unemployment protection has not been considered at all, which I believe should be guided to totally abandon the insurance technique (complemented by welfare benefits) to favour the setting up of a single system, also funded by tax payments (contributions) and based on professional solidarity, and one that lies



beyond an insurance scheme as being attributive of entitlements, nor within a simpler parametric reform framework, those requirements which, in today's system (with its contributory and welfare level), act as a brake in such a way that the system operates as a "safety" mechanism and a flexibility compensation, have been reformed.

The welfare level of provisions has also undergone considerable amendments which have affected the protecting role that should be attributed to unemployment subsidies; doubtlessly the most affected is the doctrinally so-called "early retirement benefit", or the benefit for the over 55s. Four amendments, clearly based on economic and financial reasons given the present-day crisis, despite what the reform regulations state, have limited its scope of protection:

1) Raising the protected age to 55 years, which thus returns to the origins of unemployment benefit for those aged over 55, immediately restricts the protected group (RDL 20/2012), and most certainly cuts the cost of this provision for the system.

2) The accuracy related to the time a worker must accredit the expected age (RDL 20/2012), as at the date the benefit or provision ended, or being of the expected age when having to fulfill requirements to access any contemplated subsidies, or being of the expected age while receiving benefits. Evidently reaching the expected age after the above requirements does not allow access to this benefit for people aged over 55 years, which reinforces the connection between this benefit and the aforementioned alleged cases which it should necessarily derive from.

3) The amendment adopted (RDL 5/2013) for any income calculated as being a requirement to access this benefit shall include, apart from incomes from the unemployed, the whole family's income (spouse and/or children under the age of 26, disabled adults or minors in foster care), in such a way that the sum of the incomes of all family members, including those of the applicant, divided by the number of members that make up the family, does not exceed 75% of the national minimum wage, after excluding the proportional part of the two extra salaries. This requirement must also be accredited at the time that the risk of the circumstance of need materialises and the time that the benefit is requested, and also while all forms of benefit set out in this article are being paid. However when the requirement that prevents access to a benefit is lack of income, 1 year starting from the date when the risk materialised is set (art. 215.3 LGSS) in such a way that if the worker eventually meets the requirement, he or she can obtain the corresponding benefit as of the day following the application made, and its duration is not cut.

4) According to Law RDL 20/2012, the duration of the benefit now has a maximum duration date. If previously the subsidy was extinguished when the worker met the minimum ordinary age for access to a retirement pension, now the benefit ends when the worker "*reaches the age that allows access to a contributory retirement pension, in any of its forms*". This means that the employee will be required to agree to early retirement; so the worker must choose between being paid a retirement pension, after the reducing coefficients have been applied to the corresponding amount, or be left with no benefit (and consequently with no retirement contributions made) until (s)he reaches ordinary retirement age, along with the impact of possibly losing contributions—unless the worker has subscribed to (and is in charge of doing so) a Special Scheme. This may lead to the paradoxical situation in which a worker who has paid more social security contributions [33 years ex Art. 161, bis A) LGSS, retirement due to a non-imputable cause]—from which the entitlement to early retirement is acknowledged—may be made to retire early, by up to 4 years, before reaching ordinary retirement age. In economic terms, this may imply a reduction in the quantity of the retirement pension of at least, and in the best of cases, an annual 6% (1.5% per three months), and of 7.5% in the worst case (1.975% per three months), which respectively implies 24% and 30% pension reductions in all. Yet the worker who does not meet the requirements to access an early retirement scheme could be paid a benefit (and make the consequent contributions) until (s)he reaches ordinary retirement age, without his/her pension lowering as a result of applying the reducing coefficient to early retirement entitlements. However, the pension would lower from the calculations made during the grace period from a longer social security contributions period given the meagre contribution base while being paid early retirement benefit (125% national minimum wage—NMW), would apply.

Although it is difficult to make a short-term evaluation of the result of these reforms since any available statistical data offer a very limited scope, the result of these reforms comes over quite clearly in the light of the few data available. **Table 1** shows the initial registrations for beneficiaries of unemployment benefits aged over 55 years: the year 2013 already shows a significant reduction compared with 2012 (52.86%), and this reduction will continue in the year 2014.

