



SPLIN

Spanish report

Co-enforcement in the construction sector of the region of Asturias: a case study

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Introduction

The persistence of different forms of fraudulent contracting work has attracted scholars' interest on labour standards enforcement. Labour inspection is a central response to the gap between formal regulations and outcomes for workers which has widely been studied (Weil, 2015). Scholarly debates have also concentrated on trade unions and enforcement, but they have largely neglected the existence and potential for partnerships between labour inspectors and social partners. Generally, actions developed by public authorities and social partners tend to be analysed separately (Eurofound, 2016). This oversight has deprived scholars of the tools to understand the relationships between these actors and, perhaps more importantly from a policy-research approach, has limited the range of policy options considered by reformers (Amengual and Fine, 2017).

This report, which is part of the EU funded SPLIN¹ project, relies on a small research line on co-enforcement (Amengual and Fine, 2017; Fine, 2017; Fine and Gordon, 2010; Hardy, 2011), which incorporates the potential contributions of social partners (worker and employer organisations) for co-enforcing labour standards jointly with national labour inspection institutions. Co-enforcement action has been defined as: ongoing coordinated efforts of state regulators and social partners to jointly produce labour standards enforcement (Amengual and Fine, 2017; Fine, 2017). Empirical research on co-enforcement has inferred a number of mechanisms which justify the relevance of this approach and highlight its specificity compared with traditional enforcement approaches. Co-enforcement literature has particularly shown, first, how co-enforcement relies on the non-substitutable elements of state and social partners. Co-enforcement incorporates the unique capabilities to improve enforcement that each partner adds (the unique capacity of the state to set labour standards, the unique capabilities of trade unions to share their tacit knowledge on work processes, etc.). Second, co-enforcement relies on a sort of 'strategic enforcement' approach (Weil, 2010), which focuses on specific sectors. When social partners and inspectorates focus on a specific sector, they are in a better position to understand how companies operate and which are the main causes of the frauds and abuses. Literature has also identified how co-enforcement contributes to building political support between state authorities and social partners (Amengual and Fine, 2017; Fine, 2017).

In the SPLIN project, co-enforcement is studied in the construction sector, which is one of the most problematic sectors in terms of enforcement, clearly calling for innovative strategies to improve compliance with labour standards (Eurofound, 2017).

This report analyses one of the co-enforcement actions selected in the SPLIN project, namely, the co-enforcement action developed in the construction sector of the Autonomous Community of Asturias (*Comunidad Autónoma de Asturias*) (Spain). The co-enforcement action studied involves institutionalised cooperation between the Territorial Direction of Labour and Social Security Inspectorate of Asturias (*Dirección Territorial de la Inspección de Trabajo y Seguridad Social del Principado de Asturias*) and the Commission on Health and Safety and Hiring Prevention (*Comisión de Seguridad y Prevención de Riesgos Laborales y Contratación, COPREVAS*). This commission is regulated by the regional sectoral collective agreement of the construction sector. It consists of and is managed by the sectoral social partners of the construction sector with the support of the paritarian sectoral institution, the Labour Foundation of the Construction Sector of Asturias² (*Fundación Laboral de la Construcción de Asturias, FLC*).

Following this introduction, the report presents first the specific research objectives and methods. Second, it analyses main working conditions and fraudulent practices identified in the

1 Fair working conditions: exploring the contribution of cooperation initiatives between Social Partners and Labour Inspection authorities (VS/2019/0080). For project details, updates and country reports, see <http://splin.forba.at/>.

2 The shorter term Labour Foundation will be used in the document to refer to this institution.

Spanish construction sector. The third section studies the co-enforcement action identified in the construction sector of the Autonomous Community of Asturias, by analysing its design, key points of implementation and effectiveness in preventing and tackling fraudulent forms of contracting work and abuses. A final section focuses on the conclusions, discussing the co-enforcement action in relation to previous research findings.

1. Research objectives and methodology

The main research objective of this report is to analyse in-depth a co-enforcement action identified in the construction sector of the Autonomous Community of Asturias (Spain).

The specific objectives of the report are:

- Presenting the state of the art regarding employment, working conditions and fraudulent practices in the construction sector in Spain and Asturias (the Spanish region where the co-enforcement action is developed).
- Analysing the factors (political, societal, sectoral, etc.) which explain the development of the co-enforcement actions identified in the Asturian construction sector.
- Explaining the main features of the co-enforcement action.
- Presenting the key points of its implementation and dynamics identified.
- Presenting the action's contribution and effectiveness in promoting fair working conditions, and preventing and/or tackling fraud and inequalities in working conditions.

With a view to gathering both qualitative and quantitative data relevant to an in-depth analysis of the co-enforcement action, three different research methods have been developed. First, desk research has been conducted. This includes the revision of the existing relevant literature focused on working conditions in the construction sector; identification and analysis of relevant regulations and policy documents of the actions; identification and analysis of data to assess enforcement actions.

Second, 10 semi-structured interviews were conducted as per the profiles detailed in table 1 below. All the interviews were recorded and transcribed.

Table 1. Interviews conducted

| Institution | Position | Acronym |
|--|---|--------------------------|
| Construction Federation of Workers' Commission (<i>Federación de la Construcción de Comisiones Obreras, CCOO</i>) | General Secretary of Health and Safety, Environment and Communication section, Construction Federation of CCCO. Member of COPREVAS governing board | TU1 |
| Industry, Construction and Agriculture Federation of General Trade Union (<i>Federación de Industria, Construcción y Agricultura de la Unión General de Trabajadores, UGT</i>) | General Secretary and Head of Health and Safety section of Industry, Construction and Agriculture Federation of UGT. Member of COPREVAS governing board | TU2 |
| Employer Confederation of Construction Sector Asturias (<i>Confederación Asturina de la Construcción, CAC-ASPROCON</i>) | President of the employer organisation and President of COPREVAS governing board | EO |
| Labour Foundation of the Construction Sector of Asturias (<i>Fundación Laboral de la Construcción de Asturias, FLC</i>) | Deputy Director | FLC 1 |
| Labour Foundation of the Construction Sector of Asturias, (<i>Fundación Laboral de la Construcción de Asturias, FLC</i>) | Head of Economic Department | FLC 2 |
| Labour and Social Security inspection (<i>Inspección de Trabajo y Seguridad Social</i>) | Head Labour Inspector of undeclared work team in Asturias | LI |
| COPREVAS health and safety delegates (4 interviews) | Inspectors appointed by EO (2) and TU (2) | HS delegate (1, 2, 3, 4) |

Third, in May and July 2019, two days of direct observation were carried out. Four delegates from the Commission on Health and Safety and Hiring Prevention (COPREVAS) working in pairs were accompanied during their daily work. A total of 8 construction projects were visited in the two days of direct observation, which covered both big projects with several contractors and small construction projects including one single contractor. This exercise enabled us to gather relevant information about the implementation process of the action, including the way COPREVAS delegates interact with companies and employees, and how they apply the existing protocol of action. During this process, delegates could also respond to several specific questions formulated by the researcher about the actual implementation of the co-enforcement action, which contributed towards filling gaps in the information obtained through desk research and the semi-structured interviews. Information gathered during the direct observation was recorded in minutes.

2. Working conditions and main ‘fraudulent practices’³ in the construction sector: state of the art

2.1 Employment trends and working conditions in the construction sector

Recent employment trends

The construction sector (NACE F) includes:⁴ construction of buildings, civil engineering, specialised construction activities (demolition, plumbing, etc.) and other specialised construction activities (roofing activities, etc.) (Eurofound, 2017).

Employment in the construction sector was deeply impacted by the economic crisis starting 2008. Prior to the economic crisis, construction was one of the most important sectors of the economy. In the period 2001–2007, sectoral employment accounted for 11.2% of total employment and 9.7% of GDP (Villegas et al., 2012). This situation was altered with the crisis. As shown in table 2 below, sectoral employment dramatically dropped from 2,459,900 workers in 2008 to 993,500 workers in 2014. In the same period, sectoral employment as a proportion of total employment decreased from 12.1% to 5.7%. A very similar drop was recorded in Asturias, where sectoral employment as a proportion of total employment decreased from 11.5% to 5.4%.

Table 2. Construction (NACE F) employment, and employment as a proportion (%) of total employment (15–64 years) (Spain)

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---------|---------|---------|---------|---------|---------|-------|---------|---------|---------|---------|---------|
| Sectoral Employment (thousands) | 2,459.9 | 1,889.8 | 1,651.4 | 1,403.9 | 1,161.3 | 1,029.5 | 993.5 | 1,073.7 | 1,073.8 | 1,128.3 | 1,221.8 | 1,277.9 |
| Construction employment as a % of total employment | 12 | 9.9 | 8.8 | 7.6 | 6.6 | 6 | 5.7 | 6 | 5.9 | 6 | 6.3 | 6.5 |

³ It is possible to identify the fraudulent use of an employment/contractual relationship when two conditions are simultaneously met: (1) A specific employment/contractual arrangement is used to hire workers or to subcontract certain activities which involve the performance of work; (2) the factual circumstances of the specific employment/contractual relationship do not correspond to the (legal/formal) requisites that qualify that specific form of contracting work, directly via an employment relationship or indirectly through a subcontracting relationship (Eurofound, 2016).

