

# Specialist family fostering under full-time dedication: an opportunity to broaden the foundations of family fostering, incorporating social intervention professionals as foster caregivers

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## Abstract

As a child protection measure, family foster care takes precedence over residential foster care because it allows the child to develop within a family. However, despite continued efforts in this area, this priority has not yet been delivered.

Indeed, Spain has not engaged in developing a model for professionalised family foster care, although the scope for it has been mentioned since 1996 in the Spanish Civil Code (Royal Decree, 24 July 1889).

The enactment of Organic Act 8/2021, of 4 June, on comprehensive protection for children and young people from violence has led to the removal from Spanish national legislation of any reference to specialist family foster care of a professional nature. Instead, it has triggered the introduction of a new figure: specialist family foster care with exclusive dedication.

This form of family foster care constitutes an opportunity to offer a new perspective on social work intervention, incorporating other profiles of foster caregivers who benefit from suitable experience and training, and who opt to make family foster care their primary activity through a

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### **Studies. In depth**

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Specialist family fostering under full-time dedication: an opportunity to broaden the foundations of family fostering, incorporating social intervention professionals as foster caregivers

self-employed scheme or on the basis of an agreement with the Department of Social Security, thereby allowing exclusive dedication to be given to the care of a foster child.

Consequently, this text strives to act as a framework document to encourage the implementation of this form of family foster care in the various autonomous communities, focussing in particular on the experience of self-employed foster care delivered in the province of Gipuzkoa.

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**Keywords:** Child protection, specialist family foster care, professionalised family foster care, Gipuzkoa.

## 1. Introduction

Family foster care is a protection measure with which, in the exercise of public authority, public administrations provide protection and assistance for a child in a situation of abandonment, integrating them with an individual or family who will take on the responsibility of offering the child care, company, nutrition, education and comprehensive preparation in a caring environment in return for financial payment.

Family foster care is considered a preferential option over residential foster care. This is because it enables the child to develop within a family. Indeed, according to Del Valle et al. (2009, p. 33) this is “one of the areas on which there is the broadest legal, scientific and professional consensus”.

Along these lines, all autonomous regional regulations have explicitly acknowledged that family foster care carries priority over residential foster care. This priority has also been determined nationally in legal terms following the reform of the system for the protection of children and adolescents with Act 26/2015, of 28 July, modifying the system for the protection of children and adolescents (specifically in article 172 ter 1 of the Civil Code [Royal Decree of 24 July 1889], hereinafter the CC; and in article 21.3 of Organic Act 1/1996, of 15 January, on legal protection of children, hereinafter the LOPJM).

Consequently, the implementation of policies, legislation, programmes, schemes and initiatives aimed at promoting family foster care has been at the core of the concerns and focus of the various authorities involved.

In Europe, common strategies have been analysed and put in place to reduce the number of children taken into residential foster care – the Common European Guidelines on the Transition from Institutional to Community-based Care (European Expert Group on the Transition from Institutional to Community-based Care, 2012); the Research Report on Transition from Institutional to Community-based Care (Šiška and Beadle-Brown, (2020) – upon observing that the number of families was insufficient (Reimer, 2021).

In Spain, the various national strategic plans for children and adolescents (PENIA, from the acronym in Spanish) incorporated the goal of promoting family foster care. Indeed, the actions with this aim in mind envisaged the promotion of specialist foster care: the II National Strategic Plan for Children and Adolescents 2013-2016, approved by resolution of the Council of Ministers on 5 April 2013 (Spanish Ministry of Health, Social Services and Equality, 2013).

Also on a national level, the reform of the 2015 protection system entailed a general ban on residential foster care for children under the age of three, with priority being given to children under the age of six (article 21.3 of the LOPJM).

These very goals have been enshrined in various covenants (the Children's Pact of Catalonia [Government of Catalonia, 2013]), plans (the

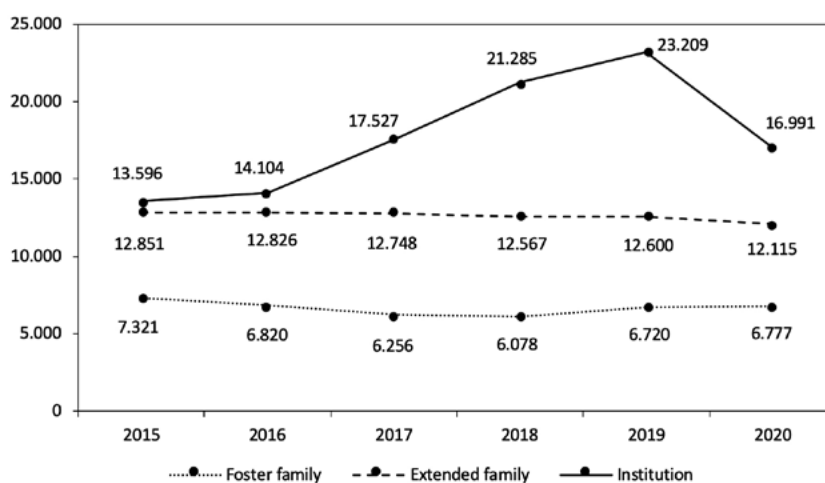
## Studies. In depth

Specialist family fostering under full-time dedication: an opportunity to broaden the foundations of family fostering, incorporating social intervention professionals as foster caregivers

3rd Children's Plan to Deliver Care to Abandoned Children of Biscay 2016-2019 [Biscay Provincial Council, 2016] and regulations (Decree 35/2021, of 26 February, regulating family foster care in the Community of Valencia) at autonomous regional level.

Nevertheless, these institutional commitments and measures have failed to bear fruit in the official statistics that reveal the high number of children fostered at institutions and the stagnation in the figures of children cared for by foster families, as shown in graph 1 and table 1 below.

**Graph 1.** Trend in the number of children according to foster category in Spain as of 31 December (2015-2020)



Source: Statistical reports on childhood protection measures. Spanish Ministry of Social Rights and the Agenda 2030 (Children's Observatory, 2021).

Note: The increase in residential foster care from 2017 onwards may likely be explained due to the increase in the numbers of unaccompanied migrant children arriving, almost all of whom are fostered at institutions.

