

Exploring co-enforcement in the construction sector

Evidence from three case studies in Austria, Poland and Spain

SPLIN Comparative Report

December 2020



Pablo Sanz de Miguel (Notus) and Bettina Haidinger (Forba)

in cooperation with **Ulrike Papouschek (Forba)** and
Dominik Owczarek (Institute of Public Affairs)

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Executive Summary

The effectiveness of traditional labour inspectorates' and social partners' instruments to generate and enforce labour standards are limited when businesses make a strategy of depriving workers of their rights, using complex and transnational business models to exploit regulatory loopholes and undermine fair competition. Hence, strategic and innovative practices are needed to make the enforcement of labour standards more effective, especially in sectors with a high incidence of precarious employment and noncompliance. One promising way forward is the potential contribution of co-enforcement actions undertaken by worker and/or employer organisations together with labour inspection institutions to safeguard minimum labour standards.

The SPLIN report relies on an original research line on co-enforcement which incorporates the potential contributions of worker and employer organisations for co-enforcing labour standards jointly with national labour inspection institutions. This approach seems to be particularly promising in a context where labour inspectorates in many countries face budget constraints entailing insufficient resources and where trade unions' power has declined. Co-enforcement has inferred a number of mechanisms which justify the relevance of this approach and highlight its specificity compared with traditional enforcement approaches: the non-substitutable elements of state and society; strategic enforcement; routinising the flows of information between state and society; and the need for political support within state and social partner organisations.

This comparative report analyses and compares co-enforcement actions developed at national (Austria and Poland) and regional level (Spain) in three different countries in the construction sector. These actions aim to ensure fair working

conditions, and to prevent and to tackle fraud. The report reflects the design, development and impact of the following cases:

- Construction Workers' Holiday and Severance Payment Fund (*Bauarbeiter-Urlaubs- und Abfertigungskasse*, BUAK) in Austria.
- Institutionalised cooperation between the Asturian regional offices of the Spanish National Labour and Social Security Inspectorate (*Comisión Territorial del Principado de Asturias de la Inspección Nacional de Trabajo y Seguridad Social*) and the Asturian sectoral social partners through the Commission on Health and Safety and Hiring Prevention (*Comisión de Seguridad y Prevención de Riesgos Laborales y Contratación*, COPREVAS) in Asturias, Spain.
- A set of three agreements: Agreement for Safety in Construction (*Porozumienie dla Bezpieczeństwa w Budownictwie*, ASC); Agreement on Minimum Wages in Construction (*Porozumienie w sprawie stawki minimalnej w Budownictwie*, AMW); and Agreement for Occupational Safety in the Operation of Cranes (*Porozumienie na Rzecz Bezpieczeństwa Pracy przy Obsłudze Żurawi*, AOSOC) in Poland.

CIRCUMVENTING LABOUR REGULATION IN THE CONSTRUCTION SECTOR

Construction is one of the sectors highly affected by employer abuses and fraudulent practices in the three countries studied, including bogus self-employment and underpayment. This is the result of the interplay between the structural characteristics of the construction sector related to its high degree of labour intensity; the specificities of the main business models in operation, relying on extensive subcontracting strategies; and the effects of different European and national regulatory fields

(Posting of Workers Directive, public tendering regulation, etc.). Fraudulent employer practices and poor working conditions are also explained by the way employers take into account the segmented labour supply side in their employment systems. In relation to this latter aspect, employers in the construction sector also tap on a migrant work force with a view to perpetuate or extend labour flexibility. National specificities reflect the impact of national institutional frameworks on the sector, as labour, tax, and industrial relations regulations are essentially defined at national level. In addition, differences are explained due to the different impact of posted work in each of the countries studied: Poland and Spain are net sending countries, while Austria is a net receiving country of posted workers. In Spain and Poland, employer demand for a flexible workforce has been principally satisfied through migrant workers (in some cases undocumented migrant workers) and, to a lesser extent, through posted workers.

CO-ENFORCEMENT ACTIONS IN AUSTRIA, SPAIN AND POLAND: KEY FINDINGS

The cases researched in Austria and Spain rely on strong social partnership approaches to co-enforcement. In both countries, co-enforcement actions entail binding agreements which are the result of social partners' historical joint efforts in improving enforcement through social dialogue in cooperation with the state.

In Poland, co-enforcement initiatives have relied on soft-regulatory mechanisms based on non-binding agreements. In some cases, mainly trade unions cooperate with enforcement authorities to improve compliance and regulation. In other cases, the main role is played by big companies in cooperation with the Labour Inspectorate, with trade unions playing a less important role.

The three case studies, particularly the Austrian and Spanish experiences, show how social partner actors play both political and operational roles in enforcement policies. In Austria and Spain, social partners do not only contribute to the design and evaluation of enforcement policies, but also play an active role in ensuring employer compliance with labour standards through inspections in the workplace. Conversely, in Poland, social partner inspection activities are only superficially defined, and inspection was not the outstanding element of the actions studied.

Social partners display different approaches to enforcement. The Polish case has a strong focus on

pedagogical and support actions instead of punitive actions. In the Austrian case study, the sanctioning and deterrence character of the action is more salient, although counselling and information to both employers and employees is provided and emphasised as well. In Spain, enforcement actions in the health and safety field have a more pedagogical character compared with the actions focused on ensuring compliance with contractual regulation (subcontracting, bogus self-employment), the latter of which generally entails the submission of formal complaints to the National Labour Inspectorate.

CONCLUSIONS

The three case-studies exemplify co-enforcement actions, broadly understood as ongoing coordinated efforts of state regulators and social partners to jointly produce labour standards enforcement. All have social partners playing a significant role in initiating, implementing, or supervising enforcement actions. In all the cases, social partners operate in close cooperation with authorities equipped with sanctioning competences. At the same time, the degree and institutionalisation of cooperation between social partners and public authorities greatly varies. In Austria, the cooperation between state authorities and social partners has been institutionalised for a long time and is very strong. Meanwhile, in the Spanish example (Asturias), the cooperation was only recently made official, after a long process of fruitful informal cooperation which fostered political consensus between social partners and public authorities. In Poland, the connections between social partners and the National Labour Inspectorate is comparatively weaker and less institutionalised. Nevertheless, the examples showed that both partners benefit from the complementarity of their strengths to shape working conditions in construction for the good of workers and fair competition.

In any case, all the co-enforcement actions studied have achieved promising outcomes in terms of: improving health and safety compliance and regulations (Asturias/Spain, Poland); targeted and efficient inspections of bogus self-employment (Asturias/Spain) and underpayment (Austria); and in terms of better informing employers and workers about rights, standards, and obligations concerning occupational health and safety, wages, and other working conditions (Austria, Asturias/Spain and Poland). In this sense, the actions can serve as good and exemplary practices to counteract and reduce fraudulent practices in a highly problematic sector, through different degrees and forms of cooperation between social partners and state authorities.

Preface

This report was produced as an output of the SPLIN project. SPLIN is a two-year European research project dealing with the role of social partner institutions in inspecting and enforcing labour standards in two sectors, the construction industry and maritime shipping.

SPLIN has explored two different types of measures:

1. Co-enforcement actions, defined as the ongoing coordinated efforts of labour inspectorates and social partners to jointly produce labour standard enforcement, and
2. Transnational trade union enforcement action, defined as coordinated efforts led by a transnational trade union to develop and enforce labour standards, implemented in cooperation with national and local trade unions.

This report focuses on the analysis and comparison of different co-enforcement actions in the construction sector. As a comparative report, it is based on three national reports of co-enforcement actions in Austria, Spain and Poland¹.

The comparative report was compiled by Pablo Sanz (Notus-asr) and Bettina Haidinger (Forba). They have deployed parts of the outcomes from the three cases studies to this report with the permission of the authors Bettina Haidinger and Ulrike Papouschek (Forba, authors of the Austrian national report) and Dominik Owczarek (Institute of Public Affairs, author of the Polish national report). The authors are much obliged to the SPLIN associate partners BUAK (Construction

Workers' Holiday and Severance Payment Fund, AT), Budowlani Trade Union (Construction Trade Union, PL) and Fundación Laboral de la Construcción Principado de Asturias (Labour Foundation Asturias, ESP) for their great support to realise the case studies.

The consortium for SPLIN consists of the following organisations: FORBA is in charge of SPLIN's project coordination. Research partners are Notus (ESP), University of Jyväskylä (FI) and the Institute of Public Affairs (PL). The research was conducted in close cooperation with the associate partners: BUAK (Construction Workers' Holiday and Severance Payment Fund, AT), Budowlani Trade Union (Construction Trade Union, PL) and Fundación Laboral de la Construcción Principado de Asturias (Labour Foundation Asturias, ESP).

For further and detailed information about SPLIN, please visit <http://splin.forba.at/>

¹ The three national reports are published on the project website <http://splin.forba.at/>

1 Introduction

The persistence of fraudulent practices circumventing labour regulations has attracted scholars' interest to labour standards enforcement. Labour inspection is a central response to the gap between formal regulations and outcomes for workers, and it has been widely studied (Mustchin & Martínez Lucio, 2020; Piore & Schrank, 2008; Walters, 2016; Weil, 2014). Scholarly debates have also concentrated on trade unions and, to a lesser extent, on employer organisations, studying their role in setting and enforcing labour standards (Baccaro & Howell, 2017). However, research has largely neglected the existence of and potential for partnerships between labour inspectorates and social partners. In general, 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 & Fine, 2017).

In response to this research gap, this report relies on an innovative research line on co-enforcement (Amengual & Fine, 2017; Fine, 2017; Fine & Gordon, 2010; Hardy, 2011), which incorporates the potential contributions of worker and employer organisations for co-enforcing labour standards jointly with national labour inspection institutions. Co-enforcement action has been defined as the ongoing coordinated efforts of state regulators and social partners to jointly produce labour standards enforcement (Amengual & Fine, 2017; Fine, 2017). This approach seems to be particularly promising in a context where labour inspectorates in many countries face budget constraints entailing insufficient resources. Another relevant factor is the decline in power of industrial relations institutions, trade unions in particular, “to shape,

mediate, and mitigate the impact of broad transformations in types of economic growth and the balance of class power” (Howell, 2019, p. 470)

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

This comparative report is based on three sectoral cases studies that have been conducted in Austria, Poland and Spain between May 2019 and January 2020. The following enforcement actions and institutions are analysed in the comparative report:

- Construction Workers' Holiday and Severance Payment Fund (*Bauarbeiter-Urlaubs- und Abfertigungskasse*, BUAK) in Austria.
- Institutionalised cooperation between the Asturian regional offices of the Spanish National Labour and Social Security Inspectorate (*Oficina Regional del Principado de Asturias de la Inspección Nacional de Trabajo y Seguridad Social*) and the Asturian sectoral social partners through the Commission on Health and Safety and Hiring Prevention (*Comisión de Seguridad y Prevención de Riesgos Laborales y Contratación*, COPREVAS) in Asturias, Spain.
- A set of three agreements: Agreement for Safety in Construction (*Porozumienie dla Bezpieczeństwa w Budownictwie*, ASC); Agreement on Minimum Wages in Construction (*Porozumienie w sprawie stawki minimalnej w Budownictwie*, AMW); and Agreement for Occupational Safety in the Operation of Cranes (*Porozumienie na Rzecz Bezpieczeństwa Pracy przy Obsłudze Żurawi*, AOSOC) in Poland.

The report is structured as follows. Following this introduction, the second section gives a brief overview of SPLIN's research objectives and methods. The third section analyses the main factors explaining fraudulent practices in the construction sector and explores their impact in the three coun-

tries studied. The fourth section discusses, from a theoretical perspective, the concept of co-enforcement. Then, it analyses the three co-enforcement actions studied. Finally, some comparative conclusions are presented.