⁴ In some relevant publications, such as those published by the European Construction Sector Observatory (ECSO), there is a slightly different definition of the sector. The ECSO reports distinguish between the narrow construction sector (NACE F) and the broad construction sector, which includes manufacturing, construction, real estate activities, and architectural and engineering activities. In Spain, the narrow construction sub-sector employs 62.9% of the 1.8 million people working in the broad construction sector in 2017 (European Construction Sector Observatory, 2019). This report will focus on the narrow construction sector (NACE F).

Table 3. Construction (NACE F) employment, and employment as a proportion (%) of total employment (15–64 years) (Asturias)

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|------|------|------|------|------|------|------|------|------|------|------|------|
| Sectoral Employment (thousands) | 52.6 | 40.2 | 37.2 | 36.1 | 31.0 | 23.5 | 20.2 | 20.4 | 20.1 | 22.6 | 22.9 | 25.4 |
| Construction employment as a % of total employment | 11.5 | 9.4 | 9 | 9 | 8.1 | 6.4 | 5.4 | 5.4 | 5.2 | 5.7 | 5.8 | 6.6 |

Source: Spanish Labour Force Survey, annual data (thousands)

There is a consensus that the construction sector was oversized in the years prior to the crisis. Employment in the Spanish construction sector accounted for 11% of total employment compared to 8% of the EU-28 average. Sectoral growth in the years prior to the crisis was due to the extraordinary housing boom, which increased housing prices. According to the Bank of Spain (the Spanish Central Bank), between 1997 and 2007, the average housing price in Spain rose by 115% in real terms. The rise in prices occurred in parallel with a huge increase in supply and new dwellings built. From 2003 to 2007, over 600 thousand units of new residential flats per year were built, with a maximum of 760 thousand in 2006, way above the reasonable and customary numbers recorded in other European countries. Indeed, in some of these years, the number of new residential flats built in Spain exceeded the number of new construction flats in the four big EU countries combined (Germany, France, UK and Italy) (Herrero and Fernández, 2008). While the rate of housing price growth was already decreasing in 2007, the impact of the USA subprime crisis accelerated the then ongoing correction, causing dramatic impact on employment levels (García-Herrero and Fernández, 2008).

In recent years, the Spanish construction sector has showed some signs of recovery. On the one hand, the number of finished dwellings increased by 36% between 2016 and 2017, ending nine consecutive years of downward trends. On the other hand, households' investments in housing renovation has also been increasing since 2013 (ECOSO, 2019). As a result, sectoral employment has grown by 29% from 2014 to 2019 in Spain and by 26% in Asturias. However, this employment growth has not been enough to recuperate pre-crisis employment levels.

Workforce characteristics

As is common throughout Europe, the construction sector in Spain is heavily male-dominated, with 91% (Spain) and 89% (Asturias) of workers being men in 2019 (Spanish Labour Force Survey, annual data). In addition, a relevant feature of the construction sector is that a large share of construction workers are migrants.

Employment and Working conditions

Employment and working conditions in the construction sector are shaped by several structural factors. First, the construction sector is a labour-intensive industry: about 50% of the turnover is achieved through the labour of the worker (Eurofound, 2017). In addition, a key characteristic of the construction business model is the widespread use of subcontracting. On the one hand, subcontracting part of a project to another firm is still common standard practice as a result of the different skills and specialisation domains of different construction firms. On the other hand, construction business models have been based on subcontracting strategies where the main purpose has been to save costs and blur liability. For instance, this is the case of subcontracting strategies in which the main firm only plays the role of administration and manager, outsourcing most of the activity to subcontracting firms. As a result, most subcontracting firms in the

construction sector in Spain are Small and Medium-Size Enterprises (SMEs) or they are formed solely of self-employed workers (Romero-Barriuso et al., 2019).

The worst characteristics of employment and working conditions in the construction sector determined by those structural factors described above are: the high instability or insecurity of work contracts (high rate of temporary employment and self-employment); high rate of work accidents; irregular working time and long working days; and low wages.

In terms of employment conditions, a significant feature of the construction sector is that self-employment is widespread: 26% self-employment as a proportion of total employment, compared with 16% at cross-sectoral level. Moreover, 15% are self-employed without employees compared with 10% at cross-sectoral level (Spanish Labour Force Survey data, second quarter).⁵ As shown in table 4 below, data from the Labour Force Survey shows that self-employment has remained stable at cross-sectoral level since 2008. In contrast, in the construction sector, self-employment sharply increased during the economic crisis: from 21% in 2008 to 29% in 2012. Since 2016, the proportion of self-employment has slightly decreased, although it is still 10% points higher than in the whole economy.

Table 4. Self-employed as proportion of total employment. Construction (NACE F) and total economy (Spain)

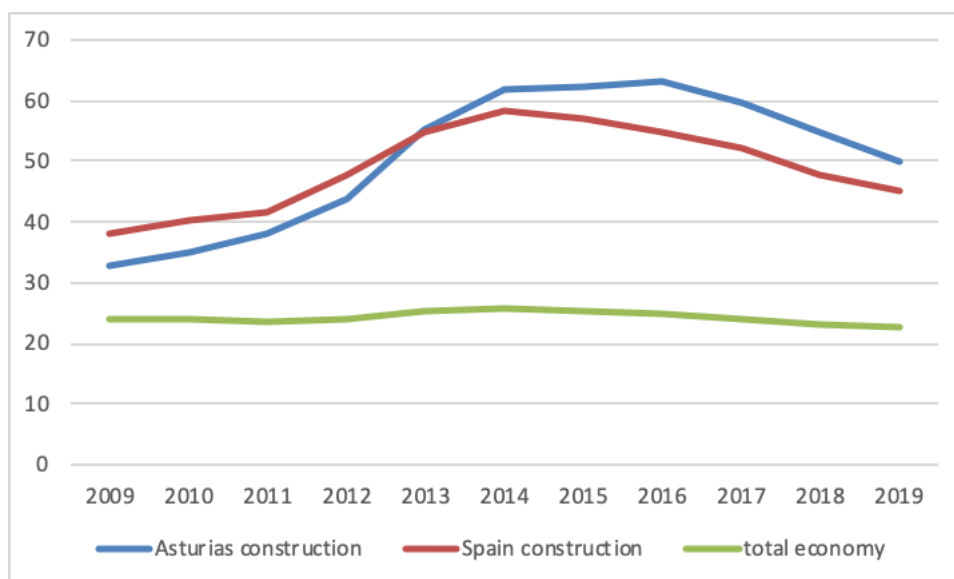
| | 2008 | 2012 | 2016 | 2018 | 2019 |
|----------------------|------|------|------|------|------|
| Construction | 21% | 29% | 30% | 27% | 26% |
| Total economy | 17% | 17% | 17% | 16% | 16% |

Source: Spanish Labour Force Survey, microdata, second quarter

Figure 1 below estimates self-employment as a proportion of total employment, using data from Social Security for the construction sector in Spain and Asturias, and for the whole economy. This source confirms that self-employment is much more prevalent in the construction sector than in the total economy. When comparing the evolution of self-employment in the construction sector in Spain and Asturias, it appears that the increase of self-employment since 2013 is higher in Asturias. Moreover, in the construction sector in Asturias the proportion of self-employment continued to grow from 2014 to 2016 while in the Spanish construction sector it has started to decrease after 2013.

⁵ According to Social Security data, there were 380,518 self-employed in the construction sector in 2019. Therefore, there were 34% self-employed in the construction sector compared with 19% at cross-sectoral level (Social Security statistics).

Figure 1. Self-employed as proportion of total employment. Construction (NACE F) and total economy (Spain and Asturias)



Source: Social Security statistics. Monthly average January.

The prevalence of self-employment in construction has been explained by the temporary nature of construction projects and the dominant subcontracting practices existing in the sector. In this context, using self-employed workers enables firms to match contractual or seasonal fluctuations in demand, while minimising the economic risk of surplus labour during slack periods (Behling and Harvey, 2015). Nevertheless, the rise in self-employment recorded during the crisis years in Spain has also been interpreted as a sign of growing bogus self-employment in the sector, as remarked in the interviews for this research.

