


# Law on subcontracting in the construction sector (LSCS)

Spain

	<p><b>Summary</b></p> <p>Spain adopted Law 32/2006 regulating subcontracting in the construction sector (LSCS) to improve occupational health and the working conditions in a sector where undeclared work was widespread. By ensuring a minimum organisational structure, including a certification process, the LSCS guarantees that companies in this sector operate on a declared basis, and contributes to preventing occupational accidents.</p>
<p><b>Title of the practice in original language</b></p>	<p><i>Ley reguladora de la subcontratación en el Sector de la Construcción.</i></p>
<p><b>Name(s) of authorities/bodies/organisations involved</b></p>	<ul style="list-style-type: none"> <li>▶ Spanish Labour and Social Security Inspectorate (<i>Inspección de Trabajo y de la Seguridad Social, ITSS</i>);</li> <li>▶ Ministry of Labour and Social Economy (<i>Ministerio de Trabajo y Economía Social, MITES</i>).</li> </ul>
<p><b>Sectors</b></p>	<p>Construction and woodworking</p>
<p><b>Target groups</b></p>	<ul style="list-style-type: none"> <li>▶ Companies involved in the subcontracting process in the construction sector either as contractors or subcontractors, including informal enterprises in the undeclared economy (directly targeted);</li> <li>▶ Labour inspectors (indirectly targeted);</li> <li>▶ Workers in the construction sector (indirectly targeted).</li> </ul>
<p><b>Purpose of measure</b></p>	<p>Prevention</p>

	<p><b>Aims and objectives</b></p> <p>The objective of the LSCS is to prevent occupational accidents in subcontracting chains in the construction sector and to guarantee that companies operate on a declared basis.</p> <p>The Spanish Labour Inspectorate exercises surveillance on undeclared work and controls companies' observance of the LSCS.</p>
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	<p>Funding comes from the Spanish Ministry of Labour and Social Economy.</p>
<p><b>Background context</b></p>	<ul style="list-style-type: none"> <li>▶ Before the enactment of the LSCS, undeclared work was present throughout the sector, as 21,55% of undeclared activities in Spain were carried out in this sector.<sup>i</sup></li> <li>▶ Outsourcing in the construction sector generally leads to increased specialisation, higher quality operations and business efficiency. However, excessively long subcontracting chains can sometimes lead to the participation of companies, including informal enterprises in the undeclared economy. In turn this may lead to undeclared work and worsening worker health and safety conditions;</li> <li>▶ In fact, ILO studies prove that the higher the number of subcontractors in a chain, the higher the accident rates;<sup>ii</sup></li> <li>▶ LSCS was introduced on a national basis in October 2006 and it is still in force.<sup>iii</sup> The LSCS includes a certification process to ensure that companies in the construction sector operate on a declared basis and have the necessary capacity and quality requirements in occupational risk prevention.</li> </ul>
<p><b>Key objectives of the measure</b></p>	<p><b>General Objective:</b></p> <ul style="list-style-type: none"> <li>▶ To prevent occupational accidents in subcontracting chains in the construction sector and to guarantee that companies operate on a declared basis.</li> </ul> <p><b>Specific Objectives:</b></p> <ul style="list-style-type: none"> <li>▶ To prevent occupational risks and undeclared work by ensuring a minimum organisational structure, including limiting the number of companies in a subcontracting chain;</li> <li>▶ To certify that the companies that operate in the construction sector operate on a declared basis and have the capacity and quality requirements necessary to prevent occupational risk.</li> </ul>
<p><b>Main activities</b></p>	<ul style="list-style-type: none"> <li>▶ The LSCS prevents situations of non-declaration of employer status which relate to labour supply operations, which deprive employees of their rights in the user company. Thus, according to the LSCS, companies operating in the construction sector (not third parties) must manage and organise employees' work directly. They should have their own production organisation and staff (at both managerial and productive level) that have the necessary training in occupational risk prevention.</li> </ul>

	<ul style="list-style-type: none"> <li>▶ Moreover, there is a public registry, which certifies that the companies operate on a declared basis in the construction sector, and meet the capacity and quality requirements of occupational risk prevention. For this purpose, the LSCS introduces the obligation for subcontractors to prove their compliance to the contracting company and to the labour authority through registration in the Register of Accredited Businesses (REA). This also impedes informal enterprises participating in subcontracting chains, thus tackling undeclared work in the construction sector;</li> <li>▶ Non-fulfilment is a serious infraction in terms of occupational risk prevention with fines of between EUR 2 451 and 49 180;</li> <li>▶ There is a simplified registration procedure for companies that post workers to Spain, which prevents cross-border undeclared work. If a posting lasts less than 8 days, registration is not necessary. In other cases, the first posting communication required by article 5 of Law 45/1999 (which transposes Directive 96/71/CE) is considered a registration request. However, a declaration of compliance with requirements of quality and capacity is also required.</li> </ul>
<p><b>Funding/organisational resources</b></p>	<ul style="list-style-type: none"> <li>▶ Implementation and enforcement of the LSCS is the responsibility of the Spanish Labour and Social Security Inspectorate (ITSS);</li> <li>▶ Funding comes from the Spanish Ministry of Labour and Social Economy.</li> </ul>
	<p><b>Outcomes</b></p> <p>Before the enactment of the LSCS, undeclared work amounted to 21,55% of total undeclared work in Spain. Ten years later, undeclared work in this sector has declined to 7,5%. The number of accidents in the construction sector has also been reduced by 50%. Particular attention has been devoted to preventing the proliferation of ‘fake’ companies and informal enterprises in the undeclared economy, which do not have the necessary means for protecting employees from occupational risks.</p>
<p><b>Achievement of objectives</b></p>	<ul style="list-style-type: none"> <li>▶ Undeclared work in the construction sector is evaluated annually by the Labour Inspectorate<sup>iv</sup>. In addition, rates of occupational accidents are analysed by the Construction Labour Foundation (<i>Fundación Laboral de la Construcción - FLC</i>), which is a foundation created by social partners in the construction sector;</li> <li>▶ The LSCS is gradually achieving its objectives. Together with other measures, it has contributed to the reduction of</li> </ul>

