

Factsheet on Undeclared Work – SPAIN

1.1 Nature and Estimated Scale of Undeclared Work

1.1.1 Definition of undeclared work

There is **not a legal definition of undeclared work** in Spain comparable to the EU's (COM(98) 219) or OECD's. The law states the obligation for employers to register job contracts with Social Security and pay the corresponding monthly Social Security contributions; there is an obligation for self-employed to register with Social Security as well; and for workers to declare to the Tax Agency (*Agencia Tributaria*) their work incomes. Thus, *de facto* undeclared work in Spain is defined as the payment or reception of a monetary remuneration without declaring it to the Treasury, or making the compulsory registration and payment with Social Security. Self-employed workers must register with Social Security when they carry out a 'usual' activity as professionals, with Supreme Court case law determining on several occasions the extent and meaning of 'usual'. Alternatively, an activity would be considered as 'usual' if it provides the self-employed worker more than the annual amount of the minimum wage.

1.1.2 Characteristics of undeclared work

The **main types of undeclared work in Spain** are (Foundation, 1 May, 2011)¹: companies or workers not registered with Social Security; foreign workers without a working permit; workers who work while receiving unemployment or other social benefits; full-time jobs declared as part-time jobs; envelope wages; and unpaid or non-declared extra hours. In addition, other forms of work that, although declared, do not fully comply with labour regulations, are: illegal application of employment incentives (rebates to Social Security contributions when hiring certain collectives); and illegal use of certain types of working contracts, such as volunteering or traineeships.

There is a clear **sectoral concentration of undeclared work**. According to the Labour and Social Security Inspectorate (*Inspección de Trabajo y Seguridad Social*), more than 80% of undeclared work detected in 2015 was found in four economic sectors: hospitality and restaurants (34.4%); services (25.2%), of which: professional services (12.4%); education, healthcare, sport and free time services (10.4%). Retail trade (13.1%) and construction (7.5%). Agriculture accounts for 6.5% of cases.

Other sources of information showed that in household services, involving mostly women, over one-third of workers could be unregistered². Other economic sectors with a high presence of undeclared work carried out at homes are the textile and the ICT sectors (Foundation, 1 May, 2011). The transport sector is also highlighted as having a high presence of undeclared work. Finally, according to Eurobarometer (2014), 33% of the goods and services purchased where the consumer had a good reason to believe that they included undeclared work were repairs or renovations at homes, car repairs (27%), and domestic activities (cleaning of houses, 11%).

Although undeclared work has been found **in companies of all sizes**, it has been reported to be more frequent in SMEs. In addition, a positive correlation has been found between the percentage of self-employed in the economy and the size of the shadow economy³.

As for the main motivators for undeclared work, in the case of low-qualified self-employed workers, the inability to afford taxes and Social Security contributions plays a key role. The

¹ Foundation 1 May (2011) (CCOO Trade Union). 'El trabajo no declarado en España' (Undeclared Work in Spain).

² Comparing the 650 000 persons employed, according to the LFS 2014, only 420 000 persons registered in the Special Regime for Household workers.

³ Gestha (Trade Union of economists of the Treasury) and Jordi Sardà (University Rovira i Virgili) (2014). 'La economía sumergida pasa factura. El avance del fraude en España durante la crisis' (The costs of the shadow economy. The growth of fraud in Spain during crisis).