In terms of employment conditions, another significant and negative characteristic is related to the high rate of temporary employment. Fixed-term employment contracts are more widespread in construction. As shown in table 5 below, in 2019, the temporary employment rate was 42% in the construction sector compared with 26% for the whole economy. The temporary employment rate decreased during the most negative years of the economic crisis (from 49% in 2008 to 37% in 2012). However, after 2012, it began to increase again in parallel with employment recovery.

Table 5. Temporary employment rate. Construction (NACE F) and total economy

| | | 2008 | 2012 | 2016 | 2018 | 2019 |
|-------|---------------|------|------|------|------|------|
| Spain | Construction | 49.5 | 36.8 | 43.1 | 40.3 | 41.9 |
| | Total economy | 29.3 | 23.4 | 25.7 | 26.8 | 26.4 |

Source: Spanish Labour Force Survey, microdata, second quarter.

When looking at working conditions, scientific literature shows that construction workers are more likely to experience negative or precarious working conditions in several dimensions. First, the sector has traditionally recorded a comparatively higher rate of accidents at work. Responding to this problem, investments in health and safety policies have evolved positively since the 1990s. In addition, several policy and industrial relations initiatives were launched. In this regard, the limitation of subcontracting chains and the introduction of new requirements to monitor compliance with regulation were particularly important (Romero-Barriuso et al., 2019). Subcontracting has been assessed as a key determinant of labour accidents, particularly in SMEs and for self-employed workers. This is because subcontractors at the bottom of the contracting chain are more likely to circumvent some elements of health and safety regulation (Muñoz-Villalba et al., 2017). Moreover, workers in these companies generally lack trade union

representation and, accordingly, are more vulnerable to employer abuses (Sanz de Miguel, 2019).

Despite the introduction of stricter regulation on subcontracting, the incidence rate (IR), which measures the number of accidents for every 100,000 exposed workers who are affiliated with Social Security and covered for occupational accident contingencies, is still much higher in the construction sector than for most economic activities. In 2018, the IR was 7,982.7 for the construction sector compared to 3,408.7 for the whole economy (Work Accidents Statistics, Ministry of Employment). In that year, only the extractive industries sector recorded a higher IR. Some studies have shown that during the crisis in Spain (the period 2008–2013), occupational accidents in the construction sector declined, both in absolute terms and relative terms. However, this trend has changed since 2013 (Muñoz-Villalba et al., 2017). Confirming this trend, trade unions interviewed in the fieldwork described a rise in the number of labour accidents in recent years, in line with the economic recovery (TU1 interview).

Second, construction workers are more exposed to variable working hours, unsocial working time (weekends, evening, etc.) and, particularly long working days. In the construction sector, 64% of all workers work between 40 and 50 hours, compared to 44% in the whole economy; and 9% work more than 50 hours compared to 7% in the whole economy (Spanish Labour Force Survey, second quarter 2019). In contrast, part-time work is less prevalent in construction than the economy as a whole, as only 5% of the employees in the construction sector work on a part-time basis, compared with 15% in the whole economy (Spanish Labour Force Survey, second quarter 2019).

Thirdly, wages in construction are comparatively lower when we look at the actual average annual wages (€22,607 for construction vs. €23,646 for the whole economy in 2017, according to the Wage Structure Survey).

2.2 Fraudulent practices and abuses in the construction sector

Reviewing the few studies that have researched the topic in the construction sector in Spain (Eurofound, 2017) plus the data gathered in fieldwork, the most common fraudulent practices identified are:

- Bogus self-employment.
- Subcontracting chains and multi-level contracting (which entail circumvention of health and safety regulations).
- Workers unregistered with Social Security.
- Irregular adscription to collective agreements.

Bogus self-employment

Bogus self-employment is associated with workers who are declared as self-employed simply to reduce Social Security costs, and elude labour laws and collective bargaining liabilities. According to some authors (Perez, 2008), this fraud may arise from problems with demarcating self-employment and bogus self-employment according to existing criteria. Other authors (Sanz de Miguel, 2019) have challenged this explanation and attribute the extension of self-employment in Spain to the interaction of three different institutional fields: first, the fragmentation of employment relationships following regulatory reforms; second, the lack of resources of the Labour Inspectorate to enforce existing regulation; third, trade union weakness at company level.

Bogus self-employment is a cross-sectoral phenomena (Sanz de Miguel, 2019). At the same time, it is particularly acute in the construction sector, where it seems to have grown since the onset of the economic crisis. A report of Labour Foundation Asturias (FLC, 2015) highlighted the existence of bogus self-employment in the construction sector resulting from employer

strategies aiming to save costs. They estimate that in this region, between 30% and 40% of self-employment in the construction is bogus self-employment. The same report identified a corrosive effect on health and safety associated with these fraudulent practices, as those workers are forced to work longer working days, and are not covered by health and safety protection mechanisms.

The labour inspector (LI) and social partners interviewed confirmed that this has been by far the most important fraudulent practice in the construction sector in Asturias:

“During the worst years of the crisis, we used to detect one or two bogus self-employed every week...Now the number of bogus self-employment has decreased. The main explanation [for using self-employed workers] was the employers’ wish to save costs and avoid labour liability.” (LI)

Subcontracting chains, multi-level contracting, and circumvention of health and safety regulation

The effects associated with subcontracting chains and multi-level contracting was an issue extensively discussed prior to the economic crisis. Subcontracting with long chains provokes a displacement of risks from bigger companies to weaker companies. Principal contractors push subcontractors to save costs, and they are thus encouraged to resort to irregular practices, particularly related to circumventing health and safety regulation.

The high incidence of labour accidents in the construction sector has been associated in the literature with long subcontracting practices where subcontractors, particularly SMEs, were not meeting the health and safety regulations (Muñoz-Villalba et al., 2017).

Fraud has also been associated with the use of letterbox companies, or intermediate agencies without real construction activity or productive infrastructure.

To handle abuses related to subcontracting, a new regulation was approved in 2006 (Law 32/2006) that, among other things, imposes new conditions on companies and aims to intervene in subcontracting practices in terms of: quality and company solvency (ensuring there is real activity and productive infrastructure, assumption of risks and liabilities, etc.); health and safety, in terms of having accreditation with the Register of Accredited Enterprises (*Registro de Empresas Acreditadas*); and the percentage of workers with open-ended contracts (at least 30% of the entire workforce). Moreover, the law limited long subcontracting chains, forbidding the third-level subcontractor to further subcontract work and making it mandatory for subcontracting companies to complete a so-called ‘subcontracting book’, in which companies have to record a range of details about the subcontracting chain (Monreal, 2008).

However, despite this 2006 regulation, companies still circumvented regulations on subcontracting practices. This can be seen in a report from Labour Foundation Asturias (FLC, 2015) which details the following non-compliance with the Law 32/2006 on subcontracting:

- Companies not updating the information provided in the Register of Accredited Enterprises.
- Companies not meeting the requested minimum percentage of workers hired with open-ended contracts.
- Companies not having the subcontracting book.
- Companies which lack productive infrastructure, and health and safety coordinators.

In addition, fieldwork information highlights the problem with public procurement/public tendering regulation. This regulation limits subcontracting by requiring a contractor under public contract to perform 40% of the work themselves. As regulation is not properly monitored, companies can easily resort to bogus self-employment and other bogus subcontracting chains.

Workers unregistered with Social Security

This fraud occurs when companies do not register workers with Social Security. It was particularly associated with the employment of non-regularised migrants, especially prior to the economic crisis. It was estimated that a significant proportion of undocumented migrants were employed in the construction sector (Meardi et al., 2012).

In the region studied (Asturias), the labour inspector stressed that there was a dramatic increase in the number of workers unregistered with Social Security during the years of the crisis (2008–2013).

Irregular adscription to collective agreements

Some Spanish trade unions (UGT) at national level have made criticisms that there are companies which register their headquarters in those provinces where the collective agreement establishes lower wages and worse working conditions, while operating in a different province (Eurofound, 2017).

In Asturias, Labour Foundation Asturias (FLC, 2015) has warned of companies irregularly classifying their activity with the aim of been covered by other sectoral collective agreements and, as a result, eluding stricter regulation by the construction collective agreement. The companies also want to save comparatively higher costs in terms of health and safety, and vocational training which have to be paid to the FLC.

The labour inspector interviewed confirmed the significance of this fraud:

“We have found cases of companies from different regions which are working here and do not apply the regional collective agreement. I am not talking about posted workers who come here to work in a construction project. I am talking about workers from Asturias hired on purpose under a ‘temporary contract for specific jobs or services’ (contrato de obra y servicio), to work on a project in the region, who are employed under the conditions regulated under a different collective agreement (region of Cantabria, etc.) and do not pay Social Security quotas here. Or we find companies which have part of the structural activity in Asturias and do not apply the agreement.” (LI)

3. Co-enforcement action

The previous section showed the importance of improving enforcement efficiency in the construction sector, given the widespread use of several fraudulent practices, the perpetration of which increased during the economic crisis. Bearing this in mind, this section studies an innovative co-enforcement action developed in the region of Asturias aiming to improve enforcement through cooperation between social partners and public institutions.