**Table 1.** Rate out of 100,000 of children under the age of 18 years in family foster care as of 31 December (2015-2020)

Year	2015	2016	2017	2018	2019	2020
Rate 1/100.000	50.6	51.2	48.7	47.9	53.5	51.8

Source: Statistical reports on childhood protection measures. Spanish Ministry of Social Rights and the Agenda 2030 (Children's Observatory, 2021).

Specifically, according to the latest statistics released by the Children's Observatory (2021), in Spain, by 31 December 2020, 1,177 children under six years were fostered at institutions, 537 of which were children aged three years or less. Therefore, the bans and priorities legally set in

this regard have not been adhered to. More recently, the report from the Ombudsman of the Community of Valencia (2022), dated 25 May, points out that more than six years after the legal ban came into effect, 34 children under six years were still being fostered at institutions in said community.

Consequently, in its *Concluding observations on the combined 5th and 6th periodic reports of Spain* (2018, p. 8), the Committee for the Rights of the Child underlined its concern owing to the “The high number of children in residential care and the fact that residential care is, in practice, used as the primary alternative as an initial measure”; hence, it recommends that the State expedite the process of deinstitutionalisation, “ensuring that residential care is used as a measure of last resort”.

At this juncture, if we look into the potential complications when it comes to family foster care for children who need it, aside from the shortage of families, the primary issues are (López et al. 2010; Mayoral, 2015):

- Age (in particular, complications are heightened for children aged nine to twelve).
- Groups of siblings.
- Children with special needs.
- Prior interventions. It should be pointed out that previous failure of family foster care almost always leads to a child being put back in residential foster care.
- The existence of a broad visiting schedule (more than one weekly visit) with the biological family.

This has led to (Casellas and Mayoral, 2010) new forms and formulas for family foster care being considered which would allow the number of children fostered at institutions to be reduced and would assure an enhanced response is given to their needs. Undoubtedly, the possibility afforded by professionalised family foster care has been one of the schemes called for in order to deliver this.

Nonetheless, professionalised family foster care has not benefited from efficient implementation, despite this model being considered in Spanish national legislation since 1996.

Lastly, in 2021, all references in national legislation to the potential professional nature of fostering were removed; indeed, this figure has been replaced by specialist family foster care with exclusive dedication.

Along these lines, the aim of this paper is to examine this new figure of specialist family foster care with exclusive dedication and to lay the foundations needed for its implementation and/or development by the autonomous community authorities in view of the definition of this form of foster care laid down in final provision eight of Organic Act 8/2021, of 4 June, on comprehensive protection of children and adolescents from violence (hereinafter the LOPIVI).

This analysis is particularly relevant in view of the steps taken by the Spanish Government to implement this model. Indeed, it is using Next Generation funds to finance two experimental projects on specialist family foster care with exclusive dedication – the Acoges+Aldeas Infantiles SOS

project (2022) and the Redes AFE programme, developed by Agintzari and the Resilis Foundation in partnership with Gipuzkoa Provincial Council (Fice Spain Association-2022) – until December 2024, and is enacting a Royal Decree to regulate Social Security for specialist foster caregivers with exclusive dedication. This Royal Decree has not yet been adopted, despite the one-year term established in the LOPIVI having elapsed and the commitments taken on in Parliament by the minister of Inclusion, Social Security and Migration (Senate, 2022).

With this in mind, there are in essence three reasons justifying the need to deliver this new model:

- Enabling the integration into a family of a larger number of children suffering from abandonment who need this, meeting the legal and technical mandate of lending priority to family foster care, particularly for children under six years. To do so, individuals with specific training (experts from the fields of social work, social education, psychology and teaching, etc.) need to be incorporated who are able to make fostering their primary activity and livelihood. In this respect, the effectiveness of campaigns focussing on specific professional groups with particular ties to children has been highlighted (SIIS Study and Documentation Centre, 2021).
- Allowing better care to be provided both for children suffering from abandonment and for their families who have special needs or circumstances, providing personalised care within the context of family foster care. In this regard, fostering by specialist individuals working with exclusive dedication may result in a child receiving better care and a better intervention being delivered, whilst providing support for their biological families.
- Providing suitable financial compensation and protection for foster caregivers who on account of being especially capable (owing to experience and training) are devoted to the task of family foster care with exclusive dedication. The goal is to incorporate people who view specialist foster care as a means of developing personally and professionally as an actual alternative to going to an in-person job.

To do this, firstly a brief review will be conducted on the existing regulatory framework in Spain both nationally and in the autonomous regions, setting out the reasons why it has not been possible to implement professionalised family foster care in Spain within the framework of an employment relationship.

On this basis, an analysis will be carried out on the characteristics of the new figure of specialist family foster care with exclusive dedication. To conclude, consideration will be given to a proposal envisaging how its implementation could unfold in the various autonomous communities through two formulas: the first involves remuneration through financial provisions and Social Security cover in the form of an agreement with the

Department of Social Security; the second involves the figure of the financially dependent, self-employed worker, hereinafter the TRADE (from the acronym in Spanish), incorporated into Spanish legislation by means of Act 20/2007, of 11 July, on the Self-employment Work Statute implemented by means of Royal Decree 197/2009, of 23 February. This shall be based on the experience that has been forged over the past fifteen years within the Province of Gipuzkoa leading to excellent outcomes (SIIS Study and Documentation Centre, 2021).

## 2. The regulatory framework of specialist family foster care with exclusive dedication

Below, we will first set out a brief analysis of the Spanish regulatory framework governing specialist family foster care. Secondly, reasons will be given as to why in Spain the current legal framework has failed and continues to fail to be appropriate in order to deliver professionalised family foster care under the umbrella of an employment relationship. All this will serve as a prior step to analysing the scope for implementing specialist family foster care with exclusive dedication in Spain.

### **2.1 Professionalised, specialist family foster care in national regulations. From professionalised, specialist foster care to specialist foster care with exclusive dedication**

When Act 21/1987 incorporated the figure of family foster care into the Spanish Civil Code it already envisaged the fact that, upon formally establishing it, there was a need to specify “whether or not it is remunerated”.