2 Methodology

The main research objective of this report is to analyse and compare co-enforcement actions developed at national (Austria and Poland) and regional level (Spain) in three different countries in the construction sector. These actions aim to ensure fair working conditions, and prevent and tackle fraud.

The specific objectives of the report are:

- Analyse the main characteristics of fraudulent practices in the construction sector in the three countries studied.
- Analyse the contextual factors (political, societal, sectoral, etc.) which explain the development of the co-enforcement actions identified in the construction sector.
- Analyse and compare the main features of the co-enforcement actions in terms of design and functioning.

Case studies have been the main research strategy used to carry out this in-depth analysis of the co-enforcement practices selected. A case study is defined as “an empirical inquiry which investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident” (Yin, 2014, p. 16). The case study is one of several existing research strategies within social science, and every strategy has its particular advantages and disadvantages. Case studies are an appropriate strategy when the focus is on a contemporary phenomenon within some real-life context. Moreover, it is a pertinent strategy to approach social phenomena revising previous theoretical and empirical knowledge (Yin, 2014). In the SPLIN project, we have relied on theory and empirical evidence that highlight the significance of co-enforcement actions for promoting fair working conditions (Amengual & Fine, 2017; Fine, 2017).

A multiple holistic case study design has been followed in order to understand the differences and the similarities between the case studies. The three case studies focus on different co-enforcement initiatives conducted in three countries (Austria, Spain and Poland).

In order to gather both qualitative and quantitative data relevant to an in-depth analysis of the co-enforcement actions, three different research methods have been developed:

- Desk research. Relevant statistics and literature on recent sectoral developments, regulations and policy documents related to the co-enforcement actions studied; as well as data to assess enforcement actions (number of inspections, violation of rights detected, etc.) were identified and reviewed.
- Semi-structured interviews. A total of 39 semi-structured interviews were conducted in the three countries studied (19 in Austria, 10 in Spain and 10 in Poland) in 2019. Interviews were conducted with main stakeholders involved in the design and the implementation of the enforcement action (social partners and labour authorities). Interviews were recorded, transcribed and followed common interview guidelines. Details on the persons interviewed in each country can be consulted in Annex 1.
- Direct observation. Direct observation of enforcement actions was developed to get relevant data on the enforcement dynamics and features of their implementation. The research team accompanied enforcement actors during 2 days of their daily work and recorded relevant information to understand the action in an in-depth way.

3 Construction sector: fraudulent practices to circumvent labour regulation

This section analyses the main factors identified in the literature for understanding the prevalence of fraudulent practices in the construction sector. Then, it explores the main fraudulent practices in the construction sector in Austria, Spain and Poland, and their impact on working conditions. For this analysis, the construction sector was defined according to the NACE rev. 2 classification which includes: the construction of buildings, civil engineering, specialised construction activities (demolition, plumbing, etc.) and other specialised construction activities (roofing activities, etc.).

3.1 UNDERSTANDING FRAUDULENT PRACTICES IN THE CONSTRUCTION SECTOR

The literature has identified construction as one of the sectors most affected by employer abuses and fraudulent practices (Eurofound, 2017). It is also a sector characterised by labour segmentation, with various segments of the industry and workers' profiles (particularly immigrants and/or posted workers), being subject to different working conditions and exposed to different forms of fraud and irregular practices. Relying on an institutionalist analysis (Gallie, 2007; Prieto et al., 2009; Sanz de Miguel, 2019; Weil, 2014) this section explains the complex reality as the result of the interplay between the structural characteristics of the construction sector, the specificities of the main business models in operation and the effects of different regulatory fields. Fraud and poor working conditions are also explained based on a critical

segmentation approach which emphasises the relevance of supply side factors in the labour market (Rubery, 2006).

When analysing the main causes behind fraudulent practices in the construction sector, attention has to be paid, first, to the high degree of labour intensity that characterises the sector. In the sector, about 50% of the turnover is achieved through labour (Eurofound, 2017). As in other highly labour-intensive industries, construction employers tend to foster competitive advantages through lowering labour costs (Bosch et al., 2007; Bosch & Wagner, 2005). Such competitive advantages are also attained by deploying fraudulent practices and abuses, as confirmed by sectorial social partners at EU and national level (Eurofound, 2017).

Second, subcontracting is a key determinant of current working conditions and fraudulent practices. Subcontracting parts of the project to other firms is a common and legitimate standard practice in the construction sector, as a result of different skills and specialisation domains of construction firms. Subcontracting is also driven by the seasonality of construction work and cyclical economic demand, which require companies to be flexible and responsive to both peak and slack periods of economic activity (Behling & Harvey, 2015). At the same time, subcontracting strategies are also used to save costs and shift risks from larger to smaller companies. In such business models, the main firm is only an administrator and manager, outsourcing most of the activity to subcontracted firms which

are, typically, small and medium-sized enterprises (SMEs) or self-employed workers. In many cases, sub-contracting is also built as a complex multi-level network in different Member States, often with the involvement of temporary employment agencies (Voss et al., 2016). In Europe, these strategies were enabled by the posting of workers, which is regulated through the Posting of Workers Directive² (PWD). Posting is a particularly widespread employment form in the construction sector. In 2018, an average of 40% of Portable Documents A1 issued according to Article 12 of the PWD were granted to persons providing services abroad in the construction sector (De Wispelaere et al., 2019). One of the most problematic impacts of posting in the construction sector relates to the phenomenon of so-called letterbox or bogus companies. These are companies that do not carry out any significant activity within the Member State where they are established. Their only purpose is to legally register workers in countries where social security contributions are lower and because it is easier to cheat on workers' entitlements when they are posted to another country to provide temporary services.

Employment in construction is characterised by a high degree of labour intensity, subcontracting, including subcontracting to posting firms and self-employed persons, and a segmented labour supply. Such features can be identified as drivers of non-compliant employment practices in the sector.

Construction business models with their complex subcontracting chains have the characteristics of “fissured workplaces” (Weil, 2014). This concept refers to “employment relationships that have been broken into pieces, often shifted to subcontractors, third party companies, or, more troubling, to individuals who are treated as independent self-employed” (Weil & Goldman, 2016, p. 27). As Weil argues, fissured workplaces exert different pressures on workers compared to lead business (Weil, 2014). Subsidiary companies operate under tight margins. This means, in many cases, that poor working conditions are preconditions to solvency. A workforce subjected to this kind of employment, particularly when at the bottom of fissured business models (independent self-employed, foreign/posted workers subcontracted through temporary agencies, etc.) are more vulnerable to precarious working conditions. Moreover, this model poses serious challenges to enforcement, as it blurs the

responsibilities and liabilities of the main employer in several aspects (health and safety, wages, etc.) (Weil, 2014; Weil & Goldman, 2016).

Despite subcontracting practices being endemic in the construction sector, they can be modulated by the impact of different European and national institutions. At European level, the enforcement of Directive 96/71/EC has addressed different regulatory gaps and problems in relation to enforcement. Interestingly, European sectoral social partners from the construction sector (the European Construction Industry Federation, FIEC, and the European Federation of Building and Woodworkers, EFBWW) successfully lobbied for stricter provisions related to administrative control and inspections (Articles 9 and 10) (Eurofound, 2017). More recently, one of the impacts of Directive 2018/957 amending Directive 96/71/EC has been the implementation of the equal pay principle beyond the minimum wage (thus requiring employers to make supplementary payments that are also generally applied to the local workforce).³ European trade unions have particularly welcomed this reform, as they believe it can contribute to limiting the negative effects of social dumping (Riesco-Sanz et al., 2019).

At national level, subcontracting can be further regulated through laws directly limiting subcontracting or specifying legal grounds for liability claims to the contractors, as has been the case in subcontracting and/or liability laws approved in Spain and Austria. On the other hand, attention has to be drawn to the interplay between subcontracting, and the different labour and fiscal law regimes. Behling & Harvey 2015 have addressed this question in the construction sector from a critical perspective which challenges the concept of institutional complementarities (Hall & Soskice, 2001). The authors argue that institutions can conflict with each other, and provoke negative economic and social effects. For example, looking at the UK, they have shown that self-employment in the construction sector responds to the interaction between the business model and a particular fiscal and legal regime with several results. Notable results include establishing: fiscal incentives for self-employment; and a complex legal definition for self-employment (Behling & Harvey, 2015). As such, public institutions can be seen to play a paradoxical role in relation to subcontracting (counteracting but also indirectly incentivising), which

² Posting of workers covers those situations where activities undertaken provide temporary services in a Member State (the host state) other than the Member State where they are established (the home state). It is regulated by the Posting of Workers Directive (Directive 96/71/EC, amended in 2018 by the EU Directive 2018/957) which aims to reconcile and balance the tensions between two competing rights: on the one hand, employers' freedom to provide services within the EU market; and, on the other hand, workers' rights to equal treatment compared to workers in the host state, within the framework of free movement for EU workers (Voss et al., 2016) ((Arnholtz & Lillie, 2019). With this aim, it established that posted workers have to be covered by a core of clearly defined protective rules in force in the host Member State.

³ A second key innovation of the Directive is that it obliges the application of collective agreements erga omnes to all posted workers. However, this principle already applied to the construction sector.

is also seen in the sphere of public tendering. As denounced by European sectoral employer organisations, many countries have regulatory responses which aim to further regulate subcontracting, however, these regulations coexist with tendering systems which indirectly promote social dumping (Eurofound, 2017). This is because they prioritise price over other criteria such as quality and, as a result, companies resort to subcontracting or transfer pressure to the workers by cheapening and deteriorating working conditions.

Finally, it can be argued that fraudulent practices in construction are also determined by the way employers take into account the segmented labour supply side in shaping their employment systems (Rubery, 2006). Compared to other sectors, construction cannot be offshored to countries with lower labour costs. In this context, several scholars have studied how employers in the construction sector use the presence of migrant workers with a view to perpetuate or extend labour flexibility (Alho, 2013; Meardi et al., 2012; Reyneri, 2004). Employers take advantage of immigrants' lower wage expectations and their – compared to native workers – worse information regarding worker rights and entitlements in the host country. Moreover, the existence of a flexible workforce supply, including posted and migrant workers, is also useful for employers in terms of handling the slack periods of economic activity or economic downturn. Immigrants, often working in informal employment, can be easily dismissed or replaced without causing political problems, due to their higher vulnerability (Meardi et al., 2012). This is also facilitated by difficulties encountered by trade unions in recruiting and representing migrant or posted workers (Alho, 2013; Arnholtz & Lillie, 2019).

3.2 EXPLORING FRAUDULENT PRACTICES IN THE CONSTRUCTION SECTOR IN AUSTRIA, SPAIN AND POLAND

Fraudulent practices are reported to be widespread in the construction sector in the three countries studied. Desk research and fieldwork (see Annex 1) have identified several common fraudulent practices as well as national specificities for common fraudulent practices, reflecting the impact of national institutional frameworks. This reflects the fact that labour, tax, and industrial relations regulations are essentially defined

at national level (Eurofound, 2016). Differences are also explained because of the different impact of posted work in each of the countries studied: Poland and Spain (since 2011) are net sending countries, while Austria is a net receiving country of posted workers. In Spain and Poland, employer demand for a flexible workforce has been principally satisfied through migrant workers (in some cases illegal migrant workers and/or those working in the hidden economy) and, to a lesser extent, through posted workers.