Box 1. Enforcement terms and actors used in the section

Labour Foundation of the Construction Sector of Asturias: paritarian body in the construction sector in Asturias (Spain), comprising sectoral social partners (worker and employer organisations).

COPREVAS: Commission on Health and Safety and Hiring Prevention. It is an autonomous commission created and managed by the sectoral social partners of the construction sector.

COPREVAS prevention delegates: workers appointed by COPREVAS to implement social partners autonomous enforcement activities in the field of health and safety and contractual regulation. Also referred to as simply 'delegates' in this report.

Labour and Social Security Inspectorate (also referred as labour inspection institution): main Spanish institution in charge of supervising the enforcement of labour and social security provisions through its network of labour inspectors.

Formal complaint (*denuncia*): the only and direct means that workers have to bring cases of employers' circumvention of labour law provision to the Labour and Social Security Inspectorate. Access to the formal complaint system is public (it can be made by any person) and confidential.

Notification: written advice issued by COPREVAS to the companies alone, without informing the Labour Inspectorate

3.1 Drivers of co-enforcement: the institutionalisation of a social partners' consensual approach to enforcement

In Asturias, a significant feature of enforcement in the construction sector has been the informal and formal cooperation between sectoral social partners and the Labour Inspectorate. This cooperation was officially institutionalised through a cooperation agreement between construction sector social partners in the Autonomous Community of Asturias and the Labour Inspectorate. It was signed in 2017 and renewed in 2019 through a formal agreement with the regional Labour Office (*Oficina Regional de Empleo*). Through this agreement, social partners' own inspectors (so-called 'prevention delegates'), share information weekly with the Labour Inspectorate on infractions related to health and safety, and fraudulent contracting practices.

To fully understand the co-enforcement experience, attention has to be drawn to the role played by sectoral social partners from this region in promoting fair competition, improving working conditions, and better enforcing health and safety standards. This is the result of an historical process of social dialogue institutionalisation, which resulted in the creation of two key institutions.

The first institution is the Labour Foundation, which represents a crucial attempt to shape a more cooperative industrial relations model at sectoral regional level. It was created in 1988 through a specific clause in the sectoral/regional agreement concluded by the most representative sectoral/regional social partners (UGT, CCOO and CAC-ASPROCON). It was

the first 'paritarian' body in the construction sector in Spain. It started to develop a wide range of actions focused on sectoral employees and also the unemployed, including training and different social benefits.

The creation of the Labour Foundation was the culmination of several years of intense negotiations aimed at regulating a conflictual sector where working conditions were usually bargained on an individual basis. This was also a learning process in which sectoral social partners studied and compared good practices of sectoral social dialogue, including meetings with sectoral social partners from countries such as Austria or Germany. It is worth noting that in Spain, democratic industrial relations institutions were in a very early stage in the 1980s. Social partners were legalised in 1977 and the right to strike was only officially recognised in the Spanish Constitution of 1978. In 1977, there was a long sectoral strike lasting 90 days, which proved to be a key historical event impelling social partners to shape a more constructive social dialogue climate. The strike had been mainly organised by self-organised workers' assemblies. In this context, anarchist trade unions (*Confederación Nacional del Trabajo*, CNT and *Confederación General del Trabajo*, CGT) played a leading role. This strike had two main impacts. First, companies understood the importance of industrial relations' institutions favouring bargaining as a means to prevent conflict. Second, trade unions previously linked to the Communist Party (CCOO) and the Socialist Party (UGT) which, although formally class-oriented (Hyman, 2001), had more reformist agendas, appeared as key bargaining partners in developing new industrial relations institutions, thereby marginalising anarchist trade unions.

The second key institution is the Commission on Health and Safety and Hiring Prevention (COPREVAS). It was regulated in the regional sectoral collective agreement of 1997 to enforce a new law on the prevention of occupational risks which was approved 2 years before (Law 31/1995, of 8 November 1995), and to reduce the high number of labour accidents. At this time, the mortality rates for workers in the workplace (*siniestralidad laboral*) was very high because companies and workers lacked a culture of prevention in occupational health and safety. In addition, COPREVAS also aimed to improve the enforcement of contractual labour regulation.

COPREVAS started to operate in 1999 with 4 delegates appointed by trade unions and employer organisations. In 2004, the number of delegates was enlarged to 8 delegates.⁶ Since then, different technological and organisational innovations have been introduced. Moreover, the increasing use of fraudulent contractual practices since the 2008 crisis, led COPREVAS to put more emphasis on detecting and making formal complaints about these practices through more sophisticated methods.

COPREVAS and the Labour Foundation are formally two different institutions, although they have similarities and work closely together. COPREVAS delegates are contracted and appointed by employer organisation (4) and trade unions (4). COPREVAS and the Labour Foundation work together in the implementation of enforcement activities, and both have high degree of internal cooperation. As shown in the next section, the Labour Foundation provides technical support to the delegates and also attends COPREVAS meetings. It has also played a leading role in proposing and developing innovations aimed at increasing the efficiency of fraud detection.

In a nutshell, the proactive social partners' role on enforcement has been a key driver in the development of this co-enforcement initiative. Since the creation of COPREVAS, social partners have engaged the Labour Inspectorate in their actions. They have asked them to provide training to their delegates and have supported their work though submitting formal complaints (*denuncias*) to them.

⁶ The number of delegates temporally increased in 2011, in the context of an ad-hoc campaign favouring the renovation of construction equipment. Currently there are 8 delegates.

3.2 Design of co-enforcement action

As noted above, a significant feature of enforcement in the construction sector in the Asturian region has been the informal and formal cooperation between sectoral social partners and the Labour Inspectorate. In this particular context, a key lesson learned is that the cooperation leading to co-enforcement is mainly the result of previous trade union and employer organisations' agreements on enforcement, involving the Labour Inspectorate and the regional Labour Office from the beginning.

Social partners' joint actions on enforcement: design and functioning of the Commission on Health and Safety and Hiring Prevention COPREVAS

In the Asturian construction sector, social partners have been closely working together since the 1990s to improve enforcement of health and safety standards, and contractual regulation. The main achievement of this joint-effort was the creation of the Commission on Health and Safety and Hiring Prevention (COPREVAS) in the sectoral regional collective agreement of 1997. According to the collective agreement, the COPREVAS commission consisted of 8 members appointed by trade unions (4) and employer organisation (4). However, in practice COPREVAS is managed by a governing board of three members which represent the employer organisation (CAC-ASPROCON) and the trade unions CCOO and UGT. In terms of funding, the initiative is basically funded via the Labour Foundation of Asturias, which is principally financed by the employers' contribution (4.5 % of the gross wage cost).

COPREVAS was a pioneer institution in the Spanish context because of the introduction of the so-called 'health and safety delegates', who started to operate in February 1999. Social partners agreed to appoint and contract four 'health and safety delegates' (2 appointed by the employer organisation and 2 by the trade unions). Their goal was to improve and extend the prevention culture, and enforce health and safety, and labour contractual regulation. For this purpose, they were mandated to: freely enter all the companies covered by the sectoral agreement; conduct interviews with both workers' representatives (including works councillors and prevention delegates) and employers; and recommend the suspension of work in case of serious health risks, with direct contact with the responsible person for each construction project. After each inspection and company visit, delegates were required to submit a report to the governing board of COPREVAS, notifying them of any incident or legal infringement found and, if considered necessary, a call for a formal complaint (*denuncia*) to the labour inspector. This information had to be then revised and approved by the governing board of COPREVAS.

When social partners were asked about the reasons which favoured the employers' acceptance of this innovative institution in the 1990s, they stressed that this was partly because they were aware that the main purpose of COPREVAS delegates was to carry out pedagogical actions and, to a lesser extent, punitive actions. In this context, a formal complaint (*denuncia*) to the labour inspector was conceived of as a strategy of last resort, limited to those cases where employers did not follow COPREVAS advice and recommendations. The pedagogic character of COPREVAS delegates in relation to health and safety standards is still considered a hallmark of this institution nowadays:

“Our task goes beyond formal complaints (denuncias) alone. We provide advice to companies and workers. We contribute to raising awareness on the need to implement proper health and safety conditions. Except in very serious cases, we always try to raise awareness and to provide technical support.” (TU2)

Employers' acceptance of COPREVAS was also strengthened by the organisation of delegates' work in working pairs. It was agreed that all company inspections would be made by two delegates, appointed by the employer and the trade union respectively. Thus, advice and

notifications were always formulated in agreement by representatives from both the employer and the employee side:

“The main strength of the COPREVAS delegates is their equal composition. The best thing that can happen to a COPREVAS delegate is that employers do not distinguish between who was appointed by the employers and who was appointed by the unions.” (EO)

COPREVAS has been kept even in the most conflictual negotiation processes. According to the Labour Foundation staff interviewed, social partners do not put COPREVAS on the table when they bargain about even the most conflictual topics (wages and working time). One trade unionist interviewed recognised that even during the economic crisis, when they faced serious difficulties in renewing the collective agreement, discussions about COPREVAS were not at stake. However, he also pointed that COPREVAS’ existence is directly linked to the maintenance of the sectoral collective agreement: *“if the collective agreement falls, COPREVAS will fall too”* (TU2).

