

## **BUILDING SAFE AND GREEN: A COMPARATIVE ANALYSIS OF OSH LEGISLATION IN THE DUTCH AND SPANISH CONSTRUCTION SECTORS AND THE ROLE OF COLLECTIVE REPRESENTATION**

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**ABSTRACT:** The transition into sustainable practices, decarbonization strategies and climate-mitigation policies, presents new challenges for occupational safety and health (OSH). The policies outlined in the European Green Deal to facilitate the green transition are expected to significantly impact heavy industry, such as the construction sector. The fragmented structure of this sector presents challenges to the effective implementation of OSH policies. Collective representation, through trade unions and works councils, plays a pivotal role in safeguarding OSH standards throughout the green transition. This paper examines the role of collective representation in safeguarding workers' occupational safety and health in the construction sector amidst the green transition in the Netherlands and Spain. In the Netherlands, works councils hold significant rights to influence OSH policies, particularly in response to technological changes. In Spain, there has been a growing integration of green clauses within collective labour agreements, addressing challenges such as extreme weather and heat stress, which have become more prevalent due to climate change. The paper concludes by advocating for a just green transition, highlighting the need for stronger green social dialogue to ensure a balance between environmental policies and the protection of workers' safety and health in the green construction sector.

**RESUMEN:** La transición hacia prácticas sostenibles, estrategias de descarbonización y políticas de mitigación del cambio climático presenta nuevos desafíos para la seguridad y salud en el trabajo (SST). Se espera que las políticas descritas en el Pacto Verde Europeo para facilitar la transición verde tengan un impacto significativo en la industria pesada, como el sector de la construcción. La estructura fragmentada de este sector presenta desafíos para la implementación efectiva de políticas de SST. La representación colectiva, a través de sindicatos y comités de empresa, desempeña un papel fundamental en la salvaguardia de las normativas de SST durante toda la transición verde. Este artículo examina el papel de la representación colectiva en la salvaguardia de la seguridad y salud en el trabajo de los trabajadores en el sector de la construcción en el transcurso de la transición verde en los Países Bajos y España. En los Países Bajos, los consejos tienen derechos importantes para influir en las políticas de SST, particularmente en respuesta a los cambios tecnológicos. En España, ha habido una integración creciente de cláusulas verdes en los convenios colectivos, abordando desafíos como el clima extremo y el estrés térmico, que se frecuentan más debido al cambio climático. El artículo concluye abogando por una transición verde justa, destacando la necesidad de un diálogo social verde más fuerte para garantizar un equilibrio entre las políticas ambientales y la protección de la seguridad y la salud de los trabajadores en el sector de la construcción verde.

**RESUM:** La transició cap a pràctiques sostenibles, estratègies de descarbonització i polítiques de mitigació del canvi climàtic presenta nous desafiaments per a la seguretat i salut en el treball (SST). S'espera que les polítiques descrites al Pacte Verd Europeu per facilitar la transició verda tinguin un impacte significatiu en la indústria pesant, com el sector de la construcció. L'estructura fragmentada d'aquest sector presenta desafiaments per a la implementació efectiva de polítiques de SST. La representació col·lectiva, a través dels sindicats i els comitès d'empresa, exerceix un paper fonamental en la salvaguarda de les normatives de SST durant tota la transició verda. Aquest article examina el paper de la representació col·lectiva en la salvaguarda de la seguretat i salut en el treball dels treballadors al sector de la construcció enmig de la transició verda als Països Baixos i Espanya. Als Països Baixos, els consells

tenen drets importants per a influir en els polítics de SST, particularment en resposta als canvis tecnològics. A Espanya, hi ha hagut una integració creixent de clàusules verdes en els convenis col·lectius, abordant desafiaments com el clima extrem i l'estrès tèrmic, que són més freqüents a causa del canvi climàtic. L'article conclou advocant per una transició verda justa, destacant la necessitat d'un diàleg social verd més fort per a garantir un equilibri entre les polítiques ambientals i la protecció de la seguretat i la salut dels treballadors al sector de la construcció verda.

**KEYWORDS:** occupational Safety and Health – green transition – European Green Deal – construction sector – collective representation – circular economy – heat stress – The Netherlands – Spain – European Union

**PALABRAS CLAVE:** seguridad y salud en el trabajo – transición verde – Pacto verde Europeo – sector de la construcción – representación colectiva – economía circular – estrés térmico – Países Bajos – España – Unión Europea

**PARAULES CLAU:** seguretat i salut en el treball – transició verda – Pacte verd Europeu – sector de la construcció – representació col·lectiva – economia circular – estrès tèrmic – Països Baixos – Espanya – Unió Europea

**SUMMARY:** I. INTRODUCTION. II. THE GREEN TRANSITION AND OCCUPATIONAL SAFETY AND HEALTH: ISSUES AT STAKE IN THE CONSTRUCTION SECTOR. 1. Balancing OSH in the complex world of construction. 2. Adapting to the green transition: circular construction and heat stress. a) Circular construction. b) Heat stress. III. NATIONAL APPROACHES TOWARDS OCCUPATIONAL SAFETY AND HEALTH. 1. National perspectives: the Netherlands. a) The pillars of the Dutch OSH framework: The Working Conditions Act and the Dutch Civil Code. b) Elaborating on the Working Conditions Act: the Working Conditions Decree and the Working Conditions Regulation. c) Occupational Safety and Health Catalogues. 2. National perspectives: Spain. a) Foundations of OSH legislation: the Spanish Constitution and the ET. b) The development of OSH legislation: from early foundations to the LPRL. c) Targeted OSH legislation in the Spanish construction sector. IV. THE ROLE OF COLLECTIVE REPRESENTATION IN THE MIDST OF GREEN CONSTRUCTION. 1. Collective representation and green collective bargaining. 2. Collective representation and green construction: national approaches. a) The Netherlands. b) Spain. V. CONCLUDING REMARKS. VI. BIBLIOGRAPHY.

## I. INTRODUCTION

Occupational safety and health (OSH) intends to promote a safe working environment by the prevention of occupational diseases and the improvement of workers' well-being and working conditions. It was not until 2022 that a safe and healthy work environment was incorporated as fifth fundamental principle at work in the Declaration of Fundamental Principles at Work of the International Labour Organisation (ILO) (International Labour Organization, 2022). This inclusion reflects the recent transformation of OSH into a moving target, driven in large part by the green transition, which has prompted increased attention to workers' health and safety. Defined by its pursuit of sustainability and carbon neutrality, the green transition seeks to address environmental degradation and mitigate the effects of climate change through the advancement of sustainable development practices.

The European Union (EU) embraces the green transition and is striving to address climate change and preserve the environment. In 2019, the European Commission launched the European Green Deal (EGD), a growth strategy setting out policies committed to the transition into a low-carbon economy, setting out a roadmap to decouple economic growth from resource use and ensuring no net emission of greenhouse gasses by 2050 (European Commission, 2019: 2).

