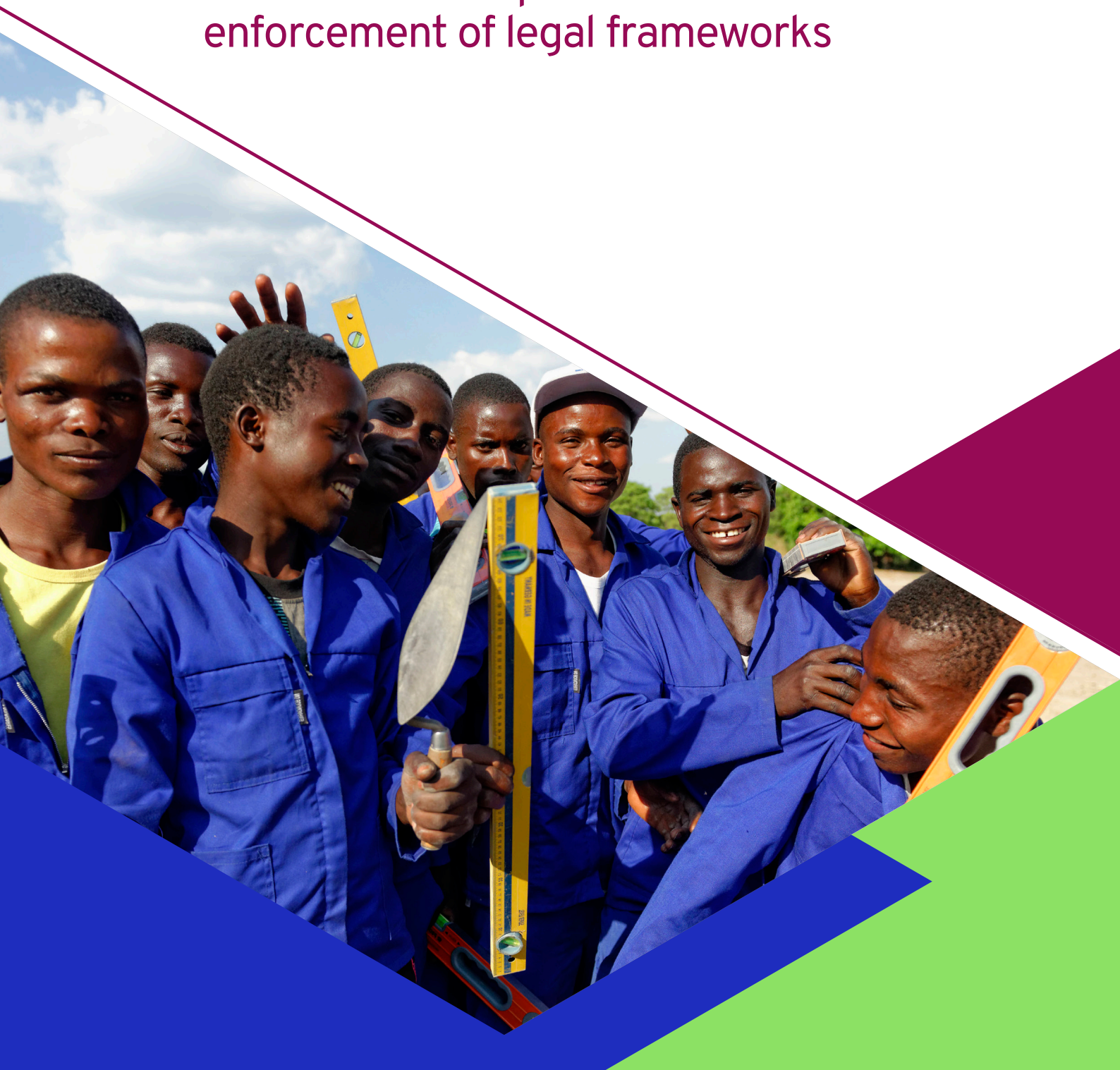


► Governance of social protection systems: a learning journey

Module #3: Compliance and enforcement of legal frameworks



▶ **Governance of
social protection systems:
a learning journey**

Module #3: Compliance and
enforcement of legal frameworks

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► Summary

Acknowledgements	v
1. Introduction: A few words about compliance	1
1.1 External and internal drivers of compliance	2
2. Objective and structure of this module	7
3. The notion of compliance within international social security standards	9
4. The State: its overall responsibility in establishing an enabling framework conducive to compliance and in monitoring its functioning	11
4.1 Duty to develop sound and comprehensive legal frameworks	13
4.1.1 Using constitutions to foster compliance	14
4.1.2 National laws and regulations: Setting compliance in motion	16
4.2 Adopting a dissuasive regime of sanctions: A necessary but not sufficient approach	17
4.2.1 Pecuniary and criminal sanctions	17
4.2.2 Sanctions other than pecuniary and criminal aimed at fostering compliance	20
4.2.2.1 Exclusion from public tenders	20
4.2.3 Designing and implementing policy measures to combat social security fraud	22
4.2.4 Promoting compliance by adapting social protection mechanisms to fit the specificities of hard-to-cover groups	24
4.2.4.1 Cooperation between social security and tax authorities	26
4.2.4.2 Designing integrated tax and social security mechanisms favouring compliance by micro and small enterprises, self-employed persons, agricultural workers and enterprises.	27
4.3.1 Long-standing recognition by human rights and ILO social security instruments	29
4.3.2 Main types of mechanisms settling individual claims	33
4.3.3 Core principles for securing accessible and effective complaint and mechanisms	37
4.3.3.1 Simple and rapid litigation procedures	37
4.3.3.2 Fair trial and other key principles underpinning the right of complaint and appeal	38
5. Social security institutions as key actors of compliance	41
5.1 Internal and external drivers that favour good governance of social security institutions	41
5.2 International guidelines relevant to securing good governance of social security institutions	44
5.3 Lack of good governance, transparency and accountability as deterrents of compliance	46
5.4 Penalties applied to social security officials and other professionals	47
5.5 Participatory management	47
5.6 Using technological innovations to facilitate compliance	48
5.7 Raising awareness and tackling information deficits to promote compliance	51
5.8 Optimizing record-keeping and contribution collection	55

5.9 Reinforcing social security inspection: A pivotal component of strategies aimed at securing compliance	56
5.9.1 Labour and social security inspections in international labour standards	56
5.9.2 The complementarity of social security and labour inspection services	57
5.9.3 State supervision and inspection of social security legislation	60
5.9.4 Mandate and prerogatives of inspection services to secure compliance	63
5.9.5 Awareness-raising and educational campaigns by inspection services	65
5.9.6 Inspection services and the challenges of undeclared work, social security evasion and fraud	66
6. Compliance from the perspective of employers	69
6.1 Ensuring compliance with contribution collection	70
6.1.1 Securing compliance with the obligation to keep records of contributions	71
6.2 Impact of non-compliance with contribution collection by employers	73
6.2.1 No suspension of benefits	73
6.2.2 Recovering outstanding contributions	74
6.2.3 Penalties applied to employers	75
7. Compliance from the perspective of protected persons	79
7.1 Internal drivers of compliance	79
7.1.1 Knowledge about social security and its importance	79
7.1.2 Fear of retaliation	80
7.1.3. Securing compliance: The challenging case of self-employment	81
7.2 External drivers of compliance	84
7.2.1 Penalties sanctioning non-compliance by beneficiaries	84
8. References and further guidance (guidelines, online courses ...)	85
9. Bibliography	87

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► 1. Introduction: A few words about compliance

Compliance as a key dimension in guaranteeing the human right to social security and protection and achieving the Sustainable Development Goals

Recognizing that social protection is a social, economic and political necessity, the international community gave it a prominent place in the 2030 Agenda for Sustainable Development: 5 of the 17 Sustainable Development Goals (SDGs) expressly acknowledge the role of social protection in responding to global challenges and achieving a better and more sustainable future for all that leaves no one behind. In particular, social protection is given a key role in eradicating poverty through social protection systems for all (SDG target 1.3).

The UN system gives global recognition to the ILO's mandate in social protection by giving the ILO the official custodianship of the compilation of data and reporting on progress made towards the achievement of SDG target 1.3 through SDG indicator 1.3.1. In addition, SDG target 1.a calls for the significant mobilization of resources from a variety of sources to end poverty and specifically considers government spending on health, education and social protection (SDG indicator 1.a.2). Social protection also contributes to SDG target 3.8 on achieving universal health coverage since they guarantee access to essential health care (SDG indicator 3.8.1) without hardship (SDG indicator 3.8.2). The 2030 Agenda also highlights the role of social protection as a means to attain sustainable economic and social impacts on a global scale, gender equality (SDG Goal 5), decent work and economic growth (SDG Goal 8), reduced inequality (SDG Goal 10) and the promotion of peaceful and inclusive societies for sustainable development and effective, accountable and inclusive institutions at all levels (SDG Goal 16). The achievement of these objectives has been seriously challenged by the COVID-19 pandemic, which in many cases has revealed new vulnerabilities and inequalities or further exacerbated existing ones, thus requiring a renewed and strong post-crisis commitment in the run-up to 2030.



Securing compliance with the international and national normative frameworks therefore forms an integral and crucial part of achieving the goals of the 2030 Agenda. As recognized in the SDGs, establishing the right to social protection has many dimensions. This module seeks to explore the various drivers that will enable or secure compliance of the various actors involved with normative frameworks.

1.1 External and internal drivers of compliance

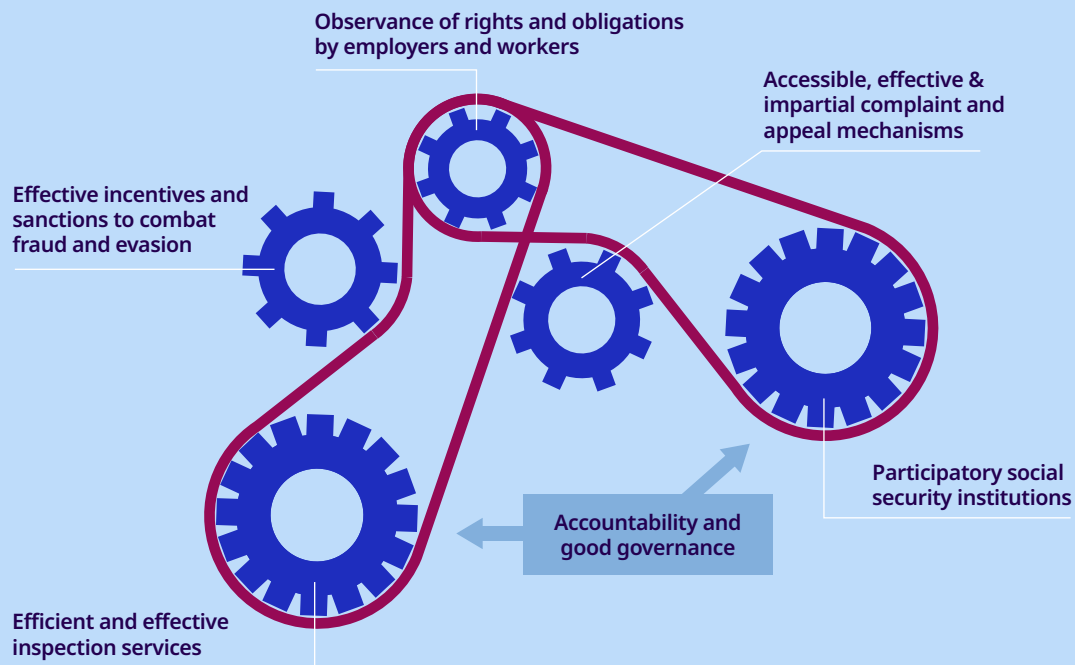
For the purposes of this module, compliance is seen as the result of abiding to the rules, standards and good practices established by national and international labour and social security standards (ILO 2017b). The concept of compliance in social security covers not only citizens or enterprises, as the targets of national legal frameworks, but also the State's responsibility to ensure the fulfilment of the right to social security, in particular by establishing and operationalizing the legal framework and ensuring the delivery of social protection through mandated institutions and the setting up of adequate grievance mechanisms.

Accountability and transparency are crucial for building a social protection system that people can trust and ensuring that people realize their rights but also respect their obligations (ILO 2017d). Therefore, efficient and accountable institutions are essential for securing compliance with national social protection legal frameworks. Employers and workers will question the need to participate in financing a social protection system that they perceive to be inefficient in providing the benefits that people need or too expensive for the little protection that they provide. It is futile to seek to secure the compliance of labour market forces if the institutions that administer social protection systems and schemes fail to deliver or cannot be held accountable in case of implementation deficiencies. At best, this will merely perpetuate existing shortcomings while doing nothing to address them.

This module introduces the various drivers of compliance with social protection legal frameworks by a range of stakeholders, including employers, workers, state authorities and social security institutions, taking into account the main principles established by ILO standards in this respect. In particular, it focuses on inspection and on complaint and appeal mechanisms as two key drivers of compliance. Country cases and examples are provided to illustrate good international practice in the design and implementation of drivers of compliance. These examples also show the multitude of factors that influence and reinforce stakeholders' willingness and capacity to comply with their social security obligations.

Ultimately, compliance with the social protection regulatory framework is the result of a range of measures through which the State assumes its responsibility for securing the proper functioning and administration of social protection systems. These measures act as compliance-oriented drivers directed to the various social protection stakeholders – social security institutions on the one hand and labour market forces (employers and workers) on the other (figure 1). When designed with the objective of securing compliance with legal frameworks in mind, these drivers are conducive to the sound functioning of social protection systems. Internationally adopted (and, as appropriate, ratified) social security standards establish a guiding framework for establishing and maintaining comprehensive social protection systems, including as regards securing compliance. Inversely, should these various drivers not act in unison, the resulting imbalances result in non-compliance, compromising the smooth functioning of the entire system.

► **Figure 1. Drivers through which the State can fulfill its responsibility to secure of compliance with the rule of law in social security**



Source: Authors.

External drivers of compliance from the perspective of social security institutions: Administrative and judicial institutions

External drivers of compliance by social security institutions comprise the administrative and quasi-judicial mechanisms or bodies created by law to monitor the proper functioning of social protection entities, as well as the judicial institutions that are competent to adjudicate matters related to the malfunctioning of social security institutions.

- In most cases, lodging an administrative complaint is the first procedural step, often made directly with the administrative authority involved in rendering the contested decision, for example with regard to the eligibility conditions or the amount or duration of benefits. The decision may be reviewed by the initial decisionmaker, but more often than not the complaint is then lodged with a higher-level administrative authority in the social security system itself. In some cases, such as in Panama, the Philippines and Norway, a second level of administrative review exists (ILO, 2021a).

Internal drivers of compliance within social security institutions

Social security institutions can also be made subject to internal drivers that help to improve compliance with their mandate, in particular the delivery of benefits. These include accountability mechanisms (for example, bottom-up periodic reporting on their activities and performance) as well as good governance mechanisms (governance structures and processes, transparent and participatory decision-making and so on).

- ▶ In **Mauritius**, the National Pensions Act requires the Ministry of Social Security, National Solidarity and Reform Institutions to publish the duly audited accounts of the National Pensions Fund each year in the National Gazette. To comply with this reporting obligation, the audited accounts shall set out the receipts and payments of the fund and the assets and liabilities of the fund with particular reference to the investments held. The Act further stipulates that the audited accounts shall be presented before the National Assembly (section 39) and imposes an obligation to perform actuarial reviews of the fund at least every five years (section 38(a)).

External drivers of compliance from the perspective of employers and workers: Inspection mechanisms and complaint and appeal mechanisms

From the perspective of employers and workers, compliance with the rights and obligations established by national laws and regulations provides legal certainty and predictability, which result in positive spillover effects on the economy and society at large. These positive spillovers include less poverty; the guarantee to be protected against life risks; a healthier and better-educated population; higher productivity levels; less absenteeism and worker turnover; better workplace relations; a more predictable cost structure; and a more level playing field for compliant companies (ILO 2013).

The drivers of compliance by these actors with their social security legal obligations can also be divided into external and internal drivers. External drivers for employers and workers mostly coincide with those in the context of social protection institutions and include the existence, access to and efficiency of:

1. social security inspection services (autonomous or integrated in labour inspection services) that are mandated to survey the implementation of national social protection legal frameworks by employers and workers; and
2. complaint and appeal mechanisms that are accessible to employers and workers alike.

In addition to these two drivers, the existence of a coordinated and coherent legal framework that is accessible to and known by its intended audience is also an important factor that drives compliance by these actors.

Internal drivers impacting compliance by employers' and workers'

With regard to the internal drivers of compliance, i.e., the subjective processes and mechanisms that influence employers' and workers' compliance with their social protection-related obligations, these vary between employers and workers and will be examined separately below.

Internal drivers from the perspective of employers

On the one hand, observance of social security legal frameworks by employers is often related to whether or not the applicable legal framework is easy or difficult to implement (i.e., not only from a financial perspective but also with respect to the extent of red tape involved), a cost-benefit analysis and the potential consequences of non-compliance. The existence of administrative red tape to fulfil social security-related obligations participates to contributory evasion as much if not more than bad governance or an inadequate sanctions regime. This is linked to whether or not the legal and institutional framework

is conducive to compliance. In other words, the more complicated it is to follow the rules and the less confidence people have in the system, the greater will be their avoidance and non-compliance with social protection-related obligations. Therefore, an increase of penalties for non-compliance (external driver) will only achieve the expected results if it is accompanied by an improvement of institutional drivers (for example, the establishment of a single-window mechanism to reduce red tape or the simplification and digitalization of registration and contribution payment mechanisms) and if the effort of contributory avoidance (internal driver) is perceived as not being worthwhile. In addition, the existence of participatory structures within enterprises that are mandated by law and associate the representatives of employees with the management represents another driver that influences compliance by employers with their social security-related obligations.

Finally, internal drivers can also be impacted by related social-economic policies, including as regards coordinated measures, which also seek to promote an enabling business environment, etc. It can be noted that there is a growing body of knowledge and experiences, which look at how the field of behavioural insights can help identify and nudge employers in complying with their obligations. This is grounded on the need to cue in from social norms, and in particular perceptions of what is typical and desirable, to promote compliance, including with obligations stemming from social security legal framework.

- ▶ In **Argentina**, the Ministry of Labour (MEyPPS at the time) used behavioural insights to promote compliance with social security registration. A behaviourally-informed letter was written and sent to households above a certain income, reminding them of their obligation to register, and providing them with the necessary information to do so. The letter reinforced the identity of employers as being good employers, and drew attention to the fact that informal employment was not a behaviour consistent with being a good employer. The letter had a significant impact the number of households who consequently registered their domestic workers (ILO 2021d).

Internal drivers from the perspective of workers

With regard to internal drivers of compliance with social security obligations from the perspective of workers, knowledge of the regulatory framework and their social security rights plays a key role. Employees who do not understand or are unaware of their legal entitlements can hardly be expected to trigger the intervention of inspection services or the judiciary system (external drivers). Another internal driver of compliance by employees is whether or not existing sanctions encourage them to report non-compliance or are neutral in this respect. In other words, the compliance of workers is influenced by their subjective perception regarding possible “advantages” to collude with contributory evasion (for example to protect their job security) and whether there are incentives to claim their legally recognized rights.

- ▶ Aiming to create a culture of social protection, where all citizens are aware of their social security rights and obligations, **Uruguay** has incorporated a sophisticated social security education programme into the curriculum of public schools, universities, and vocational training institutes. The programme includes learning units adapted to every age (starting from age 5), ensuring that children learn about social security every year of their schooling as part of civic education (ILO 2021c).



► 2. Objective and structure of this module

Traditionally, securing compliance has tended to focus exclusively or predominantly on enforcement mechanisms, in particular the use of penalties and other administrative sanctions to sanction non-compliance, as well as recourse to judicial review in case of alleged non-compliance. More recently, however, countries are increasingly engaged in a multidimensional and more holistic approach to securing compliance, whereby punitive strategies are complemented by promotional mechanisms to raise awareness and create a culture of social protection as one of the main pillars grounding each society's social contract (box 1). While this module will present inspection and judicial redress mechanisms as key drivers of compliance, it will address them within a broader set of mechanisms and other drivers that influence compliance by the various stakeholders involved in social protection. Reaching overall compliance with national social protection legal frameworks therefore implies putting in place a series of mechanisms conducive to compliance by leveraging the behaviour of all stakeholders involved.

Box 1. The “carrot and stick” approach

The “carrot and stick” metaphor illustrates two complementary strategies that can be used to ensure compliance with social security legal frameworks.

The carrot represents incentives to generate a positive attitude towards legal requirements and to enable stakeholders' compliance and cooperation through preventive and promotional measures. States and other non-state actors can implement such actions, including through awareness-raising campaigns, information sessions and training workshops.

The stick represents mechanisms for deterring non-compliance or the enforcement of legal frameworks. This approach encompasses effective inspection mechanisms; increasing the cost of non-compliance, including through imposing meaningful sanctions; and allowing recourse to judicial review mechanisms.



Therefore, this module will review compliance from a broad perspective, identifying the main actors of the social security system whose responsibilities and actions are critical for ensuring compliance, starting with the State and its role in setting up a sound legal and institutional framework, including social security institutions as well as inspection and grievance mechanisms. The module will also review the drivers aimed at securing compliance at the level and from the perspective of both employers and workers. Each section will therefore explore the role of each stakeholder with regard to compliance; identify the guiding principles set out in international standards and guidelines; and identify challenges and best practices by examining relevant country examples.

In sum, this module addresses the following questions:

1. How is the notion of compliance reflected in the international social security legal framework;
2. What is the role of the State in ensuring compliance?;
3. What can social security institutions do to enhance compliance?;
4. What is the role of employers in promoting compliance?; and
5. What is the role of workers in promoting compliance?



► 3. The notion of compliance within international social security standards

Reaching compliance by fully mobilizing the potential of International social security standards and international good practices and guidelines

By clearly positioning social security, as a central social institution placed under the general responsibility of the State, ILO social standards provide a general framework of rights and obligations that is oriented towards effectively guaranteeing the operation of sound social security systems, including through good governance. At the centre of the international legal architecture, the ILO's landmark [Social Security \(Minimum Standards\) Convention, 1952 \(No. 102\)](#) sets out fundamental principles for the financing and management of social protection systems and the minimum benchmarks of protection to be secured. Convention No.102 has been reinforced and complemented by more advanced conventions and recommendations, which while they are grounded in the same core principles of administration and financing, require higher benchmarks to be observed in terms of coverage or benefit levels and duration. Importantly, ILO social security instruments are geared towards substantiating the human right to social security, including by securing compliance.

The Social Protection Floors Recommendation, 2012 (No. 202) further expanded and made more explicit the core principles embedded in earlier international standards – including the principles of accountability and transparency – that are essential components for implementing a rights-based approach to social protection. Box 2 contains an overview of key principles for the good governance of national systems, as established by the ILO normative framework.



