

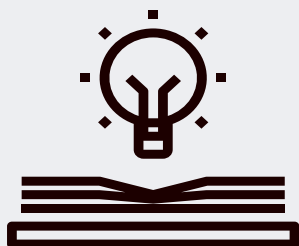
Study visit to Spain: Automated procedure on formal infringements

Madrid, Spain, 6 February 2024

EXECUTIVE SUMMARY

The study visit hosted by Spain for the European Platform tackling undeclared work covered the Spanish Labour and Social Security Inspectorate's pilot automated penalty system for employers that commit formal infringements. It aimed to exchange knowledge and build a network of experts dedicated to exploring the possibilities of new technologies and Big Data for detecting and sanctioning undeclared work in an automated way. The in-person study visit assembled 27 participants from among Platform members, observers, Spanish representatives, labour inspectors, tax authorities, and ELA representatives.

Introduction to the theme of the study visit



The Spanish automated penalty system is a pilot inspection process within the General State Administration that uses new technology to automatically issue penalties based on data from different sources, specifically from the Social Security Agency, without the direct intervention of a labour and social security inspector, but allowing, where appropriate, for their subsequent intervention at the instruction stage in case of allegations.

'Formal infringements' is a type of non-compliance by employers in the Social Security system which is uncontroversial and does not require further investigation. It can be detected without direct intervention from an inspector at that stage. For example, if employers fail to notify workers' registrations on time, this delay is automatically recorded in the social security's files. The Spanish Labour and Social Security Inspectorate (ITSS)¹ has a semi-automated procedure for detecting and sanctioning formal infringements in different areas, such as the improper use of bonuses in labour contracts by employers. The sanction is automatically generated, but it is still reviewed by inspectors before it is notified to the employers. The system is ready to be moved to a fully automated process but has not been implemented yet.

¹ ITSS stands for *Inspección de Trabajo y Seguridad Social* (Spanish Labour and Social Security Inspectorate)

Host country perspectives



The Spanish approach to the automated procedure was explained by the ITSS, along with the organisational framework, legal and practical challenges, and digital solutions associated with the future full implementation of automated administrative actions. In particular, the ITSS discussed the potential integration of the automated process for handling formal infringements within the broader context of its inspection activities. This integration is particularly relevant to ITSS's proactive enforcement efforts, which rely on the intensive use of technology.

According to the thematic expert, AI can enhance the efficiency and effectiveness of public administration processes, especially in the detection and prevention of fraud. The three key components for the deployment of AI are: (1) data, (2) algorithms, and (3) computing capacity. The expert also stressed the need for ethical AI that complies with EU standards, such as the General Data Protection Regulation (GDPR)² and the proposal for a Regulation on Artificial intelligence.³ AI can have various applications in public administration, including fraud control and benefits management. However, AI also poses privacy challenges for sanctioning law, predictive surveillance, and administrative sanctioning procedures, which requires guarantees and limitations to be put in place in order to safeguard fundamental rights and ensure transparency. It was concluded that AI has a significant potential to improve the competences of enforcement authorities in the future.

Data-crossing efforts initiated the automation of procedures within the ITSS and resulted in the development of the Anti-fraud tool (HLF),⁴ which was launched in 2015 to detect fraud cases. The ITSS strategic plan 2021-2023 aims to expand the use of Big Data and automate sanction procedures. Despite notable progress, the transition to automated processes has encountered several challenges. These include improving social acceptance of this procedure, ensuring legal compliance and human supervision, fostering internal adaptation and modernisation, and overcoming technical issues with existing systems like INTEGRA and exploring new applications in other relevant areas.

Regarding the legal framework, Article 41 of Law 40/2015 of 1 October 2015 on the Legal Regime of the Public Sector establishes the general conditions for automated procedures managed by Public Administrations, where there is no direct intervention of a public servant. The ITSS has developed specific rules for future automated administrative actions against formal infringements by employers, which involve different steps. First, the Director of the State Labour Inspections and Social Security Services (OEITSS)⁵ issues a frame resolution electronically, determining the cases where such actions can be used. Then, the OEITSS Director, through an order, outlines the criteria for preparing and executing each set of actions of the same nature. Following this decision, data is cross-checked using AI to identify instances of formal infringements.

Infringement notices are mass-generated, and individuals are promptly

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- 2 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.
 - 3 Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (artificial intelligence act) and amending certain union legislative acts.
 - 4 Herramienta de lucha contra el fraude. ELA Good practice fiche - Spain: Anti-fraud tool unit (2018): <https://www.ela.europa.eu/sites/default/files/2021-09/ES%20-%20Anti-fraud%20Tool.pdf> (last accessed on 29 February 2024); ELA Good practice fiche - Spain: Predictive Tool (Herramienta de lucha contra el fraude) (2017): https://www.ela.europa.eu/sites/default/files/2021-09/7.Spain_Predictive%20Tool.pdf (last accessed on 29 February 2024)
 - 5 OEITSS stands for Organismo Estatal Inspección de Trabajo y Seguridad Social (State Labour Inspections and Social Security Services).

notified, receiving an invoice that offers a 40% penalty reduction. The electronic notifications speed up the process. Notified individuals can either pay with the reduction and end the procedure or submit allegations. If they submit allegations, the files are transferred to an inspector or sub-inspector. If no action is taken, an automated resolution proposal is forwarded to the competent authority for a final decision.

