European Platform
tackling undeclared work

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New regulatory and automated scheme of sanctions to tackle undeclared work

Spain

Summary

In 2021, Spain established a new regulatory scheme of sanctions to deal with compliance challenges related to undeclared work. The new scheme is tailored to Spanish institutional features (e.g. its administrative organisation, sectors making up the economy, types of employment) in order to address the specific factors that drive undeclared work in the country.

Title of the practice in original language	*Mejora de procedimientos y sanciones para combatir el trabajo no declarado.*
Name(s) of authorities/bodies/ organisations involved	▶ The Labour and Social Security Inspectorate (*Inspección de Trabajo y de la Seguridad Social, ITSS*); ▶ Ministry of Labour and Social Economy.
Sectors	All
Target groups	▶ Companies (directly targeted); ▶ Workers involved in undeclared work (indirectly targeted).
Purpose of measure	Deterrence: improve detection

Aims and objectives

The new regulatory scheme focuses on (a) improving the existing "anti-fraud" IT tool with the aim of detecting fraud patterns related to undeclared work, among other issues, and (b) enforcing updated sanctions when such infractions are detected, applying an automated procedure to a proportion of those cases, as decided by the competent authorities. This process results in an increase in sanctions as a direct consequence of the greater number of infractions detected.

Background context	▶ Before the introduction of the new regulatory scheme of sanctions, penalties related to labour law violations remained at

relatively low levels and were not always an effective deterrent, particularly for medium-sized and large businesses that had no difficulty affording the fines. Through Act 10/2021, Spain has made it a priority to update penalties at a national level, including those related to undeclared work.[i] [ii]

▶ Automation of sanction procedures has also been introduced to address the significant administrative burden involved in drafting notifications of infractions that are easily detectable and clear-cut.

▶ Additionally, a Strategic Plan 2021-2023 drawn up by the Labour and Social Security Inspectorate is in place. It includes a wide range of measures to combat undeclared work and takes advantage of new technologies to provide the service, including artificial intelligence, electronic administration, interconnection of data bases, and recruitment of staff with IT training.[iii] [iv]

▶ The revised penalties[v] and the automation of sanctions procedures[vi] came into force in 2021.

Key objectives of the measure	**General Objective:** ▶ To introduce more effective sanctions and administrative procedures to tackle undeclared work, ensuring that both penalties and procedures are properly tailored to the country's actual regulatory and economic conditions. **Specific Objectives:** ▶ Establishing timely and effective administrative procedures for imposing and enforcing sanctions, using sophisticated IT tools; ▶ Increasing penalties for infringements related to undeclared work to enhance their deterrent effect;[vii] ▶ Exploiting big data mechanisms to be more agile in detecting infringements related to undeclared work.
Main activities	▶ Royal Decree 688/2021 introduced an automated administrative procedure for the imposition of penalties and for prompt settlement of unpaid social security contributions and fines. The automated administrative procedure is used, for the moment, exclusively for infractions related to social security contributions that can be detected using data matching, i.e., a large-scale comparison of records or files collected by different agencies. Infringement notices are accompanied by an invoice, with a reduction of 40% in return for prompt payment.

	Notifications are sent through electronic notification without requiring papers or hand delivery;
	▶ Act 10/2021 increased the levels of the penalties applicable to labour infractions committed from 10 January 2021 onwards, involving (a) undeclared or under-declared social security contributions; (b) under-declared wages or working time; (c) non-declaration of employee status; and/or (d) bogus employment contracts;[viii]
	▶ The "anti-fraud" IT tool has been improved with the aim of detecting fraud patterns, harnessing algorithms, big data, and artificial intelligence to address issues such as abuse of temporary labour contracts, undeclared work, sex discrimination and equal pay, etc. This IT tool is managed by a team of experts at the Labour Inspectorate. It requires human intervention to start the decision-making process and to design a search strategy (e.g., by sectors, areas, groups).
Funding/organisational sources	▶ The Spanish Labour Inspectorate provides the human and technical resources to develop the activities. Funding comes from the Spanish Ministry of Labour and Social Economy.

Outcomes

The Labour Inspectorate's Strategic Plan envisages a system of efficiency and effectiveness indicators to measure whether infringements related to undeclared work decline and how efficiently the penalty procedure is applied in the real world. While the legal structure of a sanctions system is important, appropriate and timely administrative processes for imposing and enforcing sanctions must accompany it.