Box 2. ILO principles on securing compliance

ILO social security standards, including the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Social Protection Floors Recommendation, 2012 (No. 202), and the [Transition from the Informal to the Formal Economy Recommendation, 2015 \(No. 204\)](#), provide a set of principles which when observed can ensure well-managed, effective, efficient and sustainable social protection systems, including:

- ▶ **Overall and primary responsibility of the State for the proper administration of the system and the due provision of benefits** (Convention No. 102, Art. 71(3); Recommendation No. 202, Para. 3).
- ▶ **Entitlements anchored in national law.** The scope, coverage and level of benefits, including basic social security guarantees, should be prescribed in national law or regulations (Convention No. 102, Arts 1 and 5; Recommendation No. 202, Paras 3(b), 6 and 7).
- ▶ **Right of complaint and appeal.** Persons protected should have a right of appeal “in case of a refusal of the benefit or complaints as to its quality and quantity (Convention No. 102, Art. 70). Complaint and appeal procedures should be impartial, transparent, simple, rapid, accessible, inexpensive and free of charge to the applicant (Recommendation No. 202, Paras 3o and 7).
- ▶ **Participation.** Participation of representatives of protected persons and employers in the management of administering institutions (Convention No. 102, Art. 72); tripartite participation, consultation and social dialogue with regard to social protection floors and strategies for the extension of social security (Recommendation No. 202, Paras 8(d), 13(1), and 19); full respect for collective bargaining and freedom of association for all workers (Recommendation No. 202, Para. 3(q)).
- ▶ **Accountability and transparency.** Transparent, accountable and sound financial management and administration (Recommendation No. 202, Para. 3(j); Convention No. 102, Art. 71(3)).
- ▶ **Financing.** Solidarity in financing while seeking to achieve an optimal balance between the responsibilities and interest among those who finance and benefit from social security schemes (Recommendation No. 202, para. 3(h)); collective financing through social insurance contributions or taxation or both in a manner that avoids hardship to persons of small means (Convention No. 201, Art. 71) and limited contributory capacity (Recommendation No. 204, Para. 20).
- ▶ **Promotion of gender equality, non-discrimination and responsiveness to special needs** (Recommendation No. 202, Para. 3(d); Recommendation No. 204, Para. 7(h)).
- ▶ **Rights and dignity.** Respect for the rights and dignity of people covered by the social security guarantees (Recommendation No. 202, Para. 3(f)); effective promotion and protection of the human rights of all those operating in the informal economy (Recommendation No. 204, Para. 7(e)); special attention to the most vulnerable (Recommendation No. 202, Paras 2, 3(e) and 16; and Recommendation No. 204, Paras 7(i) and 19).

Source: ILO, 2019, p. 65

► 4. The State: its overall responsibility in establishing an enabling framework conducive to compliance and in monitoring its functioning

The international social security conventions and recommendations place on the State the overall responsibility for the proper administration of social security systems and the due provision of benefits.¹ This very overarching systemic obligation implies the State's responsibility to secure a functioning legal and institutional framework, together with effective compliance mechanisms. In other words, the State must ensure the effective and efficient functioning of the system, which involves setting up the required legal and institutional arrangements, including inspection services and auditing rules, as well as complaints and appeal mechanisms.² Importantly, since national social security systems most often comprise a combination of contributory and non-contributory schemes, the responsibility of the State with respect to social security covers both arrangements. As highlighted by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), this responsibility includes the pursuit of the three main objectives formulated by Recommendation No. 202:

- the establishment and implementation of national social protection floors;
- the development and implementation of a national social security extension strategy; and
- the monitoring of progress, with the tripartite participation of representatives of employers and workers and in consultation with other relevant and representative organizations of persons concerned (ILO 2019c).

Figure 2 outlines the State's responsibilities concerning social security as provided for in ILO standards.

¹ This section is largely based on the Social Security and the rule of law: General Survey concerning social security instruments in the light of the 2008 Declaration on Social Justice for a Fair Globalization, Report III (Part 1B), International Labour Conference, 100th Session, Geneva, 2011 (Geneva).

² Convention No. 102 (Arts 71 and 72) provides that the State has the overall responsibility to guarantee the proper administration of the social security system, including by securing financial sustainability through periodical actuarial valuations, and the obligation to ensure that benefits are duly provided.

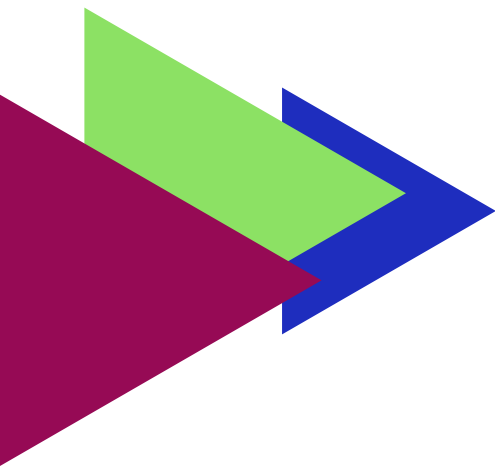
► Figure 2. Key State's responsibilities with regard to social security



Note: Convention No. 102 (dark blue) and Recommendation No. 202 (light blue)

As regards the general responsibility for the proper administration of the institutions and services involved in social security within the State set out at Article 72 of Convention No. 102, governments should secure the budgetary resources needed to provide the tax-financed benefits mandated by law; monitor compliance rates with the different contributory schemes and implement the necessary measures to secure the payment of social security contributions. Depending on the national context, this may include securing closer cooperation between social security institutions and the authorities responsible for contribution collection (tax authorities). In sum, governments' responsibilities are manifold and permeate the design, implementation, administration, supervision and reforms of social security systems.

Some of the responsibilities that have a salient impact on compliance are described below.



4.1 Duty to develop sound and comprehensive legal frameworks

The State's responsibility as regards social security systems, in both their contributory and non-contributory components, needs to be rooted in national legislation that specifies how such rights arise, how they materialize and how they can be enforced (ILO 2019c, para. 165). This is key to facilitate the exercise of the social security rights and obligations of all actors and therefore also in securing compliance with the legal framework, since compliance presupposes the existence of sets of rules to be complied with. A sound legal framework is also essential for implementing a rights-based approach to social security, including from an enforcement and compliance perspective (see Box 2).

ILO social security standards establish a global minimum level playing field of rights and obligations as well as a set of core principles along the lines of which a social security systems can be built and implemented. In order to fulfil the obligations assumed under these standards, States should implement comprehensive social protection systems; establish institutions that are mandated to administer and secure compliance with the legal framework; and allocate the financial and human resources required to give effect to the relevant laws and enforce their application.

A strong legal basis ensures the continuity of rights and obligations over time; contributes to the predictability and sustainability of the social security system and the accountability of the institutions responsible for its governance; and acts as a safeguard against arbitrary governance. A clear and coherent legal framework also facilitates the progressive formulation of overarching aims and objectives for the social security system and the development of linkages between its various components, including contributory and non-contributory schemes and benefits in cash and in kind (ILO 2019c).

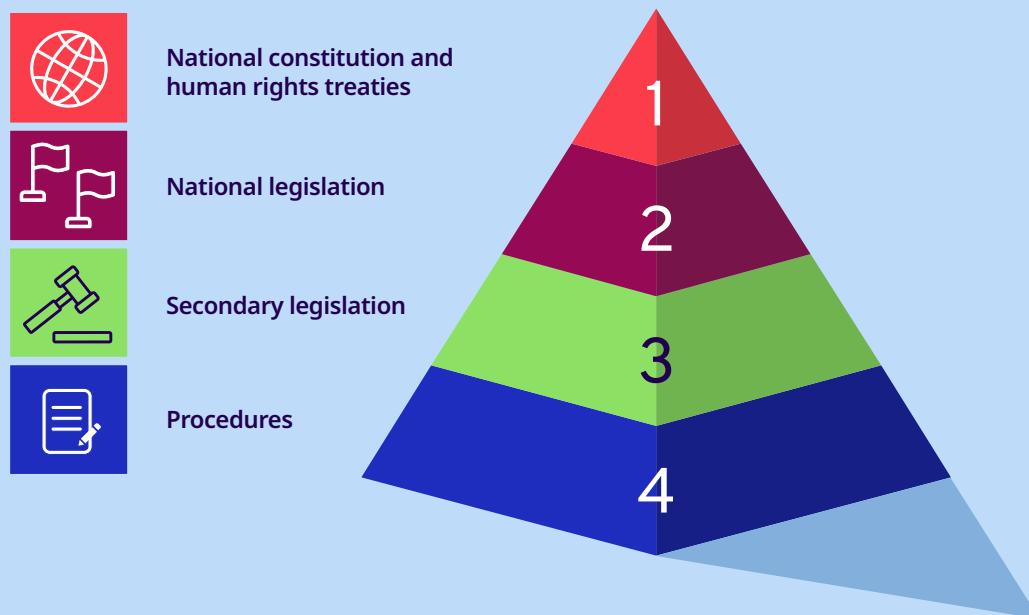
The case in favour of sound legal frameworks is generally understood by reference to contributory schemes, for which the legislation should address the complexities of contribution collection ahead of benefit disbursement as well as all the components related to the design of such schemes. Nonetheless, legal anchorage is just as relevant in the case of non-contributory schemes, since it constitutes the formal expression of a State's intention to implement a rights-based approach through legally established programmes and to secure the budgetary resources required for their implementation. Without such legal grounding, it would be impossible for beneficiaries to claim the existence of a right nor enforce their rights against the State and public authorities responsible for their implementation and delivery. The absence of an appropriate legal anchorage and institutional framework also violates the principle of accountability, as it makes identifying the various components of the programme, its duration and the authorities responsible for its implementation, very hard.³

Legal frameworks are therefore at the heart of the notion of compliance as they delineate the rights and obligations of protected persons and also set out the mandate of the institutional actors responsible for ensuring that these rights are realized and establishing the architecture and the conditions under which grievance mechanisms will operate.

In spite of being the main vehicle for establishing legally enforceable objectives and rights in any national context, there are no two national social security legal frameworks that are identical. Each has been developed according to its particular circumstances and needs, history, economic and social development, political economy and legal tradition. Although each country's legal landscape is unique, legal frameworks usually follow a hierarchical order, which means that some legal instruments have precedence (higher importance) over others. An example of how legal frameworks are typically organized in legal systems is provided in figure 3.

3 ILO, "Social Protection Legal Drafting Guide", forthcoming.

► Figure 3. Example of a legal hierarchy



Source: Authors.

4.1.1 Using constitutions to foster compliance



The supreme document containing the founding principles that a State is obliged to uphold is the national constitution (whether written or unwritten). Therefore, in most countries the national constitution is the supreme legal text to which all other laws must adhere and as such is located at the top of the legal hierarchy.

The twentieth century has seen a growing trend towards the constitutional recognition of the right to social security. This recognition can take many forms, including affirming the right to social security as an opposable right that individuals are able to enforce through court. In prevailing practice however, the right to social security forms part of the family of economic and social rights – its recognition by the Constitution is considered to establish an obligation of means (as opposed to of result) for the State - that is, an obligation to take steps to ensure the progressive realization of this right, which in turn places social security among the guiding principles of State policy (ILO 2011). This generally prevents individuals from holding the State accountable before the national jurisdictions for non-fulfilment of the constitutional provisions related to social security and protection and loss of opportunity to receive a specific benefit. However, constitutional provisions have been demonstrated to have far-reaching consequences in terms of competent national bodies determining whether the State has done enough to establish and properly maintain the national social security system, including by allocating the maximum available resources as per the obligations assumed under the International Covenant on Economic, Social and Cultural Rights of 1966 (171 State parties).

In many national contexts, the constitutional “block” integrates the body of international treaties ratified by the State. Upon ratification, international standards, such as human rights treaties⁴ or ILO labour and social security standards,⁵ are incorporated into national legal frameworks. In certain countries (called monist), the international standard becomes law by the mere fact of ratification, whereas in others (called dualist) ratified international treaties must be transposed in the national legal order before they can be implemented at the national level. The supremacy of international law, however, applies to both dualist and monist systems. Thus, the provisions of ratified international treaties represent an essential complement to constitutional provisions and a crucial component of national social protection legal frameworks. They also help to place concrete obligations on States for implementing and complying with such provisions, not only at the international level but also at the national level where they provide the basis for national legislation.

When a State ratifies an international standard, such as a human rights treaty or an ILO Convention, this creates legal obligations for the State to implement it. Consequently, ratified international treaties also have implications for social security institutions, relevant inspection services, the judiciary and employers and workers. Figure 4 provides three useful sources for identifying the main international instruments ratified by a given country.

► **Figure 4. Which international obligations apply to my country?**

 <p>International Covenant on Economic, Social and Cultural Rights</p>	<p>The Office of the United Nations High Commissioner for Human Rights has developed an interactive dashboard that shows the Status of Ratification of 18 International Human Rights Treaties, including:</p> <ul style="list-style-type: none"> ► International Covenant on Economic, Social and Cultural Rights ► Convention on the Rights of Persons with Disabilities
	<p>Click here to check which of the ILO Conventions have been ratified by your country.</p> <p>An interactive map that displays the status of ratification of up-to-date social security conventions is available here: https://www.social-protection.org/gimi/Standards.action?lang=EN#conventions</p>

4 Some of the relevant treaties for social security are the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Persons with Disabilities and the European Social Charter.

5 An online toolkit has been developed to raise awareness about ILO social security standards and promoting their ratification. It provides practical insights on ratification procedures and model instruments of ratification, as well as interactive information on the key provisions of these standards. See ILO, “[Toolkit on ILO Social Security Standards](#)”.

4.1.2 National laws and regulations: Setting compliance in motion

Nonetheless, like constitutional provisions, those contained in international standards most often address the State and rarely reach the level of detail needed to create concrete and enforceable rights and obligations at the level of individuals, employers or even social security institutions, beyond the core principles that have been set forth. Thus, in most cases, the main source of social security rights and duties is the national legislation enacted by the State's legislative branch (national congress or parliament) or the regulatory framework adopted by the government (executive power). Anchoring social security schemes in sound legal frameworks not only clarifies each party's rights and obligations but also enhances the predictability and potentially conducive also to improving the adequacy of benefits; strengthening institutional capacities; promoting transparency and accountability; providing safeguards against corruption; and establishing a more stable and regular funding base (ILO, 2017d). Importantly, the existence of such a framework is a precondition for it to be enforced or complied with. Domestic laws and regulations thus should ideally define the organization of the social protection system, provide the mandate for national institutions and the various stakeholders involved and establish the minimum standards of protection that should be observed.

Among others, social security and protection legal frameworks establish:

- ▶ how the State exercises its responsibility for the formulation of national policies, the administration of the various schemes, the due provision of benefits established by law and the enforcement of rights and obligations;
- ▶ the personal scope of the national laws and regulations (persons entitled to benefits; employers and workers subject to mandatory and voluntary coverage; and those exempted from participation);
- ▶ the material scope (for example, the social risks covered, and benefits provided in case the covered contingencies materialize);
- ▶ entitlement conditions (for example, minimum qualifying periods), the benefit levels and other parameters;
- ▶ procedures for registration, membership, receiving benefits and so on;
- ▶ sources of financing, including the contribution rates applicable to the different social security schemes operating in the country; and
- ▶ sanctions and penalties in case of non-compliance and procedural aspects concerning complaints and appeals.

Secondary legislation also forms an integral part of national legal frameworks. It includes regulations, decrees, presidential decrees and executive orders that provide technical details or directives to guide the implementation of legal provisions.

The bottom of the hierarchy of legal norms comprises normative instruments such as internal institutional rules, administrative orders and circulars, which may be established by the social security institutions and public authorities that administer benefits to regulate processes such as forms to be filed out with social security schemes and systemic management of contribution collection. While such procedures also help to secure compliance as they organize the "last mile" in the delivery or administration of social protection, in particular by allowing social security institutions to design (within the scope of existing legislation and regulations) tangible procedures impacting the various stakeholders, they have not been specifically examined by the present module due to an effort to focus on the more systemic aspects.

► **Figure 5. Compliance with what?**

	<p>National legal framework</p> <ul style="list-style-type: none"> • Constitution • Labour code (i.e. working conditions, occupational health and safety, working time, paid leave) • Social security code • Minimum wages • Regulations (i.e. affiliation, contribution collection)
	<p>International obligations</p> <ul style="list-style-type: none"> • Ratified international treaties (i.e. United Nations human rights treaties) • Ratified ILO conventions (i.e. social security minimum standards, maternity protection)

4.2 Adopting a dissuasive regime of sanctions: A necessary but not sufficient approach

Notwithstanding the important role that deterrence measures can play in securing compliance, it should be noted that deterrence mechanisms have two dimensions – the cost of sanctions and the perceived or actual likelihood of being detected (Williams, 2016). Non-compliant behaviour is unlikely to change if there is a low probability for offenders of “getting caught” and facing the consequences of violations or a low level of pecuniary or other sanctions (ILO, 2020b). At the same time, seeking to ensure compliance exclusively through punitive mechanisms will only partially deliver the expected results in the absence of other complementary approaches. Therefore, in parallel to establishing a comprehensive regime of sanctions, efforts should also be made to establish a regime of incentives to encourage compliance, as well as to establish effective and well governed social security institutions, efficient inspection services and accessible grievance mechanisms.

4.2.1 Pecuniary and criminal sanctions

In order to be effective, penalties for the violation of social security law should be sufficiently dissuasive to make offenders aware of the consequences of non-compliance. Yet, such penalties also need to be proportional to the gravity of the infraction. In this regard, an analogy can be drawn with labour law violations, with respect to which the Labour Inspection Convention, 1947 (No. 81) provides that adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced (Art. 18).

Indeed, fraud or contributory evasion are often rampant as the result of penalties being weak. Legal proceedings should be initiated when administrative procedures have not resulted in compliance with the law, in the case of payment of arrears, or when, pursuant to an audit or on-site inspection of enterprises, irregularities have been identified. In the event that enforcement of social security legislation is the responsibility of the social security institution, the latter is often authorized to initiate civil or

administrative proceedings. Proceedings may be initiated with civil courts or specific social security courts. In a number of countries, non-compliance with social security law, under specific circumstances proper to each national situation, is considered a criminal offence. In some countries, administrative and criminal proceedings can be initiated simultaneously for the same offence. The only common feature of all systems is that they all impose sanctions in the form of fines, terms of imprisonment or both. In **Finland**, for example, under the Penal Code an employer who, to obtain an economic advantage, fails to pay social security contributions within the time limit, for reasons other than insolvency or a court order, shall be sentenced, unless the act is punishable as tax evasion, to a tax offence with a fine or imprisonment for a term not exceeding six months (Chapter 29, section 4). The Code also provides that in cases of serious pension insurance fraud (involving the pursuit of significant economic benefits or repeated offences), the employer or their representative shall be sentenced to imprisonment for a minimum of four months and a maximum of four years.

In countries in which the collection of contributions and enforcement are the responsibility of the tax authorities, the proceedings that are initiated are assimilated to tax recovery proceedings. For example, in **the United States** an employer who fails to pay their federal unemployment payroll tax shall (like any other taxpayer) be subject to a variety of federal enforcement actions, the most common being the assessment of interest and penalties.

Box 3. Typifying social security fraud as a criminal offence: Examples from Latin America

The withholding or evasion of contributions is a penal offence in several countries, including:

- ▶ **El Salvador.** The Penal Code specifies a sanction of a 100 to 300 days fine for employers who withhold funds or contributions from workers' salaries and fail to remit them to the appropriate social security institution, union or relevant government institution for three periods (Art. 245).
- ▶ **Nicaragua.** Article 313 of the Penal Code catalogues social security fraud and related sanctions as follows:
 - Employers who deduct social security contributions from their workers and do not report them to the corresponding institution are punishable with a penalty of four to eight years in prison.
 - Employers who, through fraudulent manoeuvres, fail to pay the employer's social security contributions shall be sentenced to one to four years in prison.
- ▶ **Panama.** In 1999, the Penal Code was amended to include a chapter on the undue withholding of social security contributions. According to article 241, employers who withhold and do not remit the employee–employer contributions to the Social Security Fund within three months after the obligation to pay arises will be sanctioned with imprisonment for two to four years, provided that the withheld amount exceeds 1,000 balboas. The same sanction applies to employers or their representatives who, through misleading statements or malicious concealment, evade or prevent in any way persons who are obliged to affiliate with the social security system from doing so.

Source: Adapted from ILO, 2011, pg.148.

Some considerations concerning the effectiveness of sanctions are:

- ▶ Effective and dissuasive sanctions need to be proportional to the severity of the offence but also to the employer's or self-employed person's financial means.
- ▶ A graduated system of penalties may be useful to ensure that those with a high degree of vulnerability are not adversely affected (ILO 2021c).

- ▶ The scale of sanctions should be in proportion to the prejudice caused and should take into consideration the previous behaviour of the non-compliant employer or the self-employed person (in case of reiterative offences).
- ▶ In cases where the national legislation prescribes the penalties as flat-rate amounts, sanctions will need to be frequently adjusted for inflation.

In general, a good practice to facilitate the understanding of social security obligations and penalties in case of non-compliance is to consolidate the information concerning legal proceedings. Similar offences are often catalogued under different legal instruments (social security, fiscal laws, the Penal Code and so on) and are subject to different types of sanctions, which might affect in the enforceability of the laws.

Box 4 illustrates the measures implemented in Belgium and Spain to consolidate social security offences into a single legal instrument.

Box 4. Country examples concerning the consolidation of social security obligations and penalties

- ▶ **Spain.** The Act on Offences and Sanctions in the Social Order (Royal Decree No. 5/2000 of 4 August 2000) consolidates under Chapter III three categories of offences concerning social security. The law establishes sanctions for each category of offences, which can be of a minor, serious or very serious nature (arts 21 to 23). The law codifies violations committed by employers, workers, the self-employed, social security beneficiaries and institutions involved in administering the social security system. Article 39 stipulates a scale of sanctions applicable to each category, including three levels of sanctions: minimum, medium and maximum. The level of the sanction depends on the offender’s negligence and intent, failure to comply with previous warnings, the company’s turnover, the number of employees or beneficiaries affected and other circumstances that may aggravate or mitigate the level of the infringement.
- ▶ **Belgium.** In 2009, the parliament enacted the Penal Social Code, which consolidates all offences against labour law and social security. The Code expanded provisions concerning respect for fundamental rights (rights of the defence, proportionality of penalties) and decriminalized less serious offences, which are punishable as administrative offences (with administrative fines) only, allowing courts to focus on the more serious forms of social security fraud. The Code also introduced a rule for surcharges and the principle of multiplying the penalty by the number of workers involved in the offence; the harmonization of administrative and criminal fines; and uniform procedures for prosecutions of violations at both criminal and administrative levels. Offences are grouped by subject and the following four levels of sanctions.

Sanctions	Imprisonment	Criminal fine (€)	Administrative fine (€)
Level 1			80 to 800
Level 2		400 to 4,000	200 to 2,000
Level 3		800 to 8,000	400 to 4,000
Level 4	6 months to 3 years	4,800 to 48,000	2,400 to 24,000

Source: Adapted from ILO (2011), 161 and 16; and Belgium, Federal Public Service, “[Employment, Labour and Social Dialogue](#)”.

Some countries have invested social security officials with extensive rights, which go as far as to allow them to impose fines and even terms of imprisonment.

- ▶ In **Thailand**, the Social Security Act of 1990, as amended, provides that social security officials tasked with inspection and enforcement functions are given the status of competent officials under the Penal Code and may impose penalties, including terms of imprisonment (arts 81 and 83). Employers who do not register their employees on time, do not report changes on the employee's personal status or provide false information are liable to imprisonment for up to six months or a fine not exceeding 20,000 baht (approximately US\$583) or both (arts 96 and 97).