The HLF employed by the ITSS is a data analysis tool that uses various databases to identify potential fraud cases. It serves as a planning tool for regional Inspectorates and the Special Directorate (responsible for multiregional files), guiding the development of targeted actions based on signs of fraud. The HLF has three main functions. First, it plans inspection activities by analysing data to identify fraud indicators. Second, it conducts extensive communication and inspection actions to enforce compliance. Third, it prioritises future automated actions in line with ITSS strategy, emphasising the importance of human supervision, transparency, and ethics.

The INTEGRA software is a key tool for managing inspection activities within the ITSS. INTEGRA helps ITSS officials in two ways. First, it facilitates the investigation process by granting them access to relevant information, generating possible infringement reports, and proposing penalties as appropriate. Second, it supports the follow-up process by enabling communication with offenders, coordination with various entities involved, and confirmation of the penalty imposition. INTEGRA uses specific criteria to determine when inspections are needed. It also shows a trend towards automated procedures, enhancing efficiency in the generation of infringement notices and the collection of fines.

Featured practices from France, the Netherlands and Italy



The French organization responsible for funding social protection schemes, the URSSAF, outlined their roadmap for 2023-2027, which centres on four key objectives: (1) enhancing service delivery, (2) increasing collection efficiency, (3) ensuring data quality, and (4) fulfilling social responsibility. As part of its strategy, URSSAF integrates fraud prevention, using predictive tools to create new databases that can improve the data lake for more targeted risk assessment of behaviours and businesses. Additionally, various inspection tools assist inspectors in identifying possible irregular declarations, such as those related to the international mobility of workers. Specifically, an electronic tool named 'ESCOBAR' supports the inspectors in their search for suspicious declarative behaviours by cross-referencing the large amount of data collected. CLASS verifies the mobility of workers with compulsory prior labour declarations,⁶ and the ILASS guides the applicable social security legislation.⁷

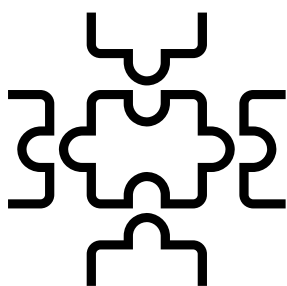
⁶ Control Legislation Applicable of Social Security

⁷ Instruction Legislation Applicable Social Security

The Netherlands Labour Authority (NLA) shared some examples of automated procedures on formal infringements. The NLA handles various aspects of labour, including those concerning foreign workers, working hours, minimum wage, and labour exploitation. To combat labour market fraud, they process approximately 5000 complaints annually, using data analysis and networking to prioritise cases for inspection. The NLA also described an ongoing pilot project that focuses on posted workers, in line with the EU Posted Workers Directive.⁸ The initiative aims to ensure fair competition and protect the rights of posted workers. The project uses the Dutch Posted Worker Registry to reach out to companies and assess the effectiveness of the system and conduct risk assessments. Multiple variables are used to identify high-risk and low-risk companies, with a traffic light system providing clarity. The dashboard offers a comprehensive overview, including a map of registered companies, risk signs, and detailed explanations of risk factors.

The Italian Revenue Agency explained how Italy implemented e-invoicing through the Exchange System mandate (*Sistema di Interscambio*), which aims to streamline data collection and improve risk analysis using AI and new algorithms. The system requires structured electronic invoices to be submitted through a centralised portal, which ensures compliance and prevents VAT evasion. With over 2.4 billion e-invoices processed in 2019, the system has proven effective, leading to only a 1.4% rejection rate. This approach not only enhances tax compliance but also supports efforts to collect tax contributions and prevent fraud in labour-intensive sectors, particularly during the COVID-19 pandemic. Italy's e-invoicing system may serve as a model for other countries considering similar measures.

Other views and experiences from Member States



Participants discussed their approaches to automated procedures and data management within their respective national inspectorates. Germany is considering the adoption of a legal framework for big data analysis. The Netherlands have tried such systems using algorithms but encountered challenges (such as the SyRI algorithm case)⁹ and they agree on the idea of ethical AI use that complies with EU standards. Portugal and Greece are adopting systems similar to existing ones, leveraging AI for more efficient inspections, especially during the pandemic. Finland and Bulgaria rely on manual or semi-automated methods but are open to automation. Latvia needs more funding to implement automated systems. Belgium is working on data matching for infringement detection. France has automatic administrative procedures but is concerned about transparency in algorithmic decision-making. Italy plans to increase data collection and integrate AI to prevent undeclared work.

⁸ Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

⁹ The District Court of The Hague nullified the SyRI algorithm, used by Dutch authorities to predict social security fraud, citing a lack of reasoning in its judgment of 5 February 2020.

Conclusions



Participants concluded that AI tools can significantly improve fraud detection and risk assessments in labour inspection. Several Member States shared their models of using AI in labour inspection, underlining the importance of transparency and ensuring that such processes are developed with all the necessary guarantees for businesses and citizens. Compliance with EU data protection and transparency regulations is crucial. Automation can free up labour inspectors to focus on more complex tasks, such as upholding workers' rights, while digitisation can also modernise procedures and enhance compliance, ultimately creating a more conducive environment for enforcing labour laws. ELA can play a significant role in supporting national authorities in using innovative digital tools by, for instance, facilitating the sharing of information and creating a network of experts.