Subsequently in 1996, final provision 6 of the LOPJM incorporated for the first time into the Spanish Civil Code the notion of professionalised foster care with a brief reference in article 173.2.6 of the Civil Code to the fact that the document formally arranging foster care should mention the following: “if the foster caregivers act in a professionalised manner (...) this shall be expressly specified.”

This line was pursued in the legislation enacted in several autonomous communities, such as La Rioja (article 82 of Act 1/2006, of 28 February, on the protection of children of La Rioja), the Basque Country (article 7.11 of Decree 179/2018, of 11 December, regulating family foster care in the Autonomous Community of the Basque Country<sup>1</sup> or more recently the Community of Valencia (article 17.2 of Decree 35/2021, of 26 February, regulating family foster care). However, in reality there has been no impact because, as we will see, due to the lack of a reform of labour and Social Security law it has not been possible to set up a figure that involves such huge complexity.

That notwithstanding, the general feeling was that professionalisation was convenient without it entailing a substitution of voluntary foster

care, but rather a form of fostering that is supplementary to the former. Accordingly, most references in published papers or articles pointed to the need for a form of remunerated foster care that they called professional (De Palma, 2006; Del Valle et al., 2009; Ravellat, 2014), albeit without going into detail about the technical and employment-related aspects that were indispensable for it to be effectively implemented.

Indeed, the 2015 reform deleted the reference to the professionalised nature specified in article 173 of the Civil Code, although the following paragraphs are introduced in article 20.1 of the LOPJM:

Care provided with a foster family may be specialist, which shall refer to that provided in a family where one of the members has a qualification, experience or specific training in order to carry out this function for children in special circumstances or with special needs, whereby they have full availability and are suitably remunerated as a result, without this entailing an employment relationship under any circumstance.

Specialist foster care may be professionalised when there is an employment relationship between the foster caregiver or caregivers and the public organisation, provided the foregoing requirements are met in terms of a qualification, experience or specific training.

Thus, for the first time at national level a regulation exists for specialist family foster care, a form of fostering that had already been developed within the academic sphere (Del Valle et al., 2009), acknowledged at autonomous regional level (for instance, in article 26 of Act 7/1994, of 5 December, on children of the Government of Valencia) and also at European level (Lakija, 2011; Reimer, 2021) where it is common to distinguish between specialist foster care – which involves especially trained foster caregivers who use a range of technical and therapeutic approach methods in their day-to-day routine and their interaction with the fostered child (whereby this may or may not be remunerated); and professionalised foster care –which is characterised by being an independent, remunerated activity that calls for specific training.

Nevertheless, this regulation tied professionalised family foster care to the need for there to be an employment relationship; hence, it did not consider the complex nature of the relationships that arise in the context of family foster care and it overlooked the fact that a professional activity could be practiced through other schemes aside from an employment relationship, such as self-employed work, for instance.

Consequently, not only was there not an improvement on the former situation, due to the express reference made to an employment relationship, it ran counter to and even jeopardised the initiative under the system of self-employment which, as we will see, was being implemented in Gipuzkoa.

In the face of this, the LOPIVI incorporated an amendment to section 1 of article 20, setting out the following:



Family foster care may be specialist, which shall refer to that provided in a family where one or more of the members of the family unit has a qualification, experience or specific training in order to carry out this function for children in special circumstances or with special needs, whereby they may be remunerated as a result.

Specialist foster care may be provided with exclusive dedication when determined thus by the public organisation owing to the special circumstances or needs of the child being fostered, whereby the individual or individuals appointed as the foster caregivers receive compensation based on the time dedicated.

Also, additional provision nine under the title “Social Security for specialist foster caregivers with exclusive dedication” envisaged the incorporation of these specialist foster caregivers with exclusive dedication into the Social Security scheme:

By regulation, within a period of one year of the enactment of this Organic Act, the Spanish Government will determine the scope and terms for incorporating into the Social Security scheme individuals who are appointed as specialist foster caregivers with exclusive dedication, as envisaged in article 20.1 of Organic Act 1/1996, of 15 January, on legal protection of children, partially modifying the Civil Code and the Act on Civil Procedure, under the relevant system, as well as the requirements and the procedure for affiliation, registration and contribution.

As a result, the figure of professionalised family foster care has disappeared from national legislation and has been replaced by specialist family foster care with exclusive dedication, for which there is “compensation based on the time dedicated”, enabling foster caregivers to be affiliated with and contribute to the Social Security scheme.

## **2.2. Specialist foster care in autonomous regional regulations**

In the exercise of the powers bestowed on the various autonomous communities, specialist family foster care has been developed to differing extents.

Within the basic framework of the forms of family foster care (urgent, simple, permanent, specialist) there are no major disparities, and the most common foster caregiver profile has been that of volunteer families who have been remunerated by means of benefits or financial grants.

However, the systems for benefits or financial grants operated by the various autonomous communities are disparate. In certain cases, they are scant and, in the case of specialist foster care, the amounts can vary between €25 and €41 per child per day (SIIS Study and Documentation Centre, 2021), albeit with a tendency to cover not merely ordinary and extraordinary expenses arising from the care of fostered children, but also to compensate or remunerate the capacities and dedication exhibited by the family.

The disparities between the forms and the various criteria and amounts set by each community are broad. It should be pointed out that the sum of these benefits or supplements envisaged for this specialist foster care does not come to the same amount as the minimum wage established in some cases (for 2022 this was €33.33/day or €1,000/month according to Royal Decree 152/2022, of 22 February, setting the minimum wage for 2022). This is true in Castile-La Mancha (Council of Castile-La Mancha, 2022) and Madrid (Order 1086/2017, of 23 June, of the Department of Social Policies and Family, and the appendix to Order 824/2020, of the regional minister of Social Policies, Families, Equality and Childbirth).

On the other hand, in other cases it is higher. This is true in Navarre, where specific compensation for specialist foster care stands at €1,500 (article 11.2 of Regional Order 91/2017, of 7 March, of the regional minister of Social Rights) and Catalonia, where the supplementary financial benefit stands at €1,800, pursuant to Resolution GOV/135/2022, of 28 June. In both cases, these specific benefits are compatible with other supplementary amounts.