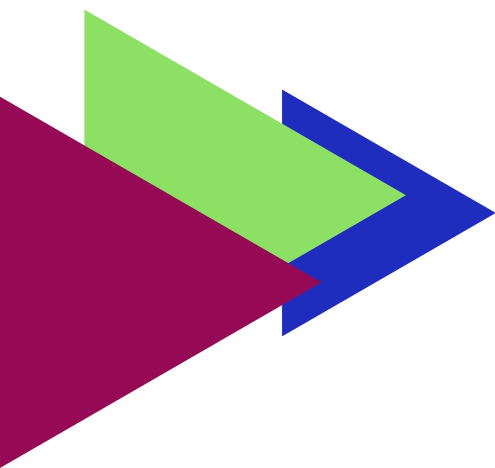
4.2.2 Sanctions other than pecuniary and criminal aimed at fostering compliance

4.2.2.1 Exclusion from public tenders

The adoption of deterrent measures, including sanctions that affect the economic interests of enterprises, also plays a crucial role in securing compliance. For example, excluding non-compliant employers from participating in public contracts can act as a deterrent against evading social security contributions and related obligations.

In many countries, national legal frameworks include provisions that specify that public authorities should exclude non-compliant enterprises from participating in public tenders and contracts (box 5).

The European Directive on public procurement of 26 February 2014 is an interesting example in this regard (box 6). The Directive provides that “**an economic operator shall be excluded from participation in a contract where the contracting authority is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions** and where this has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority” (art. 57(2)). The Directive permits **Member States of the European Union** to provide for a derogation from this mandatory exclusion on an exceptional basis or where an exclusion would be clearly disproportionate (due to the amount of unpaid contributions).



Box 5. Examples of exclusions from public contracts in legal frameworks

- ▶ **Brazil.** According to Act No. 8.666 of 21 June 1993 on general bidding, companies applying for public tenders must submit proof of having fulfilled their tax and social security obligations (art. 29).
- ▶ **United Kingdom.** The Public Contract Regulations of 2015 stipulates that authorities have discretionary power to exclude a company from a public tender if it is in breach of its obligations relating to the payment of taxes or social security contributions (art. 57(4)).
- ▶ **Austria.** The Public Procurement Act of 2018 states that authorities should exclude companies from public tenders when they have committed a serious violation of labour law, social security law or environmental law or when they have not fulfilled their obligations in terms of social security contributions and taxes (art. 78(5) and (6)).

In some countries, legal frameworks also include provisions for the exclusion of non-compliant companies from public tenders.

- ▶ **Hungary.** Article 62(1)(b) of Act CXLIII of 2015 on Public Procurement stipulates that companies and subcontractors should be excluded from participation in a public tender procedure when they have not fulfilled their tax, customs duty or social security contribution payment obligations for more than one year.
- ▶ **Portugal.** To participate in public tenders, companies should not have been convicted during the last two years for the use of labour that was not declared in terms of tax and social security.
- ▶ **Luxembourg.** The Social Security Code states that, in addition to a penalty, companies should be excluded from public tenders for a period of three months up to a maximum of three years for intentionally withholding contributions or levying unauthorized contributions (art. 449(4)).

Source: Adapted from ILO (2011), 161 and 162.

Box 6. Incentives and disincentives as deterrence measures

A system of sanctions based solely on the imposition of fines may not be sufficient to achieve high compliance levels. Therefore, other deterrence measures, including regulatory incentives and disincentives, should be considered, including:

- ▶ excluding employers from public tenders;
- ▶ limiting employers' access to public aid, subsidies or credit;
- ▶ banning enterprises from participation in public contracts for a limited time; and
- ▶ temporarily or permanently withdrawing the licence to conduct the business.

Considering that administrative sanctions alone are unlikely to be enough to deter unscrupulous employers, compliance should be strengthened by applying criminal penalties in certain instances.

Source: Adapted from European Parliament (2014).

In **Ecuador**, for example, contractor companies must provide a certificate of compliance with social security obligations in order to receive payments for work performed for any public-sector entity. Social security law also provides that all companies, for the approval of statutory reforms, capital increases, evaluation of assets, balance sheets and financial statements, should present certification that they are up to date in the fulfilment of all obligations with the Ecuadorian Institute of Social Security (art. 87).

4.2.3 Designing and implementing policy measures to combat social security fraud

A growing number of countries have developed innovative measures and policies to promote compliance with social security legal frameworks by both employers and workers, including by way of preventive measures such as inspections and audits, training of labour inspectors, awareness campaigns, reporting fraud and publicity campaigns.

- ▶ In the **Philippines**, the Social Security System Anti-Fraud Department conducts training of its personnel to detect fraud and falsified documents. In addition, human resources professionals are trained on Philippine social security law and on the employer's obligations in this regard.
- ▶ A list of non-compliant employers may be published (**Chile**, the **United Kingdom** and **New Zealand**).
- ▶ The reporting of suspected cases of non-compliance with social security obligations may be incentivized (**Spain**, the **United Kingdom** and the **United States**). In the United Kingdom, there is a free hotline, the Fraud Benefit Hotline, which anyone can contact anonymously to identify persons who are suspected of abusing benefits. A similar system exists in the United States, where anyone can submit a report online on persons suspected of fraud.
- ▶ Coordination between social security institutions and other state actors (labour inspectorate, tax authorities, the police, customs and immigration services) may be enhanced.



Box 7. France: Measures to combat social fraud

Decree No. 2020–872 of 15 July 2020 created new structures to combat both social security and fiscal fraud. An inter-ministerial anti-fraud coordination mission (MICAF), which is chaired by the Prime Minister, is the political body entrusted with defining the policy objectives to combat fraud. MICAF, under the responsibility of the ministry in charge of the budget, is responsible for the coordination of administrations and public bodies in combating fraud in public finances (compulsory levies of fiscal and social, social benefits) at national and local levels. It also facilitates cooperation with the European bodies responsible for protecting the European Union’s financial interests and operational exchanges with the European Anti-Fraud Office.

The task of MICAF includes facilitating coordination with other government and European bodies to exchange information, interoperability and interconnection of files. It guides national anti-fraud operational groups (GONAFs) to combat undeclared work, as well as the local committees that coordinate all joint action at the local level undertaken by the administrative services responsible for combating fraud.

The decree also created the GONAFs to promote the decompartmentalization of approaches, facilitate information-sharing, establish common risk maps, and develop coordinated actions and investigations. In particular, this enhances the identification and combating of complex and organized fraud by promoting better coordination of administrative and judicial efforts in the following areas:

- ▶ VAT fraud;
- ▶ counterfeiting;
- ▶ tobacco trafficking;
- ▶ tax and social fraud committed via e-commerce;
- ▶ illegal work and related tax evasion;
- ▶ tax and social fraud committed through fraudulent ephemeral companies;
- ▶ residence fraud;
- ▶ documentary and identity fraud;
- ▶ adapting survey resources to digital challenges; and
- ▶ enhanced recovery of debts in the area of public finance fraud.

Both the MICAF and the GONAFs are chaired by the Prime Minister. They are coordinated by the ministers for labour, social security, solidarity and health, justice, interior, immigration, agriculture and transport. Depending on the issues on the agenda, other members of the Government and the representatives of social security institutions and administrative and judicial investigation services may be called upon to sit on these bodies.

Coordination of efforts to combat fraud at the local level is organized by local anti-fraud operational committees, which according to the priority actions and specificities of each territory are responsible for:

- ▶ determining the coordinated actions to be put in place between partners in combating fraud that affects compulsory tax and social contributions as well as fraud that concerns benefits; and
- ▶ ensuring the operational exchanges of information among the competent state services and between these services and social security institutions.

Local committees are co-chaired by prefects and public prosecutors in their plenary form and under the sole chairmanship of public prosecutors in their restricted form.

Source: France, Décret n° 2020-872 du 15 juillet 2020 relatif à la coordination interministérielle en matière de lutte contre la fraude et à la création d’une mission interministérielle de coordination anti-fraude ; and France, Ministry of the Economy, Finance and Recovery, “MICAF”.

4.2.4 Promoting compliance by adapting social protection mechanisms to fit the specificities of hard-to-cover groups

To effectively extend the coverage of contributory schemes, these mechanisms should be effectively adapted to labour market characteristics, in particular to the high number of workers in non-standard forms of employment and informal employment (ILO 2017d). This includes mechanisms that take into account income volatility and in some cases seasonal employment, especially in the case of rural and agricultural workers (box 8).

Box 8. Costa Rica: Collective insurance agreements with farmers

In Costa Rica, own-account workers, including farmers, have been able to join organizations and enter collective insurance agreements with the social insurance system since 1984.

To register, the organization files an application with the social insurance system, together with documentation proving its legal personality and associate number. After the organization is accredited, the negotiation procedure begins. Only own-account workers and those performing activities consistent with the nature of the organization may participate. The organization also negotiates group contributions with the Board of Directors of the social insurance institution (CCSS). It is responsible for collecting the previously negotiated contributions from the insured and transferring them, together with a monthly report, to the CCSS.

The Board of Directors is responsible for establishing general guidelines, approving increases in contribution scales and settling force majeure disputes. Collective agreement registrants have the same rights as those established for employed workers. Contribution levels are set according to the specific productive activity performed by the registered workers of the organization and according to the contributory capacity of the registered group. They are established on the basis of specific and regular reference incomes for certain members, rather than according to income categories as in the case of individual registration. Within the same organization, different contribution scales are established for individual members. The organization itself decides what scale is most appropriate to the person's income. This is periodically verified by inspectors.

Source: ILO (2021c), box 4.14.

Some countries have extended the coverage of contributory arrangements within the general social security system through, for example, subsidized contributions. Other countries have implemented distinct modalities in respect of hard-to cover-groups, including agricultural workers, self-employed persons, domestic workers and construction workers while taking into consideration the need to secure the portability of social security rights (both acquired and in the course of acquisition). **Tunisia** is a good example of the latter approach, with eight different schemes and distinct benefit packages for different difficult-to-cover groups, namely:

- ▶ non-agricultural employees;
- ▶ agricultural employees;
- ▶ fishermen;
- ▶ self-employed;
- ▶ Tunisians working abroad;
- ▶ domestic workers;

- ▶ low-income earners; and
- ▶ artists, creative workers and intellectuals.

Box 9 presents some of the characteristics of the scheme for artists, creative workers and intellectuals.

Box 9. Tunisia: Extending social protection to artists

Although Tunisia has eight different social security schemes covering the various groups mentioned above, they are administered by a single institution, the National Social Security Fund (CNSS).

Law 2002-104 introduced the scheme for artists, creative workers and intellectuals, which seeks to cover individuals who carry out an artistic or cultural activity on a permanent basis and are not subject to any other social security scheme.

Individuals who fulfil the registration requirements under this scheme pay a quarterly contribution of 14.7 per cent of an annual contribution base, which is determined based on the monthly minimum wage and a multiplier coefficient (SMIG) set for ten income classes (see table). As a reference, the overall contribution rate for non-agricultural employees is 25.75 per cent (16.57 per cent borne by the employer and 9.18 per cent by the employee).

Amount of contributions from 1 January 2023				
Income class	SMIG multiplier coefficient	Annual contribution base -D-	Monthly amount of contributions -D-	Annual amount of contributions -D-
1	2	10 598 400	129 919	1 559 025
2	2.5	13 248 000	162 398	1 948 781
3	3	15 897 600	194 878	2 338 537
4	4	21 196 800	259 837	3 118 049
5	5	26 496 000	324 797	3 897 562
6	7	37 094 400	454 716	5 456 586
7	10	52 992 000	649 594	7 795 123
8	13	68 889 600	844 472	10 133 660
9	16	84 787 200	1 039 350	12 472 197
10	18	95 385 600	1 169 269	14 031 222

The contribution paid by artist, creative workers and intellectuals finances old-age, disability, survivors, sickness, maternity and medical care benefits. Coverage in case of work injury or occupational diseases is possible, subject to an additional contribution of 0.5% of declared earnings.

Source: Tunisia, CNSS (2023).

4.2.4.1 Cooperation between social security and tax authorities

Another measure to prevent contribution evasion and social fraud is to facilitate the exchange of data between the relevant social security institutions and the tax authorities. Strategies that facilitate data exchange between public institutions have the potential to reduce fraud and contribution evasion while enhancing coordination and governance of the social security system. Such strategies have been implemented in many countries.

- ▶ In **Bulgaria**, the National Revenue Agency (NRA), the labour inspection directorate and the national social security institute collaborate closely to improve compliance with social security obligations. The labour inspectorate has real-time electronic access to the “register of employment contracts”, which each employer submits to the NRA at the beginning and at the end of each employment contract and every time the contract is modified. The NRA is also responsible for contribution collection and it provides the national social security institute with data received from the insurance funds with regard to employment contracts and contributions paid by employers and the self-employed.
- ▶ In the **United Kingdom**, the Department of Work and Pensions is authorized to triangulate its data against those held by other government departments, such as Her Majesty’s Revenue and Customs, in order to detect fraud committed by social assistance beneficiaries who receive income from work. Data-sharing between the two departments has been further strengthened since 2014 with the introduction of real-time information data, which collects up-to-date information on income from work and other sources, including benefits.
- ▶ In **Colombia**, the Special Administrative Unit for Pension Management and Parafiscal Contributions of the Social Protection (UGPP) under the Ministry of Finance has been responsible for monitoring the adequate, complete and timely payment of social security contributions since 2010. To carry out these tasks effectively, the UGPP has privileged access to the information managed by the National Registry of Civil Status and the annual personal income tax declarations and businesses tax returns managed by the Directorate of National Taxes and Customs. The UGPP may report the findings to the administrators of the Social Protection System to take the necessary actions to determine, settle and collect social security contributions under their competence (Law 1450, art. 227(2)).
- ▶ In **Uruguay**, since 2013 the Social Insurance Bank, the General Tax Directorate and the General Labour and Social Security Inspectorate have improved their system’s interoperability data exchange on company records and taxable wages of workers.

Aiming to achieve greater efficiency with regard to contribution collection and enforcement, some countries have allocated the inspection and audit functions of the respective social security institutions to one or a reduced number of institutions. This approach also seeks to reduce the administrative burden for employers (who are responsible for the payment of their and their workers’ contributions) and rationalize the costs of enforcement bodies. For example, in **Bulgaria** social security contributions are collected by the tax authority but the national social security institute is responsible for monitoring compliance with contributions that finance disability, survivors’, old-age, maternity and unemployment, health care and supplementary compulsory pension insurance. Monitoring can be performed together with officials of the NRA based on an agreement between the governor of the national social security institute and the director general of taxes (Social Security Code, art. 108).

Also, joint examinations of wage taxes and contributions (GPLB) have been implemented in **Austria** since 2003. GPLB examines compliance with all wage-related charges, including taxes on wages, municipal taxes and contributions for health, pension, accident, unemployment insurance and insurance in case of insolvency. Previously, the auditing function was entrusted to three different institutions – the tax administration, health insurance organizations and municipalities – which implied a higher administrative burden for employers. Since July 2020, the tax administration and the Austrian Health Fund have carried out audits jointly. Each inspector audits the data that fall within its competence and the data of the other. The auditors remain subject to their respective hierarchies.

4.2.4.2 Designing integrated tax and social security mechanisms favouring compliance by micro and small enterprises, self-employed persons, agricultural workers and enterprises

ILO labour and social security standards recognize the important role that simplified schemes can play in formalizing micro and small enterprises (MSEs) and the self-employed and the extension of social security coverage. In particular, Recommendation No. 204 provides that with respect to the formalization of micro and small economic units, members should reduce compliance costs by introducing simplified tax and contributions assessment and payment regimes (Para. 25(b)).

Simplified contribution and tax payment schemes can be effective mechanisms for extending the coverage of contributory schemes to difficult-to-cover groups, while taking into account the particularities of their economic activities. Countries like **Argentina**, **Brazil** and **Uruguay** have implemented such schemes, which are often referred to as “monotax” schemes, in order to facilitate self-employed and informal workers’ registration and payment of social security contributions and compliance with the tax system.

Monotax schemes unify social security contributions and taxes (income tax and value added tax) into a single contribution, which can be set as a flat-rate payment or a percentage of actual or assumed earnings or turnover. These schemes also reduce the burden of compliance for workers and small contributors by entrusting the scheme’s administration and the responsibility for contribution collection to one institution instead of several.



Rural employment services project - Uganda, © ILO

In addition, some monotax mechanisms also reduce the financial burden faced by the self-employed and MSEs by setting a unified rate that is lower than the usual tax and social security contributions paid by entrepreneurs outside the mechanism (ILO 2021b). The Uruguayan case is briefly reviewed in box 10.

Box 10. Uruguay: Monotributo

Monotributo

This is a simplified scheme introduced in 2006 that allows self-employed persons engaged in reduced economic activities to register in Monotributo and pay a unified monotax contribution (social security and taxes) based on an assumed income below the monthly minimum wage.

Persons eligible to register in Monotributo can choose to enrol in the general social security scheme instead, in which case they will pay the regular social security contributions to the Social Insurance Bank (BPS), based on the monthly minimum wage, and will submit a separate tax declaration with the General Tax Administration.

Monotributo Social

Introduced by Law 18.874, this variant of Monotributo seeks to cover self-employed persons with very low contributory capacity, including one-person enterprises and de facto partnerships with up to five members. Under this simplified scheme, eligible self-employed persons engaged in small maintenance and repair activities, such as masonry, plumbing, plaster repairs and de facto partnerships, pay a reduced monotax contribution (social security and taxes).

To be eligible to register under the Monotributo Social, individuals must belong to a household categorized as vulnerable by the Ministry of Social Development or as living under the poverty line by the National Institute of Statistics. In addition, small contributors cannot have dependent employees and their annual turnover cannot exceed:

- ▶ 1,074,997 Uruguayan pesos (Ur\$)* for individual ventures as of January 2024.
- ▶ Ur\$1,791,662 for de facto partnerships as of January 2024.

The monotax contribution is set as a monthly flat-rate amount of Ur\$2,345 as of January 2024; however, the contribution is paid progressively, starting with 25 per cent of the total contribution for the first 12 months, 50 per cent for the second 12 months, 75 per cent for the next 12 months and 100 per cent as of the 36th month.

This scheme includes old age, disability and cash sickness benefits. Persons registered in the Monotributo Social may voluntarily enroll in the health insurance programme, subject to the payment of additional contributions that vary depending on their family composition.

*Exchange rate at : US\$1.00 = Ur\$ 39.3.

Sources: Uruguay, BPS (2024); Uruguay, "Monotributo Social MIDES -Ley 18.874: Información general"; and ILO (2021c).

4.3. Securing compliance through effective and accessible complaint and appeal mechanisms

Undoubtedly, social protection systems that effectively deliver benefits and services while meeting employers' and workers' expectations will have the trust and the support of the population (ILO 2017d; ISSA 2019c). However, even well-governed systems and schemes are not immune from making mistakes or failing to observe their legal obligations, whether due to policy failures, technical or administrative errors or in the worst case corruption (UN/DESA and ILO 2020). Complaint and appeal mechanisms that allow the lodging of complaints to effectively claim social security rights or the observance of the law by social security institutions are crucial for guaranteeing a rights-based approach to social protection and accountable institutions, as well as – importantly – to build trust.

Therefore, national legal frameworks need to clearly establish the mechanisms that are available to protected persons, their representative structures and employers, as well as inspection services, for the initiation of legal proceedings in response to violations of social protection laws.

4.3.1 Long-standing recognition by human rights and ILO social security instruments

A rights-based approach to social protection implies the right to access to justice in case of violation of the legislation and to seek redress of such violation. The universal and fundamental nature of the right of access to the courts and the complementary right to an effective remedy are recognized by the international human rights instruments. The Universal Declaration of Human Rights⁶ and the International Covenant on Civil and Political Rights (Art. 2(3)) establish every person's right to effective remedies by the competent administrative or judicial authority when their fundamental rights are violated. Set forth by the Universal Declaration of Human Rights in 1948 (Arts 8 and 10), the right of every person to a fair and public hearing by an independent and impartial court or tribunal within a reasonable time has since then also been recognized by several international and regional human rights standards, including the International Covenant on Civil and Political Rights (Art. 14) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Art. 6(1)). In a general comment, the UN Committee on Economic, Social and Cultural Rights emphasized the importance of ensuring the availability within national legal systems of appropriate means of redress and accountability for violations of economic, social and cultural rights. States have the duty to ensure that legal remedies, whether of a judicial or administrative nature, are available to aggrieved individuals or groups. These remedies must be "accessible, affordable, timely and effective".

ILO social security instruments have also long recognized the right to lodge a complaint and the right of appeal in social security matters to ensure compliance with, and the effective implementation of, the rights of insured persons and due process. The remedies available to individuals whose social security rights have been violated depend on the national legal framework but in most cases include access to courts, tribunals and other dispute-resolution mechanisms.

ILO instruments therefore reflect the sequential and complementary character of the rights to complain and to appeal. For complaints about the quality and quantity of benefits, the review of decisions of the local social security body is first carried out by a higher-level administrative authority within the social security system itself. Once that internal complaint procedure has been exhausted, appeals against the decisions of this administrative authority may be engaged subsequently in order to settle disputes through the intervention of an external (normally judicial) body.

⁶ Article 8: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law".

The right of appeal should thus be guaranteed against the decisions of a social security administration to either a court of general jurisdiction or a special tribunal. The concept of appeal further implies the settlement of disputes by an authority that is independent of the administration that reviewed the initial complaint. Merely guaranteeing the right to seek review of the decision by the same administrative authority would therefore not be sufficient to constitute an appeal procedure in accordance with the principles guaranteed by ILO social security standards. In the absence of special appeal procedures against the decisions of an administrative authority responsible to the government which rules in the first and last resort, the safeguards provided for in ILO instruments may nonetheless be ensured by the application of the general rules governing the right of appeal to the ordinary courts in so far as these rules permit the review or annulment of any administrative ruling.

Box 11. A snapshot of the concept of complaint and appeals in international standards

- ▶ The Medical Care Recommendation, 1944 (No. 69) indicates that provisions should be made for the submission of complaints by beneficiaries concerning the care received to appropriate arbitration bodies under conditions that afford adequate guarantees to all parties concerned (Para. 63). Beneficiaries who have submitted complaints to the competent arbitration body should have the right to appeal their decisions to an independent tribunal (Para. 112).
- ▶ The Income Security Recommendation, 1944 (No. 67) also recognizes the right of appeal for claimants in case of dispute with the administrative authority concerning such questions as the right to benefit and the rate thereof. It indicates that appeals should preferably be referred to special tribunals, which should include referees who are experts in social insurance law, assisted by assessors who are representative of the group to which the claimant belongs and, where employed persons are concerned, by representatives of employers as well (Annex, Para. 27(8)). Recommendation No. 67 recognizes the right of appeal not only for insured persons but also for employers in any dispute concerning liability to insurance or the rate of contribution (Annex, Para. 27(9)). In addition, provisions for the uniformity of interpretation should be assured by a superior appeal tribunal (Annex, Para. 27(10)).
- ▶ Convention No. 102 provides that every claimant shall have the right of appeal in case of refusal of the benefit or complaint as to its quality or quantity (Art. 70(1)). Where a claim is settled by a special tribunal established to deal with social security questions and on which the persons protected are represented, no right of appeal shall be required (Art. 70(3)). Where the medical service is administered by a government department responsible to a legislature, the right of appeal may be replaced by the right to have a complaint concerning the refusal of medical care or the quality of care received investigated by the appropriate authority (Art. 70(2)).
- ▶ Recommendation 202 specifies in this respect that **impartial, transparent, effective, simple, rapid, accessible and inexpensive complaint and appeal procedures should be specified**. Access to complaint and appeal procedures should be free of charge to the applicant. Systems should be in place that enhance compliance with national legal frameworks (Para. 7).