One of the sectors that is expected to be notably affected by climate-mitigation policies and decarbonization strategies initiated by the EGD, is the construction sector. Constructing, renovating and the use of buildings account for around 40% of the energy consumed and 36% of greenhouse gas emissions stemming from energy. Moreover, many existing buildings use old technologies, wasteful appliances and rely on fossil fuels for the purpose of heating and cooling (European Commission 2020: 1). To address the challenge of energy efficiency and achieve the target of 55% of emission reduction by 2030, Member States (MS) in the EU ought to engage in a Renovation Wave (European Commission, 2019: 9). The aims of the Renovation Wave are threefold: achieving buildings that are energy-efficient, sustainable, and lower carbon impact throughout their full life cycle (European Commission, 2020: 1-2). Furthermore, the renovation wave is founded upon the principles of circularity (European Commission, 2020:

2): unlike the linear economy, characterized by the one-time utilization of materials, a circular economy fosters sustainability through a framework of reducing, reusing, recycling and recovering resources (Voorter, 2021: 1052-1058). To achieve the aims set out by the EGD and the Renovation Wave, the construction sector will undergo a significant transformation in both its construction methods and use of materials, adopting more sustainable and energy-efficient practices.

Aside from the impact of the EGD and related policies, the construction sector faces its own array of notable challenges. This sector is characterized by a higher prevalence of OSH risks, stemming from the inherently dangerous and pollutive nature of the activities conducted, such as heavy machinery operation or exposure to hazardous materials (often asbestos). Moreover, the OSH framework within the construction sector is relatively complex, due to the extensive reliance on subcontracting and the widespread use of (often bogus) self-employed workers and labour migrants, who operate alongside regular employees. This fragmented workforce often leads to inconsistencies in the application and enforcement of health and safety protocols, which undermines the effective oversight of OSH responsibilities and exacerbates the risks of accidents and injuries at the construction site.

Given the significant OSH risks within the construction sector, how are OSH, the construction sector and the green transition precisely intertwined? While efforts to transition towards sustainable, green economies through decarbonization, renewable energies and green policies are crucial for environmental progress, it remains uncertain whether these shifts are equally beneficial for workers' health and safety. A specific example can be found in the Renovation Wave itself, which emphasizes the need to protect construction workers' health and safety, particularly as the renovation of older buildings may expose them to asbestos (European Commission, 2020: 15). Another example can be found in the use of new, sustainable materials, which may pose adverse health effects on construction workers handling them, that are not yet (fully) known. The green transition should therefore not only prioritize environmental goals but also ensure a fair and just approach, protecting workers in affected sectors and precarious

employment situations from being left behind in the move towards a greener economy.<sup>1</sup>

To ensure fairness and protect workers in the construction sector in the midst of the green transition, the role of collective representation becomes essential, particularly given the high OSH risks and the construction sector's reliance on fragmented labour forces. Through collective bargaining, trade unions can advocate for fair working conditions and health and safety standards. Likewise, works councils are granted a set of rights enabling them to ensure that employers comply with OSH rules and regulations. Furthermore, green collective bargaining is becoming more prevalent. In light of these dynamics, it is insightful to examine how collective representation can help address OSH challenges.

Given the absence of a unified EU-approach to addressing the challenges of the green transition, beyond the broad policies outlined in the EGD, and considering the varying impacts on each MS, it is valuable to examine national strategies in response to these challenges. The Netherlands and Spain provide two compelling examples of how OSH, the green transition and collective representation intersect in distinct ways. The Netherlands has a well-established system of collective negotiation rooted in private law: representatives of both employers and employees are open to social dialogue, leading to fair collective labour agreements (CLA). Often, recurring provisions in various CLA's become part of the normative legal framework after the effectiveness and the utility of these provisions is proven in practice. This represents a bottom-up approach (Bouwens et al., 2019: 273). In contrast, Spain follows a top-down approach, where collective negotiation is constitutionally enshrined and operates within a more centralized framework. Here, the legislator structures the normative framework in such a manner that social partners are enabled to tailor the legal provisions to the specific needs of each sector, providing considerable flexibility in the outcomes of collective bargaining (Palomeque Lopez, 2020: 15).<sup>2</sup> Furthermore, climate change has increasingly impacted workers' OSH in Spain,

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<sup>1</sup> As stated in the Council Recommendation of 16 June 2022 on ensuring a fair transition towards climate neutrality, 2022/C243/04.

<sup>2</sup> Collective negotiation was abolished during the dictatorship of Franco, leading to its enshrinement in the constitution afterwards.

particularly in sectors like construction, where heat stress and other OSH risks are on the rise. On the other hand, the Netherlands has recently placed greater emphasis on integrating circularity into its construction sector, a development that presents its own set of challenges.

In light of the above, this contribution will examine how OSH legislation in Spain and the Netherlands protects construction workers' health and safety amidst the green transition and the role of collective representation in this context. Section II examines in more detail the relationship between the green transition, occupational safety and health, and the issues at stake in the construction sector. Section III outlines the legal framework of OSH in the Netherlands and Spain, with a particular focus on the construction sector. Section IV discusses the role of collective representation within national OSH legislation, green collective bargaining and the impact thereof on the Dutch and Spanish construction sectors. Section V concludes.

## **II. THE GREEN TRANSITION AND OCCUPATIONAL SAFETY AND HEALTH: ISSUES AT STAKE IN THE CONSTRUCTION SECTOR**

Section II explores the evolving intersection of the green transition and OSH in the construction sector. Paragraph 2.1. examines the complexities of balancing OSH within the construction sector, particularly in the light of increased fragmentation, subcontracting and the rise of non-standard forms of employment. Building upon this foundation, paragraph 2.2. delves into specific OSH challenges arising from the green transition, focusing on emerging issues such as circular construction and the increased risk of heat stress for construction workers.

### **1. Balancing OSH in the complex world of construction**

Historically, working in the construction sector was perceived as being under relatively favourable working conditions. Despite the physically demanding nature of the work, employees enjoyed bonuses, competitive wages and a high degree of security (Cremers, 2016: 17). However, with the rise of non-standard

forms of employment, the increasing practice of outsourcing parts of the construction process and the intensification of subcontracting, the sector has moved away from its traditional model, characterized by skilled and unskilled workers that worked alongside one another under the direct oversight and management of an employer. This shift has given rise to a cost-reduction oriented strategy that circumvents standard employment contracts, facilitating the entry of various forms of non-standard employment. Consequently, the number of specialized workers overseeing on-site operations has diminished, while subcontracting has become prevalent. As a result, the reliance on low-cost, unskilled labour has increasingly become a central feature of subcontracting at lower levels within the construction sector (Cremers, 2016: 19).

The fragmentation in the construction sector has led to increased OSH concerns, especially among non-standard workers. The European Agency for Safety and Health at Work (EU-OSHA) identified three mayor areas of concern that can lead to OSH hazards in the context of non-standard employment in the construction sector: communication challenges due to language and cultural differences, performing work in high-risk sectors, and excessive overtime which is frequently coupled with inadequate living conditions. Often, these workers (such as (bogus)self-employed workers, temporary agency workers or mobile workers) have a migrant background, which leads to a language barrier when it comes to proper OSH training or training in the construction field. Another factor contributing to the elevated OSH risks among non-standard workers concerns the element of time constraints, as non-standard workers are often found on construction sites performing tasks where time is of the essence, which may result in the neglect of preventive measures or safety instructions (Cremers, 2016: 20).