**Table 1.** Initial registrations for beneficiaries of unemployment benefits aged over 55 years (2007-2015).

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015 (Jan.)
Number	53,168	64,687	98,190	116,454	124,230	119,538	63,233	61,052	5152

Source: Based on the data taken from the “Bulletin of Labor Statistics” (Table PRD-16) (Ministry of Employment and Social Security). Available at: <http://www.empleo.gob.es/estadisticas/bel/PRD/index.htm> (date last consulted: 22 October 2015).

### 3. Reforms in the Amount of Pensions: About the Adequacy of Pensions

The complex legal and administrative framework of the Social Security System teleologically addresses the fulfilment of its characteristic mission, which is none other than repairing the circumstances of need of protected individuals by means of economic provisions, and such circumstances are legally defined according to the scope of the system’s protective action (Arts. 38 and 86 LGSS). These economic provisions (pensions) must be, according to the Constitution, sufficient; even though sufficiency is a relative term that is strongly conditioned by the financial availabilities of each system, doubtlessly it should at least allow beneficiaries to cover their requirements, requirements that are found on the upper threshold of vital necessities or subsistence which, at any rate, must be covered by other welfare means (Vida Soria, 2006). Debate on the substitution rate that social security provisions must be acknowledged is long-standing, and contemporary, even when preparing social welfare projects, where voices interested in seeking space for negotiating complementary social provisions, which the constitutional text also mentions, have been heard.

In any case, all the adopted reforms invoke inspirational principles like those of contributory and proportionality following the Toledo Agreement recommendations (1995) and subsequent social and parliamentary agreements. In this way, the alleged intention is to bring what has been paid in tax to what is paid out in a clear resurgence of the private insurance technique upon which our Social Security System was built—and what it also explains is that the responsibility regime of matters of provisions is still in force (Art. 126 LGSS)—which has resuscitated with each reform, no matter how loud the plea for a clearly antagonistic principle—the principle of solidarity—attempts to qualify.

Many reforms have had a strong impact on the basic elements or parameters that affect the determination of the amount that provisions come to, and which can entail a risk for the sufficiency of provisions, especially pensions. These reforms have especially affected the mechanisms of solidarity, which cushioned the strict application of the principles of contributory and proportionality.

#### 3.1. The Mechanism of Integrating Gaps

Firstly, the mechanism of integrating gaps into the determination of the regulatory base for permanent disability benefits and pensions has indeed played a vital role in attenuating the negative consequences that stemmed from non-tax-paying periods during the contribution period used to calculate and determine the regulatory base of these provisions. When Law 26/1985, of 31 July, came into being (a law responsible for increasing the contribution period to calculate and determine the regulatory base of retirement pensions, and also permanent disability pensions due to common disease), it helped cushion the impact that any non-tax-paying periods during the contribution period could have on the calculations made in accordance with the regulatory base by at least ensuring the calculation of the minimum contribution of the minimum contributory base for those aged over 18 years. Thus it pointed out the principle of proportionality by attempting to cushion the negative effects brought about, derived from increasing the calculation period.

Nowadays, after the successive reforms that have been adopted according to Law 27/2011, of 1 August, and Law 3/2012, of 6 July, the mechanism to integrate gaps has become more severe as only the first 48 monthly payments are integrated with a 100% minimum contribution base for anyone aged over 18, and the rest are integrated into this minimum base at only 50%. This evidently means a reduction in the amount of pensions of more vulnerable workers: that is, those who accredit irregularly or discontinuous insured careers. This possibility has become more likely since the calculation period to calculate the regulatory base of retirement pensions has been increased as set out in Law 27/2011, of 1 August (Art. 162.1 LGSS with the gradual application set out in D.T.5<sup>a</sup> LGSS).

The situation may become even more serious for part-time workers for whom a singular integration of gaps system is foreseen (D.A.7<sup>a</sup>, third rule, Section b) LGSS], by means of which integration of gaps must be carried

out with the minimum contributory base of those applicable at any time, “which ultimately corresponds to the number of contracted hours”. This ruling thus sets aside—although this is not the view of Constitutional Court (STC 156/2014, of 25 September) as it has declared that it complies with the Constitutional Text—the application of the principle of proportionality as it does not consider the whole insured career undertaken by workers throughout their professional working life, rather the ultimate working day/time form worked; that is, that immediately prior to the period during which tax payments are not compulsory. Thus it excludes what appears to be a more reasonable criterion with equality, and also with the principle of contributory and proportionality that have inspired the latest reforms: the proportional weighting of periods worked either full-time or part-time. This matter is particularly serious when it comes to evaluating the effectiveness of the Social Security System’s protective mission. Precarious work through, among other forms, generalising work to a part-time basis, and normally involuntarily, which will predictably increase in the future, plus no response from the legal system, may all lead to the system’s provisions becoming economically insufficient and a crisis as to its effectiveness.