Therefore, in these cases, remuneration by means of benefits or financial grants (which are also more beneficial in tax terms) is comparable to, or in certain cases, higher than the salary set by collective bargaining agreements for a social worker or social educator. For instance, the gross remuneration of a social worker or social educator in Catalonia stands at between €1,474.23 and €1,716.84/month, in line with the collective bargaining agreement on labour of Catalonia for social action involving children, young people, families and others at risk for the period from 2013 to 2018 (Resolution TSF/2786/2017, of 27 October).

### **2.3. Legal aspects hindering professional family foster care in Spain operating under the umbrella of an employment relationship**

At European level, there are models in place for professionalised family foster care based on an employment relationship. Along these lines, France constitutes the paradigm for paid family foster care (Montserrat et al., 2010; Ramón, 2012; Rivas, 2015; Reimer, 2021), while other countries such as Austria, Germany and Italy operate mixed systems (Reimer, 2021).

As shown, in Spain, a motion has been put forward for recruiting professional foster caregivers according to a relationship akin to a labour-based one in keeping with the French model, although acknowledging that this possibility clashed with the Spanish regulation applicable in this sphere (Rivas, 2015).

The reason for this is that, on account of the characteristics of the relationship and the complexity it entails, family foster care cannot be envisioned within the narrow margins of an employment relationship as regulated under Spain's labour and legal system. This is for the following reasons:

1. The foster caregiver accepts the duty of "looking after" the fostered child, "keeping the child in their company, offering the

child nutrition, education and comprehensive preparation in a caring environment” (article 173.1 of the CC). This relationship gives rise to the same obligations as parental authority (article 20 bis 2.i of the LOPJM) and the same rights acknowledged by the Administration for all other family units (article 20 bis 1.o of the LOPJM). When the tasks of the foster caregiver are defined in this manner, it is not possible to subject that role to a work day, a timetable and a work schedule, or indeed to apply weekly breaks, days off and leave – article 37 of the Workers’ Statute, hereinafter the ET (Legislative Royal Decree 2/2015, of 23 October) – and holidays, as generally defined in the ET.

2. The start and end of family foster care is bound by an administrative resolution or a judicial decision within the civil courts due to reasons that may not be in any way related to the suitable practice of the function by the foster caregiver (for example, owing to the child returning to their biological nuclear family).
3. The essential duties of the foster caregiver must be performed within their family home. As a result, the foster caregiver is required to set aside a space and to use the communal elements in their family residence. On the other hand, the employment relationship is essentially characterised as consisting of the provision of personal services. Therefore, in addition to a lease of services there is a lease of property, such as part of a home (articles 1554 et seq. of the Civil Code).
4. The fostered child is entitled to “take part fully in the family life of the foster caregiver” (article 21 bis 2.a of the LOPJM and 173.1 of the CC). This right cannot be bound by any schedule and it may not simply be suspended as a result of certain contingencies that can affect any family (temporary incapacity, maternity, etc.) but which would give rise to the suspension of an employment contract or to the entitlement to work reduced hours (articles 45.1.d; 46.3 and 48.5 of the ET). These aspects are entirely incompatible when the employment relationship arises specifically due to family foster care.

As a result of all the foregoing aspects, it is not possible to classify the relationship between the foster caregiver and the Family Integration Partner Institution (ICIF) or the public protection organisation as falling within the category of an employment relationship bound by the Workers’ Statute.

For this to be the case, a specific regulation governing this profession would be needed, such as that identified in comparative law with the closest case in France where the *Code de l’action sociale et des familles* (articles L421-1 et seq.) and its implementing regulations govern the legal status of those who in France are referred to as family assistants, as well as the specific characteristics of the employment contract and relationship.

In the absence of this specific employment regulation, which is exclusively incumbent on the State, it is not currently feasible to engage

Specialist family fostering under full-time dedication: an opportunity to broaden the foundations of family fostering, incorporating social intervention professionals as foster caregivers

in the employment-based recruitment of foster caregivers giving minimum guarantees and the necessary legal protection. As a consequence, it has not been possible to implement professional foster care as an employment relationship in any autonomous community (SIIS Study and Documentation Centre, 2021).

### 3. Characteristics and scope for implementing specialist family foster care with exclusive dedication

Below we will set out the characteristics of specialist family foster care with exclusive dedication and the two potential formulas to be able to implement it in Spain.

#### 3.1 Characteristics of specialist family foster care with exclusive dedication

According to the regulation incorporated into the LOPJM by the LOPIVI, the characteristics of specialist foster care with exclusive dedication are as follows:

1. Specialist foster care with exclusive dedication may take place in the case of fostering with the extended family or with a foster family. Indeed, although the previous drafting of the 2015 reform referred to the fact that “fostering with a foster family may be specialist...”, this specific circumstance was deleted and reference is made to “family foster care”. Therefore, it must be concluded that fostering both with the extended family and with a foster family may be deemed as specialist and, by extension, specialist with exclusive dedication.
2. Specialist foster care is characterised as that which unfolds “in a family where one or more of the members of the family unit has a qualification, experience or specific training in order to carry out this function for children in special circumstances or with special needs”. The possible scenarios are linked disjunctively (by “or”) rather than cumulatively, as was the case with the 2015 drafting; hence, it allows for the possible requirement of either a “qualification”, “experience” or “specific training”. This means a university qualification may not be required. This is in keeping with the line agreed on in the *Criteria for coverage, quality and accessibility in family foster care* (Spanish Ministry of Health, Consumer Affairs and Wellbeing, 2019, p. 6): “it is not a case of demanding a minimum level of specific academic education; rather, of specifying the ability and educational skills needed to deal with the problems exhibited by children who are likely to be fostered under a specialist category”.