bureaucratic complexity is another motivation among self-employed workers. In contrast, in the case of high qualified self-employed workers the motivation for tax evasion can be considered as more relevant. However, several studies show no conclusive evidence to consider the overall tax level as a cause of the shadow economy⁴. Other motivations are the reduction of administrative and bureaucratic costs; the possibility to evade regulations (health, safety, urbanism, etc.); the need for higher organisational and productive flexibility, including higher geographical mobility; or lower labour unitary costs⁵. **From the employees' side**, according to Eurobarometer (2014)⁶, the main reasons for not declaring work included, the lack of regular jobs in the labour market (45% of respondents); salaries in regular business being too low (23%); and the lack of controls (28%). From the **consumers' side**, the price is one key motivator for 59% of respondents when asked 'what made you buy it undeclared instead of buying it in the regular market?' (Eurobarometer (2013), a figure similar to EU 27, at 60%, and 5pp higher than in 2007). The second reason argued was to help someone in need (27%), 17pp higher than in 2007. Finally, the **economic crisis** has also been observed as a factor⁷; in the period before the crisis (2004-2007) the figures for the shadow economy are lower than for the period 2008-2011. However, there is a counter argument to this motivation: undeclared workers do not bear dismissal costs, so that companies would have dismissed first undeclared rather than formal workers to adjust to the reduction of demand caused by the crisis, and thus reduce the overall weight of undeclared work. Indeed, according to the method based on the comparison between LFS and adjusted Social Security registration figures, undeclared work would have diminished by 313,000 persons between 2008 and 2014⁸.

1.1.3 Estimated scale of undeclared work

There is not a consensus on the estimated scale of undeclared work in Spain and the available estimates differ widely. The first estimate was made by Ruesga (1984), with a figure of undeclared work for 1980 between 9.3% and 11.3% of the active population⁹. With a similar, although adjusted methodology¹⁰, undeclared work in Spain would have reached 561,400 workers, 3.2% of total employment, in Q2/2014¹¹ (218,400 Spanish and 343,000 foreign workers).

Gestha and Sardà (2014)¹² estimate the shadow economy at 23.1% of GDP in 2012 combining several sources¹³, stating a wide geographical dispersion behind these figures. The study of FUNCAS (2011), assuming the same productivity for undeclared work as for the formal economy, and based on LFS values and three models for the estimation of the shadow economy

⁴ Randstad study (2014) shows a correlation of $R^2 = 0,1373$ between the shadow economy and corporate tax level across OECD countries. Gestha and Sardà (2014) arrive at a similar conclusion.

⁵ Santos M. Ruesga, '*Economía sumergida y fraude fiscal*'. Actualidad Tributaria, 30 septiembre 1994. Quoted by Foundation 1 May (2011).

⁶ Special Eurobarometer 402 (2014). Undeclared Work in the European Union.

⁷ Gestha and Sardà, 2014, op. cit.

⁸ Calculation based on figures from INE. Labour Statistics Working Group. 'Comparison between employment statistical magnitudes according to LFS and affiliation data. Q2/2014'. May 2015.

⁹ Ruesga, B. (1984), '*Economía oculta y mercado de trabajo: Aproximación al caso español*', Información Comercial Española. Revista de Economía, nº 607 (marzo).

¹⁰ Based on the gap between the employment figures of the LFS and the affiliation to social security. The INE estimates take due account of the weight of certain groups (such as papal clergy or civil servants that are registered in a mutuality).

¹¹ Source: INE. Labour Statistics Working Group. 'Comparison between employment statistical magnitudes according to LFS and affiliation data. Q2/2014'. May 2015.

¹² Op. cit.

¹³ Arrazola et al. (2011); Schneider, Büehn y Montenegro (2010); B a F. Schneider (2011); Schneider, AT Kerney, by VISA (2013) 'The Shadow Economy in Europe'; Pickhardt, M. and J. Sardà (2011). 'Evolution and Causes of the Spanish Underground Economy', Mimeo; Ruesga, S.M. y Carbajo, D. (2013). 'El "Tax Gap" en España: definición, estimaciones y medidas dinámicas para su reducción'. Mimeo.

(monetary, energy and MIMIC), estimates around 4 million undeclared work jobs in the period 2005-2008¹⁴. On its side, the study of the Foundation of Financial Studies on the Shadow Economy in Spain (2013)¹⁵ estimates a figure of around 1 million undeclared jobs based on the estimate of the shadow economy linked to undeclared work made by Gestha and Sardà¹⁶ (EUR 82,500 million) and a productivity per worker of EUR 61,200 (EC, 2012).