Finally, the distinction between complaint and appeal procedures is also relevant with respect to the bodies with which claims are to be lodged: while complaints should be addressed to the body administering the benefit scheme, appeals should be lodged with an independent body, such as a court or tribunal. ILO instruments do not determine the form to be taken by the complaint or appeal procedure. In many countries, the practice is to grant claimants the right to appeal to an administrative authority superior to that which decided in the first instance, as well as to special social security or labour tribunals or the ordinary courts.

Box 12 presents the relevant provisions concerning appeal and complaint mechanisms in ILO social security standards.

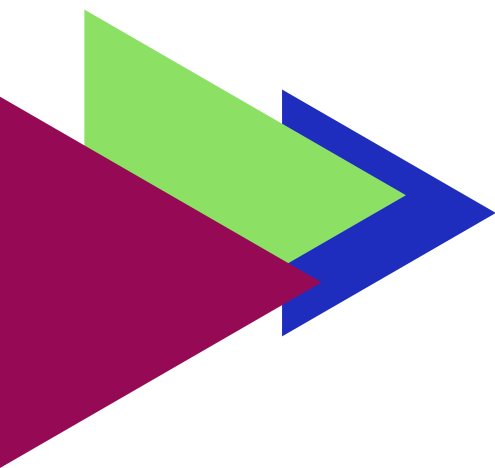
Box 12. Complaint and appeal mechanisms in ILO social security standards

The right to complaint and appeal is prescribed in the following ILO social security standards:

- ▶ Social Security (Minimum Standards) Convention, 1952 (No. 102).
- ▶ Employment Injury Benefits Convention, 1964 (No. 121), Art. 23.
- ▶ Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), Art. 34.
- ▶ Medical Care and Sickness Benefits Convention, 1969 (No. 130), Art. 29.
- ▶ Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), Art. 27.
- ▶ Income Security Recommendation, 1944 (No. 67), Para. 27.
- ▶ Medical Care Recommendation, 1944 (No. 69), Paras 63 and 112 to 114.
- ▶ Social Protection Floors Recommendation, 2012 (No. 202), Paras 3(o) and 7.

Source: Adapted from ILO (2019), p. 69; and ILO (2021a), p..2.

Also, in order to effectively guarantee that protected persons can exercise their right to lodge a complaint and to appeal a decision, a number of substantive and procedural provisions need to also be enshrined in law, including the type of remedies available to protected persons; the grounds giving rise to the right of complaint or appeal; the time limits within which claimants must exercise this right; and the formalities to be completed by the claimant (ILO 2019c).



Box 13 presents an overview of the complaint and appeal process established in the legal framework governing social assistance benefits in South Africa, including some relevant procedural provisions.

Box 13. South Africa: Complaint and appeal mechanisms

The Social Security Agency (SASSA) administers the non-contributory component of **South Africa's** social protection system. This component includes the following nine benefits, governed by the Social Assistance Act of 2004, as amended:

- ▶ child support grant;
- ▶ old-age grant;
- ▶ disability grant;
- ▶ war veteran's grant;
- ▶ care dependency grant;
- ▶ foster care grant;
- ▶ grant in aid; and
- ▶ social relief of distress grants.

Complaint and appeal processes established by law

- ▶ The Social Assistance Act requires SASSA to offer all reasonable assistance to a person, who, due to his or her age, disability or inability to read or write, is unable to understand, appreciate or exercise their rights, duties or obligations in terms of the Act, in the official language of the Republic which he or she is likely to understand (Section 2(3)).
- ▶ Section 14 of the Act provides that when a social assistance claim is rejected, the claimant has the right to request a reconsideration of the SASSA decision. The responsibility to hear appeals is entrusted to an independent tribunal comprised of appropriately qualified persons appointed by the Minister after consultation with Parliament (section 18).
- ▶ A beneficiary or a person acting on their behalf who disagrees with the SASSA decision under the Act may lodge a written appeal with the tribunal within 90 days of the decision. The request must set out the reasons for the appeal and why the tribunal should vary or set aside the SASSA decision.
- ▶ Upon receipt of the written appeal, the tribunal must request the SASSA to provide the reasons and all relevant records that informed the contested decision.
- ▶ The tribunal must consider the appeal within 60 days of receipt of the relevant information and may confirm, vary or set aside the SASSA decision or make any other just pronouncement.

Source: South Africa, Social Assistance Act of 2004, as amended.

Box 14 includes a checklist that can be used to do a preliminary assessment on whether the right to complain and appeal established in a given country follows a rights-based approach.

Box 14. Checklist. Complaint and appeal mechanisms: Alignment with international standards

Answering the following questions gives an indication of whether a social protection scheme's accountability mechanisms follow the rights-based approach:

- Does the national legal framework establish the right to complain and appeal?
- Does the legal framework contain procedural elements that allow individuals to exercise their right to lodge complaints or appeals?
Procedural elements include:
 - the revision of programme eligibility;
 - supervision of the distribution of benefits;
 - how to initiate a complaint or appeal a decision;
 - which authority is in charge of the decision;
 - which type of remedies are available; and
 - what are the time limits and formalities to be accomplished.
- Are the established complaint and appeal procedures impartial, transparent, effective, simple, rapid, accessible and inexpensive?
- Does the national legislation provide for effective remedies in cases where an individual's social security rights are violated?

Source: Based on ILO (2021a).

4.3.2 Main types of mechanisms settling individual claims

Pursuant to Recommendation No. 202, complaint and appeal procedures need to be specified in law so that rights are enforceable and predictable and so that relevant stakeholders involved, and through them the State, can be held accountable for the due provision of benefits or proper management of the system and schemes in application of the law.

In a considerable number of countries, such procedures are regulated by the same legal instruments that establish social security benefits. For example, in **Slovakia** the Act on Social Insurance contains provisions that regulate appeal procedures against decisions related to insurance schemes. In **Mauritius**, the National Pensions Act establishes the right of claimants to challenge the decisions of a national pensions officer, a medical officer or a medical board concerning the payment of benefits. In **Namibia**, any person aggrieved by a decision of the Social Security Commission may appeal to the Labour Court. In some other countries, there are separate laws on complaint and appeal procedures. For instance, in **Poland** these procedures are set out in the Code of Administrative Procedure, while in **Saint Vincent and the Grenadines** they are set out in the National Insurance (Determination of Questions) Regulation of 1995.

▶▶ The effective exercise of the right to complaint and appeal requires the law to be specific on a number of substantive and procedural aspects, including the type of remedies available to protected persons; the grounds giving rise to the right of complaint or appeal; the time limits within which claimants must exercise this right; and the formalities to be completed by the claimant.

Most social security schemes guarantee the right to appeal to a body independent of the one that initially awards and pays benefits. In a number of countries, including **Colombia, Namibia, Poland, Spain, Slovenia, the Russian Federation and Viet Nam**, the right to complain or appeal is guaranteed by the national constitution.

Box 15. The right to complaint or appeal in national constitutions

- ▶ In **Brazil**, the Constitution provides that a beneficiary who disagrees with the administrative decision made in the first instance is guaranteed the right of appeal.
- ▶ In **Bosnia and Herzegovina**, the Constitution provides that all persons are guaranteed the right to appeal or other remedies against a decision determining their rights or legal interests, including their social security rights.
- ▶ In **Poland**, article 63 of the Constitution provides that every person has the right to submit petitions, proposals and complaints in the public interest, in their own interest or in the interests of another person (with their consent) to public bodies, organizations and social institutions, in connection with the performance of their prescribed duties in the field of public administration.
- ▶ In **Viet Nam**, article 31(1) of the Constitution prescribes the right of every person to lodge complaints and appeals with the competent state bodies against illegal acts of state authorities, organizations and individuals.

Source: Adapted from ILO, 2011, pg.169.

Some countries, including **Algeria, Djibouti, Greece** and the **United States**, have established tripartite social security dispute settlement mechanisms, which in most cases take the form of local or regional administrative committees composed of representatives of workers. In **Djibouti**, both employers and workers have the right to lodge complaints before a tripartite board appointed by the administrative board of the national social security fund. They may refer the case to the labour courts if the complaint is rejected by the board.

Four main types of legal procedures for reviewing benefit decisions taken by competent social security institutions may be distinguished: (i) internal administrative procedures; (ii) special judicial procedures; (iii) judicial procedures before general courts; and (iv) mixed procedures (box 16).

Box 16. Examples of complaint and appeals legal procedures

- ▶ **Internal administrative procedures.** In some countries, the right to seek a formal change of an official decision relating to a social security claim is only envisaged at the administrative level. Complaints against decisions made by lower administrative bodies may be brought to higher authorities or appealed to a special body set up within the social security administration (ILO 2011).
- ▶ **Special judicial procedures.** In **Ethiopia**, according to the Social Security Agency Establishment Proclamation, the Social Security Appeal Tribunal shall examine and decide on appeals made against decisions of the Agency relating to social security rights and benefits.
- ▶ **Mixed procedures.** In **Ecuador**, the Social Security Law establishes two administrative bodies responsible for handling complaints concerning the approval or denial of benefits claims brought by insured persons: (a) the National Appeals Commission; and (b) the Provincial Benefits and Disputes Commission. The Provincial Benefits and Disputes Commission resolves claims and complaints of insured persons or their beneficiaries in the first instance. In the second and final instance, the National Appeals Commission hears and decides appeals against administrative decisions made by the Provincial Benefits and Disputes Commission (art. 44). Although the decisions of the National Appeals Commission are not subject to administrative appeal, they can be challenged via judicial proceedings, as prescribed in article 173 of the Constitution.

Some national legislation only provides for the right to complain or appeal to the tribunals and courts of the national judicial system. There may be a special judicial procedure for social security matters, although in most countries complaints or appeals must be lodged with the general courts.

- ▶ In the **United Kingdom**, following the implementation of the Tribunals, Courts and Enforcement Act 2007, a single Tribunals Service consisting of two tiers – a First-tier Tribunal and an Upper Tribunal – has been developed. In most cases, a decision by the First-tier Tribunal (Social Entitlement Chamber) may be appealed to the Upper Tribunal (Administrative Appeals Chamber) and decisions of the Upper Tribunal are subject to appeal to a court. However, the right of appeal may only be exercised with the authorization of the tribunal that handed down the initial decision or the tribunal or court with which the appeal is lodged. The Upper Tribunal also has jurisdiction to deal with some judicial review cases that would otherwise have to be dealt with by the High Court or the Court of Session.
- ▶ In **Austria**, social security claims give rise to legal proceedings. The right to make a complaint against a decision by a social insurance institution is provided for in the Labour and Social Security Act. Procedural matters are established in the Labour and Social Court Act and the Code of Civil Procedure. In the proceedings of first instance, a claim must be brought to the regional court tasked with labour and social matters. First-instance judgments can be contested within four weeks of their notification to the competent higher regional court. In the third instance, an appeal against a higher regional court's decision may be made to the Supreme Court.
- ▶ In **Namibia** and **Türkiye**, appeals concerning social security matters may be lodged with the labour courts. In Türkiye, the rulings of specialized labour courts may be appealed to the Court of Appeals, which has two chambers specialized in social security and labour law.

The rights of complaint and appeal can sometimes be exercised through both administrative and judicial procedures by lodging the claim with the competent administrative bodies in the first instance (the right to complain) and the corresponding tribunal in the second (the right to appeal).

- ▶ In **Japan**, in matters relating to health insurance and employee pension insurance, claims concerning insurance benefits must be made to a social insurance review officer. If the claimant is not satisfied with the decision made by the latter, administrative appeals may be lodged with the Social Insurance Review Panel before claims can be submitted to courts of law for judicial review.
- ▶ In **Poland**, the decision of the social insurance institution may be appealed in the relevant court within a period and according to rules set out in the Polish Code of Civil Procedure. Jurisdiction for general social security matters is allocated to regional courts. However, in matters related to sickness benefits, maternity benefits, family allowances and invalidity and work injury benefits, it is allocated to district courts in the first instance. Appeals must be made through the administrative body that took the decision under appeal. An appeal is first addressed in writing to the administrative body, which either: (i) admits the appeal and revokes (reverses) the decision or changes it; or (ii) upholds the decision and immediately forwards the appeal to the courts. In the second instance, claimants may lodge an appeal with the Court of Appeal and may ultimately appeal to the Supreme Court against sentences or decisions by courts of second instance.

Depending on national legislation, the competence for handling appeals with regard to social security rights may therefore lie with three different types of courts:

- ▶ administrative courts (as in **Bulgaria, Croatia, Germany, the Netherlands, Sweden, Uruguay**);
- ▶ labour courts (as in **Cuba, Israel, Namibia, Syrian Arab Republic, Türkiye**); or
- ▶ social security courts and tribunals (as in **Ethiopia, Gabon**).

As noted above, national legislation should establish procedural framework for settling social security claims, including, importantly, the length of the period available to claimants for lodging a complaint and appealing a decision. Although the length of this period varies greatly from one country to another, in order to effectively guarantee the right to procedural justice and fairness a reasonable period should be provided.⁷

An important component of exercising the right of complaint and appeal is the question of access. The right to receive legal aid therefore forms an essential means of helping beneficiaries in their efforts to identify and understand their legal rights and obligations and ultimately to achieve compliance with the social security legal framework. It is often the case that the provisions of the relevant national legislation are not formulated in simple and readily understandable terms. Such aid is also rendered necessary by the unequal positions of the parties involved, as state institutions and bodies are in a more favourable position. Beneficiaries often feel helpless when faced with complicated provisions; without proper assistance, they may be unable to resolve the issues that arise. Assistance in social security matters enables people to understand their legal obligations and assert their legal rights more effectively.

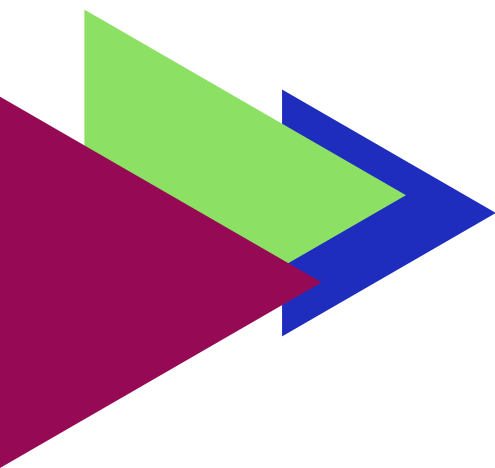
⁷ For example, in some countries protected persons must complain within four weeks (Austria) or six weeks (the Netherlands) from the date of notification of the decision of the body responsible for paying the benefit. Similarly, an appeal must be made within four weeks (Guernsey) to 90 days (South Africa) from the date of notification.

- ▶ In **Switzerland**, section 37 of the Federal Law on General Social Insurance of 6 October 2000 establishes the right to representation and aid by legal assistance in matters related to social security.
- ▶ In **Australia**, a person can be legally represented at any stage of the review process.
- ▶ In **Austria**, plaintiffs are entitled to represent themselves during the proceedings at the regional court, although representation by a lawyer is usually required in such proceedings. The plaintiff may also be represented by a representative of a voluntary professional association referred to in a collective agreement.
- ▶ In **Poland**, the legal assistance provided by a lawyer or a legal adviser is obligatory if the dispute is referred to the Supreme Court.
- ▶ In the **Dominican Republic**, Act No. 87-01 establishing the Dominican Social Security System entitles beneficiaries to be assisted by the Directorate of Information and the Defence of Insured Persons, where such protection is necessary. This assistance includes information about their rights, duties, resources, legal entities, legal action and the lodging of complaints, representation and the follow-up of cases.
- ▶ In the **United States**, in some cases claimants are entitled to financial assistance to obtain legal representation.
- ▶ In **Spain**, the proceedings before the Social Court do not require the assistance of a counsel or attorney. Employees may be represented and/or advised by a person of their choice.

4.3.3 Core principles for securing accessible and effective complaint and mechanisms

4.3.3.1 Simple and rapid litigation procedures

Simple and rapid procedures are crucial to ensure that the rights of complaint and appeal are accessible and effective, especially given that benefits are, in most cases, the only financial support available to beneficiaries. Therefore, decisions that reject or modify benefits, claims or requests should be explained to individual claimants, as far as feasible, in writing, using simple, clear and easy to understand terms. It is a good legal drafting principle that social security legislation should be drafted so that beneficiaries and contributors can easily understand their rights and duties (see Recommendation No. 67, Annex, Para. 27). In devising the procedures to be followed by beneficiaries and contributors, simplicity should be a primary consideration (Recommendation No. 67, Annex, Paras 27(3)–(4)). Convention No. 168 also expressly provides that the available complaint and appeal procedures should be simple and rapid (Art. 27(1)).



- ▶ In the **United States**, the Social Security Act does not explicitly require simple and rapid procedures. However, it does require that notices about programme benefits be written in simple and clear language (section 42). Because the Act establishes an obligation to provide benefits promptly, social security institutions are continuously looking for ways to streamline processes.
- ▶ In **Austria**, the procedural law of the social courts provides for the rapid treatment of claims. In Italy, in order to achieve a more rapid and simple procedure and effective protection of social rights, the Code of Civil Procedure introduced a process that includes oral hearings and the right of the judge to attempt conciliation. Hearings may not be postponed and the sentence must be filed with the Registry within 15 days. The procedure is also characterized by immediacy through the direct enforceability of interim rulings in favour of workers, as well as by the extended powers of the courts.

The prompt rendition of justice is indeed crucial in social security matters since claimants often rely on benefits to survive. social security claimants around the world too often continue to face related challenges in terms of poverty, literacy and remote living conditions as they struggle to obtain access to critical income support and medical care. This advocates for establishing “fast track” procedures for the rapid solution of cases where the urgency is manifest.

However, as observed by the ILO supervisory bodies in the 2010 General Survey concerning social security instruments, making the procedures in social security matters simple and rapid sometimes remains challenging. For example:

- ▶ “[i]n **Peru**, according to a report by the ombudsperson, as reported by the workers’ organizations (CGTP, CATP and CUT), the number of complaints in social security matters increased significantly in 2007, while the treatment of complaints, particularly in relation to old-age benefits, suffers from severe deficiencies. The Welfare Standards Office (ONP), which is responsible for the recognition and payment of pension entitlements, is one of the main causes of delays and the denial of pension rights. In 2008, some 15,000 procedures were delayed for over a year, while over 90,000 others were awaiting examination. The Constitutional Court has found that the participation of the ONP in judicial proceedings related to old-age benefit was unconstitutional and contrary to its case law. The responsibilities of the ONP included the assessment and payment of pensions, which is preventing thousands of workers from enjoying their entitlement to social security.⁸ To overcome these challenges, the government of Peru created in 2014 an Administrative Tribunal on Social Security tasked to act as the last administrative instance to resolve appeals filed against decisions issued by the ONP concerning pension entitlements.”

4.3.3.2 Fair trial and other key principles underpinning the right of complaint and appeal

The right to a fair trial is a fundamental safeguard to ensure that individuals are protected from unlawful or arbitrary deprivation of their human rights and freedoms, including the right to social security, and enables the effective functioning of the administration of justice. This fundamental right is intended to guarantee that courts and judges are impartial and have the judicial independence to decide disputes

8 [ILC.100/III/1B](#), para. 431.

according to the facts and the law, including freedom from improper internal and external influence. They should also have comprehensive legal knowledge and expertise. The right to a fair trial guarantees that any decision must be duly motivated or in other words must explain the reasoning that led to the decision in the dispute and must be legally enforceable. It also implies procedural equality between the parties to the dispute.

The right to have a recourse duly examined has been considered by the ILO supervisory bodies as falling under the general responsibility of the State to guarantee the proper administration of social security institutions and services. Any dysfunctions in social security recourse procedures therefore must be duly addressed by the State in conformity with the principles guaranteed by international social security law. The existence of appropriate recourse procedures should not be used abusively by forcing beneficiaries to file claims against decisions, thereby systematically denying their right to benefits. The fundamental principles guaranteed by international law should be applied throughout litigation procedures (complaints and appeals phases), as they intrinsically form part of the notion of the rule of law.

The European Court of Human Rights has also acknowledged that the “right to fair trial” (European Convention on Human Rights, Art. 6) is applicable to claims concerning social security benefits. Accordingly, in all the 47 Member States of the Convention, “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”. The non-execution of judgments granting social benefits is considered to be a violation of “fair trial” as well (*Burdov v. Russia* (2002)). Thus, the protection of the right to complaint in social security under the Convention is very comprehensive. Common law countries have developed the notion of due process, which aims at guaranteeing fair treatment throughout the judicial system, for example through persons’ entitlement to notice of a charge and a hearing before an impartial judge.

Other important general principles set out in international social security instruments in the area of the right of complaint and appeal comprise, inter alia:

- ▶ The principle of equality between the parties is extremely important in social security disputes, as claimants usually come up against a government or administrative body. Each party should also have access to the relevant evidence, including documents, expert opinions and so on. Dispute settlement bodies should therefore ensure that individual claimants have reasonable opportunities to assert or defend their rights.
- ▶ Another principle that is applicable in social security legal procedures concerns the burden of proof, which should not lie exclusively with the complainant.
- ▶ Finally, Recommendation No. 202 states that where the gratuity of the appeal procedures for the beneficiary is not ensured, the cost of appeal should be kept at the absolute minimum so as to allow for the effective exercise of this right, including by persons of small means. Both parties should be guaranteed the right to engage a lawyer or other qualified representative of their choice. The law should guarantee that claimants who cannot afford legal assistance are entitled to be represented by a public defender/counsel for the defence appointed by the competent authority.



► 5. Social security institutions as key actors of compliance

The governance of a social protection system, in particular how efficient, accountable and transparent it is, has a strong impact on not only how the system is viewed from the outside but also how it performs and how its members or contributors comply with their obligations. Seeking to enforce contributory obligations in the context of a scheme that neglects to observe elementary accountability and transparency rules would be equivalent to building a boat with leakages. Strengthening transparency, accountability and good governance is therefore essential for building trust and ensuring that the social protection system lives up to people's expectations (ILO 2021c). Where the members of a society generally distrust how social protection schemes operate and perceive them as unreliable and inefficient, they are less likely to affiliate, contribute or support these schemes (ILO 2011). While the existence of a comprehensive legal framework is important, the problems related to implementation, governance, a lack of systemic coordination and weak institutional capacities for the effective delivery of benefits and services are among the most commonly encountered challenges to compliance (ILO 2017d).

Conversely, sound institutional capacities, effective administrative processes and adequate systems are paramount in effective service delivery, irrespective of the type of scheme administered and the social security benefits provided. Therefore, to fulfil their promises and live up to the expectations of the public, social security institutions and other relevant stakeholders need adequate structures for handling their core administrative processes, including registration, enrolment or affiliation, contribution collection (for contributory schemes), delivery of benefits and grievance mechanisms.

5.1 Internal and external drivers that favour good governance of social security institutions

National legislation should provide the institutional and administrative framework governing the different schemes that comprise the social security system (see Chapter 1, section 1.1). As such, governance is shaped by formal rules, the roles and responsibilities of the stakeholders involved in the delivery of social protection and the existing accountability mechanisms that ensure compliance across and within the different organizations involved in programme implementation and delivery (Bassett et al. 2012). At a more macro level, national policies and operational guidelines also play a role in articulating these elements.