BOGUS SELF-EMPLOYMENT

A key common fraudulent practice identified in all three countries relates to bogus self-employment, which is generally understood to cover situations where self-employed people “declare themselves (or are declared) as self-employed simply to reduce tax liabilities, or employer responsibilities” (OECD, 2000, p. 156), while in fact they should be employed. This fraud is very widespread in Poland and Spain, where it is assessed by social partners and the labour inspectorate as one of the main problems in the sector. In Poland, at the national level, frauds related to bogus self-employment are further defined, taking into account the specificities of national employment law, as “unlawful incidences of civil law contracts”. These bogus self-employment frauds represent 14.5% of all fraudulent cases in the sector, according to the national labour inspection.⁴ In Poland, there are over 100,000 companies in the construction sector, and on top of that as much as nearly 160,000 solo self-employed, according to Statistics Poland (*Główny Urząd Statystyczny*). A large part of the self-employed are bogus self-employed in the sense that they have only one contractor. In Spain, the rise of self-employment recorded during the crisis years has been interpreted as a sign of the growth of bogus self-employment in the sector. Self-employment sharply increased during the worst years of the economic crisis in the construction sector (from 21% in 2008 to 29% in 2012), while it remained stable at cross-sectoral level. In some regions, such as Asturias, bogus self-employment in the construction sector has been estimated at 30% (Labour Foundation Asturias, 2015).

Bogus self-employment is very widespread in Poland and Spain, where it is assessed by social partners and the labour inspectorate as one of the main problems in the sector.

⁴ In Poland there are two kinds of independent contractors which are covered by the Civil Code instead of the Labour Code: self-employed and civil law contractors. The figures cited here refer to the share of unlawful civil law contracts discovered during labour inspection. A civil law contract is deemed unlawful when the labour inspection finds that an employment relationship is taking place, i.e. a relationship where there is subordination to the employer, a defined time and place of work, etc.

In all the countries, self-employment in the construction sector reflects a similar business strategy which is aligned with the fissured workplace business model (Weil, 2014). At the same time, some national institutional factors also contribute to understanding the incidence of self-employment. In Poland, bogus self-employment (unlawful civil law contracts) has been explained particularly through differences in wage and social security costs between employers and workers with self-employed civil contracts. With this in mind, in 2015 the Polish government approved an employer obligation to pay full social-security contributions up to the level of the minimum wage in the case of civil-law contracts. In addition, in 2017 it established a minimum hourly wage for so-called contracts of mandate (a specific type of civil-law contract). However, problems with enforcing this new regulation still exist. According to the Labour Inspectorate, over 25% of all civil law contracts revised in the construction sector showed some abuses, which was one of the highest shares for all the sectors in the national economy.

Most common fraudulent practices identified in the three countries are: underpayment, misuse of working time regulation, health and safety irregularities, undeclared work and irregular classification in collective agreements.

In Spain, bogus self-employment has also been explained as result of a regulatory approach which fragments employment relationships by institutionalising intermediate categories (economically dependent self-employment, so-called TRADE) which add more legal uncertainty (Huertas & Prieto, 2016; Sanz de Miguel, 2019). In addition, Spanish social partners and labour inspectors interviewed stressed the impact of the economic crisis. The reduction of profit margins during the crisis, led many SMEs, already operating under tight margins, to resort to these practices, in some cases forcing previous employees to become self-employed.

Bogus self-employment is comparatively less problematic in Austria, although it does exist. Statistics gathered by the main bipartite social partners body, the Construction Workers' Holiday and Severance Payment Fund (BUAK), shows 564 cases of suspected bogus self-employment in 2018. Compared to other types of non-compliance with labour and social security law, this is a small number. In Austria, social partners and labour authorities are more concerned about the problem of bogus companies often found in extended corporate networks (also at a transnational level). As in the case of bogus self-employment, it aims to blur liability of the main employer in several aspects, particularly social security and wages (Eurofound, 2017; Sardadvar et al., 2014; Schmatz & Wetzels, 2014).

BOGUS COMPANIES

Bogus companies in Austria operate as follows: companies (often letterbox companies) are established by people using false identities, and – often migrant – employees are registered at social security institutions, but do not actually perform work for the bogus company; instead, the employees work for a company higher up the subcontracting chain. The contracting company saves on social security contributions for the respective employees. The bogus company also does not pay the contributions, and when this becomes evident with the social security institution, the bogus company declares insolvency. As there is no capital left, the state thus cannot claim contributions and taxes from these insolvent companies (Winter-Ebmer et al., 2013). Subsequently, once a bogus company is shut down, a new one is often opened shortly afterwards. The issue of bogus firms has specifically been addressed in the so-called Social Anti-Fraud Act (*Sozialbetrugsbekämpfungsgesetz, SBBG*). The Austrian federal ministry of finance is obliged to publish a list of companies that have been judged as bogus companies. This list is permanently updated and has been available online since January 2016. The list contained 356 entries on the 15 March 2020. Most of the bogus companies were designated as belonging to the construction sector, others were companies for temporary agency work, light vehicle transport, cleaning and catering. This publication serves as a source of information for companies and is intended to protect them from possible liability for charges. Following Article 9 SBBG, the contractor is liable for claims on work payments, where employees were assigned from a bogus company and the contractor knew (or should have known) that the subcontractor was a bogus company

Other relevant fraudulent practices identified in the three countries are: underpayment, misuse of working time regulation, health and safety irregularities, undeclared work and irregular classification in collective agreements.

UNDERPAYMENT

The problem of underpayment was mentioned in the fieldwork interviews in Austria, Spain and Poland. In Poland, underpayment is particularly linked to civil contractors and self-employed workers, given the fact that the government regulated a minimum wage for some self-employment contracts. In Spain and Austria, underpayment is related to incorrect payment of wages, social security contributions, and allowances, supplements and special payments which are regu-

lated in sectoral collective bargaining. However, while in Spain it is a fraud which mainly affects local workers, in Austria it mainly affects posted workers. In Austria, in 2018, 46% of posting companies inspected by BUAKE were suspected of underpaying their employees compared to only 1% of Austrian companies. For posted workers, underpayment also involves cases of companies discounting excessive housing costs or relocation costs directly from posted worker salaries (Hollan & Danaj, 2018; Schmatz & Wetzels, 2014).

MISUSES OR VIOLATION OF WORKING TIME REGULATION

Misuses or violation of working time regulation were particularly highlighted in Austria and Poland. In Austria, it affects, on the one hand, posted workers who consent to working more than the legally permitted working hours per day, per week or per month. On the other hand, it is related to abusing part-time work: workers who are registered as part-time workers with social insurance providers while in fact work longer hours, usually full-time. Presumably, they receive the remaining part of their salary in an undeclared manner. In Poland, labour inspection audits have revealed considerable abuses in registering working time. Irregularities in relation to recording working time were detected in 25% of the companies inspected. A significant part of the irregularities occurred in SMEs in the construction sector. Also, many discrepancies were found between the amounts on payrolls and the actually salaries paid.

CIRCUMVENTION OF HEALTH AND SAFETY REGULATION

Circumvention of health and safety regulation is a crucial aspect in construction, given the comparative high number of accidents that this sector records. Again, in Austria this problem was highlighted in relation to posted workers. These workers are particularly affected, and in multiple ways (Hollan & Danaj, 2018, p. 2). First, employers pay less attention in terms of Occupational Health and Safety (OHS) training for posted workers. Second, their temporary status marks them as workers who are easier to exploit and pressure into accepting unsatisfactory working/OHS conditions. Third, due to their short-term stay, they tend not to be so informed about their rights and the regulations in Austria. The literature on the high incidence of labour accidents in the Spanish construc-

tion sector has associated this high incidence with extended subcontracting practices where subcontractors, particularly SMEs, were not fulfilling health and safety regulations (Lidon Lopez et al., 2017). In Poland, 93% out of over 4,800 inspections carried out in 2018 found irregularities in the area of health and safety. The most common causes include incorrect worker behaviour (45%), inappropriate general organisation of work (15%) and technical reasons (40%).

UNDECLARED WORK

Undeclared work occurs when companies do not register workers with Social Security institutions. This fraud was found in Poland and Spain, and was particularly associated with the employment of irregular migrants. In Spain, prior to the 2008 economic crisis, it was estimated that a significant proportion of undocumented migrants were employed in the construction sector (Meardi et al., 2012). Fieldwork conducted in Spain reveals that, during the crisis years (2008-2012), there was a dramatic increase in the number of local workers unregistered with Social Security.

IRREGULAR CLASSIFICATIONS

Finally, the problem of irregular classification in collective agreements was reported in Spain. This is a problem related to the particular structure of collective bargaining in Spain, which is characterised by the prevalence of sectoral collective bargaining concluded at regional and, particularly, provincial level. In this country, the Spanish trade union UGT (General Union of Workers, *Unión General de Trabajadores*, UGT) have made a formal complaint (*denuncia*) at national level regarding companies which register their headquarters in provinces where collective agreements have established lower wages and worse working conditions than the provinces where those same companies are actually operating (Eurofound, 2017). In Asturias, the social partners bipartite body Labour Foundation Asturias has made a formal complaint (*denuncia*) regarding construction companies that irregularly classify their activity with the aim of being covered by other sectoral collective agreements and, as a result, elude the stricter regulation of the construction collective agreement (2015). These companies also aim to save the comparatively higher costs of health and safety, and vocational training which have to be paid to the Labour Foundation in this region.

4 Co-enforcement – concepts and rationales

4.1 THE CRISIS OF ENFORCEMENT: STATE AND INDUSTRIAL RELATIONS RESPONSES

The crisis of enforcement is a topic which is attracting growing research interest. Research evidence shows an increase in the incidence of irregular and fraudulent forms of employment contracts (Eurofound, 2016). In addition, public enforcement institutions and trade unions report growing difficulties in ensuring that employers comply with labour standards.

The crisis of labour standards enforcement has to be analysed in the context of increasing fragmentation of employment relationships and weakening of trade unions (Mustchin and Martínez Lucio, 2020). The diversification of employment contracts is a consequence of the liberalisation of employment relations and political aims to flexibilise labour markets. In their seminal work on the development of European industrial relations and institutions in Western Europe in the neoliberal era, Baccaro and Howell (2017) show that institutions regulating the labour market, as well as the relationships between employers, unions, and states, have undergone processes of liberalisation and weakening. Employer discretion has been augmented across industrial relations systems in Europe: employers have greater influence and control over wage determination, over hiring and firing, and over the flexible deployment of workers. At the same time, the collective power of workers has disintegrated, that is, their collective power as actors to set and control labour standards.

In addition, literature highlights sectoral specificities which contribute to understanding fraudulent practices and employer abuses. The crisis of enforcement becomes acute in sectors such as construction, where employment has become “fissured” (Weil, 2014), following the prevalence of business models relying on subcontracting practices. Subcontracting practices are likely to undermine labour rights because they set serious challenges for enforcement, as they blur responsibilities and the liability of the main employer in several aspects.

Two main responses are generally discussed with a view to tackling the crisis of enforcement. Both acknowledge the crucial role that labour inspection plays in closing the gap between formal regulations and outcomes for workers.