The regulation of the delegates’ work in the collective agreement was completed with the elaboration of a protocol of action, and an inspection ‘check-list’ which describes in detail all the actions to be carried out in every inspection. For the elaboration of the checklist, COPREVAS was advised and supported by the Regional Asturian Institute of Health and Safety Prevention (*Instituto Asturiano de Prevención de Riesgos Laborales*). A key aspect of the protocol are the procedures which may lead COPREVAS to make a formal complaint (*denuncia*) about health and safety infractions. The protocol establishes that prior to a formal complaint (*denuncia*), three visits, accompanied by two official notifications, have to be made by the delegates (a ‘notification’ is written advice issued by COPREVAS to the companies alone, without informing the Labour Inspectorate). Only where a company already has a negative record of health and safety infringements, can a formal complaint (*denuncia*) be proposed by the delegates after the first visit. This aspect of the protocol does not apply to contractual infringements (bogus self-employment, etc.), where a more punitive strategy is followed. In those instances, a formal complaint (*denuncia*) can be formulated after the first visit.

Finally, it is worth pointing out that COPREVAS’ internal rules did not include any targets, neither in terms of types of companies to be visited (big companies, SMEs, posted workers, etc.), nor other objectives such as numbers of inspections or detected instances of fraud. According to one interviewee, COPREVAS delegates are supposed to visit all types of companies regardless of their size or other characteristics.

Evolution and changes in the design and functioning of the Commission on Health and Safety and Hiring Prevention

Since its enactment in 1997, the figure of the health and safety delegate has been subject to different changes. A first key innovation was introduced in the regional sectoral collective agreement concluded in 2007 (2007-2011). This 2007 sectoral collective agreement conferred new competences on COPREVAS delegates related to the enforcement of contractual labour regulation. Delegates were conferred new powers giving them access to all existing subcontracting books in the construction projects inspected. Subcontracting books were regulated in the 32/2006 Law on subcontracting. Delegates’ access to the subcontracting books was a crucial step in increasing COPREVAS’ capacity to detect bogus self-employment. This book contains detailed information on several aspects of the subcontracting chain, including the number of employees and self-employed working in a construction project under the direction of any contractor or subcontractor.

However, only from 2015 could COPREVAS take full advantage of the information gathered through the subcontracting book. It was only then that the Labour Foundation could implement longstanding demands to make photographic copies of subcontracting books and gather all this

information in its database. This was only possible once the employer organisation changed its position because, until that year, the employer organisation had strongly refused any inspection action involving the taking of photographs. According to one interviewee (LF1), the position changed due to the negative impact of bogus self-employment and irregular company classification of collective agreements on fair competition, exacerbated by the economic crisis.

Because of this new possibility, information gathered by delegates is cross-checked by the Labour Foundation through an internal database and app which gather all the information from the subcontracting books, and filter for information on the self-employed. This database and app enable the Labour Foundation to identify potential cases of bogus self-employment which are reported in a formal complaint (*denuncia*) through COPREVAS to the Labour Inspectorate. Labour Foundation staff check numbers related to the share of self-employed workers who work for the same contractor in a construction project. By default, the Labour Foundation internal database notifies database users about all the contractors who have hired at least three self-employed workers in a construction project. However, this criterion needs to be complemented by qualitative criteria. For instance, a relevant aspect is related to the occupational profiles of the self-employed. In construction, the subcontracting of part of the project to self-employed workers is a standard practice, partly due to the different skills and specialisation domains they can provide. Due to this, LFC stressed the need to check whether the self-employed contracted are engaged in occupational activities falling within the specialisation domain of the company acting as a contractor, as this tends to be a clear sign of bogus self-employment:

“Through the subcontracting book we get information about all the self-employed working in construction projects. We see, for instance, that a contractor has 3 self-employed workers out of a total of 4 workers contracted for the project. We therefore revise this case, which could be suspicious. Then, we check which type of self-employment activity they are carrying out. If it is a plumber, I do not care. However, if the self-employed worker carries out tasks which are aligned with the main goal and activity of the company, there is a potential fraud.” (FLC 1)

In addition, the Labour Foundation’s access to subcontracting books enables cross-checking to establish if any company working in a construction project is irregularly classified under another sectoral collective agreement and, accordingly, is not paying the appropriate sectoral contributions. As noted in section 1, this is one of the most widespread fraudulent practices in the construction sector. As emphasised by one of the delegates interviewed, social partners and LFC are very interested in the non-payment of these contributions because this implies a reduction of their financial capacity (HS Delegate 2).

In 2015, an additional technological innovation, introduced by the Labour Foundation, was a toolkit with a Global Positioning System (GPS). The delegates have, through this toolkit, an online map which informs them of the location of any construction project. This is very important considering the geographical characteristics of the region: moderate population density and a mountainous landscape. According to interviewees, only small renovation projects are not recorded in the online map. Moreover, the employer organisation provides additional information on existing construction projects through an agreement with the professional association of building engineers. Employer organisation can check if these construction projects are already listed in the Labour Foundation database and, in case they are not, they are incorporated into the database (EO).

A final key organisational innovation was introduced in 2017, when delegates were required for the first time in the history of COPREVAS to conduct inspections alone (one delegate only, not in working pairs). The goal was to increase the number of companies inspected in order to tackle the dramatic rise in fraudulent contractual practices perpetrated by companies during the economic crisis. In addition, delegates were prompted to pay particular attention to the detection and reporting of bogus self-employment through formal complaints (*denuncias*). When interviews were conducted, social partners were still discussing the return to the previous model

of ‘working pairs’. Indeed, both the employer organisation and trade unions interviewed were in favour of returning to the original model, since this was the hallmark of this social partnership approach. However, the return to the previous model has been postponed. With the enactment of the new model, the protocol was updated. In order to avoid any employer concerns regarding potential biases from delegates exclusively appointed by trade unions visiting companies alone without their employer-appointed counterpart, the protocol specifies that any health and safety formal complaint (*denuncia*) will always be agreed on and notified by two delegates appointed by the employer organisation and trade unions respectively.

Co-enforcement: the cooperation between the Commission on Health and Safety and Hiring Prevention, and the Labour Inspectorate

Looking at the cooperation between COPREVAS and public institutions, co-enforcement was integrated within the COPREVAS design since its birth (where co-enforcement is broadly understood as cooperation aiming to improve enforcement capacity).

In the initial phase of COPREVAS, there was no formal agreement with the Labour Inspectorate or the regional government related to information sharing. However, COPREVAS worked closely with the Labour Inspectorate and the regional Labour Office through three actions. First, the sectoral collective agreement established that “*one representative from labour inspection and one representative from the Technical Cabinet of Health and Safety regional office (Gabinete Técnico Provincial de Seguridad e Higiene en el Trabajo) will be invited to all the meetings, giving these representatives of public institutions a voice but not a vote*” (Sectoral regional collective agreement, 1997). This clause has been maintained in successive agreements. Second, there were different cooperative training actions. This included: in-work training of the delegates with labour inspectors through joint visits to workplaces; and specific training to the delegates provided by the Regional Asturian Institute of Health and Safety Prevention. As previously noted, this institution also contributed to the design of the checklist. Third, COPREVAS supported labour inspection work through regular formal complaints (*denuncias*) and the regular sharing of privileged information gathered by COPREVAS and the Labour Foundation on the evolution of irregular and fraudulent contractual practices. A relevant outcome of this cooperation was, for instance, an increased Labour Inspectorate awareness of the rise in bogus self-employment during the crisis:

“During the crisis, the Labour Foundation sent us data which put the Labour Inspectorate on alert regarding bogus self-employment fraud [...] Thanks to this information, we started to give priority to this fraud.” (L)

This historical cooperation process paved the way for an official cooperation agreement to be enacted which, among other things, officially institutionalised information sharing:

“The agreement is the result of previous experiences of cooperation. It is the result of the information sharing cooperation maintained for years, and it specified the demands that each stakeholder had.” (LI)

The cooperation agreement was signed in 2017 by the sectoral social partners and the regional Labour Office, then subsequently renewed in April 2019. The agreement regulated two main actions to be implemented. First, actions to raise awareness about labour standards compliance, which includes campaigns and dissemination activities. Second, and more important, regular exchange and transfer of information. On the one hand, social partners agree to transfer information to the regional Labour Office every two months, regarding construction projects not listed in the Register of Accredited Enterprises (REA). Registration in the REA is a legal requirement which ensures that construction companies meet the requirements regulated in Article 4 of the Law on Subcontracting in the Construction Sector (Law 32/2006).⁷ On the other

⁷ Requirements to be met include: having adequate infrastructure and resources to carry out the activity; directly exercising the management and control of the workers, assuming the risks and liabilities

hand, social partners agree to share information gathered through COPREVAS and the Labour Foundation with the Labour Inspectorate, on a weekly basis, which is particularly relevant to supporting labour inspection work.⁸ To this end, the Labour Inspectorate and COPREVAS have developed a protocol of action (unpublished) with some codes linked to different frauds and infractions classified into three main groups: Social Security frauds, which include bogus self-employment, undeclared work and irregular adscription to collective agreements; circumvention of subcontracting legislation; and circumvention of health and safety regulation. Based on this, the Labour Foundation sends an email every week on behalf of COPREVAS, which specifies every infraction and fraud detected: a short description of the fraud; the name of the main contractor company; the name of the company which perpetrates the fraud, and the geolocation of the construction project where the fraud is found (LI).

