

LEGISLATIVE DEVELOPMENTS

Briefing note – Update of the sanction’s regime applicable for Intrastat purposes

On 29 January 2025, Royal Decree 1305/2024, of 23 December, was published in the Official State Gazette, approving the Regulation on the sanctioning procedure for infringements for non-compliance with the obligations arising from the statistics on international trade in goods within the European Union, and amending the Regulation on the administrative procedure for penalties for infringements for non-compliance with the obligations established in the Law on the Public Statistical Function, approved by Royal Decree 1572/1993, of 10 September.

This Regulation consists of three Chapters, namely, the first of which establishes the general provisions, the second, relating to the sanctioning procedure itself, and the third, which includes the criteria for classifying infringements and grading penalties.

General provisions

This Regulation will be applicable to the reporting units obliged to provide the information necessary for the preparation of Intrastat statistics, that is, to VAT taxpayers, as well as to persons and/or entities that, even if they do not qualify as VAT taxpayers, have an individual identification number granted, provided that a series of circumstances are met:

- a) In the case of exports, they have declared intra-Community supplies of goods or are exporters.
- b) In the case of imports, they have declared intra-Community acquisitions of goods or are importers.
- c) They are included in any of the cases in which the regulations indicate them as such in the case of specific movements of goods.

Sanctioning procedure

The sanctioning procedure will be governed by the provisions of Law 39/2015 for this purpose and the customs authorities will be competent to initiate, instruct and agree on the resolution of a specific sanctioning procedure.

The possibility of initiating preliminary actions, i.e. actions initiated prior to the sanctioning procedure, by the statistical services, is ruled to know the circumstances of the specific case and the accuracy or not of initiating this sanctioning procedure, the maximum duration of which may not exceed 6 months.

Generally, the sanctioning procedure will start by means of an start agreement issued by the head of the Regional Customs and IIEE Unit where the alleged infringing subject will be established and it

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will provide a period of ten working days to file allegations in the hearing procedure.

The investigation of the procedure will be in accordance with the provisions of Article 8 of the Regulations, and once the investigation has been completed, it will be necessary to disclose the file to the interested party so that he or she can submit, within a period of 10 working days, the allegations he or she deems appropriate, after the adoption of a decision in this regard.

After this period, the corresponding proposal for a resolution will be issued, granting the interested party a new period of 10 working days to make allegations.

If no allegations have been made to the agreement to initiate sanctioning proceedings, said agreement may be considered a proposal for a resolution provided that it contains a price pronouncement on liability.

The decision issued will put an end to the administrative procedure and only an optional appeal for reversal may be filed.

A maximum resolution period of six months is set, counted from the date of notification of the initiation agreement. After this period, the procedure will expire, without prejudice to the possibility of restarting it.

Finally, the possibility of reducing the amount of the penalty by 20% in the event of the recognition of liability is maintained. Additionally, a 30% reduction is contemplated in case of payment of the penalty within the voluntary payment period.

These reductions mean the reduction of the possibility of filing any type of appeal, as well as, where appropriate, the presentation of the returns with the correct data.



Classification and grading of infractions

The following will be considered very **serious infringements**:

- Failure to comply with the duty of statistical secrecy.
- The use for purposes other than statistics of confidential personal data obtained directly from the informants by the statistical services.

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- The provision of false data to the competent statistical services.

- Notorious, habitual or false excuses in the sending of the required data, when there is an obligation to provide them.

- The commission of a serious infringement when the offender has been sanctioned for two other serious infringements within a period of one year.

For these purposes:

1. It will be considered that there is notorious resistance in the sending of the required data when two requests on the same periods and flows are not met within the period granted for this purpose.
2. A very serious infringement shall be considered to have occurred when the offending party has been fined for two serious infringements in the twelve months prior to the date on which the infringement was committed.
3. Infringements relating to non-compliance with the obligations arising from Intrastat will be punished with a fine of 6,000 euros when, in relation to the previous calendar year, the sum of the taxable bases included in the summary declarations of intra-Community transactions, referring to the supplies or acquisitions of goods, or the statistical value of their

Intrastat declarations, in a given flow, it would have been more than 100 million euros.

4. In all other cases, the amount of the fine will be 4,000 euros.

The following **will be considered** serious infringements:

- The non-submission or delay in sending the required data when there is serious damage to the service, and there is an obligation to provide them.

- The sending of incomplete or inaccurate data when there is serious damage to the service, and there is an obligation to provide them.

- The commission of a minor infraction when the offender has been sanctioned for two other minor infractions within a period of one year.

In relation to the **serious infringements** set out above and for due clarification purposes, Royal Decree 1305/2024 specifies the following:

1. Serious damage to the service will occur when the declaration is not submitted, provided that such omission does not constitute a minor infringement, or when it has been submitted after the calendar month in which the filing period ends.

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1. A serious infringement will be considered to have been committed when there has been serious damage to the service, i.e. when the incomplete or inaccurate data submitted means that the difference between the taxable base recorded in the summary returns of intra-Community VAT transactions and the taxable base or its equivalent entered in the Intrastat return is greater than 30% of the taxable base recorded in the aforementioned declarations recapitulative; when it is greater than 500,000 euros; and finally, when a declaration has been filed without operations when they have been carried out.

A declaration shall be deemed to contain incomplete data when the data entered do not include all the transactions carried out.

2. A serious infringement will be considered to occur when the offending party has been fined for two minor infringements in the twelve months prior to the date of commission of the infringement.

Serious infringements will be punished with a fine of 1,200 euros when, in relation to the previous calendar year, the sum of the taxable bases included in the summary declarations of intra-Community transactions, referring to the supplies or acquisitions of goods, or the statistical

value of their Intrastat declarations, in each flow, has been greater than 100 million euros.



In all other cases, the amount of the fine will be 600 euros.

The following will be considered **minor infractions**:

- The non-submission or delay in sending data when it has not caused serious damage to the service, and there is an obligation to provide them.
- The sending of incomplete or inaccurate data when it has not caused serious damage para the service, and there is an obligation to provide them.

In relation to the **minor infringements** previously set out and for the due clarification purposes, Royal Decree 1305/2024 specifies the following:

1. It will be considered that there is no serious damage to the service in the following cases:

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- Failure to file the return, when an electronic certificate from a reporting unit has been used to identify the declarant, or a reporting unit other than the one obliged to declare has been recorded in the return, provided that the return initially submitted has been cancelled and a new return has been filed in which the reporting unit obliged to declare has been identified.
- Filing the return late, when it has been filed between the day following the expiry of the filing deadline and the last day of the calendar month in which the filing deadline expires.
- The submission of the return with incomplete data, when the circumstances do not exist to classify the infringement as serious.

They will be punished with a fine of 300 euros when, in relation to the previous calendar year, the sum of the taxable bases included in the summary declarations of intra-Community transactions, referring to the supplies or acquisitions of goods, or

the statistical value of their Intrastat declarations, in each flow, has been greater than 100 million euros.

In all other cases, the amount of the fine will be 150 euros.

The **entry into force** of this Royal Decree 1305/2024 took place on 1 February 2025.

Notwithstanding the foregoing, the Single Transitional Provision establishes that in those sanctioning procedures initiated prior to the entry into force of the regulation, the regulations in force until February 1, 2025, will be applicable, if said regulations favour the person responsible for the infringement.

We hope that these comments are useful. For more information, please do not hesitate to contact us at the following email addresses:

Belén Palao Bastardés

Partner

belen.palao@blnpalao.com

Blanca García de Vega

Senior Manager

blanca.garcia@blnpalao.com

Melissa Segura Agüero

Lawyer

melissa.segura@blnpalao.com