Regardless of the type of legal instrument that establishes the institutional framework, this entails typically:⁹

- the institution's mandate, responsibilities and operational tasks, as well as its relationship to and coordination with other state and non-state actors for programme implementation, service delivery and monitoring;
- the governance structures;
- the financing mechanisms and principles to ensure the scheme's financial sustainability, including with regard to assets and investment policy, contingency reserves and stabilization funds, and the periodicity of actuarial valuations;

⁹ For further information, see ISSA, "[ISSA Guidelines: Good Governance](#)".

- ▶ the appointment and responsibilities of the governing body (management board, board of trustees or commission) and the management;
- ▶ the participation of protected persons and other stakeholders in the scheme's administration; and
- ▶ internal and external control and auditing mechanisms, including financial reporting obligations and oversight by independent institutions.

Therefore, while the State is responsible for creating the necessary legal and institutional framework for social security institutions to operate, it crucially also assumes the overall responsibility to make sure that institutions comply with their legal obligations and implement their respective obligations. The implementation of the overarching legal framework applicable to social security institutions is therefore an important driver for securing compliance, alongside accountability mechanisms such as judicial reviews in case institutions do not adhere to the relevant rules and regulations. The functions of oversight and external auditing also play a pivotal role in ensuring that institutions are accountable and operate effectively.

In general, social security institutions are monitored in various degrees by government departments, often more than one of them (box 17).

Box 17. Monitoring and oversight of social security institutions

- ▶ In **Sri Lanka**, the administration of the Employees Provident Fund is supervised by the Labour Department, while the management of the fund is controlled by the Central Bank.
- ▶ In **Chile**, old-age, disability, survivors and unemployment benefits are administered by the Superintendent of Pensions; work injury and family allowance benefits are administered by the Superintendent of Social Security (SUSESO); and sickness and maternity benefits are administered by the Superintendent of Health. A specific institution that is not part of a ministry but responsible to it may also carry out the oversight function.
- ▶ In the **United Republic of Tanzania**, the Social Security Regulatory Authority has been set up to supervise the operation of social security schemes.

Source: Reproduced from ILO 2011, p.145.

Good governance and accountability provisions embedded in the legal framework establish obligations for social security institutions, as shown in the recently established unemployment insurance scheme in **Malaysia** (box 18).

There are also internal drivers of compliance, such as the institution's internal governing rules and regulations, accountability and governance mechanisms and participatory management, which in most good examples involve the participation of protected persons, employers' organizations and public authorities in the institution's administration. Failure of social security institutions to observe these requirements contravenes the law, results in mistrust by the general public and ultimately compromises broader compliance by the other actors involved.

Compliance by these institutions with the mandate they have received by law represents an integral component of overall compliance with national legal frameworks and an enabling factor conducive to compliance also by other actors, such as labour market forces (employers and workers). Therefore, establishing a system that is based on the principles of accountability and transparency and includes effective supervisory mechanisms and safeguards against the inappropriate or non-transparent uses of social security funds is crucial for social security institutions to achieve their objectives and lead by example, demonstrating that their functioning is compliant with their mandate. In other words, “charity begins at home”.

Box 18. Ensuring social security institutions’ good governance through legal frameworks

In 2017, the Employment Insurance System Act No. 800 introduced a scheme to provide unemployment benefits for private-sector workers in **Malaysia**. To secure its good governance and sound financial management, the Act prescribes various reporting and financial auditing requirements, including:

- ▶ submission of a detailed annual budget, with expected inflows and estimated expenditures, for the revision and approval of the ministry supervising the scheme;
- ▶ preparation of a statement of the scheme’s accounts at the end of each financial year, along with a report of the institution’s activities during the year;
- ▶ annual examination and certification of the institution’s accounts by the Auditor General, whose right to access the organization’s financial and associated records is established by law;
- ▶ presentation of the institution’s annual report and audited accounts to the Parliamentary Counsel; and
- ▶ actuarial assessment of the scheme, including valuation of assets and liabilities every five years, to be submitted to the relevant minister.

Source: Employment Insurance System Act No. 800, Arts 53–57.



5.2 International guidelines relevant to securing good governance of social security institutions

The ISSA provides a set of five mutually reinforcing principles for the good governance of social security institutions, which ultimately also help to secure compliance. The ISSA Guidelines on Good Governance define these principles as follows¹⁰:

- ▶ **Accountability** is the ability to hold legally responsible the officials who are in charge of the institution. It requires establishing norms and standards to evaluate the achievement of the institution's mission, as well as a well-functioning system of redress that protects the interests of stakeholders and deters mismanagement and deviations from the institution's mandate. As trustees, social security administrators are responsible and therefore accountable for managing the programme prudently, efficiently and equitably.
- ▶ **Transparency** is the availability and accessibility of accurate, essential and timely information to ensure that stakeholders are well informed of the true state of the social security programme and how it is being managed. Transparency in the decision-making process promotes honesty, integrity and competence and discourages wrongdoing. The clarity and simplicity of rules, systems and processes help to limit the areas that would require discretion and arbitrariness in programme administration.
- ▶ **Predictability** refers to the consistent application of the law and its supporting policies, rules and regulations. For social security programmes, the rights and duties of members and beneficiaries must be well defined, protected and consistently enforced. Surprises and sudden changes in contribution rates, benefit entitlements or other features may seriously undermine the credibility of the programme.
- ▶ **Participation** refers to the active education, engagement and effective involvement of stakeholders to ensure the protection of their interests. The meaningful participation of stakeholders depends on their access to information about the institution and their capacity to understand and act on such information.
- ▶ **Dynamism** is simply defined as the element of positive change in governance. While the other four principles of governance may well be applied in the context of maintaining the status quo, dynamism refers to changing and improving on the status quo itself by doing things more efficiently and equitably and by responding to the evolving needs of programme members and beneficiaries, thereby creating new value.

Operationalizing these principles implies, among other things, effective resource management, sustainable investment, the timely delivery of benefits, the provision of high-quality services and compliance with reporting obligations, including by publishing periodically the financial performance and financial state.

Technological developments have significantly enhanced the quality and speed of the services provided to protected persons, while allowing greater operational autonomy and efficiency which may result in lower administration management costs. However, to capitalize on the advantages of ICT, social security institutions should guarantee that their services are people-centred, user-oriented and easily attainable by all. Three considerations are worth mentioning in this regard:

10 ISSA 2019c, 2.

- ▶ Different stakeholders may have different capacities to adapt to these changes.
- ▶ Specific categories of protected persons may experience additional difficulties in abiding by the new processes and procedures. This includes, for example, persons living in rural and remote areas, persons who are illiterate or those who are not familiar or do not have access to the internet.
- ▶ Guarantees should be established to prevent the emergence of administrative and technological barriers that restrict the accessibility of benefits and services.

Box 19. Belgium: Crossroads bank for social security

About 3,000 institutions are responsible for the execution of Belgian social security legislation. More than 10 million socially insured persons and 230,000 employers have very regular contacts with those institutions in order to assert their rights, provide requested information or pay contributions. The business process re-engineering coordinated by the Crossroads Bank for Social Security (CBSS) has resulted in benefits and subsidiary rights being granted automatically, with citizens and their employers no longer having to make declarations, thereby drastically reducing the administrative burden for citizens and companies.

In 1990, administrative procedures were not customer-oriented and not harmonized between the different social security institutions. Each institution had its own set of paper forms with accompanying instructions, on the basis of which, when a social risk occurred, it would request the information that was specifically necessary to grant the rights as a result of that concrete risk. The institutions often requested insured persons and their employers to provide information that was available in another social security institution, rather than directly collect this information themselves. Insured persons and their employers had to provide different social security institutions with the same facts, each time according to a different legal concept and administrative instructions. They had themselves to seek their rights throughout the social security system and could not count on the automatic granting of their rights on the basis of a single declaration.

Today a single declaration must be made by persons and their employers to the social security system in the following cases:

- ▶ At the beginning and at the end of employment, a declaration must be made electronically on the social security portal or via a voice server.
- ▶ Every quarter, the employer must declare electronically the income earned by each of his workers, divided into income components that have been uniformly defined throughout the social security branches for workers and civil servants, as well as how many workdays and assimilated days each of his workers has worked.
- ▶ When a social risk occurs, workers or their employers must declare the information about that social risk. Information about historical income or the historical work performances or assimilated performances no longer has to be reported because it is obtained from the quarterly declaration of wages and working time data.

Each employer has access via the social security portal to a list of his workers, so that he does not have to keep his own personnel register anymore. All social security institutions are connected to a network for the electronic data traffic managed by the CBSS and have the legal obligation to electronically solicit one another for all information available in the network.

Source: Reproduced from ILO 2011, p. 126.

5.3 Lack of good governance, transparency and accountability as deterrents of compliance

In most countries, the “transparent, accountable and sound financial management and administration” of social protection are ensured through auditing and compliance with reporting mechanisms, which are often required by law. However, many social security schemes, especially in developing countries, suffer from poor management and governance and as a result enjoy only low levels of trust, both from employers and protected persons (ILO 2019c).

A lack of trust in the social security system in general and the administering institutions in particular often impacts actors’ compliance with legal frameworks. That lack of compliance with the due payment of contributions and the underreporting of wages then undermines the schemes’ financial sustainability, resulting in a vicious circle that prevents the system from achieving its objectives. Therefore, improving governance, in particular with respect to the schemes’ financing and administration, is a prerequisite for ensuring compliance with legal and regulatory requirements and securing the resources needed to meet all benefit entitlements (ILO 2019c).

Box 20 illustrates how the Colombian Pension Administrator has substantially improved its administrative processes and service delivery to rebuild public trust.

Box 20. Colombia: Improving administrative process and service delivery to rebuild public trust

In 2012, the administration of the social insurance pension scheme was entrusted to the Colombian Pension Administrator (Colpensiones). This institution took over the dissolved Social Security Institution (ISS), inheriting more than 260,000 overdue pension claims, including at least 78,368 cases that had been awaiting a decision by the ISS for more than four years (Colpensiones 2014).

To ensure protected persons’ rights and the proper management of the recently established institution, a Constitutional Court Decision ordered Colpensiones:

- ▶ to submit an annual report on the status of the fundamental rights of the institution’s affiliates and pensioners, along with the institution’s operational, financial and fiscal conditions, the existing operational problems and the measures taken to overcome them, the objectives for the following year of operations and the installed capacity for the realization of these goals;
- ▶ to publish the annual report on the institution website in an easily visible and accessible place, to be consulted by users and interested parties, at least one month before the report was presented in a public hearing; and
- ▶ to ensure the effective participation in the public hearing of representatives of the Ombudsman’s Office, the Office of the Attorney General of Colombia, the Office of the Comptroller General of Colombia, the Financial Superintendence of Colombia and representatives of the institution’s affiliates and pensioners.

In the same ruling, the Court ordered the Financial Superintendence to present an annual report detailing the actions carried out under its supervision and oversight function of Colpensiones, in particular concerning the timely and quality recognition of benefits, the collection of contributions and the completeness of affiliates’ contributory records.

Box 20 (cont')

Results

- ▶ Concerning benefit claims with expired response terms, in October 2013, Colpensiones had 287,238 cases compared to 21,329 cases in November 2015 and 8,618 cases in December 2023.
- ▶ The number of monthly judicial petitions filed against Colpensiones decreased from 9,600 in June 2013 to 3,144 in November 2015 and 3,808 (on average) in 2023.
- ▶ In December 2023, the time required to process and recognize pension claims was 2.32 months, well within the legally required term of four months.
- ▶ Substantial improvements in Colpensiones' administrative processes, services and institutional capacity to resolve benefit claims promptly have restored public trust in the social insurance pension scheme.

Sources: Colombia, Constitutional Court, decision T-774 of 2015; and Colpensiones, 2014 and 2023 annual reports.

5.4 Penalties applied to social security officials and other professionals

Fraud by social security officials is usually covered by the provisions of the Criminal Code and administrative laws. For example, in **the Philippines** fraud committed by an employee of the social security scheme shall be punished by a term of imprisonment of not less than one year. Fraud committed by lawyers, physicians or other professionals results in their disqualification from the practice of their profession. In the event it is committed by an official of the social security system or any government agency, the official concerned shall, in addition to the penalty, be dismissed without having the possibility of re-employment in government service.

5.5 Participatory management

ILO social security standards have long recognized that the participatory management of social protection systems by representatives of protected persons and employers, as well as by public authorities, plays an essential role in ensuring sound governance of social security systems (ILO 2011).

In particular, Convention No. 102 stipulates that:

“where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to a legislature, representatives of the persons protected shall participate in the management, or be associated therewith in a consultative capacity, under prescribed conditions; national laws or regulations may likewise decide as to the participation of representatives of employers and of the public authorities (Art. 72(1))”.

The participation of protected persons in the administration of social security schemes and effective social dialogue results in increased transparency and accountability and as a result improves public trust and confidence in the system and its administering institutions, which in turn favourably impacts compliance.

The main mechanism for securing participatory management is to include the representatives of employers and workers on the boards of social security institutions, which are typically responsible for oversight and financial governance. Boards play a key role in ensuring that resources entrusted to the social protection scheme are used effectively and efficiently in order to avoid waste or inadequate delivery of promised benefits, which is essential for the scheme's good governance (ILO 2021c). The example of **Indonesia** is discussed in box 21.

Box 21. Indonesia: The principle of participatory management in the social security system

Law No. 40 of 2004 creates the National Social Security System (SJSN) and requires the establishment of the National Social Security Council (DJSN) to monitor the implementation and functioning of the SJSN.

The DJSN is responsible for formulating general policies and synchronizing the implementation of the system. It is tasked with conducting studies and research; proposing investment policies for social security funds; proposing social security budgets for recipients of subsidized contributions; and conducting oversight of the administering institutions (art.7(3)). The DJSN reports directly to the President and comprises 15 members, representing the Government, employers, workers and social security experts (art. 8(1)).

Law No. 24 of 2011, which concerns the establishment of the two state-owned companies entrusted with the administration of social security at the national level, the Social Security Agency for Employment (BPJS Employment) and the Social Security Agency for Health (BPJS Health), also enshrines the principle of participatory management.

This law mandates BPJS Employment and BPJS Health to institute a Board of Supervisors comprising seven members, including two government members, two employers' representatives, two workers' representatives and one public figure (art. 21(2)).

According to article 22(2) of Law No. 24, the Board of Supervisors shall:

- ▶ supervise BPJS management policies and the performance of the Board of Directors;
- ▶ supervise the administration and investment of the Social Security Funds by the Board of Directors;
- ▶ provide advice, counsel and recommendations to the Board of Directors on policies and administration of BPJS; and
- ▶ submit monitoring reports on the social security programme's administration as part of BPJS reports to the President, providing a copy to the DJSN.

Source: Based on ILO, "Assessment of the Social Security Legislation for the Ratification of the Social Security (Minimum Standards) Convention, 1952 (No. 102)", forthcoming.

It is worth noting that the principle of participatory management should be reflected in the social security system in its integrity, including its non-contributory components. This assertion is in line with Recommendation No. 202, which recognizes the importance of social dialogue in establishing and implementing nationally defined social protection floors. The Recommendation explicitly provides for a "tripartite participation with representative organizations of employers and workers, as well as consultation with other relevant and representative organisations of persons concerned" (Para. 3(r)). Of course, the modalities for participation and consultation in the administration of tax-financed social security schemes will differ from those applicable to schemes financed through contributions.

5.6 Using technological innovations to facilitate compliance

The institutions responsible for administering different schemes may adopt a number of measures to facilitate compliance by the employers and self-employed persons who are required to contribute. These measures include efforts aimed at:

- ▶ **Reducing the compliance burden by streamlining administrative procedures** (for example by facilitating the registration of workers, self-employed persons and voluntary contributors; simplifying document requirements and procedures; and increasing coordination with other institutions and state authorities).
- ▶ **Improving communication with stakeholders by providing timely and complete information to employers and workers on their social security obligations** (for example, contribution rates, contribution collection mechanisms, fees for late payments, etc.) and entitlements (for example, contribution history).
- ▶ **Complementing on-site services with online and mobile applications.**

Box 22. Using technological developments and data-sharing to streamline and simplify administrative processes

- ▶ **Belgium.** The notion of enforcement entails ensuring effective rights for beneficiaries while, at the same time, **not imposing on them the burden of the collection of documents that the institution can easily obtain itself.** In this respect, the “Charter of the insured”, promulgated by an Act of 11 April 1987, established the duty of social security institutions to inform and advise beneficiaries automatically, acknowledge receipt of any request and record information on employees via the Crossroads Bank (see box 19).
- ▶ **Türkiye.** The Turkish social security system underwent significant reforms in 2008, notably merging three social security institutions into one Social Security Institution (SGK) and harmonizing qualifying conditions and benefits. Along with a profound restructuring of the SGK’s management, information-processing, financial auditing and communication techniques, the institution simplified and streamlined the administrative processes and documents required for claiming benefits. This dramatically reduced the time needed to apply for non-contributory benefits, which had previously ranged from six months to two years, to just one month.
- ▶ **Zhejiang, China.** In 2017, the Zhejiang provincial government launched the reform “**Running errands no more than once**”. Based on the “Internet + eGovernment Service” and big data, this policy aims to reduce the administrative burden placed on workers and enterprises, among others, by requiring government departments to simplify their internal procedures, delegate powers to lower levels, enhance service quality and accelerate their digital transformation and data-sharing. From the perspective of protected persons, several processes, including those required to demonstrate their eligibility for benefits (for example, proof of life), can be done entirely through the relevant institutions’ websites or via mobile applications using fingerprints and facial recognition.

Sources: ILO 2011, p. 126; ISSA (2010); and ISSA (2018).

The availability of online services can also play an important role in reducing the non-monetary costs of compliance, such as transportation costs and the time required for on-site administrative formalities (employer’s registration, affiliation and disaffiliation of workers). Improvements in this regard can be significant for MSEs, employers with reduced administrative capacities (private persons), self-employed persons and informal workers.

Based on the ISSA guidelines for Contribution Collection and Compliance, box 23 summarizes the key services that can be provided online to improve the interaction between employers and workers and the institutions that administer social security schemes.

Box 23. Providing online services to facilitate contribution compliance

Guideline 14(6) of the ISSA [Guidelines on Contribution Collection and Compliance](#) states that social security institutions should provide online services to increase transparency and strengthen communication with contributors. The availability of such services is crucial for reducing errors in self-service operations.

The mechanisms proposed for operationalizing these guidelines include developing online functionalities that allow:

- ▶ the submission of declarations and payroll, validation and calculations and web-based payments, including through debit and credit cards;
- ▶ follow-up of contributions and compliance status;
- ▶ the use of social media to communicate general information to contributors and employers; and
- ▶ a help desk on tools related to contribution collection and compliance functions, with clearly defined service standards.

Source: Based on ISSA (2019a), p.29.

For example, the National Institute of Social Security administers old age, disability, survivorship, cash sickness and maternity, work injury and family benefits in **Brazil**,¹¹ covering about 90 million persons. Box 24 provides a snapshot of the Institute's efforts to develop sound web services that allow insured persons to access numerous services without visiting one of the institution's 1,600 offices (ISSA 2020b).

Institutional efforts aimed at reducing the non-monetary cost of compliance also include simplifying administrative processes; expanding the institution's network of physical offices or branches; and developing partnerships with reliable third parties to allow the payment of contributions in selected businesses. Such measures can increase the accessibility of the institution's services and coverage and in most cases can be relatively easy to implement as they fall within the institutions' mandate and do not require external approvals or the passing of legislation.

Other measures, such as increasing coordination with other social security institutions and government authorities and implementing physical and virtual one-stop shops, can also play an essential role in reducing the administrative burden and indirect costs of compliance. The [module on Coordination](#) further discusses initiatives and country examples in this regard.

Box 24. Brazil: My INSS: Providing online social security services

In 2016, the INSS created My INSS, an online, web and mobile platform to enhance efficiency, reduce bureaucracy and ensure that protected persons, especially the vulnerable (elderly persons, persons with disabilities and persons living in remote areas), could access INSS services online.

In 2019, My INSS was redesigned to simplify its use, improve the user experience and accessibility and increase the range of online services. Currently, 90 of the INSS 96 services can be accessed online, including registration/affiliation of workers, calculation and payment of contributions, request cash benefits, report work injuries, download and verify the authenticity of INSS certificates.

11 For further information, see ISSA, "[Country Profiles: Brazil](#)".

Box 24 (cont')

Objectives

- ▶ reducing face-to-face services and queues at physical branches;
- ▶ reducing waiting time for assistance;
- ▶ simplifying access to services through a single web/mobile channel;
- ▶ automatic recognition of protected persons' entitlements;
- ▶ Increased transparency by allowing users to monitor the status of their requests.

Results

- ▶ 46 per cent reduction in face-to-face assistance in 2019 compared to 2018;
- ▶ 56 per cent reduction in face-to-face applications in 2019 compared to 2018;
- ▶ establishment of My INSS as the main entry channel for requesting social security benefits and services in Brazil.

Source: ISSA (2020b).

5.7 Raising awareness and tackling information deficits to promote compliance

As previously mentioned, ensuring that the different stakeholders are fully aware of their social security rights and obligations forms an integral part of the overall responsibility of the State. The social security institutions that administer the different components of the social security system are the main channel through which this responsibility can be implemented as they play a pivotal role in creating awareness about social protection as a whole, the importance of securing compliance and the procedures for receiving benefits under the relevant scheme(s).

In this light, social security institutions, government departments and non-state actors such as trade unions are increasingly using targeted information campaigns to enhance stakeholders' knowledge regarding social security. Administering institutions in countries as diverse as **Gambia, Lesotho, Mali, the Lao People's Democratic Republic** and **Viet Nam** have implemented awareness-raising and information dissemination campaigns in recent years.

Awareness-raising and information dissemination mechanisms are also key for building trust and increasing public confidence and support for the social security system. Such efforts are therefore essential for ensuring the system's sustainability, including its contributory and non-contributory components.

Box 25 provides a checklist containing some of the information that should be provided to protected persons.

Box 25. Checklist. What kind of information should be provided to individuals?

A first step to ensure that current and future beneficiaries or contributors are aware of their rights and obligations concerning the social security system is to provide them with easily accessible information, such as:

- Overview of the social security system, including its contributory and non-contributory components, if any.
- Rules for affiliation or registration within the scheme(s).
- Institution(s) administering the scheme(s).
- Advantages of being covered.
- Contribution rates, if any.
- Qualifying conditions to receive benefits under the various schemes and the relevant documents to demonstrate eligibility.
- Benefit calculation rules or benefit amounts in case of flat-rate schemes.
- Duration of benefits and whether there are waiting periods before accessing them.
- Medical care available for the insured or primary beneficiary and their dependents.
- Cost-sharing of medical benefits.
- Grievance mechanisms, including the right to appeal in case of refusal of benefits.
- Reasons for the suspension or termination of benefits.

Source: Authors.






Similarly, employers need to be aware of their obligations with regard to the social security system. These include the rules applicable to the registration or affiliation of workers; the relevant institutional arrangements, such as the institutions involved in the administration of the different social security schemes; the applicable contribution rates; the mechanisms available for contribution collection; and penalties in case of non-compliance.

Call centres, websites and mobile applications are valuable tools for ensuring the availability of information on the rights and obligations of the parties concerned at all times.