In order to follow-up the agreement, two main coordination mechanisms have been established. First, an executive commission made up by the regional director of the Labour Inspectorate and the general secretaries or presidents of the social partners, which meets every six months. Second, a so-called ‘follow-up commission’, which meets every three months and comprises the governing board of COPREVAS (one representative per social partner) and the labour inspectors who work in the field. Delegates are not part of this commission. This last commission monitors and discusses the evolution of different frauds, based on the data and statistics provided by the Labour Foundation and any technical or legal doubts raised by the delegates. This commission was also responsible for developing the protocol of action for information sharing.

3.3 Key points of implementation and dynamics identified

In this section, the report works from different stakeholders’ assessments to analyse the implementation and functioning of the social partners’ joint action on enforcement and the co-enforcement action, the design of which has been described in the previous section. Attention is given to analysing those aspects which generate consensus and agreement, as well as conflictual areas or potential weaknesses in the actions’ implementation process.

Social partners’ joint actions on enforcement: key points of implementation of the Commission on Health and Safety and Hiring Prevention

When analysing the functioning of COPREVAS and, particularly, the work organisation and work process of the delegates, a first aspect to be highlighted is that delegates have a high degree of freedom in their labour process. Outcome based management strategies are not in place and delegates’ work is not subject to any kind of outcome evaluation or specific control procedure. Indeed, issues such as the number of inspections made, or the number of companies visited, do not appear to be conflictual at all, either for the governing board of COPREVAS or the delegates. They emphasised prioritising the quality of the inspection and work done over any quantitative indicator. As expressed by a trade union officer member of the governing board:

associated with the activity; proving that staff have the training required in terms of health and safety in the workplace and risk prevention; and proving that the company has an adequate risk prevention provision.

⁸ The agreement establishes that COPREVAS and the Labour Foundation will send to the Labour Inspectorate, on a weekly basis: a full list of companies (contractors and subcontractors) identified in construction projects (the Labour Inspectorate then checks for all the companies that do not appear in the Social Security records for contracted employees); a full list of companies (contractors and subcontractors) found in any construction project, which do not declare any contracted employees; a full list of companies not registered in the regional collective agreement of construction but which develop activities which fall within the sectoral domain or that are registered in a different region; and a full list of companies found in any construction project that lack the subcontracting book.

“We do not have objectives in terms of company visit numbers because we give priority to the quality of the visit over the quantity of visits. Moreover, we are aware that one visit can last even the whole morning while others can be finished in short period of time.” (TU 2)

A key aspect of the delegates’ work concerns the protocol of actions and checklists, as it details all the actions to be followed in every inspection. Overall, the governing board and delegates are satisfied with its functioning. The main criticism expressed by some delegates on the protocol concerned the regulation of the formal complaints (*denuncias*) process regarding health and safety infractions. As explained in the previous section, the protocol establishes that three visits are needed before making a formal complaint (*denuncia*) regarding a health and safety infraction. Although this regulation is in line with the pedagogical character of COPREVAS, this aspect is assessed to limit the efficiency of potential punitive actions.

“To make a formal complaint (denuncia) about a health and safety infringement we have to visit the construction project three times. Thus, in many cases we have to wait three months until we make a formal complaint (denuncia) about the case. Three months is a very long period. Moreover, you have to consider the time which passes before the labour inspector then visits the construction project once the official complaint has been made. That is, the labour inspector can end up making their first visit six months after you originally discovered the infringement or defect. In many cases, the project was over and, if it is not over, it is already in a very different phase.” (HS delegate 1)

A relevant outcome of the protocol and checklist, highlighted by the COPREVAS governing board members and delegates interviewed, is related to the unification of criteria for notifications and, especially, formal complaints (*denuncias*) on health and safety infringements and contractual frauds. The unification of the criteria is a politically sensitive issue because delegates are appointed by different organisations (trade unions and employer organisations) and also have different ‘political backgrounds’. While all the delegates share the same technical background (they are technical engineers), delegates appointed by the unions were union affiliates prior to being appointed. In some cases, delegates were even works council members of construction companies. In relation to this key issue, delegates’ discourse tended to stress their technical profile, which supposedly led them to avoid any political bias. They also pointed to the positive contribution of the protocol of action and checklist in this regard. However, they were aware that some divergences are inevitable. When talking with the delegates, they generally attributed those divergences to factors unrelated to politics *“We are 8 people and each person is different. But this has nothing to do with the fact of coming from one side or the other”* (HS delegate 1).

Nevertheless, the analysis of the interviews and conversations during direct observation reveals that a trade union background can indeed modulate the perception of the seriousness of certain infringements. This appeared, for instance, in relation to the so-called socio-health services and facilities in the construction projects: showers, toilets, etc. The lack of these facilities in certain construction projects was a particular concern expressed by the delegates appointed by unions. When arguing their reasoning for making notifications about these cases, trade union delegates stressed the need to defend the dignity of the workers:

“Our mission is to try and make construction a decent sector. And yes, I always notify when the construction projects lack socio-health services even in those small work projects which only last a couple of days. It is a question of dignity. And I keep on notifying companies about this, and see if one day they will implement my recommendations.” (HS delegate 2)

The delegates’ discourse was to some extent reproduced by the governing board members. Governing board members stated that they barely have disagreements on the criteria or the

formal complaints (*denuncias*) identified. This was also confirmed by delegates, who stated that the governing board always accepts all the formal complaints (*denuncias*) proposed to them. When asked about potential divergences in the governing board, the trade union and employer organisation governing board members also pointed to the question of the socio-health facilities:

“There is one divergence with the employer organisation. That is the significance given to the socio-health facilities. I do not doubt that, for the employer organisation, this is also important, but not the same as for us. This is an issue which we always stressed should be recorded as a fault and the company be notified. But we have never made a formal complaint (denuncia) against a company for this issue. Why? Because we have an agreement with the employer organisation, who maintains that this is not a serious risk for the workers’ health, but for us, this is against workers’ dignity.” (TU2)

“We understand that for a labour inspection action, the criterion based on an imminent risk for works’ health and safety has to prevail over other criteria based, for instance, on the socio-health facilities. Trade unions complain a lot about this issue.” (EO)

Interestingly, when discussing the problem of the socio-health facilities, a trade unionist from the COPREVAS governing board clearly distinguished between: the tasks and competences of the delegates, which are governed by an agreement with the employer; and the enforcement actions that a union member can do, which are not constrained by any agreement with or commitment to the employers. Trade union members can independently decide to make a formal complaint (*denuncia*):

“I would make a formal complaint (denuncia) regarding all the companies that do not offer proper socio-health facilities. As a trade union member, I indeed make formal complaints (denuncias) about those companies. However, I cannot do this within COPREVAS. So, I cannot order the COPREVAS delegates to make a formal complaint (denuncia) about this.” (TU2)

Another problem with the action procedure identified by the delegates was related to the coordination between delegates, and between the delegates and the Labour Foundation staff. Coordination between delegates only takes place through informal processes such as ad-hoc meetings when they change the geographical areas of inspection. Lack of coordination hampers information sharing on formal complaints (*denuncias*) made:

“For me it is a problem when I arrive to a working project and I discover that a formal complaint (denuncia) has already been made by a colleague or by the Labour Foundation.” (HS delegate 3)

For some of the delegates interviewed, a coordinator working in the Labour Foundation could facilitate their work. This would apply, particularly, to those cases where companies call the Foundation expressing concerns about any delegate activity or asking for advice. Since there is currently no expert dedicated coordinator, someone at the Labour Foundation always has to be identified in order to call the relevant delegate(s) to follow up. This generates work for the delegates which would be best managed through an expert coordinator. However, delegates were also aware of the political difficulties that appointing a coordinator in the Labour Foundation may entail: *“who appoints the coordinator, the employer organisation or the trade unions? This is of course a problem”* (HS delegate 2).