### 3.2. Minimum Supplements

Likewise, this insufficiency may stem from the limitation of the protective scope covered by the minimum supplements set out in Law 27/2011, of 1 August. According to current regulations, which have been in force since 1-1-2013, which do not anticipate temporary periods, but logically would be applicable only to pensions whose risk materialises after this date (D.A.54<sup>a</sup> LGSS), minimum supplements cannot exceed the quantity set out each year for non-contributory Social Security provisions. Noticing the immediate effects of this provision on the sufficiency of the pensions paid to beneficiaries of lower pensions is no difficult task, pensions which will probably be more numerous given the effects of the new system of integration of gaps, increased contribution periods to calculate the regulatory base of retirement pensions, and the amendment to the table of percentages in Art. 163.1 LGSS. Available data still do not enable an evaluation of the economic impact of this provision as it is applied exclusively to those due after 1-1-2013. Nonetheless, **Table 2** shows that a certain restraint of the overall amount of minimum supplements is seen, which has been in force since 2013 [data taken from the website of the Spanish Ministry of Employment and Social Security, Secretary of State of Social Security (date last consulted: 12-6-2015):

[http://www.seg-social.es/Internet\\_1/Estadistica/Est/Pensiones\\_y\\_pensionistas/Pensiones\\_contributivas\\_en\\_vigor/Por\\_reg\\_menes/index.htm](http://www.seg-social.es/Internet_1/Estadistica/Est/Pensiones_y_pensionistas/Pensiones_contributivas_en_vigor/Por_reg_menes/index.htm)]:

Moreover, minimum supplements have also been excluded from the regime to export provisions, conditioned by pensioners’ residence in Spain. This provision will be basically damaging to foreigners—and there are many—who are entitled to a pension in Spain, and who return to their countries of origin as they wish to settle back

**Table 2.** Amount of minimum supplement (2006-2015).

Year	Amount of Minimum Supplements (Euros)
2006	4,817,638,284.35
2007	5,400,114,728.20
2008	5,907,480,086.33
2009	6,426,319,849.82
2010	7,008,046,999.91
2011	7,486,601,051.37
2012	7,472,659,403.16
2013	7,511,338,299.25
2014	7,416,929,056.02
2015	n.a

Data taken from the website of the Spanish Ministry of Employment and Social Security, Secretary of State of Social Security (date last consulted: 12-6-2015):

[http://www.seg-social.es/Internet\\_1/Estadistica/Est/Pensiones\\_y\\_pensionistas/Pensiones\\_contributivas\\_en\\_vigor/Por\\_reg\\_menes/index.htm](http://www.seg-social.es/Internet_1/Estadistica/Est/Pensiones_y_pensionistas/Pensiones_contributivas_en_vigor/Por_reg_menes/index.htm).



there, as they may have no guaranteed access to minimum supplements.

Moreover, the sufficiency of permanent disability pensions that stem from a common disease (Art. 140.1 LGSS) may be questionable as a result of the amendment made to the system, which calculates the regulatory base according to Law 40/2007, of 4 December. Applying the percentage set out on the scale found in Art. 163.1 LGSS to determine the quantity of a retirement pension, even with the fiction scenario of considering the remaining years for the beneficiary to reach the ordinary retirement age in force at any time as contribution years, establishes an immediate reduction in the amount of permanent disability pensions, which will only reach 100%—the regulatory base to which the percentage foreseen according to the degree of disability will then be applied—if the beneficiary fulfils the maximum period predicted according to this scale which, as is well-known, has increased to 37 years.

The amendments made to the substitution rate—and, therefore, to the sufficiency of provisions—does not affect only pensions: the percentage of the contributory provision for unemployment to determine the amount of this provision has also been lowered from 60% to 50% as of day 181 (Royal Decree-Law 20/2012, of 13 July).

### 3.3. Revaluation of Pensions and the Sustainability Factor

Finally, in order to conclude this brief review of the various reforms made, which could have an impact on the Social Security System's protective mission, the modification made to the system to revalue pensions and to introduce the sustainability factor is particularly relevant as a new parameter to determine the amount of retirement pensions brought about through Law 27/2011, of 1 August, and Law 23/2013, of 23 December.