1.2 Institutional Framework

1.2.1 Responsibilities for addressing undeclared work

In Spain undeclared work involves two frauds, one in terms of Social Security contributions and another in terms of taxes. Thus the key authorities with responsibilities for identifying and tackling undeclared work are: the Labour and Social Security Inspectorate (*Inspección de trabajo y seguridad social*); the Social Security Treasury (*Tesorería General de la seguridad social*), responsible for collecting the Social Security contributions; and the Tax Agency (*Agencia Tributaria*).

1.2.2 Characteristics of the responsible organisations

The **Labour and Social Security Inspectorate** belongs to the Ministry of Employment and Social Security (MEYSS) and is a national body. The body had 960 inspectors and 840 sub-inspectors in 2015 (adding 1,800 workers), plus 1,231 additional administrative workers. This figure has remained almost constant since 2009 (1,798 inspectors and sub-inspectors), despite the increase in undeclared work observed by some organisations¹⁷.

The total number of business units¹⁸ registered with the Social Security in 2015 was 1,463,553 (excluding agriculture and domestic service regimes). This figure involves a ratio of 1.544 business units per inspector and 1.746 units per sub-inspector. In the same year, 371,887 business units of 304,413 companies were inspected, unveiling 87,068 infractions.

The amount of fines proposed by this body reached more than EUR 310 million. Regarding undeclared work, 193,562 inspections were carried out in 2015, unveiling 86,113 undeclared jobs (a figure 21.7% higher than in 2010)¹⁹.

The **Social Security Treasury** is a national body managed by the MEYSS, the main role of which is to collect social security contributions at the national level. Thus the (lack of) registration of working activities in this body determines the border between declared and non-declared work in many cases. The body has 12,066 workers (December 2014) and a network of 203 administrative offices, 53 attention offices and 277 Units of Collection (*Unidades de Recaudación Ejecutiva*)²⁰.

The **Agencia Tributaria** holds the main function of collecting taxes across the country, with the exception of the Basque Region and Navarre, which have their own tax agencies. It is managed by the Ministry of the Treasury and Public Administration, and has 25,742 workers distributed across 193 public attention offices, 31 offices of customs and special taxes, and 17 councils of territorial coordination²¹.

¹⁴ Funcas (2011). *La Economía Sumergida en España* (The Shadow Economy in Spain). María Arrazola, José de Hevia, Ignacio Mauleón, and Raúl Sánchez.

¹⁵ Foundation of Financial Studies (2013). *La Economía Sumergida en España* (The Shadow Economy in Spain). Alfredo Jiménez Fernández, Ramiro Martínez-Pardo del Valle.

¹⁶ Op. cit.

¹⁷ Gestha and Sardà, 2014, op. cit.

¹⁸ One company may have more than one business units (*centros de trabajo*), usually in several localities or regions.

¹⁹ 2014 Annual Report. Inspection of Work and Social Security (*Memoria 2014 Inspección de Trabajo y Seguridad Social*). MEYSS.

²⁰ Memory of Activities of the Treasury of Social Security 2014.

²¹ Source: Agencia Tributaria.