Figure 6 shows some of the elements to be considered when designing information campaigns to ensure that they effectively reach their intended population.¹²

¹² Depiction based on ILO 2021c. A detailed discussion of the key types of information, channels for dissemination and examples of successful practices can be found in ILO 2021c, Ch. 3.

► **Figure 6. How can awareness-raising campaigns reach their intended population?**

	<p>Define the target population (e.g. workers, employers, beneficiaries of non-contributory schemes)</p>
	<p>Tailor your messages to the target population's specific interests and needs</p>
	<p>Make sure the idea is clear, easily understandable and accessible</p>
	<p>Use different dissemination channels, such as online platforms, SMS, television and radio</p>
	<p>Translate the material into the relevant languages spoken in the country or area</p>

As recognized by the ISSA (2019b), awareness-raising actions play a crucial role in promoting a culture of social security and compliance with its obligations. Social security institutions should therefore provide free workshops adapted to various public audiences, such as small enterprises, citizens, employees, future pensioners and so on.

Non-compliance can be driven by limited regulatory knowledge and a lack of awareness concerning applicable legal frameworks. In this regard, the ILO (2021c) highlights that remoteness or isolation of the workplace and home, illiteracy and a low degree of organization may result in a lack of information about the right to social protection in general and also about existing laws, policies and programmes.

Vulnerable groups, including domestic workers, migrant workers and rural workers, may therefore be less likely to be aware of the information necessary to exercise their social security rights. This may include a lack of information about the available social protection schemes, the advantages of being covered and the administrative procedures required for registering and accessing benefits when contingencies materialize.

Therefore, ensuring that current and future social protection beneficiaries and contributors, employers and non-state actors are fully aware of their respective social security rights and obligations is a precondition for compliance with and enforcement of legal provisions.

Recommendation No. 202 specifies that when formulating and implementing national social security extension strategies, Member States should raise awareness about their social protection floors and their extension strategies and undertake information programmes, including through social dialogue (Para. 14(f)).

The CEACR has also stressed the importance of ensuring that protected persons are aware of their rights and obligations and the remedies available to them. Information, education and outreach tools and mechanisms should be designed to reach out to all protected persons, paying particular attention to the circumstances of excluded and vulnerable groups and those living in remote areas (ILO 2019c).

ILO social security standards assign the general responsibility for the due provision of social security benefits and services to the State; therefore, governments should also ensure that relevant stakeholders have the necessary information to exercise their social security rights and duties.

Despite the importance of awareness-raising campaigns in expanding stakeholders' knowledge, isolated communication efforts are insufficient to yield long-term results, such as those required for building broad public support, changing public perceptions regarding the scheme's advantages or generating behavioural changes (for example, incentivize registration or compliance with contributions).

Many countries are increasingly using the function of labour inspection as an additional channel to communicate with employers and workers and increase their awareness about their social security rights and related obligations. This approach capitalizes on the advisory role of labour inspectors and seeks voluntary cooperation and compliance through awareness raising and persuasion rather than punishment (Gunningham 2010). An example of how **Portugal** is using this approach is presented in Chapter 5, section 5.9.5.

Similarly, some countries such as **Colombia, Costa Rica, Nicaragua** and **Uruguay**, have implemented comprehensive communication strategies implemented over several years to build a social protection culture; the example of Colombia is described in box 26.

Box 26. Colombia: Creating a culture of social protection

Role and responsibilities assigned by law

Law No. 1502 of 2011 requires the Ministry of Health and Social Protection to develop a National Plan for a Social Security Culture and to implement a social protection week every year.

Ministry's role and action plan

Through fieldwork and exploratory studies, including expert forums and regional technical working groups, the Ministry identified the following challenges as the basis for the action plan:

- ▶ lack of coordination between different actors involved in the delivery of social protection;
- ▶ low awareness of the advantages of social security on the part of citizens and agents of the system;
- ▶ mistrust and perceived high levels of corruption;
- ▶ low-quality services and lack of a human-centred approach; and
- ▶ low visibility of the system's importance to protect Colombians throughout the life cycle.

Action plan and methodology

Throughout the year, the Ministry holds nationwide workshops to create awareness on the social protection system. During social protection week (last week of April), several activities are carried out to engage the public in a participatory, playful and pedagogical exercise. The participating workers, clients of private and public health care institutions and students are invited to reflect on selected topics.

Box 26 (cont')

Topics

During the workshops, participants share their experiences on topics prioritized by the Ministry based on the challenges identified, such as:

- ▶ beliefs, cultural practices and social norms related to social protection;
- ▶ negative preconceptions about the system and perceived misuse of public resources;
- ▶ previous knowledge about social security; and
- ▶ positive experiences with the system and services.

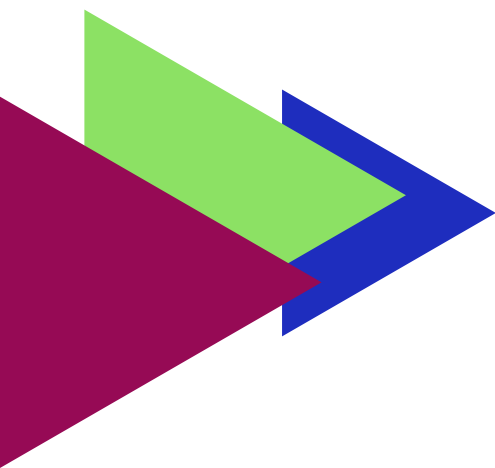


Source: Colombia, Ministry of Health and Social Protection, "Cultura de la Seguridad Social".

5.8 Optimizing record-keeping and contribution collection

There are two basic models for collecting contributions: a centralized and a decentralized system.

In the centralized system, the collection of contributions is entrusted to one central authority (i.e., one specific social security institution or the tax authorities). The collected contributions are redistributed to the different social security schemes that integrate the social protection system. Several countries, especially in Europe and in North America, have integrated social security contributions with tax collection. They include Albania, Argentina, Australia, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Estonia, Finland, Hungary, Ireland, Italy, Latvia, the Republic of Moldova, Montenegro, the Netherlands, New Zealand, Norway, Romania, Slovakia, Slovenia, Sweden, the United Kingdom and the United States.



Box 27. Argentina: Centralized social security contribution and tax collection

In Argentina, the Federal Administration of Public Revenue (AFIP), a decentralized entity under the Ministry of Economy, is responsible for executing tax, customs and contribution collection for Argentina's social security system.

Within AFIP, the General Directorate of Social Security Resources (DGRSS) is in charge of collecting, distributing and auditing the resources that finance social security benefits, including those provided under schemes adapted to the requirements of specific groups (domestic workers, self-employed persons in liberal professions and self-employed persons with reduced economic activities - Monotributo).

The DGRSS is also responsible for establishing and imposing fines and penalties and the administrative and judicial settlement of debts.

Source: Argentina, AFIP, "[Seguridad Social](#)".

Centralized contribution collection has the advantage of achieving economies of scale since contributions are collected with fewer costs, which may result in efficiency gains and better outcomes. This model can also be embedded in social protection systems, in particular in systems in which a single social security institution is responsible for contribution collection and delivery of benefits (Algeria, Azerbaijan, Belarus, Brazil, Czechia, Egypt, Israel, Kuwait, Lithuania, Madagascar, Mexico, Namibia, Poland, Saudi Arabia, Spain, Thailand, Tunisia, Uganda and Zimbabwe).

Decentralized systems, on the other hand, can be organized in different ways. In federal States, such as Austria and Germany, all social security contributions are collected by decentralized health insurance funds and the amounts are redistributed to the pension and unemployment insurance schemes. In other countries, each social security institution collects its own contributions.

5.9 Reinforcing social security inspection: A pivotal component of strategies aimed at securing compliance

5.9.1 Labour and social security inspections in international labour standards

ILO social security standards do not currently include a specific Convention or Recommendation addressing the issue of social security inspection services. Nonetheless, the issue is subsumed under other ILO instruments, in particular Convention No. 81, which concerns inspections related to the conditions of work and the protection of workers while engaged in their work. While it is important to consider the multiplicity of national contexts and legal setups that differ in nature and scope, the phrase "protection of workers while engaged in their work" covers areas such as the right to organize and engage in collective bargaining, conditions of termination of employment and social security.

The range of the labour inspection's regulatory oversight is therefore potentially vast and it varies significantly from one country to another, according to national policies and legislation. As a result of this wide range of areas of competence, labour inspectorates in many countries are assigned not only with the task of enforcing regulations for working and employment conditions and occupational safety and health (OSH) but also with the task of imposing social security regulations and supervising the legality of employment and prosecuting violations, including undeclared work and the informal economy as a whole. Some of the key provisions of ILO labour inspection instruments are presented in box 28.

Box 28. Benchmarks for effective inspection services set out in ILO Convention No. 81

- ▶ The system of labour inspection should **apply to all workplaces** in respect of which legal provisions relating to conditions of work and the protection of workers are enforceable (Art. 2(1)).
- ▶ Labour inspection should be placed **under the supervision and control of a central authority** so far as is compatible with the administrative practice of the country (Art. 4(1)).
- ▶ Labour inspection should ensure both **enforcement functions in relation to working conditions** (i.e., working hours, wages, safety, health and welfare) and alert the competent authorities of any defects or abuses not covered by existing relevant legal provisions (Art. 3 (1a)–(2)).
- ▶ Inspectors must be **public officials assured of the stability of employment** and independent of changes of government and improper external influences (Art. 6).
- ▶ They must be **recruited with the sole regard to their qualifications** and they must be **adequately trained** for the performance of their duties (Art. 7).
- ▶ The **number of labour inspectors must be sufficient to secure the effective discharge of their duties** in regard to, inter alia, the number, nature, size and situation of workplaces, the number of workers employed, and the number and complexity of the legal provisions to be enforced (Art. 10).
- ▶ Labour inspectors must be **properly equipped with local offices, transport facilities, and the reimbursement of any travelling and incidental expenses** which may be necessary for the performance of their duties (Art. 11).
- ▶ They must **be provided with proper credentials and be legally empowered** to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection (Art. 12).
- ▶ **Workplaces must be inspected as often and as thoroughly as is necessary** to ensure the effective application of relevant legal provisions (Art. 16).
- ▶ Inspectors **should supply technical information and advice** to employers and workers on the most effective means of complying with the law (Art. 3 (1b)).
- ▶ National laws should provide for **adequate penalties for violations of legal provisions** enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties (Art. 18).
- ▶ The labour inspection system can attain its objectives through **effective cooperation with other government services** and private institutions engaged in labour protection as well as with employers and workers and their organisations (Art. 15).

Source: Adapted from ILO 2010a, p. 13.

5.9.2 The complementarity of social security and labour inspection services

Effective labour and social security inspection services are one of the mechanisms that governments have at their disposal to ensure well-functioning social protection systems that are financed in an equitable and sustainable way (ILO 2017d; 2015a). Inspection services are an essential component of the labour administration system. They are responsible for the enforcement of, and effective compliance with, the normative framework, thereby ensuring fairness in the workplace and promoting economic development.

In essence, labour inspection supervises the enforcement of legal provisions beyond the observance of working and employment conditions to those that apply to social services, migrant workers, vocational training, social security and other matters. Inspection services also provide information and advice, as well as training. Supervising the application of the law requires the use of different instruments and administrative measures that ensure efficient and rapid enforcement at all stages of inspection interventions. Such interventions include not only inspection visits but also preventive, awareness-raising and educational activities and campaigns (as described above), as part of a holistic approach encompassing all the needs of enforcement. A wide range of means of action to enforce compliance is also available to inspectors: from penalty procedures to stoppage orders, labour inspections use different measures and actions to carry out their duties. Therefore, it is of the utmost importance to provide inspectorates with the clear and comprehensive mandate and with the adequate resources needed to carry out their functions effectively.

Importantly, the mandate of labour and social security inspection should be sufficient to include all economic sectors and inspection mechanisms should be responsive to the additional challenges of enforcing compliance in certain occupations. This includes but is not limited to workers in agriculture, domestic workers and workers in fisheries, who tend to be poorly protected by national labour and social security law. In addition, the nature of their work (in remote and rural areas, in private households or during long and continuous periods at sea), require specially adapted inspection services.

The inspection function's impact in preventing and detecting non-compliance can be strengthened by increasing cooperation with other state actors. For example, several countries, particularly in Europe, have facilitated cooperation and data exchanges between the inspection function and social security institutions, tax authorities, institutions responsible for contribution collection and relevant ministries, with a view to combating the evasion of social security contributions and fraud (box 29).

Box 29. Increasing cooperation between the labour inspectorate and other authorities

Sectoral and intersectoral coordination and collaboration between institutions are pivotal to ensuring a coherent application and enforcement of legal frameworks.

Among others, cooperation can be fruitful for improving information flows and data exchanges across public institutions (tax authorities, social security institutions, national registries) and broadening the scope of the inspections through joint inspections with other enforcement authorities such as on OSH.

- ▶ **Panama.** The Law on the Social Insurance Fund provides a mutual obligation between labour, social security, immigration authorities and any other state entity to communicate and inform each other when they come across infractions in their respective fields, including the improper withholding and evasion of social security contributions (Law No. 51 of 2005, art. 8(5–6)).
- ▶ **Spain.** A Royal Decree enacted in December 2023 allows central and regional government institutions to access each other's electronic platforms so that they can jointly process administrative procedures.
- ▶ **Viet Nam.** Tax agencies must share relevant data provided by employers with the different institutions involved in administering the social security system (Law on Social Insurance No.58/2014/QH13, art. 22(6)).

Sources: Boletín Oficial del Estado, Real Decreto 1011/2023, de 5 de diciembre; and ILO, "Inspection Mechanisms Research Note" (background paper for this module).

In addition to increased cooperation with other state actors, investing and reinforcing the instruments that support the inspection activities (business intelligence, databases, risk assessment models and allocation of specific management resources) can significantly improve the effectiveness of social security inspections and hence also compliance (box 30).

Box 30. Using ICT and risk assessment models for targeted inspections

Some countries have developed risk assessment models to identify the most risk-prone sectors or enterprises and prioritize their inspection plans and strategies accordingly.

- ▶ **Ecuador.** The responsibility of monitoring compliance with social security obligations is entrusted to specialized inspectors employed by the Ecuadorian Social Security Institute (IESS). Over the last years, the IESS has engaged with other public authorities, including the Internal Revenue Service and the Superintendence of Enterprises, to exchange information and classify employers according to their risk of evasion and under-declaration of contributions. Based on this information, the IESS prioritizes and targets inspections.
- ▶ **Belgium.** The Federal Public Service Social Security has been exploring the use of data analytics to increase detection of social security fraud through targeted inspections since 2015. More specifically, the Mining Watch tool uses predictive modelling to define fraud risks in four prioritized sectors (construction, cleaning, hospitality and catering services), ranking employers' predicted risk of fraud (for example, undeclared work, abuse of part-time working schemes and bogus self-employment) as high, elevated, medium and low.

Source: ISSA (2020a). European Platform Undeclared Work. n.d, MiningWatch: using data analytics for targeted inspections of social security fraud.



▶ Employment Services Centre - Nepal, © ILO / M. Crozet

Increasingly, inspection approaches aimed at building a culture of compliance among employers recognize that this is achieved through effective and consistent inspection and enforcement actions, which rely on having a sufficient number of well-trained inspectors (box 31).

Box 31. Training of inspectors

Objective

Ensure that inspectors have the information and competencies needed to perform their functions effectively, including how to deal with cases of non-compliance with labour and social security legal frameworks and mechanisms, in order to ensure that inspections are carried out in a consistent, fair and transparent manner.

Thematic areas

- ▶ Inspectors should receive permanent theoretical and practical training on national laws and regulations, as introduced or amended.
- ▶ Enforcement structures, including cooperation and coordination with other state and non-state actors, should be established.
- ▶ International obligations should be accepted by the country (ratified human rights treaties and ILO Conventions).
- ▶ Techniques should be provided for planning and carrying out inspection visits.
- ▶ Training should include strategies to verify the authenticity of documents, such as certificates of affiliation with social security schemes and payment of contributions.

General remarks

- ▶ Training should be provided when there are new laws, regulations and procedures.
- ▶ Specific training should be provided when knowledge and competency gaps are identified.
- ▶ Training sessions are an opportunity to sensitize inspectors about the characteristics of certain occupations and economic sectors.
- ▶ Training should cover how to verify documents through interviews with stakeholders. This entails learning different and effective ways to interact in a confidential manner with workers who may not readily provide information due to mistrust, fear or communication issues (ILO 2020b).

5.9.3 State supervision and inspection of social security legislation

Legal frameworks play a crucial role in establishing the legal and institutional setups that secure effective compliance, in particular with regard to registration, affiliation and the collection of contributions; inspection and supervisory mechanisms; legal proceedings and penalties; and complaint and appeal mechanisms.¹³ In particular, legal frameworks should establish labour and social security inspection mechanisms that are adapted to each country's circumstances, such as the labour market structure (employment versus self-employment, rural versus urban, etc.). This should include the scale of informality in employment and self-employment and the specificities pertaining to economic sectors and occupations (for example, agriculture, construction, self-employment, domestic work and so on).

¹³ ILO, "Social Protection Legal Drafting Guide", forthcoming.

Although an ideal labour inspection system does not exist, every system should strive to establish proper coordination mechanisms in order to achieve effectiveness and efficiency.

Monitoring compliance with social security is done by on-site inspection visits and auditing documents of employers, which remain an important tool for detecting undeclared work and social security fraud. There are two main mechanisms for controlling compliance with social security legislation.

- ▶ (a) **Labour inspection services.** In a number of countries, the labour inspectorate is entrusted with the enforcement of social security legislation since social security institutions do not have their own inspectors. These include **Argentina, El Salvador, Fiji, Hungary, the Lao People's Democratic Republic, Lesotho, Montenegro, Mozambique, Spain** and **Sri Lanka**.
- ▶ (b) **The social security system itself.** In a number of other countries, inspection is within the realm of the social security system itself. These include **Angola, Finland, France, Germany, Greece, India, Malaysia, Morocco, Namibia, Nicaragua, the Philippines, Poland, the United Republic of Tanzania** and **Tunisia**.

In a number of countries, the labour inspectorate is entrusted with this task because social security institutions do not have their own inspectors. They include **Argentina, El Salvador, Fiji, Hungary, the Lao People's Republic, Lesotho, Montenegro, Mozambique** and **Sri Lanka**. In **Benin, Madagascar** and **Senegal**, both social security inspectors and labour inspectors carry out inspections. In a number of Central and Eastern European countries, legislative measures have been taken to widen the powers of the labour inspectorate to include controlling powers with regard to compliance with social security laws.

- ▶ In **Hungary**, Act CXXXV of 2020 on Services and Subsidies for Employment Promotion and Employment Supervision empowers the employment supervision authority (formerly known as the labour authority) to investigate and reclassify the legal relationship between an employer and an employee. The institution must inform the tax authority of its final decisions on cases of employers' non-compliance with the obligation to report the establishment of an employment relationship.
- ▶ In **Montenegro**, the Law on Labour Inspection of 2008 gives the labour inspectorate the power to report employers who have not paid social security contributions.
- ▶ In **Lithuania**, since 2001 the state labour inspectorate has been responsible for coordinating interministerial action to combat undeclared work among the state social insurance fund board, the state tax inspectorate (Ministry of Finance), the financial crime investigation service and the police department (Ministry of the Interior), as well as the local offices of the state labour inspectorate. The state labour inspectorate is responsible for preparing policies and recommendations for controlling undeclared work and organizing joint inspections with officials of other institutions.

Where inspections are carried out by the labour inspectorate, departments responsible for inspection may be self-sufficient, incorporating the full range of areas of specialization, or they may operate through two or three administrative entities.

Collaboration with social security institutions and bodies is crucial in order to compile and compare data and therefore to design better targeted operations. Some countries conduct joint inspections or actions. In countries as diverse as **Bulgaria, Hungary, Indonesia, the Philippines** and **Viet Nam**, the coordination structure takes the form of an "integrated inspection concept" that involves conducting joint planning and actions towards a common goal shared by the various units responsible for labour-related inspections. In other arrangements, such as those in **Belgium**, three different inspectorates (social legislation, welfare and social security) coordinate with the regional employment services in

selected areas of shared competency (for example, undeclared work) to share information and data on a systematic basis.

Some countries with dedicated social security inspectorates use special administrative procedures that provide automatic affiliation and expedited enforcement methods. In general, all countries with a public system of social security have a service that performs the function of social security inspection, which may be organically undertaken through an integrated labour inspection service, through a specific social security inspection or through other administrative arrangements.

A number of countries have started to harness the benefits of bringing social security and labour inspection services together under the authority of a single government authority. In **Spain**, no distinction is made between social security and labour inspectors since the control over the enforcement of legislation on social security has been integrated into a single independent institution that is responsible for all employment related issues: the Labour and Social Security Inspectorate. Although it may be a legal obligation for the employer, worker or responsible medical practitioner to report accidents at work or cases of occupational disease to the labour inspectorate, in practice it is often the social security services that are the first and sometimes the only recipients of such notifications. It is therefore desirable that provisions be put in place to ensure that any relevant information on cases and conditions defined by legislation be communicated as systematically as possible to the labour inspectorate. This gives the labour inspectorate the data it requires to identify high-risk establishments and activities and determine means of prevention with a view to eliminating risk factors. In the same way, inspection services should be required to inform the social security and social insurance services of any situation that poses a threat to workers' safety and health that they may encounter during inspection visits. Raising insurance premiums for employers who are particularly negligent or persistent in disregarding inspectors' injunctions can reinforce the safety and health role of the labour inspectorate. The economic advantages of such cooperation, for both the enterprise and insurance institutions, have been amply demonstrated in countries in which relevant measures have been implemented.

Box 32. Spain: Integrated Labour and Social Security Inspectorate

In Spain, the Inspectorate of Labour and Social Security, regulated by Law 23 of 21 July 2015, is responsible for enforcing social security legislation and all employment-related issues.

This law defines the inspection system as a set of legal principles, rules, bodies, officials and material resources that contribute to the proper enforcement of labour standards, occupational risk prevention, social security and social protection. The inspection system also deals with job placement, employment and unemployment protection, trade unions, immigration and foreign labour, and any other matters assigned to it. The law regulates the Inspectorate's functions, determining the responsibilities of the officials of the senior corps of inspectors of labour and social security, as well as the sub-inspectors.

The Inspectorate is also tasked with monitoring and overseeing social security regulations, the informal economy, employment and migrant work. These responsibilities are entrusted to specialized labour and social security inspectors and labour sub-inspectors of the employment and social security scale, which among others, are empowered to:

- ▶ verify workers' access to social security benefits;
- ▶ verify the rules relating to the scope of application, employer's registration, affiliation and the deregistration of workers; and
- ▶ the status of social security contributions.

Sources: Adapted from ILO 2011, p.146; and Spain, Ministry of Labour and Social Economy, Law No. 23 of 21 July 2015.