The differences between both these laws are clear, and we should perhaps examine Organic Law L.O. 2/2012, of 27 April, on stable budgets and financial sustainability (dictated for developing Art. 135 CE, on fixing change). This regulation, after ordering the need for Social Security Administrations to maintain a balanced situation or financial surplus (Art. 11.5), includes Art. 18.3: "Should the Government foresee a long-term deficit in the pensions system, it shall review the system by automatically applying the Sustainability Factor according to the terms and conditions set out in Law 27/2011, of 1 August, on updating, adapting and modernising the Social Security System". Doubtlessly the most striking difference is the calendar during which it is to be implemented: Law 27/2011, of 1 August, set the year 2027 as the reference year, while Law 23/2013, of 23 December, established this year as being 2019. When we examine the data of the Spanish National Statistics Institute ([www.ine.es](http://www.ine.es)), the number of people aged over 67 years in 2019 will be 8,144,397, and this number will rise to 9,591,845 in 2027. From the generation viewpoint, 2027 is the year when retirements at 67 years will begin for the baby boom generation (1960).

Regarding the revaluation of pensions, the creation of a revaluation index, one that is not related to the traditional increase in retail prices, and which takes some variables into account that are exclusively linked to the system's financial sustainability (the pensions system's income and expenses, number of pensioners and how the mean pension progresses), rather than to the sufficiency of pensions, implies the immediate loss of pensioners' purchasing power, a loss which can be very heavy if it accumulates. The minimum guarantee of 0.25% cannot attenuate the serious effects that a long-term accumulation of revaluations that are below the RPI could have, which is to be expected with retirement pensions as life expectancy is predicted to increase and, from a gender perspective, could be particularly serious for females with a widow's pension given the low substitution rate that this pension has today. Really, the legislator is aware of this reality, and although Law 27/2011, of 1 August, foresees progressively increasing the amount of a widow's pension for pensioners over the age of 65 years who are entitled to no other public pension (D.A.30<sup>a</sup> LGSS), its application has been postponed by successive laws on General State Budgets. Loss of purchasing power of pensions is guaranteed: loss of Social Security income through job losses, more pensioners, access to retirement of—fewer—post-war generations with time, the flood of new pensioners who were born in the baby boom generation (1960), and the mean pension becoming more expensive given the substitution effect, determine that, even with the complexity of a mathematical formula that is highly questionable from the legal security and transparency perspective, the long-term effect of the new pension revaluation index is more than evident. The general application of this precautionary measure to all pensions, along with it immediately coming into force (1-1-2014), make this measure one of the star reforms to ensure the system's financial sustainability. The cost of the Social Security System revaluating pensions is evident. **Table 3** indicates that apart from the cost, there is a restraint in the expenses during those years in which pensions have not been revaluated. Note how despite the notable increase in the cost of the overall amount of initial pensions in the years 2011-2014, the amount of the revaluations has been maintained, and has

**Table 3.** All pensions cost (2006-2015), differentiating initial pensions amount and revaluated amount.

	All pensions	
	Initial Pension Amount	Revaluated Amount
<b>2006</b>	44,148,423,312.08	24,491,300,421.99
<b>2007</b>	47,391,147,866.51	26,435,990,519.31
<b>2008</b>	51,001,651,411.48	27,265,055,358.95
<b>2009</b>	55,093,913,096.08	27,829,541,732.80
<b>2010</b>	59,352,686,260.05	28,677,566,435.12
<b>2011</b>	63,748,384,932.06	27,599,745,890.31
<b>2012</b>	68,040,592,298.03	27,300,870,951.00
<b>2013</b>	72,842,964,595.13	27,515,326,445.65
<b>2014</b>	77,398,861,747.31	26,538,015,175.33
<b>2015</b>	n.a	n.a

Data from the Spanish Ministry of Employment and Social Security (Secretary of State of Social Security). Available at: [https://sede.seg-social.gob.es/Sede\\_1/ServiciosenLinea/Ciudadanos/index.htm?ssUserText=176258](https://sede.seg-social.gob.es/Sede_1/ServiciosenLinea/Ciudadanos/index.htm?ssUserText=176258).

even gone down, despite the number of initial pensions having increased:

The Sustainability Factor acts directly on the determination of the initial amount that a retirement pension has, regardless of the age at which this pension is accessed or its mode (Tortuero Plaza, 2014). This is a considerable change to the traditional system that determined amounts, and was based on applying percentages of the accredited contribution period according to the corresponding regulatory base, and then considering another variable that had nothing to do with the contribution worker: life expectancy over a given period of time. From the social security model's viewpoint, this entails the partial transformation of a defined contribution-provision model into a model of defined contribution (and indefinite provision). The purpose of the Sustainability Factor, as clearly set out in the Preamble to Law 23/2013, of 23 December, is to adjust "initial retirement pensions so that the overall amounts paid throughout the lives of the pensioners who access the pensions system within a given number of years, and who will predictably enjoy a longer life expectancy, is the equivalent to that paid to those who retired at a previous time"; in other words, a pensioner with a longer life expectancy should live with a pension whose overall quantity is the equivalent to that paid to someone with a shorter life expectancy who had retired earlier. Indeed official provisions demonstrate a considerably prolonged life expectancy, which materialises in a notable rise in the percentage of the population aged over 65: according Spanish National Statistics Institute data, press release of 28 October 2014, "Expected population in Spain 2014-2064" (available at <http://www.ine.es/prensa/np870.pdf>), the percentage of the population aged over 65 years, which represented 18.2% in 2014, will be 24.9% in 2029 and 38.7% in 2064.

It is evident that the quotient of the arithmetic operation that measures the ratio between life expectancy at a given time and that which will exist in 5 year's time will always be below 1. Thus its reducing effect on the pension amount is ensured and, accordingly, a doctrine has quantified that its application as of 2019 will imply a reduction of 5 per 100 per decade, so that this reduction will become 20 per 100 in the year 2050 (LOPEZ GANDIA, 2014). It is true that a time will come when life expectancy will level off or may rise more slowly, but its value has not been predicted to be  $\geq 1$ , which is the only value that would ensure maintaining the amount of a retirement pension as it stands today (and until its implementation into the Social Security's retirement pensions as of 1-1-2019): only the incident of modern pandemics (obesity and smoking) seem capable of reversing this trend.

It is noteworthy that the legislator has not contemplated any factor other than this merely demographic one (which is exclusively limited to life expectancy) to attenuate the "automatic" application of the Sustainability Factor, e.g. the system's own financial equilibrium (determined by the progress made by the system of incomes and expenses) as other systems do, as in Germany, also use the "dependency rate" as a variable that is integrated

into its Sustainability Factor (Suarez Corujo, 2014). This rate, which measures the population aged over 65 years compared to the population of working age, would be more suitable as it actually measures the basic element in a distribution system which pays pensions using quotas that result from assets. The Sustainability Factor thus seems unattached from the Social Security System's reality and is linked exclusively to life expectancy. Accordingly, the legislator directly deduces from prolonged life expectancy an increase in expenses that derive from prolonging the payment of pensions, which is an uncertain premise: tightening up requirements to access provisions, reducing the intensity of protection in the aforementioned terms, along with worse quality jobs and, consequently, the possibility of accessing the provisions offered by the system, can end up reducing the number of pensioners in addition to cutting the quantity of pensions (except for the potentiality of the Sustainability Factor) and, therefore, in expenses, without forgetting the possible increase in income, a variable upon which the legislator refrains from repeatedly acting.

It is worth pointing out the change of values that introducing this Sustainability Factor implies. The preamble to Law 23/2013 refers to what the Sustainability Factor contributes to help adjust "intergenerational equity". Although it does not define this last concept, the total lack of references to "solidarity" made by this Law 23/2013 is striking, especially when we consider that it is the main basis upon which such distribution systems are supported. Given the Sustainability Factor's functionality—that of guaranteeing that future more long-living generations will not be paid higher pensions than those paid to pensioners of previous less long-living generations, it is evident that this new principle of equity "demolishes" the principle of intergenerational solidarity. Moreover, it is impossible not to classify the legislator's use of this term as crafty, given its clear connotations or positive reminiscences ("natural justice"), when it in fact introduces an intergenerational fracture into a clearly questionable technical "egalitarianism" from the social viewpoint. In fact in other social sciences domains, this concept clearly takes the opposite sense and refers to future generations being entitled to a standard of living that is no worse than that of the present generation. The Sustainability Factor can hardly meet this objective if the exact opposite stems from its application: having to live on a retirement pension which, although its overall amount might equal that enjoyed by previous generations, will not enable future generations to enjoy the same standard of living that they have enjoyed.