A final topic discussed in relation to implementation concerned available resources. Both the CORPEVAS governing board members and the delegates interviewed provided a positive assessment on the resources available to develop their work (human and material). In particular,

a positive assessment was made in relation to the technological innovations implemented in recent years (especially the GPS map of construction projects). The main delegates' demand was focused on training, particularly on legal aspects. Although they stated that they had received specific training courses from the Labour Inspectorate on legal matters, they explained that, due to the legal complexity of many cases, they would welcome an update and more extended training in this specific field. In this sense, it is worth noting that delegates' main technical background is health and safety prevention from a technical perspective (most of them are engineering graduates).

Key implementation points regarding the co-enforcement action

A very positive assessment is given by the COPREVAS governing board members and labour inspectorate on how cooperation is actually working. When discussing the dynamics of the interaction, the labour inspector interviewed stressed the existing trust relationship between the public institution and the social partners, which has been built through many years of formal and informal cooperation. An aspect which, in his view, clearly differentiates construction from other sectors. The labour inspector also highlighted the high degree of consensus between the social partners on this topic. He explained that he barely perceives the differences between trade union and employer organisation representatives during the technical meetings. From his perspective, social partners have a common assessment on enforcement or, at least, they do not share their potential disagreements with the public institution:

“When I talk with them in the meetings, for me they are not really from trade unions or employer organisations. They are COPREVAS or the Labour Foundation. Of course, I know each organisation has its own interests, but I think they discuss them internally. They always come to the inspection with a common position.” (LI)

In a similar vein, social partners from the governing board and Labour Foundation staff interviewed positively assessed how the cooperation works. The only criticism was focused on the lack of human resources that the Labour Inspectorate has to fulfil their demands. However, they were also aware that this is a structural problem which goes beyond their agreement:

“The problem with the Labour Inspectorate is the same problem which applies to all the regions in Spain: there are very few labour inspectors. Moreover, there are not inspectors exclusively dedicated to the construction sector. So yes, the capacity to act is to some extent limited due the lack of human resources.” (EO)

A more critical view was expressed by the delegates, who regret the lack of coordination and communication with labour inspectors. Although in some cases delegates attributed this problem to the Labour Inspectorate's elitism (“*They are the elite*”), the lack of coordination and communication was mainly attributed to the fact that only the governing board members of COPREVAS have regular contact with the labour inspectors. Delegates would like to have a closer relationship with them, particularly in order to solve their daily doubts in grey areas:

“I miss having more communication with the Labour Inspectorate. We had more personal and face-to-face communication in the past. I was even trained by a labour inspector. I miss meeting with them to discuss doubts, because we always have questions on fraudulent contracting practices. Moreover, in these cases, the economic amount of punishment is very high.” (HS delegate 1)

“Labour inspectors have a lot of contact with the governing board, but not with us. And it is us who do the inspections. I blame my bosses for not having more regular contact with them.” (HS delegate 2)

Delegates would also like to receive faster responses from the Labour Inspectorate. Sometimes delegates hesitate in making formal complaints (*denuncias*) about cases, particularly when they feel that this will not have an effect due to the delay in the labour inspector visiting the workplace:

“If the work project is going to end in 15 days, we do not make a formal complaint (denuncia). Because we know that the labour inspector will not be there in time.”

Some delegates also demand that the construction sector should have more exclusive attention from the labour inspectors in exchange for the support they give them.

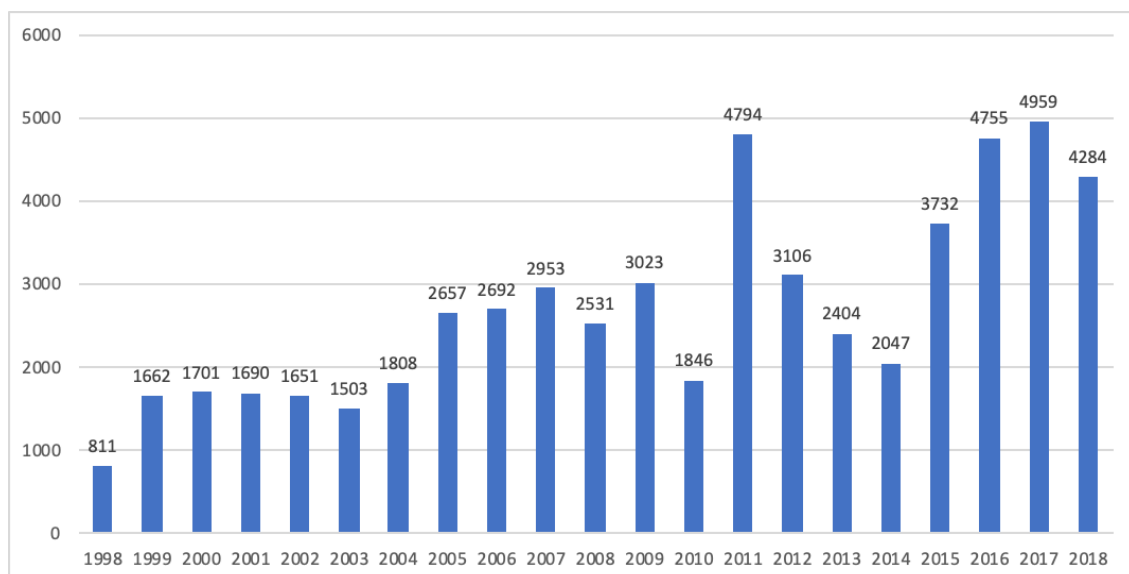
4. Co-enforcement actions' contribution and effectiveness in promoting fair working conditions and preventing fraud

In order to analyse the contribution and effectiveness of both actions (the COPREVAS action and the co-enforcement agreement action), information has been obtained through fieldwork and COPREVAS' own evaluation data.

Social partners joint action: contribution and effectiveness of the Commission on Health and Safety and Hiring Prevention

Regarding COPREVAS' enforcement action, their own annual evaluation reports offer information on the outputs and outcomes of the delegates' work. In terms of outputs, COPREVAS collects information on the number of annual visits. As shown in figure 2 below, the number of annual visits increased notably in 2005 because in 2004 four new delegates were hired. A significant increase was also recorded in 2011 because there was an ad-hoc annual campaign focused on the renovation of technical equipment which was accompanied by the temporary hiring of new delegates. Since 2014, the number of visits also records a significant increase. Interestingly, this is not related to an increase in the number of delegates. This can only be explained due to the introduction of some technological innovations which made the identification of construction projects easier and, accordingly, increased delegates' effectiveness in reaching their targets (toolkit with GPS online map of construction projects).

Figure 2. Total number of delegates' visits

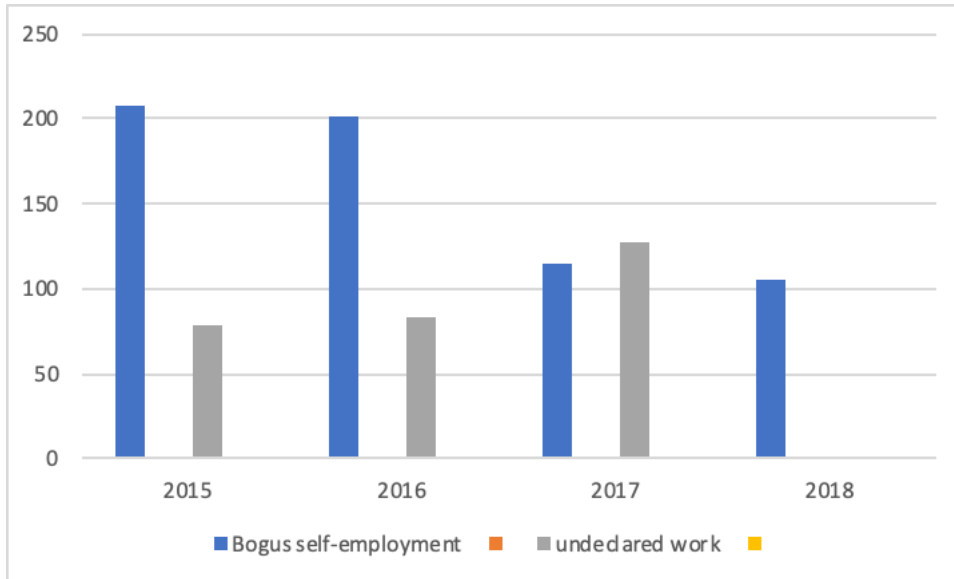


Source: COPREVAS

In terms of outcomes, COPREVAS gathers annual data on the number of formal complaints (*denuncias*) regarding two significant fraudulent contractual practices: bogus self-employment and undeclared work. Unfortunately, data on the number of formal complaints (*denuncias*) for both frauds is only available after 2015. Thus, it is not possible to assess the effect of the innovations introduced in 2015. The data is shown in figure 3 below. Data shows that in 2015 and 2016, there was a comparatively higher number of formal complaints (*denuncias*) regarding bogus self-employment. According to stakeholders' interviews, after 2016, the incidence of bogus self-employment substantially decreased. This is in line with the evolution of self-employment. As explained in section 1, in the Asturian construction sector, the number of self-