One response focuses on the need to increase the number of labour inspectors (Martínez Lucio, 2016), arguing on the basis of a relationship between the size of the Labour Inspectorate and the compliance outcomes (Amengual & Fine, 2017). While literature suggests that more labour inspection resources can increase deterrence effects (ILO, 2006), the empirical comparison of labour inspections capacity is difficult because structures of labour inspectorates differ across Europe. They range from: very comprehensive competences of labour inspectorates encompassing employment, working time, wages and salaries, social security, and health and safety, as is the case of Italy, France or Spain; to inspectorates that are only responsible for checking compliance with occupational health and safety legislation, as happens

The crisis of labour standards enforcement has to be analysed in the context of increasing fragmentation of employment relationships, the weakening of trade unions, and more employer discretion across industrial relations systems in Europe.

in Germany, Austria or the United Kingdom. In these latter cases, other public authorities are responsible for checking the remaining issues (European Federation of Public Service Unions (EPSU), 2012) (Walters, 2016). Different structures and areas of competence make comparison difficult. Besides, there is no general and harmonised methodology available for conducting statistical analyses on related labour inspectorates' activities and outcomes. For example, relevant and comparable data related to the number of workplaces inspected or the number of labour inspectors per workplace are not available.⁵

The second response focuses on the quality of the inspections, rather than the quantity (Blanc, 2018; Weil, 2011). Here, attention has to be drawn to the “strategic enforcement approach” (Weil, 2011), which focuses on the principles of prioritisation: targeting those sectors with a higher proportion of vulnerable workers and fissured workplace models; sustainability, understood as the institutionalisation of positive compliance behaviours; and systemic effects, which calls for giving priority to the underlying drivers of compliance such as competitive strategies (Hardy & Howe, 2015; Weil, 2011). This approach has been very influential in countries such as Australia, the United States, Canada and the UK, which are representative of a liberal model of industrial relations and have in common a decentralised and fragmented labour inspectorate, which is also generally assessed as poorly resourced (Mustchin & Martínez Lucio, 2020).

The quality of the labour inspection work has been also studied through international comparative approaches analysing how different labour inspection institutions work. In this regard, Piore and Schrank (2008) and Piore (2011) have compared: the so-called Latin model of labour inspection, present in countries such as Spain and, particularly, France, with its centralised and unitary labour inspectorate; with the fragmented labour inspectorate institutions of the North American model. Piore and Schrank (2008) have identified some advantages and limitations of the Latin model. The advantages are related to its higher degree of flexibility to adapt to the specificities of individual companies and broader socio-economic environment. This flexibility arises from the line inspectors' higher discretionary powers to decide which aspects of the labour code to enforce and to develop a compliance plan which comes

into effect gradually. Discretionary powers are also linked to inspectors' competences to decide which workplaces to inspect and when. In this framework, the Latin model is more pedagogical while the salient feature of the North American model is its adversarial nature. The limitations of the Latin model also stem from its flexibility, as it is difficult to evaluate and monitor inspectors' decisions in order to ensure consistency and equity of treatment across companies. Performance evaluation is also a problem associated with the flexibility of the Latin model. Mustchin and Martínez Lucio (2020) also explain specificities in labour inspectors' work based on institutional factors, considering the institutional work of inspection and enforcement agencies. However, they provide a more critical analysis which aims to illuminate tensions and contradictions which arise from the interplay between enforcement agencies' practices, and wider political and regulatory contextual factors. Their research, focused on the UK, explains how the high degree of fragmentation of enforcement state agencies in this country, which is comparable to other liberal countries (USA or Australia), has resulted in collaborative discourses and practices across various agencies, and between agencies and civil society organisations aiming to improve enforcement results. This has occurred in a political context marked by a growing focus on migrants at the expenses of more common abuses and labour infringements, within a framework of increasingly xenophobic political agendas, and austerity measures negatively affecting the capacity of enforcement institutions. These developments create new tensions within the enforcement agencies as a result of the contradictions between discourses on innovation and cooperation, and discourses on economic and political contexts.

In addition, industrial relations research has examined social partners responses to various forms of precarious and fraudulent forms of work (Fiorito & Jarley, 2008; Gumbrell-McCormick & Hyman, 2013; Sanz de Miguel, 2019; Pulignano et al., 2016). Most of this research has concentrated on the analysis of national trade union initiatives, discussing actions launched in different contexts to better protect precarious workers and enforce labour standards (better targeting of enforcement, innovative recruitment strategies, new structures and activism, campaigns, etc.). Furthermore, some studies have also considered joint actions negotiated by national trade unions and employer organisations aiming to create alternatives to state regulation on labour standards enforcement. Such initiatives generally appear in sectors or activ-

Two responses to tackle the crisis of enforcement of labour standards: more labour inspectors and better labour inspections

⁵ Further information is available at http://www.ilo.org/labadmin/info/WCMS_141079/lang--en/index.htm

ities characterised by poor working conditions and deficient compliance with labour regulation. Here, employer organisations become interested in combatting precarious and fraudulent contractual practices as they hamper fair competition. As a result, joint agreements between trade unions and employers to promote fair working conditions become feasible (Eurofound, 2017). The existence and nature of joint trade union and employer organisation initiatives to prevent fraud is also related to industrial relations patterns and models identified across Europe, and particularly to the role played by centralised collective bargaining in regulating employment relationships (Eurofound, 2017; Sanz de Miguel et al, 2020).

SPLIN explores an innovative line of research on co-enforcement, defined as ongoing coordinated efforts of state regulators and social partners to jointly produce labour standards enforcement.

Rather than focusing on labour inspection responses or social partner actions to improve enforcement, the SPLIN project relies on an innovative line of research on co-enforcement. Co-enforcement is defined as ongoing coordinated efforts of state regulators and social partners to jointly produce labour standards enforcement (Amengual & Fine, 2017). The co-enforcement approach incorporates the potential contributions of worker and employer organisations for co-enforcing labour standards jointly with national labour inspection institutions (Amengual & Fine, 2017; Fine, 2017; Fine & Gordon, 2010).

4.2 CO-ENFORCEMENT IN THEORY

The co-enforcement concept, as formulated by Amengual and Fine (2017) and Fine (2017), draws on ideas from two main approaches. First, it is inspired by “responsive regulation” approaches, particularly the tripartism model (Ayres & Braithwaite, 1992) which, instead of drawing on neo-corporatism theory (Schmitter, 1974), rests on a republican tradition of political theory which stresses direct citizen participation often at the local level (e.g. the workplace). These authors propose a regulatory process based on the full and equal involvement of so-called public interest groups in enforcement. Public interest groups (trade unions, consumer associations, etc.) are, under this approach, selected by the state and placed between the company and the enforcement institution. They are given a formal role in enforcement, including access to information, a seat at the negotiation table with the company and the institution, and the same standing to sue or prosecute under the regulatory status as the regulator. According to Ayres and Braithwaite (1992) tripar-

tism is mainly a way to “guard the guardians”, thus ensuring accountability and optimisation of enforcement actions.

Second, co-enforcement relies on Ostrom’s co-production theory (1996). This author defines co-production as “the process through which inputs used to produce a good or service are contributed by individuals who are not in the same organisations” (Ostrom, 1996, p. 1073, in Amengual & Fine, 2017, p. 131). Ostrom’s (1996) approach is incorporated in co-enforcement theory with a view to going beyond Ayres and Braithwaite (1992) tripartism model, the latter of which is mainly focused on the notion of making guardianship contestable. Through this, co-enforcement considers how social actors can play both operational and political roles in enforcement policies (Amengual & Fine, 2017).

Amengual and Fine’s (2017) and Fine’s (2017) empirical research on co-enforcement has inferred a number of mechanisms or design principles which justify the relevance of this approach and highlight its specificity compared with traditional enforcement approaches. These design principles are outlined below.

NON-SUBSTITUTABLE ELEMENTS OF STATE AND SOCIETY

Drawing on Ostrom’s (1996) co-production insights, co-enforcement relies on the non-substitutable elements of state and society. Rather than identifying the additive effect of trade unions or state bodies, it goes directly to incorporating the unique enforcement capabilities that each partner adds. That is: the unique trade union capability to share their tacit knowledge on the work processes; the unique capacity of the state to set and enforce labour standards; and the powers that employer associations have to establish best practices in relation to several working conditions.

STRATEGIC ENFORCEMENT

In the cases studied in literature, co-enforcement relies on a type of strategic enforcement approach (Weil, 2011) which focuses on a specific sector. Indeed, most of the examples studied in the co-enforcement literature focus on the construction sector. When social partners focus on a specific sector, they are in a better position to understand how companies operate and identify the main causes of fraud and abuses.

ROUTINISING FLOWS OF INFORMATION AND RESOURCES BETWEEN STATE AND SOCIETY

Co-enforcement routinises the flows of information between state and society. Thanks to this approach, public authorities can access the unique type of information that social partners can gather. At the same time, social partners benefit from the increased transparency on how cases brought to the Labour Inspectorate are carried out, as they can gather and share more information on the process and, as a result, they can gain legitimacy in the eyes of their members.

In terms of resources, trade unions can enhance operational capacities of labour inspectorates by providing inspectors with additional resources, such as staff visiting workplaces or conducting interviews. This can make a difference for labour inspectorates facing budget constraints (Fine, 2017).

POLITICAL SUPPORT TO CREATE AND MAINTAIN COLLABORATION

Co-enforcement entails that political support must be built and maintained within state and social partner organisations. This is a key precondition because co-enforcement needs full internal support from each organisation to ensure that inspectors or trade union actors, who always have some discretionary powers (Piore, 2011), are motivated to cooperate. Co-enforcement relies on a process in which each actor necessarily cedes some control over their tasks and decisions in certain areas, where those areas were entirely under their control prior to co-enforcement (Amengual & Fine, 2017; Fine, 2017). Having clarified the theoretical implications of the concept, the following section presents the three co-enforcement experiences developed in the construction sector in Austria, Spain and Poland.

Co-enforcement has inferred a number of mechanisms which justify the relevance of this approach: the non-substitutable elements of state and society; strategic enforcement; routinising the flows of information; the need for political support within state and social partner organisations.

5 Co-enforcement initiatives in the construction industry

5.1 CO-ENFORCEMENT IN AUSTRIA

The construction sector in Austria is one of the industries most exposed to wage and social dumping in the country. Underpayment in posting arrangements, bogus self-employment, bogus firms and cheating on working time can be identified as the most common practices circumventing existing regulations for minimum remuneration and working conditions. The legislator reacted to these developments and to European provisions (Posting of Workers Directive, Enforcement Directive) by enacting the Anti-Wage and Social Dumping Act (*Lohn- und Sozialdumping-Bekämpfungsgesetz*, LSDB-G) in 2011. The Construction Workers' Annual Leave and Severance Pay Fund (BUAK), a social partner institution, received wide reaching responsibilities in implementing the law, including the right to inspect wages at construction sites, verify suspected cases of wage and social dumping, and denounce cases to the district authority. This constituted an innovation in the Austrian context, because previously these have been exclusively under the domain of other institutions, namely the financial police and the health insurance providers. At the same time, this delegation process returns to the traditions of the Austrian industrial relations model, in which several sovereign tasks are devolved to social partner organisations and institutions (vocational training, collective bargaining including minimum wage setting, etc.) and social partner institutions have a strong-

hold in influencing economic and social policy decisions (Astleithner & Flecker, 2017).

In the Austrian case study, co-enforcement is enacted in two ways. First, in terms of co-designing a joint political strategy between social partners and the public authorities to improve inspection and compliance in the construction sector, which resulted in the LSDB-G Act. Second, co-enforcement is related to the state delegation of enforcement competences to a social partner institution (BUAK) with high industry expertise, thus following a strategic enforcement approach. In this context, the main cooperation at operational level (routinisation of information flows about infringements and problematic practices, etc.) takes place between the paritarian social partner institution with enforcement competences (BUAK) and the construction social partners

ORIGINS OF THE ACTIONS: SOCIAL PARTNER COOPERATION IN CONSTRUCTION

BUAK is a statutory body under public law, tasked with the administration of statutory duties for defined trades in the construction industry (*Selbstverwaltung*). Its leadership is nominated on equal terms by worker organisation (Construction and Woodworkers' Union Labour, *Gewerkschaft Bau-Holz*) and the employer organisation (Chamber of Commerce). BUAK employs about 245 people (March 2020).