Article 5 of the overarching EU Framework Directive on the introduction of measures to encourage improvements in the safety and health of workers at work (Framework Directive) stipulates the duty of care of the employer to ensure safety and health of workers in all aspects related to the work.<sup>3</sup> Within the fragmented

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<sup>3</sup> Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.



construction sector, characterized by the frequent incidence of subcontracting and employment via third parties, abiding to this can be quite the challenge. The EU Directive on minimum health and safety requirements at temporary construction sites advocates for mandatory coordination on health and safety matters between all parties involved at the construction site<sup>4</sup>, precisely because of this fragmentation within the construction sector. Articles 4,5, and 6 set out general OSH principles and duties of coordinators during the preparation and execution stages of the project. Of particular importance in the light of communication between the parties involved is article 5(c), where coordinators are obliged to exchange OSH information to be taken into account throughout the entire project. This indicates that the registration of all information pertaining to workers' safety and health throughout the construction project should form part of the normal procedure (Cremers, 2016: 20).

Despite extensive legislative frameworks, the complexity and fragmentation within the construction sector indicates that OSH risks are still persisting. Research shows that the accessibility and dissemination of OSH information among non-standard workers is in its early stages and adherence to OSH regulations is lacking, especially in the case of migrant workers. Furthermore, there is a notable lack of necessary collaboration among the various subcontractors on site (Cremers, 2016: 20). As the construction sector is undergoing transformations driven by the green transition, concerns arise regarding how ongoing OSH challenges will be addressed in the evolving landscape of green construction, and whether the new policies will add further complexity to an already fragmented sector.

## **2. Adapting to the green transition: circular construction and heat stress**

As the construction sector adapts to the demands of the green transition, new practices such as circular construction are gaining prominence, while challenges

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<sup>4</sup> Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites.

such as heat stress are becoming more pressing. These developments introduce new risks and challenges for OSH within the sector. Circular construction, driven largely by the emergence of sustainable policies, introduces new operational dynamics that require particular attention in the context of OSH. In parallel, heat stress, being a direct consequence of climate change, exacerbates existing risks for construction workers, as their work is performed mostly outside. In an industry where physical challenges and environmental factors converge, it is important to understand the OSH challenges that might arise therefrom.

#### *a) Circular construction*

Circular construction focuses on integrating the principles of a circular economy into the construction industry. Specifically, it aims to reduce the use of natural resources, minimize environmental pollution and lessen the negative effects on ecosystems by reusing construction materials and components during the creation and renovation of buildings. The main purpose is to construct energy-efficient structures using materials that are recyclable, renewable and environmentally friendly (European Commission, 2024).

As previously discussed, the construction sector must undergo substantial transformations to align with the green transition and the principles of green construction. These changes are however not without associated OSH risks. Recent studies conducted by EU-OSHA on the impact of the circular economy on OSH highlight that physical and safety hazards may increase, particularly during activities such as demolition works or the decommissioning of power plants. In such cases, deteriorated infrastructure on site and the necessity for extensive manual labour can contribute to increased risks (EU-OSHA, 2023: 3). Additionally, chemical hazards may arise, as substances such as asbestos or synthetic mineral fibres can be released into the air during the demolition or renovation of buildings. When materials are recycled for the purpose of reuse, potential chances for airborne contaminants also increase. Furthermore, the OSH risks associated with new, green materials (such as nanomaterials) remain insufficiently explored prior to their introduction into the sector, for instance

because of the pressure for early release of these materials to maintain a competitive edge. Considering that these materials have not been thoroughly examined, workers may be exposed to emerging OSH challenges that have yet to be identified (EU-OSHA, 2023: 3).

In addition to the OSH challenges inherent in circular construction, OSH concerns may also arise regarding the required skills. The implementation, design and installation of circular solutions demand specialized technical expertise and advanced knowledge. For the construction sector to transition into a circular model, it is essential to integrate green and circular skills into existing roles, while new job positions should focus on recruiting professionals with a solid understanding of these competencies. This poses a challenge, given that the shortage of qualified workers the sustainable modernization and renovation of buildings was already an issue before the COVID-19 crisis (European Commission, 2020: 14). Although the EU aims to address these challenges through the introduction of a Skills Agenda (European Commission, 2020: 15), it is essential that construction workers receive adequate training in the necessary skills to perform these new forms of work, in order to prevent further compromise of OSH.

While circular construction offers a lot of opportunities for sustainable developments and environmental benefits, it is important to ensure that OSH standards are not compromised in the process.

#### *b) Heat stress*

Heat is a recognized occupational hazard, commonly associated with industries that generate high temperatures or outdoor work, such as construction. With the increasing temperatures resulting from climate change, heat exposure has become a growing occupational risk (Narocki, 2021: 5). 2023 has been recorded the hottest year on record, and in 2022 the World Meteorological Organization (WMO) reported that Europe was warming faster than any other WMO region (Schaapman, 2023: 2). Furthermore, in the EU, 23% of workers were subjected to high temperatures for at least a quarter of their working time, with this figure

rising to 38% among construction workers. This is particularly concerning given the precarious working conditions in the construction sector, where a significant portion of the workforce is formed by non-standard workers (Cefaliello, 2023: 15).

Rising temperatures are contributing to a higher incidence of heat stress among construction workers. Given that construction work is predominantly carried out outdoors, OSH risks are particularly heightened in southern MS like Spain. OSH risks include fatigue, heat strokes, an elevated likelihood of accidents and even heat-related fatalities (Schaapman, 2022: 2). In addition to the direct health impacts, heat exposure also has indirect consequences for construction workers' OSH, such as increased air pollution and the added risks associated with wearing personal protective equipment in high temperatures (Cefaliello, 2023: 15).

Through decarbonization strategies, green technologies and the introduction of new forms of green work, the green transition aims to reduce further environmental damage that could accelerate climate change and increase serious OSH risks, such as heat-related hazards. It is however crucial to ensure that, as these changes unfold, measures are in place to minimize heat stress and other heat-related OSH risks. Practical examples include implementing break times when workers can no longer endure the heat (Schaapman, 2022: 3), adjusting working hours, providing water, shaded areas and body-cooling equipment or clothing, as well as granting workers some autonomy in deciding when to take breaks (Schaapman, 2023: 3). Additionally, the principle of risk assessment enshrined in article 6 of the Framework Directive could be applied to address heat stress, allowing employers to assess the risks related to climate change and consider factors such as protective clothing, health and age of the workers. National laws could also be introduced to adjust work practices during periods of intense heat; for example, Spain has implemented measures prohibiting outdoor work during extreme heat, if weather alerts indicate so (Cefaliello, 2023: 16).

Considering the fragmented nature of the construction sector and its vulnerable workforce, the power imbalances within the industry make it unlikely that workers will prioritize their health and safety on their own (Cefaliello, 2023: 16). It is therefore important to ensure that workers are safeguarded from the direct effects

of climate change while climate mitigation policies are being implemented through the green transition.

### **III. NATIONAL APPROACHES TOWARDS OCCUPATIONAL SAFETY AND HEALTH**

The approach to OSH varies significantly across different countries, shaped by national legislation, cultural attitudes towards work safety and the specific needs of various industries, particularly the construction sector. As the construction sector undergoes a green transition towards sustainability, the OSH landscape is further influenced by new technologies, regulations and practices. This section explores the national legal frameworks on OSH, with a particular focus on construction, of the Netherlands and Spain.