In countries in which branches of social security are administered by independent institutions of a semi-private or private nature, it is important to stress that, pursuant to the principles established in international social security standards, the State retains the general responsibility for their proper administration and has the right and the duty to supervise them. The management of social security schemes in such countries is often based on the functional separation between the body responsible for the administration of the schemes and the oversight body that supervises the social security system. For such countries, the creation of an independent specialized body that is solely responsible for supervising and regulating the social security system, without participating in the management of the system's programmes, is essential for the proper operation and viability of social security systems. There are cases, however, in which the management of compliance may be carried out by the private institution concerned. For example, in **Finland**, employers must provide pension security for their employees through private pension providers (a pension insurance fund, a company pension fund or an industry-wide pension fund). According to sections 187 and 188 of the Finnish Employees' Pension Act of 2006, each pension provider ensures that registered employers comply with their insurance obligations and has the right to inspect the employers' premises and to take other inspection measures to determine whether employers have fulfilled their obligations under the Act. During the inspection, the employer subject to the inspection shall present the payroll records, working time records and all other documentation that may affect the insurance obligation. The Finnish Centre for Pensions, the central body of all pension providers in Finland, has the same rights. The same procedure applies to employment injuries. Each insurance institution and the Federation of Accident Insurance Institutions have the right to verify the correctness of information falling within the scope of the employer's duty to inform under the Employment Accidents Insurance Act (section 64 (b)).

The move to centralized management with regard to the collection of contributions and compulsory affiliation helps to secure compliance by ensuring better coordination, planning and linking of strategic activities from the point of view of the entire system. In federal States, a central federal institution to ensure the uniform application of the schemes usually carries out general supervision and control.

- ▶ In the **United States**, for example, the enforcement of the national unemployment insurance legislation is assured through a process in which the Secretary of Labour certifies each state's conformity with federal law as a condition for its receipt of federal funds for the administration of its unemployment insurance benefit programme. States are encouraged to operate their unemployment insurance in fiscally responsible ways, for example through the threat to withdraw or reduce federal tax credits if the state fails to promptly repay loans that the federal Government has extended to it to finance benefit payments.

5.9.4 Mandate and prerogatives of inspection services to secure compliance

The range of competencies and responsibilities entrusted to inspectors depends on each country's legal framework. However, in several countries, along with the right to inspect the enterprises' premises and audit their accounts, inspectors have the right to impose administrative sanctions, initiate legal proceedings and register undeclared employees with social security institutions. In most legal systems, these rights are often subject to judicial review.

In the event that inspections and audits are carried out by social security officials, although they have their own status, their mandate is comparable to the status of other authorities that have the rights to carry out investigations, such as labour inspectors and criminal investigation officials.

Box 33. Mandate and status of social security inspectors

- ▶ In **Nicaragua**, the inspectors of the Nicaraguan Institute of Social Security have the same powers as the labour inspectors under the Labour Code. In addition to the specific powers foreseen in the specific regulations, they are empowered to supervise workers' and employers' compliance with their social security obligations by **examining accounts, payrolls, employment contracts, proof of expenses, income tax, capital financial statements, collective agreements** and all other documents related to the verification of data (Decree No. 975 of 1982, Art. 100).
- ▶ In **Namibia**, according to article 38(4) of the Social Security Act, inspectors of the Social Security Commission have the same powers as police officials conducting investigations under the Criminal Procedure Act, based on a certificate of authorization issued by the Commission. They can **enter the premises of an employer without prior notice, verify and seize documents and interview employers, employees and any other persons present during the inspection** on issues relating to registration with the Commission, the payment of benefits, contributions and any other related matter.

Source: Adapted from ILO 2011, p.148.

One way to strengthen enforcement of legal frameworks is to enlarge the scope of labour inspection, both in terms of the economic activities (agriculture work) and areas (social security) subject to the application and enforcement of legal frameworks. Inspectors can advise and promote best practices for non-compliant enterprises and are a valuable tool for encouraging compliance with the law (Schrank and Piore 2007). For example, a number of countries, particularly in Latin America, have expanded labour inspectorates' mandates to include informal economic activities and other typically excluded sectors, such as agriculture and domestic work (box 34).

Box 34. Enlarging the scope and adapting labour inspection

- ▶ **Argentina.** A special scheme has been adopted for rural workers that guarantees working conditions, including access to social security, and entrusts the role of inspection to the State (Law No. 26.727: System for Agricultural Workers; ILO 2018b).
- ▶ **Paraguay.** Two specific schemes have been introduced for domestic workers and employees of micro, small and medium-sized enterprises, both of which include provisions emphasizing the need for inspections adapted to their circumstances.
- ▶ **Nicaragua.** The General Law on Labour Inspections of 2008 explicitly recognizes the inspectorate's role in protecting informal economy workers' rights.
- ▶ **Uruguay.** A special section in the Labour and Social Security Inspectorate is responsible for supervising adherence to labour and social security standards for domestic workers.

Source: ILO, "Inspection Mechanisms Research Note" (background paper for this module).

5.9.5 Awareness-raising and educational campaigns by inspection services

It has also been proposed that a more flexible or multi-fold approach that offers several options to enforce the law is preferable. These options can include providing information, education and incentives to comply with regulations, along with more classical functions such as monitoring compliance, giving warnings, imposing tailored sanctions and punitive sanctions.¹⁴

In this regard, over the last years some countries have complemented the traditional enforcement model with labour inspection approaches that are educational, persuasive, transparent and participatory, either through specific awareness-raising campaigns or through long-term efforts. For example, in 2014–2015, the **Portuguese** labour inspectorate developed a campaign to create awareness about the risks of undeclared work and support the transition of businesses and workers to regular employment. Box 35 summarizes the objectives, mechanisms and results of this campaign.

Box 35. Portugal: “Undeclared work: It’s bad for you, harmful for all” campaign

Background. Aiming to tackle the phenomenon of undeclared work, the Portuguese labour inspectorate (ACT) launched an awareness-raising campaign in 2014. The proliferation of undeclared work in the country was associated with several persistent factors, such as the economic crisis, severe austerity measures (including reduction of salaries and pensions), high levels of unemployment and an excessive contributory burden on labour incomes.

- ▶ **Goal.** The campaign aimed at transforming a significant number of undeclared work instances into regular employment.
- ▶ **Target group.** This comprised employers, workers and the general public (especially young people, as the future generation of workers).
- ▶ **Strategy.** This was to detect and combat undeclared and under-declared work and promote their transformation into regular employment through:
 - awareness-raising sessions in associative institutions representing economic activity sectors (employers’ organizations), municipal offices, elementary and high schools; and
 - inspection actions by the ACT in cooperation with institutional partners with inspection powers.
- ▶ **Dissemination channels.** The campaign used a wide range of channels, including:
 - posters and flyers in different languages (Portuguese, English, French, Russian and Romanian) distributed during the campaign and afterwards;
 - written press advertisements and radio advertisements;
 - a telephone helpline;
 - a page answering frequently asked questions available on the labour inspectorate website.
- ▶ **Participation of state and non-state actors.** The campaign was promoted and coordinated by the ACT in partnership with the following public institutions:
 - the Social Security Institute;
 - the Employment and Vocational Training Institute;
 - the Immigration and Borders Service; and
 - the High Commission for Migration.

14 Fenwick et al. (2007),105–109.

Box 35 (cont')

The most representative social partners were also involved in the campaign, including the Business Confederation of Portugal, the Confederation of Trade and Services of Portugal, the Confederation of Farmers of Portugal and the General Union of Workers.

- ▶ **Results.** Through these activities, it was possible to identify about 9,000 workers involved in undeclared work and transform their situations. Voluntary regularizations occurred in 40 per cent of the undeclared work situations and 35 per cent related to bogus self-employment. Where voluntary action was not taken, the ATC applied notices of infringement.

Source: Adapted from European Commission, European Platform tackling undeclared work, "Practice Fiche: Awareness-Raising Campaign, Portugal".

5.9.6 Inspection services and the challenges of undeclared work, social security evasion and fraud

The phenomenon of undeclared work is a persistent challenge for industrialized and developing countries alike. It encompasses formally registered employers that only declare part of their employees or contribute less than the amounts due, as well as unregistered businesses that operate completely outside the social security legal framework and therefore do not pay taxes and employ unregistered workers. The complexity of methods used to escape the enforcement of social security mechanisms and the pervasive effects of contribution evasion on the sustainability of social security systems require innovative and sustained strategies to tackle social fraud effectively.

Box 36. ISSA Guidelines on Error, Evasion and Fraud in Social Security

The [ISSA Guidelines on Error, Evasion and Fraud in Social Security Systems](#) distinguish between three types of non-compliance:

- ▶ **Error.** This comprises unintentional mistakes in applying established rules and calculating benefits and contributions.
- ▶ **Evasion.** This comprises actions that increase the level of benefits or reduce the level of contributions by taking advantage of the applicable laws/regulations and gaps in fraud control systems. Evasion becomes an act of fraud when initially legal manoeuvres used by the targeted stakeholder become illegal.
- ▶ **Fraud.** Comprises intentional acts that breach the rules committed by a beneficiary, a contributor or a service provider to obtain, for themselves or for a third party, undue benefits from social security systems. This includes false declarations for which a deliberate intent can be demonstrated.

Source: ISSA (2019b).

Several countries, including **France, Germany, Italy, Portugal, Switzerland** or **Türkiye**, have implemented promotional measures to combat undeclared work, such as nationwide awareness-raising campaigns and efforts to incentivize employers and workers to register with the relevant social security schemes. Other countries have taken measures to combat undeclared work by encouraging business and workers to enter the formal economy.

As previously described, the lack of compliance with regard to the payment of social security contributions also includes employers who, despite being registered within the different schemes, engage in a number of fraudulent manoeuvres, such as:

- ▶ under-declaration of the employees' wages;
- ▶ contributing less than the amounts due;
- ▶ using the contributions paid by their employees for other purposes;
- ▶ applying unlawful and wrongful deductions from the employees' wages (for example deducting contributions which should in fact be paid by the employer).

In many developing countries, low levels of social security coverage are driven by the magnitude of social security evasion and fraud, which is not limited to employers in the informal economy and may be compounded by the characteristics of the labour market. In such cases, effective solutions may require adapting the social security system to the reality of the national context (labour markets with predominantly self-employment and informal employment) and improving other structural matters, such as enhancing coordination, revising the mandate and resources of the enforcement authority and creating incentives for non-compliant employers to regularize their situation.

Box 37. Ukraine: Fight against undeclared work

Building on the findings and recommendations of a study exploring the nature and scope of undeclared work in Ukraine, a draft National Action Plan to Fight Undeclared Work was prepared in 2018. The proposal aimed at:

- ▶ strengthening the capacity to prevent undeclared work;
- ▶ encouraging the transition from undeclared work to regular employment;
- ▶ improving the ability to detect undeclared work; and
- ▶ reinforcing the capacity to effectively sanction non-compliant employers.

Several measures have been taken since then that demonstrate that the fight against undeclared work is a priority in Ukraine.

- ▶ A nationwide awareness-raising campaign was launched on undeclared work and its consequences for workers, employers and the State. *
- ▶ Implementing large-scale training campaigns for inspectors of the State Labour Service on how to detect and deter undeclared work, inspection techniques and communication skills. *
- ▶ Improving the effectiveness of inspections by increasing the number of audits in high-risk sectors (trade, construction, transport, agriculture and the hotel, restaurant and café sector) and better cooperation with other state actors (Labour Service, Tax Service, Pension Fund, State Employment Centre and the National Police).
- ▶ A 2020 amendment to the Labour Code strengthened sanctions against employers who admit employees without concluding an employment contract; report an employment contract as a part-time assignment when it is a full-time job; and fail to pay the corresponding social security contributions and taxes. Accordingly, article 265 provides the following sanctions:
 - (a) a general sanction: a fine equal to 10 minimum salaries (in 2020, 47,230 hryvnyas (Hrv)) for each employee affected by the violation;
 - (b) a sanction applicable to employers registered as single taxpayers group I, II, or III (private entrepreneurs) for a first-time violation: legal warning (newly introduced sanction); and
 - (c) a sanction for a repeated offence that occurs within two years: fine equal to 30 minimum salaries (in 2020, Hrv141,690) for each employee affected by the violation.

* These measures have been implemented with the support of a European Union–ILO project.

Source: ILO, "[Undeclared work](#)".



► Labour inspection to ensure that fishers are free from labour abuse in Thailand, © ILO

▶ 6. Compliance from the perspective of employers

Employers' obligations vary from one country to another, according to each country's labour and social protection legal frameworks and assumed international obligations. Nonetheless, most national legislations require employers, at a minimum, to register employment contracts (either before they start to combat informality or within a short period following their start date); comply with working conditions requirements, including minimum wages regulations or observe OSH standards; affiliate workers with the applicable social security schemes; and pay social security contributions (both on their behalf and on behalf of employees).

In most countries, the registration of employers and the affiliation of their workers with social security institutions is a legal obligation that falls within the employers' responsibilities. For example, in **Germany** employers must register their worker at the beginning of the employment relationship. Registration has three objectives:

- ▶ to inform the social insurance system about employment;
- ▶ to document claims with insurance institutions; and
- ▶ to identify more easily persons who were not correctly reported.

National legislation may provide safeguards to prevent employers from not complying with the obligation to register themselves with the different social security schemes. These safeguards can take the form of enforced registration with a pension fund (Finland) or a special public institution (Switzerland). Similarly, "clearance certificates" can be implemented to certify employers' compliance with the registration of workers and the payment of contributions. Such certificates may be requested when applying for the renewal of business authorization (Gambia) or bidding for government contracts (Brazil and Ecuador).

Using the same categorization explained in Chapter 1, section 1.1, in this module, it may be argued that the drivers of employers' compliance (or the lack thereof) can be characterized as either internal or external. Within these broad categories, it is sometimes possible to differentiate between objective or subjective drivers of compliance.

The existence of an overarching legal framework that requires employers to register within the different social security system and follow specific procedures (affiliation and contribution collection), as well as the existence of authorities that monitor employers' compliance with these obligations (labour and social security inspection services, judicial review), typically represent external drivers of compliance.

The key external factors that influence employers' compliance include:

- ▶ the labour inspection's capacity to enforce legal frameworks and detect contribution evasion and fraud;
- ▶ the existence of complaint and appeals procedures; and
- ▶ the availability of mechanisms to report employers' wrongdoings, including through anonymous complaints.

On the other hand, internal drivers of compliance relate to whether or not the applicable legal framework is easy or difficult for employers to adhere to and the (factual and perceived) consequences of non-compliance. In this regard, it is crucial to emphasize that in order to secure compliance with social security obligations, legal and institutional frameworks should be conducive to compliance, which can be achieved by simplifying administrative procedures, establishing single-window mechanisms and digitalizing registration and contribution payment mechanisms, among others. The existence of participatory structures within enterprises that are mandated by law and associating workers'

representatives with the management represent other drivers that influence the compliance of employers with their social security obligations.

6.1 Ensuring compliance with contribution collection

Recommendation No. 67 specifies that the employer “should be made responsible for collecting contributions in respect of all employees employed by him, and should be entitled to deduct the sums due by them from their remuneration at the time when it is paid” (Para. 18).¹⁵ Considering the crucial importance of contribution collection for the effective operation of the social security schemes, most countries have introduced legal provisions that specify the rank of priority of contribution payments over other liabilities of the employer, apart from wages.

Box 38. Legal provisions concerning the employer’s obligation to collect social security contributions

In **Albania, Bulgaria, Ethiopia, Finland, Germany, Mongolia, Namibia, Norway, Panama, Peru, the Philippines, Poland, Portugal, the Republic of Korea, Suriname** or **Uganda**, employers are responsible for deducting social insurance contributions from the wages paid.

- ▶ In the **Republic of Korea**, according to the National Health Insurance Act, employers shall pay the portion of the insurance contributions for the month to be borne by the insured employee out of the insurance contributions based on monthly remuneration by deducting it from their salary. In such cases, the employer shall inform the insured employee the deducted amount (art. 77).
- ▶ In **Peru**, employers are obliged to withhold contributions from workers’ salaries and deliver them to the social security system, along with those that said employers or companies must pay, for the term established by in the regulations, within the month following that in which the work was provided. In case the obligated persons do not withhold their workers’ contributions, employers will be liable for their payment without the right to deduct them from their workers (Decree–Law 19990, art. 11).
- ▶ In **Uganda**, the National Social Security Fund Act specifies that every contributing employer shall, for every month during which they pay wages to an eligible employee, pay to the fund, within fifteen days following the last day of the month for which the relevant wages were paid, a standard contribution of 15 per cent calculated on the total wages paid during that month to that employee (art. 11).

This obligation is usually linked with the responsibility to calculate the amount of the contributions due and pay it to the relevant social security institutions. For example, in Mongolia, according to article 17 of the Social Insurance Act, the obligation of employers to pay contributions includes:

- ▶ the duty of the employers and insurers to honestly and correctly calculate the payroll and similar income and the premium levied on them and to pay it by the due date;
- ▶ the submission of information and reports related to the imposition and payment of premiums to the insurance organization within the set time; and
- ▶ the maintenance of primary and accounting records related to social insurance in accordance with established procedures and the preparation of balance sheets.

Source: Adapted from ILO 2011, p.142.

¹⁵ A similar provision is found in Recommendation No. 69, which states that “contributions in respect of employed persons may appropriately be collected by their employers” (Para. 80).

In certain countries, employers have the responsibility not only to calculate contributions but also to actually pay out sickness and maternity benefits in place of social security institutions concerned (for example in the **Russian Federation** and **Ukraine**).

The collection of contributions should not be a major problem because it can be arranged through direct debit of the employers' accounts. Contributions risk not to be paid only when companies have gone bankrupt and social security institutions will receive only little or no further payments or have to give up existing claims.

6.1.1 Securing compliance with the obligation to keep records of contributions

The collection of contribution calls for data collection (for example employees, their working time and salaries) and a minimum bookkeeping. According to Paragraph 19 of Recommendation No. 67, "in order to facilitate the efficient administration of benefits, arrangements should be made for the keeping of records of contributions" and "for ready means of verifying the presence of the contingencies which give rise to benefits".

In many countries, both employers and social security institutions are obliged to maintain registers containing the employment and social security data of employees. Data are often centralized for the branches of social security forming separate schemes, such as the pension system and the health system.

- ▶ In **Australia**, the 2009 Fair Work Act as amended requires employers to make and keep for seven years certain employee records (wages; hours of work; salary deductions; superannuation contributions; period paid; date of payment; and fund) in relation to each of its employees.
- ▶ In **Namibia**, the Social Security Act requires employers to keep contribution records in respect of every worker employed, in the prescribed form. Such records and any other prescribed documents relating to the payment of contributions at their place of business in Namibia shall be retained for five years and shall be available for inspection on demand by an authorized person or the employee concerned (art. 22(2)).
- ▶ In **Zimbabwe**, according to the National Social Security Authority Act No. 17, employers are responsible for the maintenance of records in respect of contributions payable by them and by or in respect of their employees. The Act also prescribes the right of inspectors to audit any book, record, statement, pay roll, account or other document relating to employment or the payment of contributions (art. 40(b)).
- ▶ In some countries, the central keeping of records is the responsibility of the tax authorities. For example, in **Bulgaria**, employers register employees with the territorial directorate of the National Revenue Agency.

Other countries such as **Finland** have developed online databases and national registries to centralize record-keeping (box 39).

Box 39. Finland: Income Register database

Following the enactment of the Act on the Incomes Information System, the Incomes Register – a national information system on earnings and wages – was deployed on January 1, 2019.

Context

- ▶ The Incomes Information System is a national electronic database containing information on individual's earnings, income, contributions and benefits provided on the basis of the payers' (relevant authorities and employers) statutory obligation to notify and provide information. It also contains personal data (identification and contact information).
- ▶ The Incomes Register aims to simplify employers' reporting obligation and reduce the administrative burden involved in the process by replacing the most common reporting obligations (wage-related annual information returns and self-assessed tax returns).
- ▶ The Act distinguishes between regularly submitted mandatory data and complementary data. Mandatory data correspond to the annual information returns collected by the Tax Administration, earnings-related pension providers, the Employment Fund and occupational accident insurance companies prior to 2019. This information shall be submitted once a month and includes:
 - monetary wages'
 - data concerning the payer, including payer type (household, temporary employer, public sector entity, foreign employer, etc.);
 - data reported on an income earner;
 - data reported on an income earner's employment relationship; and
 - data reported on insurance.

On the other hand, reporting complementary data to the Incomes Register is voluntary for the payer.

- ▶ Data can be submitted via an interface, by uploading files in the Incomes Register's e-service or by entering the information in an online form. Information can only be submitted on paper in special circumstances.
- ▶ The Finnish Tax Administration's Incomes Register Unit will maintain the register and serve as the responsible authority.

Source: Finland, Finish Tax Administration (2021), information on the Incomes Register.

6.2 Impact of non-compliance with contribution collection by employers

6.2.1 No suspension of benefits

According to international standards “a person shall not be disqualified for benefits by reason of the failure of his employer duly to collect the contributions payable in respect of him”.¹⁶ Article 69 of Convention No. 102, which enumerates the cases in which benefits provided under the Convention may be suspended, does not refer to the situation of non-payment of contributions on behalf of the insured person.

Workers should not be compelled to have recourse to the courts or the labour inspectorate in order to receive benefits, even in the case of the failure of employers to comply with their obligations. It is the responsibility of the State to adopt all the necessary measures to ensure that such benefits are provided in practice, even when the employer fails to collect the contributions. However, there is no uniform practice in this respect at the national level.

- ▶ According to social security law, the **Ecuadorian** Institute of Social Security (IESS) is obliged to grant sickness, maternity and funeral benefits to all insured persons who have fulfilled the qualifying conditions established in the national legal framework, even when their employers are in arrears. This shall be without prejudice to any employer’s liability that may arise. The IESS is also obliged to provide health care benefits in its medical units to retirees, even when the State is not up to date with the payment of the compulsory contribution covering the cost of collective insurance against the contingency of illness of retirees.
- ▶ In **Indonesia**, article 38(1)(a) of Government Regulation No. 44 specifies that in case a salaried worker suffers a work injury or occupational disease while there are outstanding contributions on their behalf of up to three consecutive months, the social security institution should provide medical care and cash benefits to the injured worker. In cases where the unpaid contributions to the work injury scheme exceed three consecutive months, employers shall provide benefits directly to workers or their survivors (art. 38(2)).
- ▶ Legislation on work injury in **the Philippines** does not prejudice the right of employees or their dependants to seek benefits in the event of the failure or refusal of the employer to pay or remit contributions.
- ▶ In **Myanmar**, according to article 69 of the Social Security Act, insured persons or their survivors shall be entitled to the benefits provided in the Social Security Act, even if contributions have not been deducted from their wages or salaries.
- ▶ By contrast, in **Bulgaria** state social insurance payments shall only be made when the two following conditions are fulfilled: the employer submits a payment order certifying the transfer of the insurance contributions and the insurer confirms that the contributions for state social insurance, health insurance and supplementary mandatory pension insurance have been paid.
- ▶ Likewise, in **Croatia**, article 81 of the National Health Insurance Act provides that when the person liable for the payment of compulsory contributions fails to make the corresponding payments for more than 30 days, access to health care benefits is reduced to emergency medical care only. The right to access the full scope of health care benefits is reinstated once the overdue contributions and related interests are paid.

¹⁶ Recommendation No. 69.

In countries in which there is no guarantee of payment of benefits in case of the failure of the employer to pay contributions, persons may initiate summary proceedings before the courts for civil debt to recover the sums due. A particular case is the bankruptcy of the employer.

- ▶ In **Switzerland**, in case of bankruptcy and the non-payment of contributions, a guarantee fund provided in the federal law on old-age, survivors' and disability benefits will pay the minimum legal benefits.
- ▶ Similarly, section 7 of the Council Directive of 20 October 1980, on the approximation of the **European Union** Laws of the Member States relating to the protection of employees in the event of the insolvency of their employers (80/987/EEC), provides that Member States shall take the measures necessary to ensure that the non-payment of compulsory contributions due from the employer, before the onset of his insolvency, to insurance institutions under national statutory social security schemes does not adversely affect employees' benefit entitlement in respect of these insurance institutions, inasmuch as the employees' contribution were deducted at source from the remuneration paid.