3. Fostered children must have “special circumstances or needs”. The reference to special “needs” (which includes all developmental disorders) and “special circumstances”, an undefined legal concept, allows autonomous communities greater scope to define these “circumstances” that could include anything from groups of siblings to children with a broad visiting and interaction schedule, or children who are pregnant or have kids of their own.
4. Exclusive dedication. Formerly, the 2015 drafting made reference to “full availability”, a concept that is not dissimilar to the former, albeit not identical. Indeed, full availability refers to a specific level of intensity that means placing priority to this devotion over other areas (employment- or leisure-related, etc.); while exclusive dedication refers to exercising the duty of specialist family foster care with an exclusion or ban on carrying out any other professional activity or job. However, public regulations on incompatibilities add the potential for an exception being made with certain circumstances envisaged in the selfsame regulations. It would therefore be pertinent to envisage (as certain autonomous regional regulations already have when it comes to the concept of “full dedication”) the possibility of doing a part-time job, which could be limited to half of the established standard working day. When it comes to the self-employment model, such as TRADE, which we will examine below, its specific definition provides us with a hint as to what this exclusivity means: that it accounts for at least 75% of the earnings stemming from occupational income and professional or economic activities.
5. Special financial compensation for exclusive dedication. This “special compensation” is envisaged as an entitlement stemming from “exclusive dedication” (“will receive”) and is not discretionary like that generally envisaged for specialist foster care without exclusive dedication. The purpose of this “special compensation” is to make up for giving up a professional and/or employment undertaking as a result of exclusive dedication from the foster caregiver and it is in addition to the compensation all foster caregivers are entitled to receive simply by providing said foster care.
6. It also takes into consideration social protection for specialist foster caregivers with exclusive dedication. In addition to financial remuneration due to the exclusive dedication – to be determined by the autonomous communities – there is the protection afforded by Social Security coverage, incumbent on the State.
7. A specialist foster caregiver with exclusive dedication receiving financial compensation for said dedication, whilst also being registered with Social Security, is not engaged in an employment relationship. It is therefore necessary to remove any refer-

Specialist family fostering under full-time dedication: an opportunity to broaden the foundations of family fostering, incorporating social intervention professionals as foster caregivers

ence to an “employment relationship” and the confusing classification of “professionalised foster care” in the new reform.

### **3.2 Proposals for the implementation of specialist family foster care with exclusive dedication**

In accordance with the reality surrounding foster care models and regulations implemented to date by the various autonomous communities, there are actually two potential scenarios for the implementation of specialist family foster care with exclusive dedication which are not mutually exclusive:

- Better financial social benefits. As we have seen, this is the trend witnessed in most autonomous communities. These benefits may be backed by enhanced social protection when the Spanish Government enacts the necessary regulatory implementation.
- Development of proposals and programmes for foster caregivers operating under a self-employment system.

#### **3.2.1 Maintenance of remuneration for specialist foster caregivers with exclusive dedication through financial benefits, including the possibility of Social Security affiliation and contribution through an agreement formula with the Department of Social Security following the approval of the relevant Royal Decree regulating this**

Allowing individuals to register with Social Security by means of an agreement is the solution in place already for the provision of social protection for non-professional carers of dependent persons (Royal Decree 615/2007, of 11 May, regulating Social Security for carers of dependent persons), and this regulation may serve as a starting point for reviewing the case of foster caregivers.

It would be feasible to think that this solution was in the minds of lawmakers when the ninth additional provision was incorporated into the LOPIVI, which was not envisaged in the draft act approved by the Spanish Government. Instead, it is introduced for the first time in the report specifically issued by the Committee on Comprehensive Disability Policies and Social Rights which, on account of the subject, would have taken this precedent from the Act on Dependency.

Certain aspects which the regulatory implementation of the agreement formula with the Department of Social Security should consider are the following:

- Establishing its mandatory or voluntary nature for the foster caregiver.
- Determining who shall bear responsibility and costs for the contribution (the National State Administration, the autonomous community or the foster caregiver).
- Setting out what the monthly contribution base should be. It would be appropriate for this to be higher than the one envis-

aged for non-professional carers, which is the minimum threshold for contribution under the general Social Security scheme, giving very poor coverage.

- Deciding on the scope involved with any potential part-time work.

The benefits of this course of action for implementation are as follows:

- It falls in line with the specialist family foster care model remunerated by means of benefits or financial grants implemented in almost every single autonomous community. As a result, no major changes would need to be introduced in technical or regulatory terms on an autonomous regional level in order to arrange an agreement for foster caregivers with the Department of Social Security.
- It entails an enhancement in terms of social protection for individuals who are already voluntarily fostering and who meet the requirements of specialisation and exclusive dedication.
- It constitutes the most appropriate formula for fostering with the extended family that meets the conditions in terms of specialisation and exclusive dedication. This is inasmuch as the individuals have in common with non-professional carers the fact that a prior family relationship exists that nonetheless does not assign functions of parental authority, guardianship or responsibility.

However, there are possible drawbacks and these could include:

- It involves more of the same: it insists on there being a voluntary foster care model compensated through financial benefits which, despite their good intentions, have been proven to fall short in order to address the number and characteristics of the children who need family foster care.
- It does not appear to be a suitable proposal for professionals who could see specialist family foster care as being their primary activity and livelihood.
- The solution of the agreement with the Department of Social Security for the non-professional carer has not been a stranger to controversy in terms of its approach to dependent work for an employer (Martin, 2021), an issue that could be repeated in the case of family foster care.
- It makes it necessary to wait for the regulatory implementation from the State, which has not yet been forthcoming.



Specialist family fostering under full-time dedication: an opportunity to broaden the foundations of family fostering, incorporating social intervention professionals as foster caregivers

### **3.2.2 Implementation of specialist family foster care with exclusive dedication under a system of self-employment by replicating the model implemented by Gipuzkoa Provincial Council in other regions**

In 2007, Gipuzkoa Provincial Council launched the Programme for Professionalised Family Foster Care (Gizalde, 2022) – currently referred to as specialist family foster care – as envisaged in article 70.2 of Act 3/2005, of 18 February, on care and protection for children and adolescents of the Basque Country, determining a threefold relationship (Casellas and Mayoral, 2010):<sup>2</sup>