#### **1. National perspectives: the Netherlands**

The origins of OSH legislation in the Netherlands can be traced back to 1874 with the enactment of the “*Kinderwetje van Van Houten*” (Van Houten’s Children’s Act), which addressed child labour. This marked the beginning of an ongoing development of laws aimed at safeguarding the health and safety of specific groups and sectors (Bouwens et al., 2019: 30). The evolution of OSH regulation in the Netherlands can be characterized by four key trends. First, OSH laws transitioned from being sector-specific or directed at particular groups to becoming general legislation applicable to all employees across all industries. Second, the responsibility for ensuring health and safety at the workplace has evolved, with the duty of care now being shared between employers and employees, rather than being the sole duty of the employer. Third, over time, government intervention has decreased, with legislation becoming more general and leaving the detailed interpretation and application at the discretion of social partners and employment contract parties. Finally, Dutch OSH regulations form the national implementation of broader EU legislation, such as the Framework Directive (Bouwens et al., 2019: 30-31).

*a) The pillars of the Dutch OSH framework: The Working Conditions Act and the Dutch Civil Code*

The regulation of OSH can be primarily found in the Working Conditions Act (*Arbeidsomstandighedenwet*).<sup>5</sup> Article 1 outlines the scope of application, specifying that the Working Conditions Act applies to both employer and employees, as well as individuals that, without the necessity of an employment contract, perform work under the authority of another. Authority is present when the contractor has the right to exercise supervision and give instructions in order to provide for a detailed job description (Bouwens et al., 2019: 33). Self-employed individuals do not directly fall under the scope of the Working Conditions Act; article 16(7) extends the scope to include self-employed workers in situations where the work involves significant safety and health risks. The latter is of special importance in the light of the construction sector, considering the high degree of self-employed workers.

Article 3 establishes the employer's general duty of care, requiring the employer to safeguard the health and safety of workers in all aspects of their work. The employer is required to implement policies aimed at ensuring optimal working conditions, unless such an obligation is deemed unreasonable.<sup>6</sup> This provision is broad, encompassing the various aspects the employer ought to take care of [article 3(1)], but also, for instance, the periodic evaluation of the implemented OSH policies [article 3(4)]. In this context, article 5 introduces the obligation to conduct a risk assessment and evaluation (*Risico-inventarisatie en evaluatie*, RI&E) which complements the OSH policies the employer will put in place. The risk assessment should identify specific risks associated with the work performed by employees. Additionally, the employer must ensure that all workers have access to the risk assessment [article 5 (6)], including temporary workers or outsourced workers [article 5(5)]. This is particularly relevant in the construction sector, where a significant proportion of the workforce is comprised of non-

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<sup>5</sup> Wet van 18 maart 1999, houdende bepalingen ter verbetering van de arbeidsomstandigheden, *Stb.* 1999, 184, *Arbeidsomstandighedenwet*.

<sup>6</sup> Specific conditions can be found in Articles 3(1)(a) and 3(1)(b) of the Working Conditions Act.

standard workers. Article 11 establishes the duty of care for employees, stipulating that they must take reasonable precautions to protect their own safety and health, as well as that of others. An article particularly relevant for the construction sector is article 19, which addresses the presence of multiple employers. When several employers are carrying out work at the same workplace, they are obliged to cooperate efficiently to ensure compliance with the provisions established in the Working Conditions Act.

In addition to the provisions established in the Working Conditions Act, the Dutch Civil Code (*Burgerlijk Wetboek*, BW) also addresses employer liability in the domain of OSH. Article 7:658 BW stipulates that the employer is liable for any damages incurred by an employee during the performance of their work, unless the employee acted recklessly or intentionally, or unless the employer can demonstrate that due care was exercised and that all obligations were complied with.<sup>7</sup> Article 7:658(4) BW extends the liability to include situations where a worker who does not have an employment contract with the employer (such as self-employed workers or temporary agency workers) suffer damages during work activities. This provision is particularly significant in the context of the construction sector, where workplace accidents are prevalent and the inclusion of self-employed and other non-standard workers under the liability of the employer provides for extra OSH protection. Given the extent of subcontracting in the sector, however, it remains unclear whether the chain of liability is clear for all workers in the event that damages occur.

*b) Elaborating on the Working Conditions Act: the Working Conditions Decree and the Working Conditions Regulation*

The Working Conditions Act can be compared to the EU Framework Directive, as they both provide for a legislative framework on OSH including general provisions. More substantive provisions on OSH, and thereby an elaboration of the Working Conditions Act (pursuant to article 16 of the Working Conditions Act), are to be found in the Working Conditions Decree

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<sup>7</sup> See Art. 7:658(1) Dutch Civil Code.

(*Arbeidsomstandighedenbesluit*)<sup>8</sup> and the Working Conditions Regulation (*Arbeidsomstandighedenregeling*).<sup>9</sup>

Chapter 2, section 5 of the Working Conditions Decree sets out additional, specific OSH provisions that have to be abided to throughout the building process. Article 2.35 sets out specific obligations for the employer throughout the building process, aimed at the implementation of effective measures orientated at protecting construction workers' OSH. Examples of specific measures concern the safe installation of work stations on the construction site [article 2.35(b)], and ensuring an effective collaboration with other employers and self-employed workers at the construction site [article 2.35(i)]. Additionally, similar to article 5 of the Working Conditions Act, article 2.28 of the Working Conditions Decree sets out the obligation for the establishment of a safety and health plan in relation to construction works that may pose particular danger to workers' OSH. Moreover, article 2.26 of the Working Conditions Decree places the obligation upon the contractor to ensure that the involved employers and self-employed workers involved are capable to fulfill their OSH obligations.

Although the Working Conditions Regulation does not provide for a specific chapter that can be related to the construction sector, several of its chapters contain provisions that are important for the safeguarding of OSH at the construction site. Chapter 2 sets out provisions pertaining to the RI&E in the light of hazardous substances and severe accidents. Chapter 7 contains specific provisions directed at the safety of work equipment. Finally, chapter 8 sets out provisions directed at health and safety signaling, such as specific rules set out for safety signs in terms of colours or languages (article 8.10).

### *c) Occupational Safety and Health Catalogues*

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<sup>8</sup> Besluit van 15 januari 1997 houdende regels in het belang van de veiligheid, de gezondheid en het welzijn in verband met de arbeid, *Arbeidsomstandighedenbesluit*.

<sup>9</sup> Regeling houdende bepalingen ter uitvoering van bij en krachtens de wet Arbeidsomstandighedenwet en enige andere wetten gestelde regels, *Arbeidsomstandighedenregeling*.



Since 2007, employers and social partners have been given more possibilities and responsibilities to give concrete substance to the provisions of the Working Conditions Act. These specific agreements are laid down in occupational safety and health catalogues (*Arbocatalogus*, OSH catalogues) (Dutch House of Representatives, 2021/22: 8).

The rationale behind this was to provide for more effective OSH policies by tailoring them to the specific needs of each sector, thereby gaining sufficient support within undertakings. Social partners were tasked with the responsibility of developing and implementing these sector-specific policies in the OSH catalogues. Since 2013, the Dutch Labour Inspectorate has relied upon OSH catalogues as a framework during inspections. Employers must comply with provisions as set out in the OSH catalogues established by social partners in the relevant sector, unless they can demonstrate that an equivalent level of OSH can be achieved within their organization through alternative measures (Popma, 2024: 19).