1.2.3 Cooperation and collaboration between authorities and cross-border authorities

There has been constant cooperation between the Tax Agency and the social security over the years. The 2005 Plan of Prevention of Fiscal Fraud²² already involved data exchange between both bodies about hiring/dismissal of workers by companies and salaries paid. Later, the renewal of this plan (2008) included other cooperation models such as the exchange of data with the registry of subcontracting companies of the MEYSS and the coordination of actions with the Treasury of social security to tackle the shadow economy. In addition, the 2010 Comprehensive Plan for the Prevention and Correction of Fiscal, Labour and against the social security Fraud (*Plan Integral de Prevención y Corrección del Fraude Fiscal, Laboral y a la Seguridad Social*) guided the cooperation between the Tax Agency, the Social Security Treasury and the Labour and Social Security Inspectorate. This cooperation is based on information exchange, shared training, the creation of permanent coordination channels²³ and joint actions, focusing on certain economic sectors and on the prevention of common practices in undeclared work, such as unpaid or non-declared extra hours, subcontracting, seasonal agrarian work, undeclared transport workers, extreme low-cost retail shops, full-time jobs under part-time contracts and fraud related to employment incentives. The plan also includes cooperation with Regional Governments and with the tax agencies of the Basque Region and Navarre²⁴. Finally, the most recent Plan to fight irregular work and social security fraud (*Plan de lucha contra el empleo irregular y el fraude a la Seguridad Social*), of 2012, adds strengthened institutional cooperation between Social Security bodies, the Tax Agency, the Ministry of the Interior, the Fund for Salaries' Guarantee, the General Council of the Judiciary, the General Council of Notaries and the Real Estate Registers College. It has also set up an anonymous denouncement box on the MEYSS webpage.

There are other interesting fields of cooperation between bodies. According to the Law 23/2015 (Art 22.17), the Labour and Social Security Inspectorate can adopt several actions when the inspection finishes, such as reporting to the national PES to promote guidance and skill training of the workers found in undeclared or irregular work situations. In addition, there is a cooperation agreement between the Ministry of the Interior and the MEYSS (30 April 2013) to manage the support of police bodies to certain inspections performed by the Labour and Social Security Inspectorate. Police Forces supported 19,609 of the 193,562 inspections targeting undeclared work in 2015. According to the MEYSS, thanks to the mentioned Plan, 252,822 irregular jobs were detected in 2012-2014 with an impact of EUR 11.3 billion²⁵.

The Labour and Social Security Inspectorate participates in working groups of the Senior Labour Inspectors Committee of the EU, so that the direct contact is frequent. The Spanish body has bilateral agreements with similar organisations in Portugal, Romania, France and Poland. Every year there is a meeting between the Portuguese and the Spanish Inspectorate bodies to strengthen cross-border cooperation and to plan coordinated actions regarding undeclared work.

1.3 Policy Focus and Measures

1.3.1 Policy approach

The policy approach in Spain to tackle undeclared work has been traditionally one of deterrence, implemented through inspections by the mentioned bodies. Over the last years though, certain

²² Source: Agencia Tributaria

(http://www.agenciatributaria.es/AEAT.internet/Inicio/La_Agencia_Tributaria/Planificacion/Plan_de_Prevencion_del_Fraude_Fiscal/Plan_de_Prevencion_del_Fraude_Fiscal.shtml)

²³ *Mesa para la Prevención y Corrección del Fraude Fiscal y a la Seguridad Social* (Working group for Prevention and Correction of Fiscal Fraud).

²⁴ In Spain there is a national tax agency (*Agencia Tributaria*) plus four regional departments, in the three Basque Country provinces and in the Navarra region.

²⁵ Source: La Moncloa (press release 13 March 2015):

<http://www.lamoncloa.gob.es/consejodeminstros/Paginas/enlaces/130315enlacetrabajo.aspx>

measures suggest a gradual growth of a complementary enabling/preventative approach. An example of these measures are the employment incentives (rebates to Social Security contributions for some collectives) and the significant reduction of Social Security contributions for self-employed workers²⁶. Other examples can be found in the already mentioned Comprehensive Plan for the Prevention and Correction of Fiscal, Labour and Social Security Fraud of 2010, that includes an awareness campaign about the effects of fiscal fraud; collaboration agreements with business associations, which involve the provision of information by these organisations on a voluntary basis. The plan also includes the facilitation of bureaucratic procedures through ICT (fully operative), also to reach persons in remote areas.