Since its foundation in 1946, one main objective of BUAK is compensating for the disadvantages of seasonal fluctuation for workers in the construction industry. This includes the administration and paying-out of leave and severance pay entitlements, bad weather compensation, and interim supplements paid to unemployed construction workers prior to retirement. These benefits and allowances are financed by supplements paid by Austrian companies and foreign companies posting workers to Austria.

A particularly important milestone was BUAK's additional responsibilities laid down in the Anti-Wage and Social Dumping Act (LSDB-G) in Austria in 2011, subsequently revised in 2017. The construction industry received particular attention in this law, and BUAK was endowed with respective competences to implement the regulations. LSDB-G's objectives are to achieve equal labour market and wage conditions for all employees working in Austria, to ensure fair competition between the companies on the market, as well as the proper payment of fees and social security contributions. These regulatory objectives correspond to the common political and economic aims of both social partner organisations in the construction sector.

Up until 2011, the financial police and the (at that time regional)⁶ health insurance providers were the exclusive authorities in charge of inspecting wages and wage-related contributions. In Austria, each authority does have its limited competences that are stipulated by law and are rather diffuse. This means that different authorities are in charge of inspection, verification and the filing of the complaint for the same case; and different authorities are in charge depending on whether it is a foreign or a domestic company. Construction in particular is a complicated trade, with a comparatively high incidence of wage and social dumping. Hence, to entrust BUAK with the whole process of inspection, verification and filing of the complaint was a step that led to greater efficiency in pursuing cases of fraudulent behaviour in the construction sector. In addition, as the construction industry is subject to dozens of different regulations, including collective agreements, a specific expertise is crucial to make the detection of infringements more likely and more effective.

What distinguishes BUAK a little from the other [inspection authorities] is that we know very well the collective agreement wage system in the construction industry, where there are countless collective

agreements and with which we are very familiar due to our area of responsibility and our tasks. We are better able and specifically trained to classify construction workers [according to skill level, trade] and do it, I believe, very efficiently. I think that this is the core of what has been our unique point of success.

BUAK Head of Coordination Unit

In order to fulfil these particular tasks, BUAK employs 36 inspectors and 10 lawyers. Principally, BUAK is financed by employer contributions. For additional tasks, BUAK receives a further 2 million Euro per year from the Federal Ministry of Labour, Family and Youth (Bundesministerium für Arbeit, Familie und Jugend) (source: BUAK annual report 2018, not published).

In the past 10 years, the number of inspectors and other personnel deployed for the implementation of the new tasks has expanded quickly. A finely-tuned personnel policy regarding recruitment, the initial assignment and further training has accompanied its growth. In the course of this expansion, new tools, new structures and new methods of communication had to be developed incrementally. The head of the coordination unit emphasised that BUAK tried and also succeeded in accomplishing organisational development on its own. Employees were and are substantially integrated into organisational processes and the development of new or improved existing tools. One key success factor of BUAK's organisational development is the efficient communication and inter-departmental cooperation – the flow of information from the ground to management is of utmost importance. The high importance of communication and information exchange within the organisation, also results in a high degree of direct and unbureaucratic cooperation among legal and inspectorate staff, and the customer service centre. There are also permanent updating processes and feed-back loops to improve investigative tools.

It is very important to see how a suspected LSDB-G case “emerges”, is handled by the inspectors and then processed by our department [legal department]. Because, if you look at the process in practice, other problems are sometimes visible, compared to what you see from the desk. You often don't even realise how much effort is involved before a case even comes to us, i.e. which inspection steps are necessary beforehand. In addition, perhaps, if one or another topic should be raised more [in the inspection] to get hands-on information for the legal proceedings, we can mention this to the inspectors.

BUAK legal office staff, interviewee 3

A milestone for better inspection of employment practices and wages in Austria's construction sector was BUAK's endowment with additional responsibilities laid down in the Anti-Wage and Social Dumping Act in 2011.

One key success factor of BUAK's organisational development is the efficient communication, inter-departmental cooperation, and information exchange within the organisation.

⁶ Since January 2020, the regional social security institutions have been subsumed under one body: the Austrian health insurance institution (*Österreichische Gesundheitskasse*).

CO-DESIGN OF THE ACTION BY SOCIAL PARTNERS

The entrusting of inspection competences to BUAK within the realm of the LSDB-G had been a clear political aim of BUAK, which it had actively pursued. BUAK is an institution with high sectoral knowledge and detailed knowledge about sector-specific regulations (e.g. collective agreements). Therefore, it developed – in cooperation with the competent ministry – the respective regulations and tailor-made measures to implement them. The political decision was born and taken at social partner level, then subsequently brought to the administrative and political bodies. Hence, one of the most important influencing factors of implementation is the commitment of both social partners of the construction sector towards a ‘fair industry’ that is compliant with the existing rules against wage and social dumping:

I simply believe that this regulatory element is definitely great for the construction industry. And it is really, really exceptional that the employers are funding the inspections, which is not always pleasant for them. So, it is really great for them to say: “ok, we now have a control instrument.”

BUAK Head of Coordination Unit

BUAK received competences independent of other inspection authorities, as it is an authority in its own right, financed predominantly not from taxes but from the industry itself, and with a high sectoral expertise.

BUAK’s task was then the practical implementation of measures that have been negotiated and compromised on at social partner level, and then subsequently formalised and included into the LSDB-G. It was important that BUAK received competences independent of other inspection authorities, as it is an authority in its own right, financed predominantly not from taxes but from the industry itself, and with a high sectoral expertise. BUAK was actively involved in co-producing the formal and legislative framework for combatting wage and social dumping in the construction industry, and the optimal way to enforce this framework (Hardy, 2011). This new step was a strategic orientation of BUAK towards the additional inspection competences, including staff recruitment and existing staff redirection towards new tasks. It is important to note that these new competences did not lead to a disruption or complete reorientation of the institution. The administration and organisation of the old tasks are still prevalent. The new ones have been adopted step by step, accompanied by prudent organisational development.

IMPLEMENTATION OF BUAK’S ACTIVITIES IN THE CONTEXT OF ANTI-FRAUD POLICIES

Inspection of underpayment at construction sites

One of the main new tasks of BUAK is inspecting underpayment, including posting or cross-border temporary agency work in construction. The most important activity of BUAK in this context are wage inspections at construction sites.

The strategy is to check as many construction sites as possible throughout Austria. The aim of this strategy is to have intensive direct contact with companies and workers. Another aim is the optimisation of inspection procedures towards more complete and valid documentation of cases. This can be accomplished by very precise face-to-face inquiries using questionnaires (e.g. detailed description of tasks) and IT-systems (BUAK database, database of social security), precise observation (e.g. photo documentation), and by applying detailed knowledge of construction site operations and processes.

Generally, BUAK inspectors are granted the right of access to construction sites and their site trailers, in addition to the right to information and inspection of numerous (wage) documents. The BUAK inspectors have the right to obtain the required information for fulfilling their inspection tasks from all persons, workers and construction site management present at the construction site and engaged in working there. From the management, documents evidencing the work activity would be required, for example, employment contracts, service contracts with subcontractors, and for foreign employers also wage documents. If documents are not submitted as required, this can lead to fines for the employers.

During the inspection, the inspectors’ immediate and precise observation and perception of the workers and their actual activities is of central importance. It is the main basis for assessing the type of work they are performing. Different types of work (for example, auxiliary, semi-skilled or skilled work) entail different levels of wages according to the collective agreement applicable for the trade. For documentary reasons, photographs are taken of the workers’ actual work and the construction site as a whole. Such precise documentation is of high importance as evidence in any legal proceedings against a company that is suspected of violating the LSDB-G.

Another inspection instrument is the distribution of questionnaires to the workers. It contains questions related to pay, type of work carried out, profession of the interviewee, working time, length of work, etc., and documents all the worker responses. The questionnaires are currently available in 19 languages.

Further inspection steps at the construction site cover checking employees to ensure they are correctly registered with BUAk, the social insurance authorities and – if applicable – as posted workers. The inspectors are all equipped with laptops with online access to different databases (BUAk database, ZKO data of the Ministry of Finance, social security database) that can be consulted on site.

Besides inspections for underpayment, in 2018, the social partners agreed upon an amendment of the BUA-G (Construction Workers' Holiday and Severance Payment Act/*Bauarbeiter-Urlaubs- und Abfertigungs-Gesetz*) to inspect part-time employment in construction more efficiently. The rationale behind it was that BUAk identified in its statistics an implausible volume of part-time employment in construction. The problem is when construction workers are registered for part-time work, and the rest of the working time is paid in cash. With existing registration systems and insufficient inspection practices, it was easy for employers to cheat on working time. Hence, the social partners negotiated further obligations to record working time, including the positioning of working time, i.e. the exact start and end times of working time. If, during an inspection, the employer does not adhere to this working time recording system, a formal complaint is made to the district administration authority and a fine can be imposed (Article 32, BUA-G). In addition, the employer has to repay BUAk supplements for the preceding months. This new regulation led to an effective reduction of part-time employment in the construction sector (BUAk director interview).

Generally, workers feel confident with the regular site inspections carried out by BUAk, as this clarifies whether their employment relationship complies with the legal framework. In addition, workers receive information – for instance – about their used or remaining holiday entitlements, when they ask for it. Workers experience this as a service. Such an accessible manner towards the construction workers, who are informants to the inspectors in the context of a labour inspection, helps to build up trust. So that, on the one hand, workers will be more willing to provide correct information to the labour inspectors, and, on the

other hand, the interviews and questioning will be carried out in a more efficient way as well.

Success and efficiency of inspections are interpreted in terms of the number of inspections carried out (per inspector), and the development of suspected cases and formal complaints on the basis of the LSDB-G. The number of construction site inspections almost doubled from 2015 to 2018 (5,883 in 2015; 10,161 in 2018). For the issue of suspected cases and formal complaints, it is not an aim to increase these numbers but to improve the substantive content of complaints, i.e. to improve the quality of inspections and the subsequent complaints (Blanc, 2018). In fact, it is a success if the number of suspected cases diminishes. This was the case from 2018 to 2019: in 2018, 46% of posting companies inspected by BUAk were suspected of underpaying their employees, whereas in 2019 the percentage dropped to 37%. Of domestic (Austrian) companies, in 2018, 1% were suspected of underpayment, and in 2019 the percentage was at 0.8% (Source: BUAk annual report 2018, 2019 not published).

Verification of underpayment

Following inspections at construction sites, the inspections are documented, an inspection report is drawn up, any suspicious cases are (re-)examined, and employers are requested to provide additional documents. If suspicious cases arise, they are passed on to the legal department of BUAk. They examine in detail the documents collected and compare construction worker statements with what has been reported by the inspectors. They have access to various domestic and foreign databases, and information exchange services to verify the collected information, including the IMI (European Internal Market Information System). This is a very meticulous process. The precise documentation of inspections is a very essential tool and resource to prosecute suspicious cases further. BUAk can be a witness or a party in a legal proceeding. All legal proceedings where BUAk plays a role either as a party or as a witness, are analysed, and verdicts are considered for the future processing of cases. This is particularly important for the filing of future complaints. As a working principle, the legal department works closely with the inspectors who carry out the fieldwork.

Client liability

Another new task (since 2017) is the investigation of contractor liability for wages in construction. This means verifying whether the client of the posting undertaken is liable for pay claims held

Besides inspections for underpayment, in 2018, the social partners agreed upon more efficient inspections of part-time employment in construction.

The precise documentation of inspections is a very essential tool and resource to prosecute suspicious cases further in a legal proceeding.