The function of OSH catalogues is twofold. First, they serve as a tool for employers to develop and implement their OSH policies, particularly by detailing measures to mitigate OSH risks. Social partners are responsible for defining the sector-specific state of the art, which is particularly relevant for proper oversight by the Labour Inspectorate. When included in a CLA, these provisions are enforceable under Dutch civil law. Second, OSH catalogues fulfill an informative role, particularly by describing potential hazards. The acceptability of certain risks can sometimes be determined through legal thresholds (Popma, 2024: 16).

In the Netherlands, six OSH catalogues have been established for the construction sector: for demolition, paving, completion, the use of natural stone, foundations and construction work in general. Each OSH catalogue describes the specific construction jobs that fall within the catalogue, specific tasks within these jobs and the potential OSH risks that can emerge, as well as measures to prevent and mitigate these risks.

## **2. National perspectives: Spain**

Although safety and health at the workplace have long been significant concerns, the formal development of OSH regulation in Spain marked its beginning in the early 20<sup>th</sup> century. During the Franco dictatorship, OSH policies, insofar they existed, were integrated into the broader industrial relations framework (Cerón Torreblanca, 2011: 400). In 1971, the National Plan on Hygiene and Security at Work was established (*Plan Nacional de Higiene y Seguridad en el Trabajo*), serving as the predecessor to the current National Institute of Safety and Hygiene at Work (*Instituto Nacional de Seguridad e Higiene en el Trabajo*). The National Plan gained increasing prominence over time, culminating in its incorporation into the General Law on Social Security (*Ley General de Seguridad Social*), which recognized OSH as a social service to be integrated within the social security system. The primary objective of the National Plan was the reduction or elimination of OSH risks across various workplaces. Its implementation marked a significant expansion of protective and preventive services, extending coverage from large enterprises to include all workers concerned with the reduction or elimination of OSH risks that could emerge within different workplaces (Cerón Torreblanca, 2011: 402-403). Although the implementation of these regulations was regarded as innovative, their approach was predominantly of a fragmented and reactive nature, rather than establishing a consolidated legal framework focused on the prevention of occupational risks (Cerón Torreblanca, 2011: 404).

The end of Franco's dictatorship in 1975 paved the way for constitutional reforms, with the Spanish Constitution enacted in 1978 and the Workers' Statute (*Estatuto de los Trabajadores*, ET) in 1980. These documents marked the first legal reference to OSH in Spanish legislation. From 1978 onwards, OSH regulations underwent a series of developments through multiple legislative measures, ultimately leading to the incorporation of the EU Framework Directive into Spanish law in 1995 with the enactment of the Law on Occupational Risks (*Ley de Prevención de Riesgos Laborales*, LPRL), laying the foundation for further evolution towards a more preventive OSH system (Cerón Torreblanca, 2011: 408-411).

#### a) Foundations of OSH legislation: the Spanish Constitution and the ET

The regulation of OSH in Spain is firmly established in the Constitution, specifically in article 40(2), which mandates public authorities to ensure OSH at work. In this light, policies and legislation ought to be developed to protect the health of workers primarily through risk prevention.<sup>10</sup> Additionally, article 45 CE enshrines the right to enjoy a suitable environment, a right that can also be extended to the workplace (González Cobaleda, 2024: 106). Beyond the Constitution, the second key foundation of OSH lies in its inclusion in the ET.<sup>11</sup> Article 4 ET outlines workers' rights, with article 4(2) specifically stating the right to physical integrity and an adequate OSH policy within the employment relationship. Furthermore, article 5(b) establishes a duty of care for the employee, requiring workers to observe and familiarize themselves with the adopted OSH measures.

Article 19 ET is dedicated entirely to OSH. Paragraph 1 and 2 of this article reaffirm the provisions set forth in articles 4(2) and 5(b) ET. Article 19(4) imposes a duty of care on employers in the light of training, mandating that they ensure every workers received both theoretical and practical OSH training upon entering the employment relationship, as well as in the event of a change in role or the introduction of new technologies or work equipment. This provision takes on particular significance in the context of the green transition, as the construction sector will likely encounter new production processes, which may be accompanied by the introduction of new technologies and work equipment.

Another article that addresses OSH, and is particularly relevant to the construction sector, is article 42 ET, which deals with the subcontracting of works and services. Paragraph 4(e) of this article stipulates that any undertaking entering into contract for the provision of works or services with a contractor or subcontractor must inform the legal representative of the workers about the planned measures for the coordination of OSH activities. This means that, in cases of subcontracting, employers have a clear obligation to ensure that OSH measures are coordinated between all parties involved. This provision is

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<sup>10</sup> Constitución Española, BOE núm. 311, de 29 de diciembre de 1978.

<sup>11</sup> Real Decreto 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores, BOE núm. 255, de 24 octubre de 2015.

important for the construction sector, given the high level of sub-contracting taking place in the sector.

*b) The development of OSH legislation: from early foundations to the LPRL*

The legislation envisioned in article 40(2) of the Spanish Constitution is embodied in the LPRL. Enacted in 1995, the rationale behind the creation of the LPRL was twofold. First, it sought to establish a unified approach to OSH policies, addressing the fragmentation, accumulation and diversity of previous regulations, many of which predated the Spanish Constitution. Second, it aimed to revise outdated regulations and address new challenges not yet covered by existing OSH policies.<sup>12</sup> Similar to the Dutch Working Conditions Act, the LPRL sets out the general framework of Spanish OSH legislation, consolidating the principles stemming from the Framework Directive.

Article 4 LPRL outlines key definitions, including that of ‘working conditions’ in article 4(7). This definition encompasses any factor that may significantly influence the formation of OSH risks for workers. Given its broad scope, it is not uncommon for environmental factors (such as solar radiation or heat waves) to be considered within the range of conditions that can impact workers’ safety and health in the workplace. (González Cobaleda, 2024: 104). Article 14(1) LPRL enshrines the right of workers to effective OSH protection. In the same paragraph, the duty of care of the employer is established, mandating the employer to safeguard workers from OSH risks in all aspects of their work [article 14(2)]. To comply with this obligation, employers must adhere to the principle of prevention and implement measures aimed at preventing OSH risks to protect workers’ safety and health [article. 14(2)]. The principles of prevention the employer has to abide to are further delineated in article 15(1) LRPL, encompassing risk prevention, risk evaluation when prevention is not possible and addressing risks at the source. Additionally, under article 16(1) LPRL, employers are obliged to integrate these principles into an OSH risks prevention plan (*Plan de prevención*

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<sup>12</sup> Ley 31/1995, de 8 de noviembre, de prevención de Riesgos Laborales, BOE núm. 269, de 10 de noviembre de 1995.

*de riesgos laborales*) and apply them within the policies of the undertaking. This plan must include, amongst others, the organizational structure, processes, procedures and resources necessary for effective risk prevention actions. The duty of care is not solely the responsibility of the employer, as article 29(1) establishes the duty of employees to take due care of their own safety and health at the workplace and that of others, particularly when their actions or commissions could impact the professional activity of others.