- Agreement/administrative contract with a family integration partner organisation to provide the service.
- Signing of a service agreement by the family integration partner organisation and the specialist foster caregiver, who arranges for classification as a financially dependent, self-employed worker (TRADE) to guarantee full availability and receives financial remuneration similar to that of a social worker or social educator at a residential institution. The essential feature that makes opting to consider the figure of the TRADE and not the figure of the classic or standard self-employed worker preferable “is the requirement for exclusivity”. This option becomes clearer inasmuch as the exclusivity is imposed due to the definition of specialist foster care with exclusive dedication. Moreover, the regulation for the TRADE serves to set the extent of this exclusivity. This remuneration covers the costs arising from the duties taken on by the individual who meets the requirements in terms of training and experience when it comes to approaching the case. Among other aspects, these involve:
  - Developing a personalised education plan and the assessment of it with the fostered child.
  - Maintaining regular structured communication with the child’s biological family.
  - Engaging in coordination with respect to the resources involved in the case.
- Assignment of guardianship by the public administration giving an entitlement to receive benefits for the maintenance of the child or adolescent. In this respect, when it comes to the financial remuneration or compensation applicable, a distinction is made between:

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<sup>2</sup> It should be pointed out that in Catalonia a pilot scheme was launched under similar terms for professionalised foster care at Educational Action Dwelling Units (UCAE, from the Spanish), as they were called, in 2009 (Casellas and Mayoral, 2010). This pilot scheme formally ended in 2012 (although as of 2011 no new foster care cases were taken on). A summary of the political report covering the vicissitudes along those lines can be viewed in Pruns and Solé (2019).



- Benefits or financial grants awarded by the public organisation meeting the obligation to compensate the foster caregiver for family foster care; and
- Remuneration owing to supplementary services, as we have stated, which are regulated by a service lease agreement between the ICIF and the foster caregiver.

The relationship between the ICIF and the foster caregiver stemming from the lease of services differs from the relationship between the foster caregiver and the public organisation stemming from the administrative resolution for fostering, as the former is carried out with the individual selected beforehand and proposed by the ICIF.

On the other hand, the public organisation forges the same relationship with the specialist family foster caregiver with exclusive dedication as it does with the remaining family foster caregivers: it makes family foster care legally effective, it delegates guardianship, it oversees the regularity of the entire process and it acknowledges the right to financial compensation to which the foster family are entitled as a result of the care and support they give the fostered child and due to their special dedication to this care and to the exercise of guardianship called for by the special circumstances or needs of the fostered child (Casellas and Mayoral, 2010).

The benefits of implementation via this pathway are as follows:

- It opens up a new field for groups with specialist training in the social or health spheres and they may discover that specialist foster care provides them with a livelihood, as well as personal and professional development.
- It is the most suitable model for care with a foster family and it allows campaigns to be aimed at promoting foster care among a specific sector – social and healthcare professionals – incorporating a substantial selfless element to thereby seek to reduce the number of children in residential fostering who need family foster care.
- It does not entail having to wait for a regulatory enactment from the State, inasmuch as it already benefits from 15 years in place in the Province of Gipuzkoa, although a specific regulation would be beneficial in the sphere of self-employed work.

Of course, there are potential drawbacks and these are:

- It entails a change of focus of children's policies in most autonomous communities by implementing a new model centred on the quest for professionals who are remunerated for their dedication. This model should operate alongside the current model centred on voluntary foster care compensated via financial benefits.
- There is a risk that the relationship with the foster caregiver could potentially be deemed as being employment-based. Nonetheless, it is necessary to underline the fact that Labour

Specialist family fostering under full-time dedication: an opportunity to broaden the foundations of family fostering, incorporating social intervention professionals as foster caregivers

Relations Chamber I of the Supreme Court of Justice of the Basque Country issued judgments numbers 1923/2017 of 3 October, and 2303/2017 of 21 November, in which it dismissed the existence of occupational dependency or employment between the TRADE foster caregiver and the organisation.

### **3.2.3 Common aspects**

Under both implementation scenarios, the various autonomous regional regulations should align their rules with the new structure of specialist family foster care with exclusive dedication. They should also take into consideration certain aspects stemming from its status as a social service.

In this regard, depending on the extent to which this regulation is implemented in each autonomous community, to regulate the service benefit payment it may be necessary to ensure that the portfolio of social services is adjusted to incorporate this new form of family foster care.

Lastly, regardless of the pathway chosen, it is necessary to regulate and promote initiatives for support, intensive supervision and respite – which may be delivered by other foster caregivers (Casellas and Mayoral, 2010) – so that specialist foster caregivers with exclusive dedication can benefit from periods of breaks (weekends, holidays, etc.).

## **4. Conclusions**

Despite the legislative reforms and the programmes and plans implemented in Spain, both nationally and at autonomous regional level, to date it has not been possible to effectively deliver the right to a family life, allowing family foster care for those children who need it.

One of the formulas for doing this – professionalised family foster care – has not yet attained successful implementation in Spain due to the lack of a precise regulation under Spanish labour laws to adapt the employment regulation to the specific nature of family foster care.

In this paper we analysed the new specialist family foster care with exclusive dedication model introduced by the reform of the LOPJM, enacted by the LOPIVI, which has replaced the legal reference to professionalised specialist family foster care, and which serves as a new opportunity to boost the number of foster caregivers and to enable all children to benefit from the family life to which they are entitled.

There are two potential scenarios – that are not mutually exclusive – for implementing specialist family foster care with exclusive dedication: a self-employment system, such as the TRADE; and an agreement with the Department of Social Security.

The system of self-employment as a TRADE for the foster caregiver already benefits from 15 years in place in the Province of Gipuzkoa and its geographical scope has now extended to other regions and autonomous communities through two experimental projects. This pathway is ideal

for implementing this figure when it unfolds within a foster family, and by making it generally applicable it would allow the family foster care foundation to be strengthened by incorporating professionals with training and experience (social workers and other professionals from the health and social spheres) into family foster care.

The latter does not entail a major change to the voluntary foster care model implemented in most autonomous communities, although it may enhance the social protection afforded to certain foster caregivers, particularly in the case of fostering with the extended family upon the publication of the Royal Decree that the Government of Spain is required to approve.

In both cases, it is vital to consider support structures that provide intensive supervision and periods of breaks for foster caregivers.

All in all, this paper seeks to lay out an initial theoretical framework to implement this new form of specialist foster care with exclusive dedication with a view to delivering the very outcome all action to protect children strives to achieve: to address the priority interests of a child suffering from abandonment and, in particular in this instance, to ensure they can benefit from the right to live in a family whenever possible.