1.3.2 Measures to tackle undeclared work

The Plan to fight undeclared work and Social Security Fraud (*Plan de lucha contra el empleo irregular y el fraude a la Seguridad Social, 2012-2013*) includes the mentioned improved coordination among different public bodies; reorganisation and increase of human resources of the Labour and Social Security Inspectorate²⁷; new inspection campaigns in sensitive sectors; follow-up of undeclared work cases and areas; and several law modifications. Among these is the Law 13/2012 of 26 December, on the fight against irregular employment and Social Security fraud, and the Organic Law 1/2015, that modifies the Penal Code (Organic Law 10/1995). They include the extension of the prescription period of crimes against Social Security from 5 to 10 years; the request of paying the evaded amounts to skip penal responsibilities; tighter controls to prevent the reception of unemployment benefit while working; and an increase of fines.

In addition, an **online mailbox** has been created (August 2013) to receive anonymous reports about undeclared work or shadow economy situations: up to December 2016, it had registered 195,912 communications and led to 31,631 inspections, of which 23,750 were finalised. The creation of an **Office Against Fraud** has also been announced (Law 23/2015, July), although not yet created.

Finally, as a curative measure, on May 2011, a Royal Decree (5/2011) granted an **amnesty for undeclared workers**, allowing employers to register any undeclared employee until 31 July 2011 with no penalty and backdated Social Security contributions. The decree also increased substantially the sanctions from 31 July 2011 onwards²⁸.

Since the approval of the Plan to fight undeclared work and Social Security fraud, 252,822 undeclared jobs have been detected (2012-2014). This, together with other irregularities detected, has provided an additional EUR 11.3 billion to the Treasury during the three mentioned years²⁹. Regarding the Labour and Social Security Inspectorate actions, as mentioned above, the body accounted for 1,800 inspectors and sub-inspectors in 2015, who performed 193,562 undeclared work inspections and identifying 87,068 undeclared jobs.

1.3.3 Good practice

The reduction in Social Security contributions for new self-employed workers can be considered a good practice of a preventative approach, since the measure facilitates a smooth transition into self-employment and the beginning of entrepreneurial activities in the formal economy. This has been strengthened by another measure that can be considered as a good practice as well: the allowance to receive 100% of the contributive unemployment benefit for unemployed workers that shift to self-employment. Particular stronger entrepreneurship incentives had been approved for young people, which have now been extended to all self-employed (Law 31/2015).

²⁶ These reductions reach 80 % during the first six months, 50 % for the six following ones and 30 % for the last six months.

²⁷ The plan states to increase the staff in 50 inspectors and 63 sub-inspectors, which involves a growth of about 5 %.

²⁸ Eurofound (2013): Tackling undeclared work in 27 European Union Member States and Norway. Approaches and measures since 2008

²⁹ Source: La Moncloa (press release 13 March 2015):

<http://www.lamoncloa.gob.es/consejodeministros/Paginas/enlaces/130315enlacetrabajo.aspx>

1.3.4 Challenges and barriers

One key challenge is to achieve **a clear definition of undeclared work at the legal level**. At present, part-time self-employment is not foreseen and the minimum amount of contributions to pay is set at EUR 267.04 every month (regardless the income achieved that month), which reaches 35% of the minimum wage (EUR 764.40 per month, 12 months a year). Thus this system involves an evident barrier for part-time or low income self-employed workers. There is a current debate among several political parties to reform the Social Security fees for low-income self-employed workers.

In addition, there are **challenges in specific sectors**. Another important challenge remains in the **domestic service** and the care provision sector, where over one-third of employees may be undeclared. In addition, there is a social awareness challenge in this sector, as, according to Eurobarometer (2014), in Spain 18% of the population finds it fairly acceptable and 8% total acceptable to do undeclared work for household work. The **agriculture** sector gathers an important share of undeclared work among irregular immigrants, which is difficult to combat due to their unwillingness to denounce it.

There is a need to **increase the resources of the Labour and Social Security Inspectorate**. Moreover, according to Eurobarometer (2014), 58% of respondents in Spain consider the risk of being detected in undeclared work as 'small'.