Article 17(1) LPRL addresses protective measures relating to work equipment, obliging the employer to take necessary measures to ensure that work equipment is suitable for the tasks to be performed and properly adapted for its intended purpose. This provision is particularly significant in the construction sector, where heavy machinery is frequently used. Another relevant provision for this sector is article 28(1), which mandates that workers with fixed-term or temporary employment contracts, including temporary agency workers, must receive the same level of OSH protection as all other workers within the undertaking where they provide their services. This ensures that temporary workers in the construction sector are entitled to the same OSH safeguards as all other workers, promoting equal protection. However, the practical implementation of this provision remains uncertain considering the high level of sub-contracting in the construction sector, which may lead to a dilution of OSH responsibilities across multiple parties. Furthermore, article 24(1) LPRL stipulates the need for coordination of OSH prevention between employers when multiple undertakings operate at the same workplace, which is often the case in the construction sector.

The provisions outlined in the LPRL on risk prevention, risk assessment, preventive measures and related topics are further elaborated upon in the Regulation of Prevention Services (*Reglamento de los Servicios de Prevención*).<sup>13</sup> Article 2 provides a detailed framework for the contents of the OSH risks prevention plan, while articles 3,4 and 5 define the process and content of risks assessment procedures. Additionally, articles 8 and 9 elaborate upon the planification and content of preventive measures to be implemented.

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<sup>13</sup> Real Decreto 39/1997, de 17 de enero, por el que se aprueba el Reglamento de los Servicios de Prevención, BOE núm. 27, de 31 de enero de 1997.

Furthermore, Annex I of the Regulation recognizes construction work as a high-risk activity, thereby requiring the implementation of more extensive preventive measures to address the specific hazards inherent to the sector's operations. This is especially significant in light of the effects that the green transition will bring to the sector, which may introduce new challenges and risks demanding further precautionary actions.

The LPRL does not explicitly address environmental issues, nor does it establish a direct link between occupational health and environmental concerns. It also does not impose mandatory obligations on employers to implement specific measures for managing scenarios and risks related to climate change or other OSH challenges arising from the green transition. As a result, there is general lack of practical attention to these issues from the employer's perspective. Consequently, the interpretation of the provisions enshrined in the LPRL retains a certain degree of flexibility and remains more voluntary in this context. This ambiguity complicates the implementation of integrated policies related to climate change and potential preventive measures. (González Cobaleda, 2024:110). In this light, it is advisable to update the LPRL (Igartua Miró, 2024: 8).

### *c) Targeted OSH legislation in the Spanish construction sector*

In accordance with article 6 of the LPRL, additional regulations can be established that provide for more detailed and technical aspects of preventive measures, through the establishing minimum health and safety standards. This provision led to the enactment of the Royal Decree on Safety and Health in Construction Works in 1997 (*Real Decreto por el que se establecen disposiciones mínimas de seguridad y de salud en las obras de construcción*).<sup>14</sup> As outlined in article 1(1) of the Royal Decree, its primary objective is to establish minimum OSH standards for construction works.

Article 3(1) mandates the designation of OSH coordinators at construction sites when multiple undertakings are involved. This includes situations where a single

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<sup>14</sup> Real Decreto 1627/1997, de 24 de octubre, por el que se establecen disposiciones mínimas de seguridad y de salud en las obras de construcción, BOE núm. 256, de 25 de octubre de 1997.

undertaking collaborates with one or more self-employed workers, ensuring effective coordination of OSH practices. The responsibilities of the OSH coordinator are outlined in article 9, which, among other duties, includes the coordination of the general principles of prevention [article 9(a)] and overseeing construction activities to ensure adherence to these principles [article 9(b)].

Article 4 stipulates the preparation of an OSH study (*Estudio de seguridad y salud*). The specific requirements for the construction-related content of this study are outlined in Article 5(2), which includes, for example, specific measurements [article 5(2)(d)] and detailed blueprints [article 5(2)(c)]. In addition to the OSH study, article 7 requires the creation of an OSH plan (*Plan de seguridad y salud en el trabajo*) at the workplace as a form of complementing the OSH study. The OSH plan includes alternative preventive measures, provided they do not reduce the protection levels established in the OSH study [article 7(1)].

Given the fragmented nature of the construction sector, articles 11 and 12 of the Royal Decree impose specific obligations on contractors, sub-contractors and self-employed workers. Among these obligations, the primary responsibility they must uphold is the application of the principles of prevention [article 11(1)(a) and article 12(1)(a)]. The inclusion of contractors, sub-contractors and self-employed workers in the Royal Decree underscores the importance of taking all workers within the construction sector into account to ensure a cohesive approach to OSH.

In 2023, a Royal Decree-Law<sup>15</sup> was enacted on severe weather conditions in outdoor workplaces and workplaces that cannot remain closed, such as construction sites. Notable for its focus on adverse meteorological phenomena, the Royal Decree-law emphasizes on risks associated with heat (González Cobaleda, 2024: 115-116). In this context, it contains a single additional provision addressing environmental conditions in outdoor work (*Disposición adicional única. Condiciones ambientales en el trabajo al aire libre*). This provision

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<sup>15</sup> Real Decreto-ley 4/2023 de 11 de mayo, por el que se adoptan medidas urgentes en materia agraria y de aguas en respuesta a la sequía y al agravamiento de las condiciones del sector primario derivado del conflicto bélico en Ucrania y de las condiciones climatológicas, así como de promoción del uso de del transporte público colectivo terrestre por parte de los jóvenes y prevención de riesgos laborales en episodios de elevadas temperaturas, BOE núm. 113, de 12 de mayo de 2023.

mandates that, when work is conducted outdoors or in workplaces that cannot remain closed, appropriate preventive measures must be implemented to protect workers from risks posed by adverse weather conditions, including extreme temperatures. These preventive measures are derived from the employer's duty of care, as outlined in article 14 LPRL, and the obligation to implement preventive actions based on the risk assessment stipulated in article 16 LPRL. Should the Spanish State Meteorological Agency, or the relevant regional authority, issue a warning for severe meteorological phenomena at the orange or red risk level, and the preventive measures are deemed insufficient as to protect workers from such adverse conditions, the employer is obliged to adjust the workers' working conditions. This may include modifying or reducing working hours, or even suspending work entirely (González Cobaleda, 2024:116). This single additional provision plays a crucial role in safeguarding construction workers' OSH, especially in the light of rising temperatures to which they are increasingly exposed.

#### **IV. THE ROLE OF COLLECTIVE REPRESENTATION IN THE MIDST OF GREEN CONSTRUCTION**

While having OSH legislation in place is crucial, its practical implementation often present challenges, especially in the fragmented construction sector. The presence of collective representation, in the form of trade unions and works councils, can be instrumental in bridging this gap. Through collective bargaining, trade unions can ensure that OSH is effectively safeguarded, while works councils hold the authority to ensure that employers adhere to the terms established in CLA's. In a sector set for transformation due to the green transition, the safeguarding role of collective representation becomes key to prevent workers' OSH from being compromised. Section IV examines the role of collective representation in the construction sector, particularly in the context of the green transition, and explores national approaches to collective representation in light of the sector's evolving challenges.



## **1. Collective representation and green collective bargaining**

The green transition encompasses one of the most significant transformations currently shaping the world of work. Recognizing this, both the European Commission and social partners have prioritized embracing the green transition (Zwysen, 2024: 1). Whilst the EU focuses more on integrating the green transition in its policies, social partners have been occupied with the consequences of the green transition on workers' rights, amongst which OSH.