INFOBOX 1: BUAK'S INFORMATION POLICIES

The BUAK customer service centre's main areas of consultation are related to leave and severance pay entitlements, bad weather compensation, winter holidays, interim supplements paid to unemployed construction workers prior to retirement (the traditional BUAK tasks). Recently, they have also taken on cases of suspected underpayment. BUAK offers personal – face-to-face – consultation as well as consultation by phone and email in multiple languages. All in all, the customer service centre offers a relatively low threshold access for construction workers.

Another important information tool is an employee information newsletter (Arbeitnehmerinformation, ANI). This is a periodic information letter to workers on all claims that may be held against companies by the BUAK. This includes – if applicable – information about legal complaints on underpayment that have been made against the respective company on the basis of an assessment of BUAK. This is a very important way for employees to learn about an employers' (potential) misconduct and conviction on the basis of the LSB-G. The claims for unpaid wages, however, have to be pursued by the employee himself. BUAK is not in charge of bringing individual claims.

by posted or hired out (by a temporary agency) workers, when the worker is not paid by its direct employer. Thus, client liability is an additional option for employees to obtain the pay to which they are entitled. The employee must personally and actively inform the BUAK of unfulfilled remuneration claims for their work and give details about their case. After BUAK has reviewed the matter, the client receives a letter to inform them of their liability, including the specific amount.

CO-ENFORCEMENT LESSONS

As pointed out in the beginning of this section, co-enforcement in the Austrian case has been interpreted in terms of: co-design of enforcement policies; and state delegation of enforcement competences to a social partner institution (BUAK) with high industry expertise.

This co-enforcement approach has several advantages. First, the high expertise of the institution, especially regarding current collective agreements, which ensures a more effective enforcement of wage regulation. Second, the communication “short cuts” between the institution and the social partners of the industry, which facilitate the discussion of flaws and successes of the measure (responsive regulation). Third, the high awareness of employers and employees regarding the existence and competence of BUAK. Fourth, the expansion of legal regulation and of statutory bodies'

power (such as BUAK) to safeguard labour standards at an individual level, in the broader context of enforcement based on the strength of worker collective organisation and representation having become more brittle Baccaro & Howell, 2017).

5.2 CO-ENFORCEMENT IN THE REGION OF ASTURIAS

As in the case of Asturia, construction is one of the sectors most exposed to fraudulent practices in Spain. The most common fraudulent practices identified are: bogus self-employment; subcontracting chains and multi-level contracting (which lead to the circumvention of health and safety regulations); workers unregistered with Social Security; and irregular adscription to collective agreements. Since the 2000s, state authorities and social partners have developed several initiatives aiming to reinforce controls on the subcontracting process, and enforce health and safety regulation in the construction sector, in relation to which the Law 32/2006 on Subcontracting in the Construction Sector is particularly significant.

Cooperation between social partners and labour inspectorate at national level in the construction sector has only occurred at an informal level through ad-hoc formal complaints generally issued by trade unions. In contrast, at the regional level, a significant feature of enforcement in the construc-

BUAK's co-enforcement approach rests on its high sectoral expertise, the communication “short cuts” between the institution and the social partners, the high awareness regarding BUAK's relevance, and the expansion of the statutory bodies' power to safeguard labour standards.

tion sector in the Autonomous Community of Asturias (Principado de Asturias) is the formal and institutionalised cooperation between trade unions, employer organisation and labour inspectorate. In this particular regional context, cooperation leading to co-enforcement was mainly driven by social partners, who had previously agreed several actions aiming to improve enforcement.

ORIGINS OF THE ACTIONS: SOCIAL PARTNER COOPERATION IN CONSTRUCTION

In Asturias, sectoral social partners in the construction sector have played a key role in promoting fair competition, improving working conditions, and better enforcement of health and safety standards. In this respect, two social partner institutions deserve particular attention.

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 (Industry, Construction and Agriculture Federation of the UGT; Construction Federation of Workers' Commission, *Confederación Sindical de Comisiones Obreras*, CCOO; and Employer Confederation of Construction Sector Asturias, *La Confederación Asturiana de la Construcción-Asprocon*, CAC-ASPROCON). It was the first paritarian body in the construction sector in Spain. The creation of the Labour Foundation was the culmination of several years intense negotiations aimed at regulating a conflictive 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. Since its creation, the Labour Foundation has developed a wide range of actions. First, it offers social benefits which complement or enhance social security benefits (temporary disability benefits, sector loyalty benefit, seniority bonus, etc.). Second, it implements learning and training programmes addressed to both sectoral workers and unemployed workers. Third, it develops labour intermediation policies, in cooperation with public employment services. Fourth, it plays a key role in the management of different enforcement and co-enforcement initiatives, which will be described in the following sections.

The second key institution is the Commission on Health and Safety and Hiring Prevention (COPREVAS). It was established in the regional sectoral collective agreement of 1997 in order 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. With this aim, health and safety delegates were appointed aiming to enforce regulations in the workplace.

COPREVAS and the Labour Foundation work together in the implementation of enforcement activities, and both have high degrees of internal cooperation. As shown in the next section, the Labour Foundation provides technical support to COPREVAS 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.

COPREVAS DESIGN AND IMPLEMENTATION

In Asturias, the main achievement of social partner joint-efforts to tackle fraudulent practices was the creation of the Commission on Health and Safety and Hiring Prevention (COPREVAS) in the sectoral regional collective agreement of 1997. COPREVAS is managed by a governing board of three members which represents 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 employer contributions (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). In 2004, the number of delegates was enlarged to 8. Their goal was to improve and extend prevention culture, and enforce health and safety, and labour contractual regulation. For this purpose, they were mandated to: freely enter all companies covered by the sectoral agreement; conduct interviews with both worker representatives (including works councillors and prevention

Two key social partner institutions, COPREVAS and the Labour Foundation, work together in the implementation of enforcement activities in the construction industry in the Autonomous Community of Asturias.

COPREVAS was a pioneer institution in the Spanish context because of the introduction of health and safety delegates, who started to operate in February 1999 and who were appointed by both social partners.

delegates) and employers; and recommend the suspension of work in cases of serious health risks. After each inspection and company visit (which did not have to be announced in advance), 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, calling for a formal complaint (*denuncia*) to the labour inspectorate. This information had to be then revised and approved by the governing board of COPREVAS.

It is worth noting the agreement that all company inspections would be made by two delegates, with one each 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. This practice reflected the consensual and partnership approach behind enforcement and particularly helped to ensure employer acceptance of the delegate figure. However, this aspect was modified 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. When the case study interviews were conducted, social partners were still discussing the return to the previous model of working pairs. Indeed, both employer organisation and trade unions 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. 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, social partners agreed 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.

Delegates' work regulated through the collective agreement is complemented through a protocol of action and an inspection check-list which describes in detail all the actions to be carried out in every inspection. Both tools have been progressively updated. For the elaboration of the check-list, COPREVAS was advised and supported by the Regional Asturian Institute of Health and Safety Prevention (*Instituto Asturiano de Prevención de Riesgos Laborales*).

Delegates' work regulated through the collective agreement is complemented through a protocol of action and an inspection check-list which describes in detail all the actions to be carried out in every inspection.

A key aspect of the protocol of action are the procedures which may lead COPREVAS to make a formal complaint (*denuncia*) to the Labour Inspectorate about health and safety infractions. The protocol establishes that prior to a formal complaint (*denuncia*), three visits and 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. The procedure regulating health and safety infringements reflects the pedagogical character (Piore, 2011, p. 154) of COPREVAS in this field, which explicitly aims to distinguish itself from the more punitive approach followed by the labour inspection.

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.

General Secretary and Head of Health and Safety section of Industry, Construction and Agriculture Federation of UGT. Member of COPREVAS governing board

Although this regulation is in line with the pedagogical character of COPREVAS, this aspect is assessed by some delegates 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.

Health and Safety Delegate 1

Beyond the protocol of action, several organisational and technological innovations have been applied by COPREVAS in recent years. A first key innovation was introduced in the regional sectoral collective agreement signed in 2007 and valid for the period 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. 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. Therefore, delegate access to the subcontracting books was a crucial step in increasing COPREVAS' capacity to detect bogus self-employment.

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 (Deputy Director of Labour Foundation of the Construction Sector of Asturias), 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.

In addition, the Labour Foundation's access to subcontracting books enables cross-checking 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 3.2, this is one of the most widespread fraudulent practices in the construction sector of Asturias. Social

partners and the Labour Foundation are very interested in the non-payment of these contributions because this implies a reduction of their financial capacity (Health and Safety 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 organisations 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 (Interview with President Employer Confederation of Construction Sector Asturias, CAC-ASPROCON).

The role of COPREVAS has not been questioned 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 out that COPREVAS' existence is directly linked to the maintenance of the sectoral collective agreement: "if the collective agreement falls, COPREVAS will fall too" (Interview with General Secretary and Head of Health and Safety section of Industry, Construction and Agriculture Federation of UGT, Member of COPREVAS governing board).

INSTITUTIONAL COOPERATION: FROM INFORMAL COOPERATION TO CO-ENFORCEMENT

Looking at the cooperation between COPREVAS and public authorities, it can be pointed out that co-enforcement was driven by social partners' strategic engagement with public institutions.

New competences were conferred on COPREVAS delegates related to the enforcement of contractual labour regulation. They received powers giving them access to all existing subcontracting books in the construction projects inspected.

Looking at the cooperation between COPREVAS and public authorities, it can be pointed out that co-enforcement was driven by social partners' strategic engagement with public institutions.

sharing. However, COPREVAS worked closely with the Labour Inspectorate and the regional labour institutions through three actions.

An official cooperation agreement was signed in 2017 by the sectoral social partners and the regional Labour Office (Oficina Regional de Empleo) on behalf of the Labour Inspectorate. The agreement regulated two main actions to be implemented: actions to raise awareness about labour standards compliance, including campaigns and dissemination activities, and, even more important, the regular exchange and transfer of information gathered through COPREVAS and the Labour Foundation.

First, social partners worked decidedly to improve communication with public authorities. The 1997 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 of Construction Sector, 1997). This clause has been maintained in successive agreements.

Second, there were different cooperative training actions. These 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 last institution also contributed to the design of the delegate checklist.

Third, COPREVAS supported labour inspection work through regular formal complaints (*denuncias*), particularly in the fields of health and safety, and contractual regulation. It is worth noting that, compared to the relatively more fragmented Austrian inspection system, Spanish labour inspections are carried out through a single Labour Inspectorate: the national Labour and Social Security Inspectorate (*Inspección de Trabajo y Seguridad Social*) which partly functions through regional offices in all the Autonomous Communities of Spain. The Spanish Inspectorate has competences to monitor the compliance of employers in all fields of statutory regulation (working time, pay, etc.). Accordingly, all types of labour infringements can be managed by the same enforcement body in Spain. COPREVAS and the Labour Foundation also regularly shared privileged information with the Labour Inspectorate on the evolution of irregular and fraudulent contractual practices. This cooperation leads to significant outcomes such as the 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.

**Head Labour Inspector
of undeclared work team in Asturias**

This historical cooperation process paved the way for an official cooperation agreement to be enacted which, among other things, officially institutionalised information sharing. The cooperation agreement was signed in 2017 by the sectoral social partners and the regional Labour Office (*Oficina Regional de Empleo*) on behalf of the Labour Inspectorate. Then it was subsequently renewed in April 2019. The agreement regulated two main actions to be implemented. First, actions to raise awareness about labour standards compliance, including campaigns and dissemination activities. Second, and more important, regular exchange and transfer of information. 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. To this end, the Labour Inspectorate and COPREVAS have developed a protocol of action with a coding system classifying different frauds and infractions 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 (Head Labour Inspector of undeclared work team in Asturias).