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## Bibliographical references

- Act 1/2006, of 28 February, on the protection of children of La Rioja, Official State Gazette issue 70 § 11297 (2006).
- Act 3/2005, of 18 February, on care and protection for children and adolescents of the Basque Country, Official State Gazette issue 274 § 117217 (2011).
- Act 7/1994, of 5 December, on children of the Government of Valencia, Official State Gazette issue 95 § 2320 (1995).
- Act 20/2007, of 11 July, on the Self-employment Work Statute, Official State Gazette issue 166 § 29971 (2007).
- Act 21/1987, of 11 November, modifying certain articles of the Civil Code and the Act on Civil Procedure in terms of adoption, Official State Gazette issue 257 § 34160 (1987).
- Act 26/2015, of 28 July, modifying the system for the protection of children and adolescents, Official State Gazette issue 180 § 64544 (2015).
- Aldeas Infantiles SOS. (2022). *AcogES+*. Retrieved on 10 October 2022 from <https://www.aldeasinfantiles.es/area-prensa/aldeas-infantiles-sos-presenta-acoges-un-proyecto-de-acogimiento-familiar-especializado-con-dedicacion-exclusiva>

Specialist family fostering under full-time dedication: an opportunity to broaden the foundations of family fostering, incorporating social intervention professionals as foster caregivers

- Biscay Provincial Council. (2016). *3rd Children's Plan to Deliver Care to Abandoned Children of Biscay 2016-2019*. Retrieved on 17 October 2022 from <https://www.bizkaia.eus/home2/archivos/DPTO3/Temas/Publicaciones/III%20PLAN%20DE%20INFANCIA%20FINAL%20DEFINITIVO.pdf?hash=0322f7d0dcc06a8c49ee5f3a33ae57b3&idioma=CA>
- Casellas, S. and Mayoral, J. (2010). *L'acolliment familiar professionalitzat d'infants i adolescents en unitats convivencials d'acció educativa*. Government of Catalonia, Ministry of Social Action and Citizenship.
- Children's Observatory. (2021). *Bulletin of statistical data on measures for protecting children: Bulletin number 23, 2020 data*. Ministry of Social Rights and the Agenda 2030. Retrieved on 17 October 2022 from [https://observatoriodelainfancia.mdsocialesa2030.gob.es/estadisticas/estadisticas/PDF/Boletin\\_Proteccion\\_23\\_Provisional.pdf](https://observatoriodelainfancia.mdsocialesa2030.gob.es/estadisticas/estadisticas/PDF/Boletin_Proteccion_23_Provisional.pdf)
- Committee on the Rights of the Child (2018). *Concluding observations on the combined 5th and 6th periodic reports of Spain*. CRC/C/ESP/CO/5-6. United Nations.
- Council of Castile-La Mancha (2022). *Financial grants to support family foster care of children*. Retrieved on 17 October 2022 from <https://www.jccm.es/tramitesygestiones/ayudas-economicas-de-apoyo-por-acogimiento-familiar-de-menores>
- De Palma, A. (2006). *Administraciones públicas y protección a la infancia. En especial, estudio de la tutela administrativa de los menores desamparados*. National Institute of Public Administrations.
- Decree 35/2021, of 26 February, regulating family foster care in the Community of Valencia, Official Journal of the Community of Valencia issue 9036 § 9496 (2021).
- Decree 179/2018, of 11 December, regulating family foster care in the Autonomous Community of the Basque Country, Official Gazette of the Basque Country issue 245 § 6265 (2018).
- Del Valle, J. F., Bravo, A. and López, M. (2009). El acogimiento familiar en España: implantación y retos actuales. *Papeles del Psicólogo*, 30(1), pp. 33-41.
- European Expert Group on the Transition from Institutional to Community-based Care. (2012). *Common European Guidelines on the Transition from Institutional to Community-based Care*. Retrieved on 17 October 2022 from <https://deinstitutionalisationdotcom.files.wordpress.com/2017/07/guidelines-final-english.pdf>
- Fice Spain Association. (2022). *AFE networks. Specialist family foster care*. Retrieved on 17 October 2022 from <https://www.redesafe.org/>

- Gizalde. (2022). *Specialist family foster care programme in Gipuzkoa*. Retrieved on 17 October 2022 from <http://www.gizalde.eus/es/programa-de-acogimiento-familiar-especializado-en-gipuzkoa/>
- Government of Catalonia. (2013). *Children's Pact of Catalonia*. Retrieved on 17 October 2022 from [https://dretssocials.gencat.cat/ca/ambits\\_tematics/infancia\\_i\\_adolescencia/pacte\\_infancia\\_catalunya/](https://dretssocials.gencat.cat/ca/ambits_tematics/infancia_i_adolescencia/pacte_infancia_catalunya/)
- Government of France. (2022). *Code de l'action sociale et des familles*. Légifrance. Retrieved on 17 October 2022 from [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006074069/](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006074069/)
- Judgment of Labour Relations Chamber I of the Supreme Court of Justice of the Basque Country no. 1923/2017, of 3 October (appeal 1680/2017).
- Judgment of Labour Relations Chamber I of the Supreme Court of Justice of the Basque Country no. 2303/2017, of 21 November (appeal 2207/2017).
- Lakija, M. (2011). *Foster care models in Europe – results of a conducted survey*. Zagreb.
- Legislative Royal Decree 2/2015, of 23 October, approving the consolidated text of the Act on the Workers' Statute, Official State Gazette issue 255 § 100224 (2015).
- López, M., Del Valle, J. F., Montserrat, C. and Bravo, A. (2010). *Niños que esperan. Estudio sobre casos de larga estancia en acogimiento residencial*. Ministry of Health and Social Policy.
- Martin, P. (2021). La fina línea entre el cuidador no profesional y el cuidador profesional de las personas en situación de dependencia antes y después del Covid-19. *Lex Social*, 11(1), pp. 637- 653.
- Mayoral, J. (2015). El sistema de protección a la infancia y la adolescencia de Cataluña: Reflexiones a los cinco años de entrada en vigor de la Ley 14/2010, de 27 de mayo, de los derechos y las oportunidades en la infancia y la adolescencia (segunda parte). *Revista de Treball Social*, 205, pp. 28-41.
- Ministry of Health, Consumer Affairs and Wellbeing. (2019). *Criteria for cover, quality and accessibility in family foster care (3<sup>rd</sup> additional provision of Act 26/2015)*. Working document approved in the meeting of the Representative Committee on Social Services held on 2 October 2019.
- Ministry of Health, Social Services and Equality. (2013). *2nd National Strategic Plan for Children and Adolescents 2013-2016 (II PENIA)*. Children's Observatory. Retrieved on 17 October 2022 from [https://observatoriodelainfancia.mdsocialesa2030.gob.es/documentos/PENIA\\_2013-2016.pdf](https://observatoriodelainfancia.mdsocialesa2030.gob.es/documentos/PENIA_2013-2016.pdf)