As outlined earlier in this contribution, one of the main objectives of the EGD and the green transition is the shift from polluting to more sustainable industrial activities. This shift presents unique challenges for the construction sector, including the incorporation of new technologies, sustainable production processes and the emergence of green jobs. Green jobs are those that contribute to environmental preservation or restoration, whether in traditionally polluting sectors like construction, or in newly established green sectors (ILO, 2016). Alongside existing, albeit evolving jobs, these green jobs must also be decent and of high-quality (Zwysen, 2024: 1). This is where the role of collective representation becomes crucial: ensuring that workers' rights are respected and that no one is left behind during the green transition, making worker representation essential in navigating these changes.

Social dialogue is considered to be a cornerstone of the European social model and in recent years, European social dialogue on green collective bargaining has been increasing (European Commission, 2023: 1). The purpose of green collective bargaining is intertwining environmental solutions and social commitment as a response to climate change with due regard for the protection of workers' rights (European Public Service Union, 2017). To ensure a fair transition, achieve a decarbonized economy and further promote a social and green Europe, green collective bargaining is essential to strengthen meaningful social dialogue and fostering balanced, sustainable solutions (Council of the European Union, 2023: 2).

## **2. Collective representation and green construction: national approaches**

While the green transition is driving significant changes at European level, particularly in terms of policies (stemming from the EGD) and green social dialogue, collective bargaining at national level has increasingly begun to address its consequences. National trade unions and works councils are taking proactive steps to address sustainable and green practices during collective negotiation and within the undertakings. This trend is particularly significant in the construction sector, where green initiatives are closely intertwined with safeguarding workers' OSH. In this context, it is key to examine the role of collective representation within the national construction sectors of the Netherlands and Spain, and how this role is evolving in response to the green transition.

#### a) *The Netherlands*

The Dutch Working Conditions Act outlines several provisions regarding the role of collective representation. Article 12(1) underscores the necessity for collaboration between the employer and employee in the implementation of OSH policies. Furthermore, article 12(2) obliges the employer to consult with the works council on both OSH policies and their execution. A key aspect of this collaboration is active information exchange. According to article 12(4), works council members are granted the opportunity to accompany Labour Inspectorate officials during inspections and are also entitled to engage in confidential discussions with the Inspectorate officials, without the presence of others.

In addition to the Working Conditions Act, the Works Councils Act (*Wet op de Ondernemingsraden*, WOR) outlines several provisions that establish the rights of works councils within the workplace.<sup>16</sup> The works council is granted three primary rights: the right to information, consultation rights and the right of consent. The right to information, as defined in article 31 WOR, allows the works council to request any information necessary to fulfill its duties, with the employer being obliged to provide such information [article 31(1)].

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<sup>16</sup> Wet van 28 januari 1971, houdende nieuwe regelen omtrent de medezeggenschap van de werknemers in de onderneming door middel van ondernemingsraden, *Wet op de Ondernemingsraden*.

Consultation rights are stipulated in article 25 WOR, granting the works council the opportunity to provide advice on various matters. In the context of the green transition, particularly relevant provisions include articles 25(1)(k) and 25(1)(l). The former requires that the employer must consult the works council prior to the introduction or modification of technological provisions. When applied to the construction sector's evolving needs, this provision requires that employers consult the works council before introducing technological innovations pertaining to the sector such as circularity practices, which are integral to the sector's green transformation. The latter provision entails that employers have to consult the works council before implementing any measures pertaining to environmental matters. These measures may encompass organizational, administrative or regulatory changes, such as the introduction of green production processes, new materials or substances, all of which must be discussed with the works council in the context of green change within the construction sector.

Perhaps the most impactful right of works councils is enshrined in article 27 WOR, granting the right to consent. This provision requires that the employer must obtain the explicit consent of the works council for decisions relating to the establishment, modification or withdrawal of various policies, including those concerns OSH, as outlined in article 27(1)(d). In practical terms, this means that any changes to OSH regulations, whether it involves the introduction of new personal protective equipment due to the use of new substances or materials, alterations in production processes due to new machinery or other sustainability-driven modifications that impact OSH, can only proceed with prior approval of the works council. In the context of the construction sector, this ensures that any changes impacting workers' OSH, particularly those related to sustainability shifts, must first be agreed upon by the works council.

In addition to the role of works councils, trade unions actively advocate for the establishment of effective OSH policies within the construction sector. The outcomes of their collective bargaining efforts are enshrined in the CLA for construction and infrastructure. Section 7 of the CLA focusses on OSH, with paragraph 7.3. outlining specific regulations related to safety measures on construction site. Some provisions in this section can be seen as initial steps towards green collective bargaining. For example, provision 7.3.3. addresses the

need for winter clothing, establishing rules for workers in cold conditions, while paragraph 7.3.5. stipulating the mandatory use of sunscreen (FNV, 2024a: 66-67). Furthermore, paragraph 7.5. refers to an additional CLA that covers the issue of unworkable weather. Unworkable weather refers to the circumstances where work cannot continue due to adverse weather conditions or insufficient lighting. However, it's noteworthy that this supplementary CLA does not address heat stress or other heat-related OSH risks despite rising temperatures being a direct effect of climate change, focusing solely on resolving disputes regarding the adequacy of cold weather conditions for work (FNV, 2024b: 7-8).

Besides the provisions set out in CLA's, social partners, including trade unions, play a pivotal role in drafting the OSH catalogues outlined in the previous section. Specifically for the constructions sector, six OSH catalogues have been drafted. Some of these catalogues include provisions regarding temperatures that are considered too high for work or conditions where work would no longer be deemed comfortable. However, the temperatures specified in these catalogues are not consistent across all of them, which complicates efforts to establish a standardized temperature threshold. Moreover, the catalogues do not take into account the nature of the work being performed or other factors that could influence the impact of temperature on workers (Popma, 2024: 17).

#### *b) Spain*

Collective bargaining is enshrined in article 37 of the Spanish Constitution. This right is further detailed in article 4(1)(c) of the ET, which recognizes it as a basic right of workers. Title III of the ET is dedicated entirely to provisions regarding CLA's and their regulation. According to article 81(1), CLA's result from negotiations between employers' representatives and trade unions, reflecting an agreement freely reached in accordance with the principle of collective autonomy. article 82(3) establishes minimum mandatory requirements for CLA's, including for instance stipulations on working hours and remuneration. Notably, green clauses are not considered mandatory within Spanish CLA's. Their inclusion is entirely voluntary, depending on the preferences of the negotiating parties

(Chacartegui Jávega, Canaldo Criado, 2020: 17-20). Spanish CLA's can be negotiated at either sectoral or company level. When negotiated at company level, article 87(2) of the ET stipulates that works councils and workforce delegates can be signatory parties to the CLA, in addition to trade unions (Chacartegui Jávega, Canaldo Criado, 2020: 18).

Spanish trade unions have played a significant role in advocating for workers' rights within the construction sector, leading to the establishment of a general CLA for the construction sector.<sup>17</sup> Title IV of the CLA outlines minimum OSH provisions applicable to construction works. This title is divided into several chapters, each addressing key OSH concerns within the construction sector, including general conditions (Chapter I), excavation works (Chapter IV) and the use of work equipment and heavy machinery (Chapter VI). In response to the impact of climate change on the construction sector, article 172 specifically addresses OSH in relation to atmospheric factors. It stipulates that workers exposed to adverse weather conditions must be protected. Notably, in the case of extreme temperatures resulting in heatwaves, article 172 allows for modifications to working hours to avoid peak sun exposure. Additionally, construction workers are entitled to sunscreen, access to water and shaded rest areas. This article exemplifies how the Spanish construction sector is adapting to the direct consequences of climate change, with policies introduced through the EGD consequential to the green transition aiming to mitigate these adverse climate effects. Furthermore, Annex IV of the Royal Decree of 1997, which establishes minimum health and safety provisions for construction works (*Real Decreto por el que se establecen disposiciones mínimas de seguridad y de salud en las obras de construcción*)<sup>18</sup>, outlines the minimum OSH provisions to be applied in construction work. These provisions are to be implemented in CLA's of a lower scope than the national CLA, as well as in CLA's that include improvements in this area.