Achievement of objectives	▶ The automated administrative procedure, for the moment, is only going to be applied to infringements related to the failure to register employees with the Social Security system. The system is being tested and is not fully implemented yet.
	▶ In designing the new regulatory scheme for sanctions, Spanish policymakers have struck a balance between the deterrent and punitive roles of sanctions. When the system has been fully implemented, it will be evaluated by the General Council of the Labour and Social Security Inspection Agency (*Organismo Estatal Inspección de Trabajo y Seguridad Social*);[ix]
	▶ The Labour Inspectorate's Strategic Plan 2021-2023 envisages a system of efficiency and effectiveness indicators to measure whether infringements decline and how effectively the penalty procedure is applied in the real world;[x]

	▶ The way sanctions are applied in practice sends a strong signal to workers and employers about the government's seriousness in ensuring respect for the law and the possibility of incurring real costs for violating it.[xi]
Lessons learnt and success factors	▶ Automated procedures allow labour inspectors to free up time and resources previously devoted to dealing with formal infringements.[xii] ▶ With the realisation that certain types of infringements can be automatically and routinely detected, this brings about a change in behaviour. In that sense, timely and effective administrative procedures have a deterrent effect and promote an attitude of compliance;[xiii] ▶ Penalties set at effective levels discourage employers from engaging in undeclared work; ▶ Big data and artificial intelligence are essential for detecting fraud patterns and guiding inspection activity towards companies/sectors where there is a higher likelihood of infringements.
Transferability	A Member State interested in introducing similar measures would need to introduce sanctions which were sufficiently deterrent and accompanied by appropriate administrative procedures for their effective application and enforcement; ensure that they are tailored to their own institutional features, addressing the specific factors driving undeclared work in their country; and possess adequate IT capacity, including big data and artificial intelligence, to operate a similar scheme.

Further information

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Useful sources and resources	**Labour and Social Security Inspectorate Strategic Plan 2021-23** https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-20005 **Recovery, Transformation and Resilience Plan for Spain, 2021**

	https://ec.europa.eu/info/files/spains-recovery-and-resilience-plan_en **Law on Infractions and Sanctions in the Social Order, modified by Law 10/2021** https://www.boe.es/buscar/act.php?id=BOE-A-2000-15060 **Royal Decree 688/2021 modifying the General Regulation on procedures for the imposition of Sanctions for infractions of social order and for the liquidation files of social security contributions** https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-13382
Metadata and key words for online search	Spain; automated procedures; penalty levels; anti-fraud; big data; artificial intelligence; social security contributions; IT tools; data matching.

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[i] Act 10/2021 (1st final provision) of 9 July 2021.
[ii] Previously, Law 13/2012 put in place an important reform in the area of infractions and sanctions applied to undeclared work. It established a system where the greater the number of workers involved in undeclared work in any given company, the higher the sanctions imposed.
[iii] *Plan Estratégico de la Inspección de Trabajo y Seguridad Social 2021-2023.* Objectives 3, 8, 30, 31. Actions 1.6, 3.1, 3.2, 30.1, 30.3, 31.2, 32.2.
[iv] The Strategic Plan is part of Spain's Recovery, Transformation and Resilience Plan which envisages: (a) large-scale use of big data; (b) automation of sanctions procedures; (c) increasing the workforce of the labour inspectorate; and (d) updating penalties. See, *Plan de Recuperación, Transformación y Resiliencia de España. Junio 2021. Componente 23.* p. 13.
[v] Act 10/2021 (14th final provision) of 9 July 2021.
[vi] Royal Decree 688/2021 of 3 August 2021; Royal Decree 2/2021 of 26 January 2021.
[vii] Art. 40 in relation to arts. 22.2, 22.3, 8.2,7.3, 7.5, 22.16 of Royal Legislative Decree 5/2000.
[viii] Ibid.
[ix] *Plan Estratégico de la Inspección de Trabajo*, op. cit,. *Apartado IV. Seguimiento y evaluación.*
[x] *Plan Estratégico de la Inspección de Trabajo*, op. cit,. Objetive 28.
[xi] Velázquez, M., op.cit.
[xii] Ibid.
[xiii] Ibid.