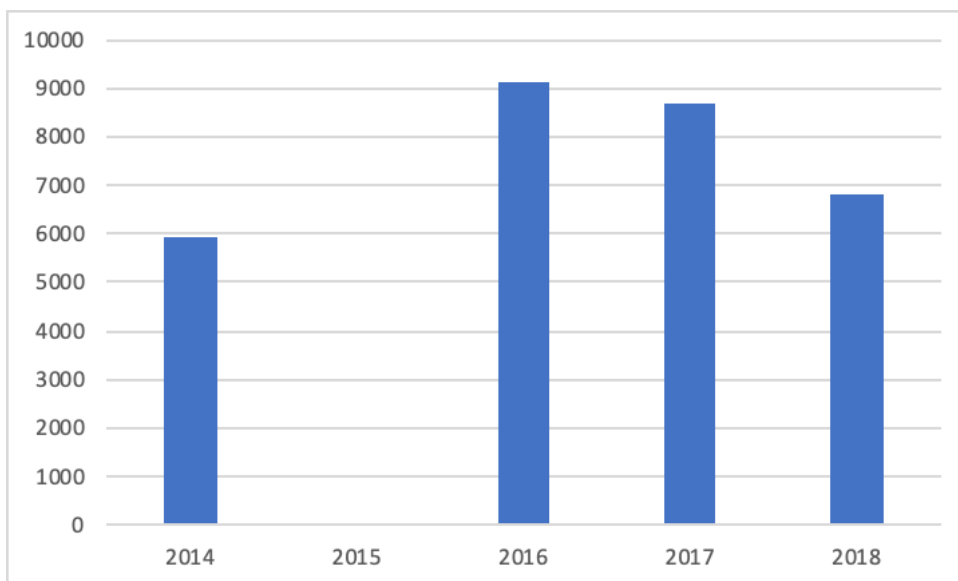
employed as a proportion of total employment started to decrease in 2016, after several years of continued increases.

Figure 3. Number of formal complaints (*denuncias*) regarding bogus self-employment and undeclared work, and number of health and safety faults



Finally, COPREVAS also gathers data on the number of notifications for health and safety faults. This includes all the faults notified regardless of whether they ended in a formal complaint (*denuncia*) or not. As observed, more than 5,000 notifications on health and safety faults have been applied since 2014 (data for 2015 is not available). A significant increase is observed since 2014 as a result of technological innovation, which has increased delegates' effectiveness.

Figure 4. Number of notifications for health and safety faults



Co-enforcement action

The evaluation of the co-enforcement action is only based on information gathered during fieldwork, because quantitative data is not available. As such, the assessment made by the labour inspector was particularly significant.

According to the labour inspector interviewed (LI) the existing agreement and protocol of action is substantially improving labour inspection efficiency. The labour inspector stressed three main positive outcomes of the cooperation. First, the regular formal complaints (*denuncias*) submitted by the social partners and, particularly, the geolocation information provided, is helping them to maximise their limited human resources by better selection of the construction projects to be visited,

Second, the labour inspector stressed an indirect ‘induced effect’ favoured by the institutionalised information sharing process. According to the labour inspector’s own experience, when they visit a company which has a COPREVAS formal complaint (*denuncia*) against it, in many cases they also detect further irregularities in that company or in other companies working in the same construction project:

“When we visit the site of the formal complaint (denuncia) raised by COPREVAS, we do not only check the company with the formal complaint against it. We check all the companies in the construction project, and we analyse contracts, payrolls. In many cases we end up detecting other types of frauds.” (LI)

Third, the labour inspector pointed out that an increase in the efficiency of their actions is also having a deterrent effect, because companies are aware that fraud detection in the construction sector has improved:

“In the end, this is producing a deterrent effect. I am not talking about the effect in terms of sanctions. I am talking about this mid and long-term effect, which I am particularly interested in.” (LI)

Conclusions

The case study has shown that improving enforcement and hence compliance with labour standards, is a key issue in the Spanish construction sector, due to the widespread phenomena of employers' resorting to fraudulent practices. In this context, the report has carried out an in-depth analysis of a co-enforcement action developed in the construction sector in the region of Asturias. When comparing the findings of this case study with previous empirical research on co-enforcement (Amengual and Fine, 2017; Fine, 2017), the following conclusions can be drawn.

A first key lesson from the case study is that this co-enforcement action is the result of social partners' historical joint efforts in improving enforcement through social dialogue. Compared to most of the empirical cases studied in the co-enforcement literature, which mainly analyse cooperation between trade unions and public authorities and, in some cases, 'high road firms' (Fine, 2017), the case study conducted in Asturias (Spain) relies on a strong 'social partnership' approach to co-enforcement. In this region, social partners developed innovative autonomous enforcement actions (COPREVAS delegates) and strategically involved public authorities until a formal agreement on co-enforcement was concluded.

Second, the action studied shows that social partners contribute to improving enforcement by increasing Labour Inspectorate human and material resources, and that both partners (the Labour Inspectorate and the sectoral social partners) complement each other's enforcement capacities by contributing their own particular strengths. COPREVAS delegates enable labour inspections to gather more data and information on fraudulent practices because they have a higher capacity to visit many more construction companies than the Labour Inspectorate does. This partly addresses the problem of the Spanish Labour Inspectorate's lack of human resources, which has been identified in the literature (Sanz de Miguel, 2019; Martínez Lucio, 2016). However, this is only a quantitative 'additive effect' as a result of more resources being joined together, which could, to some extent, be replaced in the unlikely event of an unprecedented investment in Labour Inspectorate human resources from the state. In line with previous literature, this case study also shows that co-enforcement depends on non-substitutable elements that each partner provides (Amengual and Fine, 2017; Fine, 2017). In this sense, social partners not only increase Labour Inspectorate capacity in quantitative 'additive' terms. Rather, social partners also have a qualitative impact, through sharing tacit knowledge of the labour process and detailed knowledge about construction business models which, in this sector, is particularly complex, bearing in mind the coexistence of several legitimate and illegitimate subcontracting strategies. For example, social partners have advanced information to the Labour Inspectorate on the sharply increased number of identified cases of bogus self-employment and companies' irregular classification in collective agreements.

Another significant distinctive feature of this action is that social partners play a key role in setting labour standards through collective bargaining, a function which co-enforcement literature mainly attributes to the state (in form of minimum wages, etc.), as a result of literature being mainly concentrated on experiences in the United States. In our case, social partners can set more tailor-made solutions to problems encountered at workplace level through sectoral collective bargaining. The employer organisation also provides a unique contribution, related to its capacity to promote fair competition among its affiliates. With COPREVAS, it has been particularly interesting how the employer organisation governing board has confronted some companies' pressure and reticence against cooperation with trade unions and the Labour Inspectorate.

As far as the Labour Inspectorate is concerned, the key non-substitutable element provided by this institution is its specific legal capacity to open a legal procedure to investigate the case and apply sanctions, once a formal complaint (*denuncia*) is made and solved.

Third, the case study also reflects a ‘strategic enforcement approach’ as the action focuses on one sector with fragmented supply chains and vulnerable workers (Weil, 2011). Moreover, social partners have identified some priorities for inspections (e.g. bogus self-employment, and health and safety infringements) based on their unique understanding of how companies operate in the sector. Those priorities have been internalised and addressed by the Labour Inspectorate’s activities. In addition, the action aims to ensure sustainable and ongoing compliance, as it is designed as a long-term measure which is expected to continue thanks to the existence of formalised agreements. Moreover, stakeholders interviewed stressed how the action is progressively institutionalising positive compliance behaviours. This is due to the strong focus on pedagogical and support actions provided by social partners, which are combined with the more punitive actions developed by the Labour Inspectorate.

Finally, some problems arise from how political support is built at the operative level. The action illustrates that a strong political consensus has been built between social partners’ governing board members and the Labour Inspectorate. This has ensured smooth cooperation regarding the routinisation of information flows and the joint design of a common protocol. Nevertheless, social partner delegates working in the field critically assess their low degree of cooperation with the Labour Inspectorate in practice and also excessive delays in the inspectorate’s responses to formal complaints. This is clearly the main weakness identified, considering the importance of building and maintaining trust relationships between those developing some of the most critical operational functions of the action.

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