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<sup>17</sup> Resolución de 6 de septiembre de 2023, de la Dirección General de Trabajo, por la que se registra y publica el VII Convenio colectivo general del sector de la construcción, BOE núm. 228, 23 de septiembre de 2023.

<sup>18</sup> Real Decreto 1627/1997, de 24 de octubre, por el que se establecen disposiciones mínimas de seguridad y de salud en las obras de construcción, BOE núm. 256, de 25 de octubre de 1997.

Since the introduction of the Law on Sustainable Economy in 2011 (*Ley de Economía Sostenible*)<sup>19</sup>, Spanish social partners have been trying to integrate green clauses into CLA's. Various initiatives have been introduced by Spanish social partners to incorporate both labour and environmental rights within the framework of green collective bargaining (Chacartegui Jávega, Canaldo Criado, 2020: 20). In light of the increasing frequency of adverse weather events in Spain, provisions addressing extreme weather conditions are becoming more common in CLA's. Green bargaining and environmental clauses primarily focus on heat stress, as adverse weather conditions can significantly affect workers' OSH, particularly for vulnerable workers in sectors such as construction (Chacartegui Jávega, Canaldo Criado, 2020: 53).

The V Agreement for Employment and Collective Bargaining (*V Acuerdo para el Empleo y la Negociación Colectiva*, AENC)<sup>20</sup>, in chapter VIII on safety and health at work, underscores the importance of collective bargaining to adapt sector-specific health and safety conditions in line with the Spanish Occupational Safety and Health Strategy 2023-2027 (*Estrategia Española de Seguridad y Salud en el Trabajo 2023-2027*), which establishes new challenges and objectives on safety and health. In this regard, chapter XVI focuses on the technological, digital and green transitions, emphasizing the need for collective bargaining to prioritize the development of information and training programs for workers to ensure their active participation in adopting measures necessitated by climate change. Moreover, to achieve the effective reduction of emissions and the success of the implemented measures, sustainable mobility plans should be promoted within collective bargaining.

In addition to the efforts of trade unions, works councils also play a crucial role. Article 34 of the LPRL outlines the participation and representation rights of works councils, amongst others. Article 34(2) specifically grants works councils the responsibility to protect workers' interests in OSH risk prevention through their information, consultation and other attributed rights by the ET. When turning to

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<sup>19</sup> Ley 2/2011, de 4 de marzo, de Economía Sostenible, BOE núm. 55 de 5 de noviembre de 2011.

<sup>20</sup> Resolución de 19 de mayo de 2023, de la Dirección General de Trabajo, por la que se registra y publica el V Acuerdo para el Empleo y la Negociación Colectiva, BOE núm. 129, 31 de mayo de 2023.

the ET, article 64(1) defines the information and consultation rights of works councils, as well as other competences. Works councils have the right to be informed and consulted by employers on matters that may affect workers, the undertaking's situation or the evolution of the work within the organization. An important provision in the context of the green transition is found in article 64(4)(e), which grants works councils the right to be informed about any measures being taken in response to adverse weather conditions or disasters. Given Spain's increasing temperatures due to climate change, this article may become increasingly significant for works councils in the near future.

## **V. CONCLUDING REMARKS**

As has been discussed in this contribution, the quest for sustainability of the green transition brings both new developments and challenges to the world of work, particularly in the realm of workers' health and safety. While the European response to the green transition, exemplified by the EGD and its subsequent policies, appears promising, brown sectors such as the construction sector are expected to face significant impact due to decarbonization strategies and climate-mitigation policies.

The fragmented nature of the construction sector, characterized by complex OSH frameworks, extensive sub-contracting practices, labour migrants and the presence of (bogus) self-employed workers alongside regular employees, compromises the effective monitoring of OSH responsibilities and increases the risks of accidents and injuries on construction sites. In addition to the sector's inherent OSH challenges, sustainable policy developments – such as circular construction – may further exacerbate OSH risks due to factors such as lacking technical skills, the use of new construction materials, and hazardous substances becoming airborne during the demolition of old buildings for renovation purposes. Moreover, the rising temperatures associated with climate change, combined with the outdoor nature of construction work, increases the likelihood of OSH risks related to heat exposure.

While the green transition aims to mitigate environmental degradation through the adoption of green technologies, decarbonization strategies and the promotion of green jobs, it is pivotal to ensure that the green transition unfolds in a socially just manner, particularly concerning workers' health and safety. This contribution has addressed the role of collective representation in safeguarding construction workers' OSH in the Netherlands and Spain in the context of the green transition. Although the green transition offers opportunities for sustainability, potential challenges have emerged concerning construction workers' OSH. Both the Netherlands and Spain have established rigorous legislation to protect workers' safety and health in the construction sector; however, it remains debatable whether the current legal provisions are sufficiently equipped to address the evolving green policies associated with the transition. Collective actors, in turn, have actively advocated for the inclusion of green clauses focusing on OSH in CLA's. The following observations and recommendations aim to outline a pathway towards a socially just green transition in the context of OSH.

A comparative analysis of the health and safety frameworks for the construction sector in the Netherlands and Spain illustrates that, in theory, the level of protection of construction workers appears to be robust. However, the fragmentation of the sector introduces challenges in terms of oversight, with language barriers potentially leading to miscommunications. Additionally, the extensive and varied OSH legislation in the construction sector can create complex situations, hindering effective implementation.

A more promising development can be seen when examining the different approaches to collective representation and the protective role it plays within the construction sectors of the Netherlands and Spain. In addition to the extensive legislative frameworks outlining the information, consultation and consent rights of works councils, collective bargaining and clauses in CLA's appear to be evolving towards enhancing meaningful social dialogue and fostering sustainable solutions to the challenges posed by the green transition. In Spain, green collective bargaining is becoming increasingly prevalent, with working conditions being adjusted to address OSH needs in light of adverse weather conditions. To a lesser extent, the Dutch CLA pertaining to the construction sector includes a supplementary CLA addressing unworkable weather conditions, specifically



regulating cold weather. Additionally, while the OSH catalogues do touch upon uncomfortable working temperatures, they do not provide comprehensive coverage. In both the Netherlands and Spain, there are no CLA provisions related to circular construction, despite the growing need for such measurements given the EU's rapid pace in implementing the policies stemming from the renovation wave.

Social dialogue is regarded as the cornerstone of the European social model, and at both the EU-level and MS-level, green collective bargaining has gained increasing significance. Addressing climate change and green sustainability policies through the integration of environmental solutions and social commitment – embodied in green clauses within CLA's – can play a crucial role in balancing environmental protection, sustainability policies and workers' safety and health. This approach is key to ensuring that the green transition unfolds as a socially just transition, with due regard for workers safety and health in the midst of green change.

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