#### **4. An Epilogue. Changes Made to Ways of Providing Services and Their Incidence on Access to Social Security Features: Some Brief Considerations**

It is well-known that being included in the Social Security System (Art. 7 LGSS) and, therefore, in the protective action domain that it offers, depends on all the phases of workers' professional activity, which must be underway (being registered or a similar situation according to Art. 124.1 LGSS) when the fact to consider such inclusion materialises. To this we must add any grace periods that derive from common disease to access those features (Art. 124.1 LGSS), periods that could be quite long-lasting.

This Social Security System responds to the logic of an industrial society that is fordist-based in nature and is characterised, as far as being an employee is concerned, by long-lasting fulltime labour relations. However serious employment crises, which are typical of the new post-industrial society, evidence its insufficiency: young people taking a long time to find a job and then accessing increasingly precarious jobs (training contracts; temporary, and sometimes short, contracts; or part-time ones), and the increasing discontinuity of providing services, caused by a succession of temporary part-time contracts or generalised job loss due to more flexible economic, technical or organisational reasons. This scenario has serious consequences for social security matters as far as current entitlements are concerned, especially for protection against unemployment, which is temporarily very limited, and also for what is doubtlessly the most serious matter, possibilities of accessing retirement pensions in the future.

So it is well worth wondering, in order to ward off this Social Security System's "unexpected inappropriateness" from new forms of providing services, if it would not be necessary to set up measures to cushion disadvantages that derive from the job-registration and contributory provision connection within the professional contributory model itself. Traditionally speaking, social security systems have implemented some solutions in various phases in which carrying out one's professional activity becomes relevant in the provision-related domain, but with a very limited scope. To the task of implementing similar situations to that of registration, with voluntary registration in the special scheme to maintain one's current rights to acquire and extend this requirement in order to access certain provisions (retirement, permanent disability and survival), we add protection

against unemployment, set up through economic provisions. However, these solutions deal with these situations as if they were pathological or abnormal, and are in line with productive reality where employment fulfilled certain permanent-type characteristics which no longer exist. The high economic cost of the special scheme, which no-one without income for a long period can afford, and the temporariness of the economic provision for unemployment itself, initially linked to the contributory career of a worker who lost his/her job, are limited by a maximum temporariness that currently does not reflect the reality of unemployment, especially that of older workers. This indicates that new forms to cushion the negative consequences that stem from this job-registration and contributory provision connection within the professional contributory model need setting up.

Unemployment benefit for people aged over 55 is one of the few measures set up for this purpose, which allows workers to continue being paid unemployment benefit until they can access the contributory retirement scheme, which also guarantees them maintaining any entitlements in the process of being acquired by them, but they are obliged to contribute to this possibility, of which the SPEE (the Spanish Public Service of State Employment) and the workers themselves, are in charge of. Workers can also increase their contributory base in order to improve their regulatory base for retirement pensions by registering in a Special Scheme). More recently, the legislator has made compulsory registration in a Special Scheme available—by attributing its financing to employers and employees successively—for those employment regulation files that include workers aged 55 or more whose condition was not that of a mutual entity on 1 January 1967 (Art. 51.9 ET in relation to DA 31<sup>a</sup> LGSS) (Vicente-Palacio, 2015).

All in all, even when acknowledging the positive side of both mechanisms in the interest of improving the possibilities and conditions of this group to access retirement, their scope is very limited in both subjective and objective terms. The former has not avoided the legal reforms that address further restrictions for the scope of its application, nor must we forget the pressure that both have for workers to be able to access early retirement as the corresponding corrective coefficients are applied to the amount that pensions should come to. From another perspective, the new regulation set out by Law 1/2014, of 28 February, on part-time work and applying the partiality coefficient, must be positively evaluated since it facilitates—as far as the preceding legal regulation is concerned—these workers' access to social protection. Yet apart from these, no other mechanisms exist that deal with these new forms of providing ever-increasingly generalised services to help cushion their perverse effects on social security matters.

In short, the simultaneous coincidence of legal reforms that restrict the protection offered, and the future generalisation of the new forms of services provided, will likely end up limiting the intensity of the public Social Security System's protection, which could be classified as “critical” if it affects the system's ability to fulfil the mission entrusted to it, which means having to necessarily connect to the constitutional mandate of the sufficiency of its protection. Time will tell.

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