Specialist family fostering under full-time dedication: an opportunity to broaden the foundations of family fostering, incorporating social intervention professionals as foster caregivers

- Montserrat, C., Casas, F. and Navarro, D. (2010). *Els acolliments familiars en l'àmbit internacional: el debat de la professionalització*. Government of Catalonia. Ministry of Social Action and Citizenship.
- Ombudsman of the Community of Valencia (2022). *Resolution of 25 May 2022*. Retrieved on 17 October 2022 from <https://www.elsindic.com/Resoluciones/expedientes/2022/202200531/11852734.pdf>
- Organic Act 1/1996, of 15 January, on legal protection of children, partially modifying the Civil Code and the Act on Civil Procedure, Official State Gazette issue 15 § 1225 (1996).
- Organic Act 8/2021, of 4 June, on comprehensive protection of children and adolescents from violence, Official State Gazette issue 134 § 68719 (2021).
- Order 824/2020, of the regional minister of Social Policies, Families, Equality and Childbirth, issuing the call for financial grants to support family foster care of children for 2020, Community of Madrid (2020).
- Order 1086/2017, of 23 June, of the Department of Social Policies and Family, approving the regulatory foundations for the award of financial grants to support family foster care of children, Official Journal of the Community of Madrid issue 154 § 8 (2017).
- Order 91/2017, of 7 March, of the regional minister of Social Rights, implementing the family foster care service regulated under Regional Order 69/2008, of 17 June, approving the portfolio of general social services for the specialist family foster care model, Official Journal of Navarre issue 65 § 3737 (2017).
- Pruns, C. and Solé, J. (2019). Las Unidades Convivenciales de Acción Educativa (UCAE): un campo profesional para la educación social. *Revista de Educación Social (RES)*, 28, pp. 255-267.
- Ramón, V. (2012). *El modelo francés de acogimiento familiar profesional*. Book of minutes from the 11th International Conference on Child Abuse, Oviedo, 2012.
- Ravellat, I. (2014) and Rivas, M. F. (2015). *El acogimiento familiar del Código Civil en el sistema público de protección de menores* (PhD thesis). University of Valladolid. Retrieved on 17 October 2022 from <https://portaldelaciencia.uva.es/documentos/5dd6788729995212201b0b07>
- Reimer, D. (2021). *Peer Review on "Furthering quality and accessibility of Foster Care service"*. *Thematic Discussion Paper. Better Quality in Foster Care in Europe – How can it be achieved?* European Commission. Retrieved on 17 October 2022 from [https://digitalcollection.zhaw.ch/bitstream/11475/22698/3/2021\\_Reimer\\_Quality-foster-care-in-Europe.pdf](https://digitalcollection.zhaw.ch/bitstream/11475/22698/3/2021_Reimer_Quality-foster-care-in-Europe.pdf)

Resolution GOV/135/2022, of 28 June, modifying Resolution GOV/52/2017, of 18 April, creating supplements and setting the new supplementary amounts to the benefit for fostering children protected by the Government of Catalonia, regulated under article 22 of Act 13/2006, of 27 July, on financial social benefits, Official Journal of the Government of Catalonia issue 8699 § 2 (2022).

Resolution TSF/2786/2017, of 27 October, ordering the recording and publication of the collective bargaining agreement on labour of Catalonia for social action involving children, young people, families and others at risk for the period from 2013-2018 (agreement code no. 79002575012007), Official Journal of the Government of Catalonia issue 7512 § 1-30 (2017).

Royal Decree, of 24 July 1889, publishing the Civil Code, Gazette of Madrid, Volume III, pp. 249-259 (1889).

Royal Decree 152/2022, of 22 February, setting the minimum wage for 2022, Official State Gazette issue 46 § 2851 (2022).

Royal Decree 197/2009, of 23 February, implementing the Self-employment Work Statute with regard to the figure of the financially dependent, self-employed worker and their registration, and creating the National Registry of Professional Self-employed Worker Associations, Official State Gazette issue 54 § 22048 (2009).

Royal Decree 615/2007, of 11 May, regulating Social Security for carers of dependent persons, Official State Gazette issue 114 § 20602 (2007).

Senate (2022). Journal of Sessions from 21 June 2022. Questions. *Question on when and how does the Government expect to develop a regulation on the content of the ninth additional provision of Organic Act 8/2021, of 4 June, on comprehensive protection for children and young people from violence, in relation to the scope and conditions for the inclusion of individuals appointed as specialist foster caregivers with exclusive dedication in the Social Security system, proceedings issue 680/000781, pp. 32-33.*

SIIS Study and Documentation Centre. (2021). *Estrategias de sensibilización y captación para el fomento del Acogimiento Familiar. Revisión autonómica e internacional. Observatorio de la Realidad Social*. Government of Navarre. Retrieved on 17 October 2022 from <https://www.observatoriorealidadsocial.es/es/estudios/estrategias-de-sensibilizacion-y-captacion-para-el-fomento-del-acogimiento-familiar-revision-autonomica-e-internacional/es-561102/>

Šiška, J. and Beadle-Brown, J. (2020). *Transition from Institutional Care to Community-Based Services in 27 EU Member States: Final report*. Research report for the European Expert Group on Transition from Institutional to Community-based Care.