6.2.2 Recovering outstanding contributions

The failure of the payment of contributions by employers does not necessarily trigger enforcement procedures automatically to collect the outstanding payments. It is not uncommon that first there will be steps taken to try to find a settlement with the employer to facilitate payment of the arrears in full.

- ▶ In the **Republic of Korea**, the National Health Insurance Corporation has established procedures to provide a new deadline urging payment.
- ▶ In **Saint Lucia**, agreements to facilitate payment to settle arrears can be arranged.
- ▶ In **Cameroon**, a settlement agreement and annual regularizations of contributions can be agreed upon.
- ▶ In the **Gambia**, the non-payment of contributions shall first be settled through mediation channels and, if these do not bear fruit, the matter shall be referred to the courts for legal redress.
- ▶ Several countries, including **Canada, Italy, Portugal** and **Spain** have implemented regularization measures, which permit individuals who voluntarily report their previously undeclared employment to the relevant authorities to avail themselves of either a waiver or a reduction of the associated penalties.

Administrative procedures initiated by social security institutions to collect outstanding contributions usually have an executive designation and do not require a court order to be enforced.

- ▶ In **Albania**, the obligation to pay contributions constitutes an executive designation and is executed by the bailiff's office.
- ▶ In **Namibia**, a statement of social security debt has the effect of a civil judgment.
- ▶ In **the Philippines** and **Madagascar**, the initial administrative procedure consists of sending formal reminder letters to invite employers to pay the outstanding contributions without penalty within a fixed time limit. If payment is not made within the deadline, penalties are imposed. In Madagascar, recovery procedures for collecting outstanding payments include a statement that contributions will automatically be increased by a certain percentage and a fine if the payment is not made within 15 days.
- ▶ In **Czechia**, the District Social Security Administration issues a decision to pay contributions within 15 days, otherwise a penalty is imposed.

On the other hand, legal frameworks also regulate the internal functioning of enterprises and subject enterprises to accounting rules, which are aimed at associating representatives of staff with the management and sharing important documentation, including financial, with these representatives. These legal requirements also indirectly impact the observance by enterprises of their contributory social security obligations since financial statements also reflect the amounts paid to social security institutions and can be checked by inspection bodies and staff representatives.

In addition, there are also more subjective drivers of compliance by employers with their social security obligations, such as distrust in the social protection system, which plays an important role. In other words, compliance also results from whether such subjective risk assessment is conducive or not to compliant behaviour. Such drivers include the actual and perceived advantages and disadvantages of registering and contributing to the social security system, as well as the employers' subjective assessment of whether non-compliance with social security obligations is worth the incurred risk (potential of fraud being discovered, regime of sanctions, etc.) when compared to the total cost of compliance, including the cost of the contributions themselves and the cost, financial but also in terms of involved time when all administrative requirements and formalities related to employee registration and payment of contributions are observed (red tape, multiple declarations with various institutions, face-to-face or online procedures).

The existence of incentives, including financial ones in the form of access to loans for MSEs who register formally, represents another important factor promoting compliance.

6.2.3 Penalties applied to employers

In some countries, the sanctions imposed on employers are inadequate and make it more profitable for them to pay fines instead of complying with the law. In such cases, the efficiency and authority of the law are undermined.

States have adopted different solutions, the common feature of which is the importance of the fine. In some countries, a deterrent effect is sought by imposing heavy fines.

- ▶ In **Germany**, if there is wilful misconduct of the employer, fines up to €50,000 may be charged. Other countries have instituted fines that are commensurate with the contributions due. In Lithuania, employers who have not paid contributions in full are liable to pay a penalty equal to twice the amount due (Law on State Social Insurance, art. 36).
- ▶ In **Poland**, failure to pay contributions or under-payment of contributions may be fined up to 100 per cent of the contributions owed. In Latvia, the fine is threefold (Law on State Social Insurance, art. 16(1)). The amount of the fines may also be linked and adjusted to the evolution of the minimum wage.
- ▶ In **Montenegro**, article 10 of the Law on Labour Inspection of 2008 sets fines at 50 to 200 times the minimum wage for employers who have not registered employees and have failed to pay social security contributions. The law also prescribes the minimum and maximum amounts which can be fixed.
- ▶ In **Albania**, an amount of 10,000 leks is fined to employers who do not register new employees (US\$106.24). In Namibia, fines shall not exceed 8,000 Namibia dollars (US\$428.18) or a term of imprisonment not exceeding two years (Social Security Act, section 23(2)).

In other countries, in case of non-payment of contributions within fixed time limits, interest is charged on the overdue payments based on current bank interest rates. Another practice to deter non-compliance with the timely payment of contributions is to impose a fixed interest rate that is established by law. Daily interest rates for the overdue payment of contributions ranges from 0.5 per cent in **Lithuania** to 20 per cent in **Namibia**.

Often, the law prescribes more elaborate conditions for the calculation of the penalty.

- ▶ In the **Bolivarian Republic of Venezuela**, a penalty is imposed by virtue of articles 86 and 88 of the Social Security Act on delayed payment, which is considered to be a serious offence, and is expressed in 100 tax units, the value of which is adjusted at the time of the offence.
- ▶ In some other countries, two penalties can be imposed simultaneously.
- ▶ The Code of the Republic of **Belarus** on administrative offences of 21 April 2003 imposes a fine for each day of overdue payment amounting to 1/360 of the national bank refinancing rate on the date contributions were due. In addition, non-payment or partial payment of contributions is punishable by a fine of 20 per cent of the amount due.

In countries in which the collection of social contributions is the responsibility of the tax authorities, such as **Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, the Republic of Moldova, Norway** or **the United States**, proceedings for the recovery of outstanding payments are carried out according to local tax laws. The tax authorities are in a position to pursue a forced collection of outstanding payments through, for example, seizure of bank accounts and the property of the company and may proceed to auction sales of assets. This is often also the case in countries in which the collection of contributions is the prerogative of social security institutions.

- ▶ In the **Philippines**, article 47 of the Workmen's Compensation Act provides that written warrants may be issued to confiscate and sell by auction the properties of employers who fail to pay contributions. Cash obtained from the auction is deducted for expenses of confiscation and auction and for the payment of outstanding contributions and additional payments. Any remaining cash is immediately returned to the employer and, if the employer does not claim this remaining money within five years, it shall become the property of the Fund.
- ▶ In **Thailand**, article 80(4) of the Social Security Act of 1990 as amended states that the property of an employer may be seized according to an order of the Secretary General of the Social Security Office when employers do not pay contributions or fail to pay the full amount.
- ▶ In **Hungary**, one of the measures at the disposal of the Tax and Finance Control Administration for collecting outstanding payments is the temporary closure of the enterprise (Act XCII of 2003 on the order of taxation).

With this classification, the module seeks to illustrate a rather complex phenomenon in which internal and external drivers of compliance coexists. When they reinforce each other, compliance is favoured but when they do not and work against each other they favour non-compliance. Therefore, employers' non-compliance may result from a combination of factors, including the limited administrative and financial capacity of employers, particularly in the case of MSEs, the high monetary and non-monetary costs of compliance (ILO 2013), a lack of incentives and limited enforcement capacity.

Even though contributory schemes in developed countries have achieved high levels of coverage, labour market transformations resulting from globalization and digitalization pose challenges to compliance and enforcement of legal frameworks. For example, ICT developments have increased the prevalence of non-standard forms of work, which present a range of opportunities and benefits to both businesses and workers, including flexible work arrangements¹⁷. However, these new forms of employment, including digital platform work, present numerous challenges, as they entail higher income volatility, lower job security and wages, and limited access to social protection (ILO 2024, 2016; Rokicka et al. 2016).

In this regard, according to the ILO's *World Employment and Social Outlook*, among 20,000 platform workers surveyed in 100 countries less 20 per cent of respondents working on web-based online platforms reported being covered for employment injury, unemployment and disability benefits or old-age pensions (ILO 2021e).

Moreover, in contexts in which legal frameworks are not adapted to reflect these labour market transformations and ensure coverage for workers in all forms of employment, loopholes concerning the nature of the employment relationship may arise, leaving workers insufficiently protected and affecting their future social security entitlements. Such is the case of false self-employment, which occurs when employers deliberately misclassify their workers as self-employed in order to avoid employment and social security regulations, fiscal obligations and workers' representation and shift such risks onto workers in order to gain a competitive advantage (ILO and OECD 2020).

¹⁷ Flexible work arrangements include temporary employment, part-time and on-call work; temporary agency work and other multi-party employment relationships; disguised employment; and dependent self-employment (ILO 2019b).



► 7. Compliance from the perspective of protected persons

Compliance with social security legal frameworks also means that protected persons, as rights holders, also need to comply with their respective duties and obligations. Workers and self-employed persons must comply with their obligation to affiliate and contribute to social security; claims must not be fraudulent and contingencies must not have been caused by a criminal offence or wilful misconduct of the person protected; beneficiaries must observe the rules of conduct prescribed by the legal framework during the time of payment of benefits (that is, they must comply with the rules aimed at verifying the occurrence or continuance of the contingency); workers must refrain, under prescribed conditions, from engaging in paid work while benefits are being paid; workers must remain in the country of ordinary residence and not receive another benefit for the same contingency; and in case of unemployment benefit, workers must make use of the employment services placed at his or her disposal.

In most cases, compliance by workers is contingent on that of their employers as the law usually places an obligation on employers to affiliate workers and transfer both employers' and workers' social security contributions to the authority responsible for contribution collection. Therefore, in case of non-compliance with the obligations to register, affiliate and contribute to social security, the primary responsibility usually rests with employers and most national legal frameworks consider such non-compliance as both an administrative and a criminal offence.

7.1 Internal drivers of compliance

7.1.1 Knowledge about social security and its importance

As described in Chapter 1, section 1.1, for stakeholders to comply with their national and international duties they need to understand the legal framework applicable to them. Therefore, information concerning social security rights and obligations, as well as their sources, should be available to employers, workers and non-state actors. Awareness about existing social security schemes, relevant qualifying conditions, benefits and the administrative formalities required to access them are crucial for protected persons to exercise their rights and to understand the value of social protection.

Governments under the general responsibility of the State, as well as social security institutions administering the different components of the social protection system, are jointly responsible for ensuring that stakeholders are fully aware of their social security obligations.

Box 40. France: Framework of Undeclared work**Employees who are victims of undeclared work**

Firstly, in the event of termination of the employment contract and whatever the reason of termination (redundancy, resignation or conventional termination), the employee is entitled to compensation equal to at least six months' salary (collective agreements may provide more favourable conditions). This compensation is due regardless of how long the employee has worked.

Following the decision of the Court of Cassation of 6 February 2013, an employee who has been dismissed (and previously employed without being declared) can accumulate the compensation for undeclared work with the severance pay (redundancy pay, compensation for notice, paid holiday pay and so on).

Also, in the event of an accident at work the employee receives the relevant social security benefits, which must be reimbursed by the employer.

In case a person receiving unemployment benefits accepts undeclared work, he or she will have to pay back the unemployment benefit received. An additional sanction is the removal of the person concerned from the employment services registry.

The same applies to any health insurance and family benefits received, which may have to be repaid.

Source: France, Ministère du Travail, de l'Emploi et de l'Insertion.

7.1.2 Fear of retaliation

Even when protected persons are well aware of the implications of non-compliance with the rules that govern contributory schemes and how this affects their current and future social security entitlements, they may be unwilling to make a complaint against their employer for fear of dismissal. One avenue for encouraging individuals to speak out against wrongdoing is to implement whistle-blower protection from retaliation, disproportionate punishment, unfair treatment and other challenges (ILO 2019b).

Given that workers are typically the weak party in the employment relationship and as such may be reluctant to report non-compliant employers, a number of countries have introduced legal protection for individuals who report suspected wrongdoings, such as violations of fundamental rights, tax evasion, the existence of undeclared work and other serious misconduct.

In order to effectively protect individuals against retaliation from their employers – such as dismissal, suspension or non-renewal of contracts, coercion and intimidation – reporting mechanisms should allow confidential and anonymous filing. Reporting mechanisms typically consist of “hotlines”, online complaint portals and online mailboxes exclusively dedicated to collect information on potential cases of social security fraud (box 41). As noted in an ILO report, hotlines enable individuals to raise various concerns, including those related to bogus self-employment; however, reporting mechanisms relating specifically to false self-employment are rare (ILO 2017a).

Box 41. Country approaches to facilitate or incentivize complaints

- ▶ **Sweden.** Special protection was introduced for whistle-blowers who report serious irregularities committed by their employers. Since January 2017, workers have been legally protected against reprisals.
- ▶ **Spain.** Any person who is aware of an employer action or omission that potentially constitutes an infraction of their legal obligations regarding working conditions, OSH, social security and so on, can submit an online complaint to the Labor and Social Security Inspection. Anonymous complaints are not considered.
- ▶ **United States.** The Internal Revenue Code prescribes financial awards to incentivize individuals who suspect or spot tax underpayments or violations of internal revenue laws in their workplace and provide credible information to the Whistleblower Office within the Internal Revenue Service.

Sources: Sweden, The Whistleblowing Act; Spain, Ministerio de Trabajo y Economía Social, "[Buzón de la inspección de trabajo y seguridad social](#)"; and United States, Internal Revenue Service, "[Whistleblower – Informant Award](#)", 2021.

Therefore, ensuring that protected persons are well informed about their rights and obligations by social security institutions, trust the social security system, understand the advantages of being protected and do not fear the consequences of asking their employers to obey by the law are prerequisites for securing compliance with the social protection legal framework.

7.1.3. Securing compliance: The challenging case of self-employment

Compliance from the perspective of protected persons also includes the case of self-employment, which poses various challenges in terms of adherence to social security obligations and also more broadly to labour law frameworks. These challenges are related to whether or not self-employment is genuine or constitutes a disguised form of an employment relationship aimed at evading social protection contributory obligations, as well as the manner in which self-employment is covered by the national social protection legislation.

In recent years, several countries, particularly in Europe, have implemented a range of measures to better identify disguised employment relationships (see box 42).

Depending on national legislation, the participation of genuinely self-employed persons to contributory schemes may take various forms, as follows.

- ▶ Self-employed persons may be subject to compulsory coverage and required to pay the combined worker and employer contributions. In some cases, legislation provides for government subsidies or reduced contribution rates for all or specific categories of self-employed workers (often those in agriculture).
- ▶ While mandatorily covered, self-employed persons may often be covered through special schemes aimed at simplifying contributions and tax payment mechanisms, often by combining these (monotax).
- ▶ Self-employed persons may be eligible to social security but on a voluntary basis.
- ▶ Self-employed persons may be excluded from participation. In a number of countries, mostly developing countries, the scope of application of labour and social security legislation is often limited to salaried workers. Self-employed persons may, however, be eligible for protection but only with respect to certain risks covered by the social protection system (such as old age, for example) but be excluded from others, notably those providing short-term benefits (cash sickness benefits, unemployment benefits and work injury benefits).

Box 42. Measures for identifying disguised self-employment

With a view to addressing the increasing prevalence of disguised self-employment, some countries, notably developed economies, have implemented several measures. These include the following.

- ▶ One approach is to define a hybrid status or legal category of disguised self-employment in national legislation. Belgium, Czechia, Greece, Ireland, Malta, Portugal, Slovakia and the United Kingdom have implemented such measures.
- ▶ Similarly, some countries have modified their legal frameworks to reduce ambiguities and grey zones between salaried employment, self-employment and dependent self-employment.
- ▶ Another approach is to increase the role of tribunals in reclassifying the nature of the contractual relationship from the provision of services into salaried employment. This is particularly the case for digital platform work, such as transportation, delivery and other services.
- ▶ Other countries have sought to facilitate the transition from bogus self-employment to legal employment. In Italy, for example, this has been done by reducing or waiving administrative and financial sanctions, subject to the conclusion of a written contract and the employer's commitment to pay outstanding compensation.
- ▶ Finally, some countries have broadened labour and social security inspectors' competencies to identify and sanction disguised self-employment, including digital platform enterprises. In Poland and Slovenia, the labour inspection function carries out targeted inspections to verify employment conditions, including the nature of the contractual relationship, in digital platforms (Williams and Puts 2019).



▶ Worker in United Republic of Tanzania © ILO / M. Crozet

Depending on the design features of contributory schemes, genuinely self-employed persons are responsible for registering and affiliating themselves with the relevant social security schemes, calculating and paying contributions and carrying out the administrative tasks that usually fall within the employers' realm. As such, self-employed persons' willingness and capacity to comply are also influenced by the internal and external drivers of compliance relevant to employers, as discussed in Chapter 6.

Box 43. Measures for addressing the challenge of false self-employment

The following measures may help to identify non-compliance and promote compliance with national social protection legal frameworks in case of disguised self-employment.

- ▶ Check whether the self-employed is duly registered as a self-employed person or as an independent contractor (if not, legislation often provides for the loss of the presumption of non-salaried status).
- ▶ Establish a procedure allowing self-employed persons to request an exemption from social security institutions with respect to contributory obligations for a specific situation.
- ▶ Make sure that self-employed persons have the discretion to organize their work independently (in particular with respect to working hours and the use of their own equipment to carry out their work (computer equipment, software, vehicle, etc.)).
- ▶ Check the existence of specifications and expectations for the assignment and the purpose of the assignment (an imprecise assignment or even the absence of an assignment specification can contribute to the characterization of disguised self-employment).
- ▶ Check the existence of an estimate, an order form or an invoice drawn up for the services provided by the contractor.
- ▶ Establish whether the self-employed person is treated as an employee in the performance of their work (business cards and professional emails in the name of the company, permanent office in the company, organizational or hierarchical functions within the structure and so on).
- ▶ Check the correspondence between the client company and the self-employed person, including email exchanges, the existence of binding or peremptory instructions and so on.
- ▶ Check the disciplinary control of the tasks performed by the self-employed provider.
- ▶ Establish whether the service provider can freely determine their days off (regardless of the client's organizational requirements).
- ▶ Check the client's database (in single-client situations, the presumption of non-salaried status is greatly weakened, which greatly increases the risk of the contractual relationship being reclassified as an employment contract).
- ▶ Check the number of clients for which the self-employed person provides services.

Source: Authors.

7.2 External drivers of compliance

7.2.1 Penalties sanctioning non-compliance by beneficiaries

According to the principles established in national legislation, unduly received benefits may be reimbursed, even when they have been paid because of an error committed by the social security institutions. In the latter case, facilities for repayment may be provided.

- ▶ In **New Zealand**, overpayments of benefits are repaid, usually through weekly repayments until the debt is cleared. Where unduly received benefits result from a misrepresentation of the beneficiary, their reimbursement is accompanied by a wide range of sanctions in terms of fines and terms of imprisonment.
- ▶ In **Thailand**, unduly received benefits are punishable by a term of imprisonment of not more than three years or a fine.
- ▶ In the **Syrian Arab Republic**, article 109(1) of the Social Insurance Act provides for a term of one month of imprisonment and a fine of not less than 15,000 livres (\$320) if false statements are made to obtain compensation or a pension from the social insurance institution.
- ▶ In **the Philippines**, fraud, collusion, falsification, misrepresentation of facts or any other kind of anomaly is punished with a fine of not less than 500 Philippine pesos (PHP) and not more than PHP5,000 (between US\$8.98 and US\$89.83) and imprisonment for not less than six months or more than one year, at the discretion of the court.

In some countries, the undue receipt of benefits under certain conditions, mostly related to the gravity of the offence, is considered a criminal offence.

- ▶ In **the Netherlands**, in addition to the recovery of the unduly paid benefit, an administrative fine is imposed. If the unduly paid benefit amounts to more than €10,000, the matter is referred to the public prosecutor, who decides if criminal proceedings will be initiated.

In other countries, the undue receipt of benefits is considered a criminal offence and is not linked to any condition.

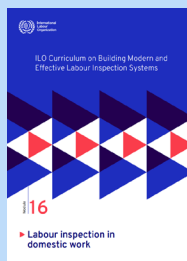
- ▶ In **Benin**, section 140 of the Social Security Code states that the undue receipt of benefits is qualified as fraud under the Penal Code.
- ▶ In **Canada**, under subsection 44(1) of the Old Age Security Act, misappropriation of funds is an offence under the Criminal Code. Discussions are being held to strengthen repression against fraud. Administrative penalties may be imposed against individuals who have been found to have knowingly made a misrepresentation; it is anticipated that these provisions will be brought into force in the near future.
- ▶ In **Canada**, punitive provisions are a deterrent measure intended to protect the integrity of the programmes and will ultimately ensure that pensioners receive the benefits to which they are entitled.

► 8. References and further guidance (guidelines, online courses ...)

- [ILO training package on inspection of labour conditions on board fishing vessels](#)
- [ISSA Guidelines on Good Governance](#)
- [ISSA Guidelines on Contribution Collection and Compliance](#)
- [ISSA Guidelines on Error, Evasion and Fraud in Social Security Systems](#)
- [Labour inspection and other compliance mechanisms in the domestic work sector Introductory guide.](#)

The ILO has developed practical resources to support countries in implementing labour inspection and enforcement measures adapted to the particularities of different economic sectors and occupations (See figure 7).

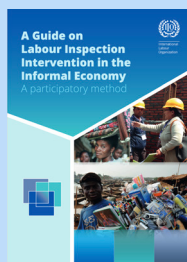
► Figure 7. Relevant resources



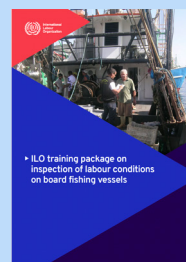
[Labour inspection in domestic work](#)



[Conducting Labour Inspections on Construction: A guide for labour inspectors](#)



[A guide on Labour Inspection intervention in the informal economy: A participatory method](#)



[ILO training package on inspection of labour conditions on board fishing vessels](#)



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Governance of social protection systems: a learning journey

Module #3: Compliance and enforcement of legal frameworks

This learning module is part of a series of working papers “Governance of social protection systems: a learning journey” developed in the context of the project “Achieving SDGs and ending poverty through Universal Social Protection”, implemented from January 2019 until June 2021 under the 2030 Agenda for Sustainable Development sub-fund of the United Nations Peace and Development Trust Fund (UNPDF). The project is jointly implemented by the Division for Inclusive Social Development of the United Nations Department of Economic and Social Affairs (UN DESA), and the Social Protection Department (SOCPRO) of the International Labour Office (ILO), in the framework of ILO’s Global Flagship Programme for Social Protection Floors and as part of the overall campaign for Universal Social Protection (USP 2030) launched in 2016. The project has pursued a two-fold strategy. In two focus countries, Pakistan and Cambodia, technical support was provided through the ILO offices to strengthen capacities of institutions and practitioners on different aspects identified as critical in social security governance. Simultaneously, at global level, the project has developed a knowledge base of good practices as well as learning modules in order to better support policy makers in their capacity to take strategic decisions in the field of social protection, the project has tried to identify and clarify, in a pragmatic and concrete way, the key drivers of different operational components inherent to all systems, starting with three core topics:

- ▶ **Coordination**
- ▶ **Information and communication technologies & data**
- ▶ **Compliance and enforcement of legal frameworks**

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