In order to follow-up on the agreement, two main coordination mechanisms have been established. First, an executive commission comprising 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.

CO-ENFORCEMENT LESSONS

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.

Head Labour Inspector of undeclared work team in Asturias

From the perspective of the Labour Inspectorate, 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 in particular 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.

Head Labour Inspector of undeclared work team in Asturias

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

In a similar vein, social partners from the governing board and the Labour Foundation staff interviewed gave a positive assessment of how 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 to the lack of human resources.

President Employer Confederation of Construction Sector Asturias, CAC-ASPROCON

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 normative areas (e.g. how to distinguish genuine self-employment from bogus self-employment). 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.

Health and Safety Delegate 3

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.

Three main positive outcomes of the cooperation between the Labour Inspectorate and social partners in Asturias can be highlighted: the regular formal complaints submitted by the social partners and the geolocation information provided; the advantages of an institutionalised information sharing process; the increase in the efficiency of LI's actions as also having a deterrence effect.

5.3 CO-ENFORCEMENT IN POLAND

Within the last ten years, social partners in the Polish construction sector have agreed on some bottom-up responses to many regulatory deficits in order to improve working conditions. The construction sector in Poland is characterised by: a low level of safety in conducting construction works and a high incidence of accidents; the problem of civil law contracts undermining minimum wage regulations (bogus self-employment); and a public procurement law that awarded the contract to the bidder offering the lowest price. This public procurement aspect is an important one as public sector contracts are one of the main demand factors in the Polish construction sector and employers have had to operate in a highly competitive market. Only recently, a social clause was introduced demanding successful bidders to employ workers under an employment contract. Migrant workers are particularly vulnerable to fraudulent employer practices, often working in precarious circumstances (undeclared work, long working hours, below minimum wage, etc.). The abuse of atypical forms of employment in the first decades of the 21st century led to the deterioration of the profession and a fall in its prestige. As a consequence, qualified employees were increasingly looking for jobs outside the construction, including abroad, and as a result unskilled workers were being increasingly recruited. Lower wages enabled a stalemate in business innovation, as no investment was necessary to gain profit.

At the same time, the institutional landscape to ensure decent working conditions in construction is weak: a low level of union density on the one hand and, on the other hand, employers' reluctance to conclude multi-employer or sectoral collective agreements, that would impact positively on the working conditions in the sector. On the state side, an underfunded and underequipped National Labour Inspectorate (*Państwowa Inspekcja Pracy*) has limited legal powers at its disposal, there is insufficient training in conducting inspections, penalties for non-compliance with regulations are too low, and labour and civil courts take a long time to come to verdicts.

In response to those challenges, three relevant agreements were enacted, namely: the Agreement for Safety in Construction (*Porozumienie dla Bezpieczeństwa w Budownictwie*, ASC), the Agreement on Minimum Wages in Construction (*Porozumienie w sprawie stawki minimalnej w budownictwie*, AMW), and the Agreement for Occupational Safety in the Operation of Cranes (*Porozumienie*

na rzecz Bezpieczeństwa Pracy przy Obsłudze Żurawi, AOSOC). The three agreements are based on soft regulation and, accordingly, rely on the voluntary commitment of the signatory parties. In all three agreements, some co-enforcement elements are identified, which result from the cooperation of the National Labour Inspectorate with social partners regarding certain different elements, particularly those related to knowledge sharing and technical advice. In addition, it is worth noting that the National Labour Inspectorate has played a key role in promoting autonomous agreements.

ORIGINS AND IMPLEMENTATION OF THE AGREEMENTS

Agreement for Safety in Construction (ASC)

The ASC is a voluntary agreement concluded in 2010 by lead construction companies (the members of the agreement constitute about 40% of the construction market in Poland). The agreement was also signed by the Chief Labour Inspector. It aims to promote a culture of safety that raises awareness of the dangers related to work on a construction site and, in consequence, reduces eventual risks.

The main motivation for the initiative was the strong need to establish tangible Occupational Health and Safety (OHS) standards in the construction sector. Problems with compliance regarding OHS regulations resulted from very poor law enforcement due to the limited resources of the National Labour Inspectorate, despite the special attention paid to the construction sector. An important factor affecting the low standard of compliance with OHS, was the need to reduce investment costs in an attempt to win public procurement contracts, as public procurement regulations ruled that the lowest price would win the contract. As accidents rose and work in the construction sector became increasingly unattractive, employers began to react: the agreement intended to eliminate fatal accidents and to significantly reduce other accidents to preserve the lives and health of their employees. Furthermore, a large number of accidents also had a negative impact on companies' images, as well as leading to financial losses related to downtime and the need to carry out repairs after damage related to the accidents. Company representatives emphasised that investments in OHS standards pay for themselves several times over in financial value.

The ASC was strongly fostered by the Chief Labour Inspector. Following the unsatisfactory results of the inspections, the National Labour Inspectorate

The institutional landscape to ensure decent working conditions in construction in Poland is weak: a low level of union density, employers' reluctance to conclude multi-employer or sectoral collective agreements, an underfunded National Labour Inspectorate with limited legal powers, as well as too low penalties for non-compliance with regulations and long-lasting labour and civil courts processes.

incentivised the key companies in the sector to introduce autonomous Occupational Health and Safety (OHS) regulations which were binding for themselves internally, as well as for their subcontractors. Some companies sought more stability in business operations and wanted to counteract unfair competition, so they initiated talks and established the ASC.

The role of the National Labour Inspectorate is to inspire and support autonomous stakeholders' initiatives. We share our experience, resources and we are ready to support them with our advice – we invite them to our conferences, trainings, we include them in our social campaigns, we distribute leaflets, publications, etc. If possible, we coordinate our activities with OHS partners. Nevertheless, our role is an assisting role. Companies and employees must be the main actors in the process of implementing OHS regulations.

Polish National Labour Inspectorate

The agreement is also supported by trade union and employer organisations, and other public institutions such as the Central Institute for Labour Protection, and the National Insurance Institution.

Currently, the partnership has no legal entity, but there are some plans to establish a formalised association in order to get all the powers necessary to conduct a professional operation. The partnership is chaired by the Chief Executive Officers (CEOs) of associated companies for a two-year term (in a rotating system). Activities of the partnership are coordinated by one dedicated coordinator. The CEOs of signatories meet every quarter in order to manage developments of the partnership. The ASC operation is financed by the companies (yearly fee amounting to 50 thousand PLN / approximately 12,000 EUR). On top of the fee, each company finances its own OHS departments with managers who run projects at the ASC. After having established a formal association, the partnership plans to apply for public grants in order to increase its scale of operation and develop OHS standards for the whole construction sector.

The activities of the ASC are grouped into as many as 14 thematic projects which are known as priorities. Each of the projects is led by the OHS manager employed by one of the companies and they are responsible for delivering tangible impacts from the project and for managing the implementation of the OHS standards in all associated companies. ASC introduced certain systemic Health and Safety at Work solutions for construction works projects, such as: shared documentation templates; and a model for confirming professional qualifications of

construction workers or periodic training. A jointly agreed template for occupational health and safety requirements is to be annexed to the contracts that alliance members sign with subcontractors. Another template lists the minimum requirements for the scope of training for subcontractors' staff. Such rules are binding only for alliance members and they make no reference to subcontractors' wage policies. All in all, 18 thematic OHS standards and over 200 advanced OHS procedures were elaborated and implemented in the partnership.

The agreement is not subject to labour inspection enforcement due to its voluntary character. However, different actions are organised to monitor and in particular incentivise its implementation. Representatives of the ASC (mostly CEOs and OHS managers) organise study visits and inspections in the associated companies in order to ensure standards are implemented. Where possible, the study visits are attended by the representatives of all signatories, including trade unions and the National Labour Inspectorate. The visits are aimed at presenting and promoting best practices implemented in certain companies which are to be developed in other companies of the partnership. There are also some challenges like the implementation of standards across all subsidiaries of associated companies and subcontracting companies. This is due to the fact that the partnership operated on a voluntary basis and also had limited capacity to execute implementation of the standards among the subcontractors.

Operation of the agreement has brought the intended effects so far. We are expanding our membership and developing further OHS standards. Together with the improvement in the economic situation, we are counting on more securely implemented contracts.

Coordinator of the ASC

Representatives of the National Labour Inspectorate are closely involved in the different activities: they participate in the meetings and study visits of the ASC, and they consult the OHS standards and procedures produced by the partnership. The Labour Inspectorate also shares some information and education materials with the ASC, and they coordinate trainings, promotional events and initiatives with each other. The ASC produced some video recordings for trainings and brochures, as well as posters for migrant workers. The OHS standards elaborated by the partnership have been translated into Ukrainian and Russian, as many workers in construction are of Ukrainian or Russian origin.

The main motivation for the ASC initiative was the strong need to establish tangible OHS standards in the construction sector. As accidents rose and work in the construction sector became increasingly unattractive, the ASC intended to eliminate fatal accidents and to significantly reduce other accidents.

The ASC agreement is not subject to labour inspection enforcement due to its voluntary character. However, different actions are organised to monitor and incentivise its implementation, with representatives of the National Labour Inspectorate closely involved in the different activities.

The partnership is developing in a dynamic way, involving ever more stakeholders and activities. For instance, in 2020, the ASC in cooperation with the Chief Labour Inspector will announce a nationwide competition – entitled “Build Safely” – for contractors who introduce innovations in technical security and organisational activities. Regular meetings and executive cooperation between partners and public institutions improved information flows significantly, especially with the founder of the ASC – the National Labour Inspectorate. In effect, both ASC activities and public institutions are integrating better into the sector. The most tangible impact of the ASC is the ongoing reduction of accidents at work in partnership companies.

AGREEMENT ON MINIMUM WAGES IN CONSTRUCTION (AMW)

The initiative AMW to introduce a sectoral minimum hourly wage – regardless of the contract – emerged to counteract fraudulent practices with regard to wages.

The introduction of a minimum wage emerged as a necessity in the context of widespread atypical employment in Poland based on civil law contracts (contracts for mandate and contracts to perform a specific task). Wages under employment contracts are subject to the minimum wage regulations. In order to reduce labour costs, many employers in Poland used civil law contracts that were not covered by such protection. Atypical employment practices, including self-employment, have also spread throughout the construction sector. The initiative to introduce a sectoral minimum hourly wage – regardless of the contract – emerged to counteract these fraudulent practices with regard to wages:

When we started working on the Agreement on Minimum Wages in the construction sector in the first decade of the 21st century, there were no regulations regarding the minimum wage for contracts of mandate. Therefore, there were pathological cases of paying a few zlotys per hour, of which it was obviously impossible to make a living. Large companies are also bothered by the lack of regulation in this area, because it is impossible to run a fair business if minimum wage standards are not used by all competitors in public tenders. The need arose to establish independently minimum standards to eliminate these pathologies.

Representative of the Budowlani Trade Union

The first attempts to establish a minimum hourly rate in the construction sector were met with scepticism, and the proposal was not approved by the then centre-liberal government, as they argued that the minimum wage violated the principles of free competition. Despite unfriendly attitudes in the general public debate, unions (namely: the

Construction Trade Union, *Budowlani*; and the Construction and Wood Industry Section of NSZZ *Solidarność*, *Niezależny Samorządny Związek Zawodowy “Solidarność”*, the Independent Self-governing Trade Union “Solidarity”) were able to convince key employer organisations (especially: the Confederation of Construction and Real Estate, *Konfederacja Budownictwa i Nieruchomości*; the Polish Crafts’ Association, *Związek Rzemiosła Polskiego*; and the Polish Association of Employers in Construction, *Polski Związek Pracodawców Budownictwa*) that the introduction of a minimum floor for wages will introduce standards and enable more predictable business operations.