	<p>undeclared work. Before the enactment of the LSCS, undeclared work amounted to 21,55% of total undeclared work in Spain.<sup>v</sup> Ten years later, undeclared work in this sector has declined to 7,5%.<sup>vi</sup></p> <ul style="list-style-type: none"> <li>▶ Equally, since its enactment (in the period 2007–17), the number of accidents in the construction sector has been reduced by 50% and the number of serious and very serious accidents has fallen by 77%,<sup>vii</sup> although recently there has been a slight increase;<sup>viii</sup></li> <li>▶ In sum, the LSCS has resulted in a sharp decline in undeclared work and occupational accidents; and in a better organisation of the subcontracting system in the construction sector;</li> <li>▶ Action taken by the Labour Inspectorate in this regard in the period 01/01/2022 – 31/08/2022, includes 1 505 interventions, 281 infractions, and EUR 716 951 in fines.<sup>ix</sup></li> </ul>
<p><b>Lessons learnt and success factors</b></p>	<p>The need to introduce legislation like LSCS has been confirmed by the sharp reduction of undeclared work and occupation accidents in this sector in the last decade. Certification processes ensuring that companies operate on a declared basis, and the setting of a minimum organisational structure of companies have been important success factors.</p>
<p><b>Transferability</b></p>	<p>For transferability, action must focus on preventing the proliferation of informal enterprises in the undeclared economy, which lack the minimum organisational structure to guarantee health and safety standards.</p> <p>Actually, there is a direct positive correlation between formalisation of undeclared workers and the decline of occupational accidents.</p>

## Further information

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### Useful sources and resources

**National Anti-Fraud Office website**

[https://www.mites.gob.es/itss/web/eu/quienes\\_somos/organigrama/Oficina.html](https://www.mites.gob.es/itss/web/eu/quienes_somos/organigrama/Oficina.html)

	<p><b>National Institute for Occupational Safety and Health</b>  <a href="http://www.oect.es/portal/site/Observatorio/">http://www.oect.es/portal/site/Observatorio/</a></p> <p><b>Construction Labour Foundation</b>  <a href="https://www.fundacionlaboral.org/en/">https://www.fundacionlaboral.org/en/</a></p> <p><b>International Labour Organisation (ILO). The effects of non-standard forms of employment on worker health and safety. Conditions of Work and Employment Series No. 67. 2015</b>  <a href="https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_443266.pdf">https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_443266.pdf</a></p>
<p><b>Metadata and key words for online search</b></p>	<p>Spain; health and safety; construction sector; subcontracting supply chains; working conditions; fake companies;</p>

<sup>i</sup> *Informe anual de la Inspección de Trabajo y Seguridad Social 2005*, p. 33. [https://www.mites.gob.es/itss/web/que\\_hacemos/estadisticas/index.html](https://www.mites.gob.es/itss/web/que_hacemos/estadisticas/index.html) [Accessed 29/12/2022].

<sup>ii</sup> ILO (2010). 'Emerging risks and new patterns of prevention in a changing world of work'. [https://www.ilo.org/safework/info/publications/WCMS\\_123653/lang--en/index.htm](https://www.ilo.org/safework/info/publications/WCMS_123653/lang--en/index.htm) [Accessed 17/01/2022].

<sup>iii</sup> Law 32/2006, of October 18, regulating subcontracting in the construction sector.

<sup>iv</sup> *Informes anuales de la Inspección de Trabajo y Seguridad Social*, [https://www.mites.gob.es/itss/web/que\\_hacemos/estadisticas/index.html](https://www.mites.gob.es/itss/web/que_hacemos/estadisticas/index.html) [Accessed 29/12/2022].

<sup>v</sup> *Informe anual de la Inspección de Trabajo y Seguridad Social 2005*, p. 33. See web site above.

<sup>vi</sup> *Informe anual de la Inspección de Trabajo y Seguridad Social 2015*, p. 161. See web site note v.

<sup>vii</sup> *Observatorio de la Fundación Laboral de la Construcción. Informe Accidentabilidad en la Construcción 2017. 21 de marzo 2019*. Available at: <http://www.observatoriodelaconstruccion.com/publicaciones/detalle/informe-accidentabilidad-en-la-construccion-2017> [Accessed 17/01/2022].

<sup>viii</sup> INSST, *Informe anual de accidentes de trabajo en España 2020*, p. 7. <http://www.oect.es/portal/site/Observatorio/>

<sup>ix</sup> Lovelace Fernández, M.. Presentation from the Platform seminar on Tackling undeclared work in supply chains held in Bratislava on 20 September 2022.