The agreement was concluded in 2014 by the *Budowlani* Trade Union and the Construction and Wood Industry Section of NSZZ *Solidarność* (on the worker side), plus the Confederation of Construction and Real Estate, the Polish Crafts’ Association, the Polish Association of Employers in Construction and the Employers of Lublin Region (*Pracodawcy Ziemi Lubelskiej*) (on the employer side). The agreement has been supported by several other organisations (chambers of commerce, employer organisations, NGOs). The AMW is an open initiative and other legal entities can join officially.

It is worth noting that the agreement was reached just three years before the introduction of the statutory hourly minimum wage by PiS.⁷ The AMW was of key importance for the sector in this interim period. After 2017, the AMW also played an important role as it includes additional obligatory expenses to workers (over the minimum floor of the national hourly minimum wage) and prevents other illegal practices like unregistered work (especially among migrant workers), abuse of specific task contracts, bogus self-employment, etc. Additionally, the process of setting the minimum wage each year requires some dialogue between signatories and trust-building between the social partners.

Before introducing the national hourly minimum wage in 2017, payments under civil law contracts – often used in the construction sector, especially among migrant workers – were well below the

⁷ In 2017, the government led by the PiS (*Prawo i Sprawiedliwość*, Law and Justice) party introduced a minimum hourly rate for contracts of mandate (a type of civil law contract). This had a positive impact on wage growth in the construction sector. However, contracts of mandate are still not fully covered by social security contributions and employee rights, and workers are not entitled to annual leave. In addition, specific task contracts (another form of civil law contract) are still not subject to the minimum wage, nor to any social insurance or employee rights.

later introduced hourly minimum wage. These practices were also a challenge for construction companies in the running for public procurements, because companies employing workers under civil law contracts not covered by minimum wage regulations competed unfairly. The signatories of the agreement decided not to compete on minimum wage standards, which was supported by trade unions, and the parties agreed on a mechanism calculating the hourly minimum wage in the sector. The minimum wage in construction is set in advance and is announced publicly on the webpage of the union *Budowlani*. The mechanism assumed a yearly indexation of the hourly minimum wage in line with the statutory monthly minimum wage. On top of this amount, some additional costs were added: costs accompanying an employment contract that do not occur in civil law contracts, and sector-specific costs (for example, a lump sum for purchasing workwear and laundry of workwear, medical examinations, etc.). The national hourly minimum wage introduced in 2017 adopted this mechanism. Therefore, after 2017, the hourly minimum wage agreed in AMW has been equal to a national hourly minimum wage plus additional costs.⁸

The signatories of the AMW commit to implementing this minimum wage floor in their companies and to incentivise their subcontractors to apply it as well. This mechanism plays an important role: it publicly informs all parties about the minimum wage in the sector, so all parties (employers and employees) can refer to it in wage bargaining (usually in direct negotiations between employer and employee, without trade union involvement). Currently, the AMW is the sole sectoral agreement of this kind in the country.

The challenge is to monitor compliance with these regulations in the partnership companies. This task is fulfilled by trade unions that should report potential irregularities. Unfortunately, the low level of unionisation means that the role of a whistleblower cannot always be fulfilled properly. However, both employers and unions asserted that the hourly minimum wage is respected in the associated companies, especially when the national hourly minimum wage entered into force in 2017. The regulation created a tangible wage benchmark for the whole sector. Respondents reported that the hourly minimum wage was taken as a point of reference in court trials before 2017, when fair remuneration was to be defined.

⁸ The agreed minimum wage in 2014 was PLN 14.29 (EUR 3.40), then in 2019 it increased to PLN 19.03 (EUR 4.53), and in 2020 it reached PLN 21.65 (EUR 5.16). Source: <http://zzbudowlani.pl/?cat=73>

It could be judged that the AMW has modest ambitions because it only applies to mandatory pay standards. But at the time the agreement was made, there was no minimum hourly wage. The agreement itself contributed to public debates on the need to fill the legal gap. AMW continues to play its important role – it is an instrument of pressure on dishonest employers before heavy-duty enforcement procedures, i.e. a lawsuit or labour inspection, are launched. A new dimension in AMW's role appeared at the time of increased migrant workers from Ukraine, among whom not everyone knows their rights in terms of remuneration.

Budowlani Trade Union

AGREEMENT FOR OCCUPATIONAL SAFETY IN THE OPERATION OF CRANES (AOSOC)

Following the 2008 economic crisis and the malfunctioning of public procurement law, several companies and their sub-contractors in the construction sector went bankrupt. Moreover, the range of employment based on civil law contracts as well as the increasing scale of self-employment (including bogus self-employment) led to a deterioration of working conditions, in particular for crane operators. Such practices have become common in the sector: crane operators set up a one-person company and lease a crane from a contractor or another third party. In this way, the majority of crane operators were not employed in construction companies anymore but worked as self-employed. In effect, greater responsibility for ensuring occupational health and safety rested on operators, and to a much lesser extent on the main contractors. This prolonged shifting of responsibility towards self-employed crane operators (or those employed under civil law contracts) has resulted in a significant increase in accident rates. Working conditions were also controlled to a much lesser extent, especially in terms of working time, wages, and working conditions such as the temperature in the cabin or the inability to take a break from work at height due to the lack of elevators or their poor quality (which did not allow crane operators to go down and return to work quickly). Due to unstable forms of employment, there was insufficient investment in new cranes, and the average age of cranes began to reach 20 years, which in itself was a risk on the construction site.

A crucial factor driving the AOSOC agreement was the outdated health and safety regulation covering crane operators. In 2016, it was revoked, but no new regulations were introduced instead. This led to a legal loophole and, as a consequence, the dete-

The signatories of the AMW commit to implementing a minimum wage floor in their companies and to incentivise their subcontractors to apply it as well. This mechanism plays an important role: it publicly informs all parties about the minimum wage in the sector. Currently, the AMW is the sole sectoral agreement of this kind in Poland.

rioration of work standards in the sector. Therefore, key stakeholders decided to organise a group that would take part in the process of preparing the draft bill and enforcement of the new regulations once adopted.

Due to the fact that OHS regulations for crane operators' work ceased to apply, the unions took the initiative to introduce new regulations that would ensure decent working conditions and up-to-date regulations.

Trade Union KOZWWP

The initiative to improve the working conditions of crane operators and to amend the outdated regulation was pursued by the Committee for Tower Crane Operators of Community of Work (*Komisja Operatorów Żurawi Wieżowych Wspólnota Pracy*, KOZWWP) which focused exclusively on crane operators and functioned as a regular fee-based union with no external funding.

The AOSOC provides far-reaching cooperation with state organs and public institutions working for work safety. It is an open initiative and can be joined by any organisation aiming to ensure the safety of crane operators and construction workers. AOSOC established autonomous social dialogue relations between the key stakeholders in the sector, as it was largely neglected in this area.

The AOSOC agreement was signed in 2017, initiated by the *Budowlani* Trade Union and the Commission for Tower Crane Operators of the Trade Union *Wspólnota Pracy*.⁹ The agreement provides far-reaching cooperation with state organs and public institutions working for work safety. The AOSOC is an open initiative and can be joined by any organisation aiming to ensure the safety of crane operators and construction workers. Signatories of the agreement may be employers in the construction sector and related industries as well as crane owners. Supporting entities may be trade unions, chambers of commerce, associations, employer organisations, and public institutions and offices. AOSOC established autonomous social dialogue relations between the key stakeholders in the sector, as it was largely neglected in this area.

AOSOC signatories also played an important role in the legislative process, resulting in the adoption of the new law on health and safety regulation for crane operators. A first draft of the new law was prepared by the unions and then consulted with other signatories. The majority of provisions were supported by employer organisations. In addition, this initiative was supported by the Chief Labour Inspector who revised the legislation proposal and advised the social partners. The draft bill was submitted to the Ministry of Infrastructure with strong support from the AOSOC signatories. In

effect, the new draft bill was adopted in 2018 and went into force in February 2019.

Since February 2019, AOSOC deals with enforcing the new law on OHS for crane operators. The partners monitor effects of the new law through statistics and qualitative observations. The agreement also supports the implementation of the new law, developing practical guidelines for crane owners and crane operators on how the new law should be implemented on building sites. Moreover, some best practices are discussed during the AOSOC meetings/seminars and disseminated throughout the country. Dissemination takes place online, mostly between signatories of the agreement.

Our capabilities as the AOSOC partnership are quite modest. Our main success was finding agreement on new OHS regulations for crane operation. Currently, us members of the partnership mainly share our experiences through the internet, and monitor on a daily basis how the new regulations work in practice.

Trade Union KOZWWP

Both employers and unions appreciate the ongoing information exchange regarding irregularities or violations of the AOSOC. Existing breaches are solved quickly. The agreement also plays an important role in influencing other subcontractors to comply with the OHS standards.

One of the key challenges identified are the insufficient training resources for crane operators to ensure skills improvement, up to date regulatory knowledge and OHS knowledge in general – of particular importance given several years of deterioration of work standards. Union resources are poor in this respect. Companies issue certificates approving compliance with the new standards, but there is no official procedure for validating standards.

All the actions under the AOSOC are undertaken voluntarily, mainly by trade unions and supported by employer organisations in order to establish new regulations for crane operators' working conditions. Unfortunately, monitoring and enforcement of new regulations by AOSOC have to proceed without any additional funds to support them, which might pose a potential threat to sustainability and effectiveness of the initiative. Despite the difficult funding situation, employers and unions declared that there is a noticeable improvement in working conditions for crane operators. The agreement regarding investments in new cranes allowed adaptation to current regulations. However, there are also considerable

⁹ References for information on the signing of the agreement: <https://wspolnota-pracy.pl/porozumienie-na-rzecz-bezpieczenstwa-pracy-przy-obsłudze-zurawi/> and <http://zbudowlani.pl/?p=3142>

difficulties with adjusting the oldest cranes to the new standards, which will be the focal point for the initiative in upcoming years. Measures to improve enforcement should be considered. The National Labour Inspectorate has reported that it should be in charge of inspection, however, its limited resources (human resources, low wages, limited legal rights to conduct inspections) hinder reliable controls and effective law enforcement. The interviewees expressed the need to train inspectors specialising in the inspection of crane operators.

CO-ENFORCEMENT LESSONS

The three agreements presented provide an autonomous (self-regulatory) response to fraudulent practices in the construction sector, in an area where neither collective labour relations nor public institutions are able to deliver acceptable standards. Each of the agreements involves both employer and employee representatives. In addition, the Chief Labour Inspector is a signatory of ASC, and it is one of the supporting institutions of AMW and AOSOC. These agreements set minimum standards for employment and OHS. Rather than an enforcement tool, the agreements function as a precondition for conducting predictable and sustainable business in the unfavourable institutional and business environment of the construction sector. The goal of the agreements is first and foremost to raise existing standards and disseminate them throughout the entire sector, acknowl-

edging it is a particularly complex institutional environment. Supported by the National Labour Inspectorate, these initiatives of key sectoral stakeholders and their advocacy activities led to the creation of islands within the sector where predictable business is possible and working conditions are acceptable.

In the context of insufficient public institutional capacity and weak social partners, compliance with OHS regulations and other legal employment standards becomes a serious challenge. Nevertheless, the National Labour Inspectorate undertakes systemic initiatives to meet the most important problems in the construction sector. The model adopted by this institution focuses on inspiring the main sectoral stakeholders to take autonomous initiatives aimed at solving a defined problem (OHS standards, compliance with minimum wage regulations or adequate forms of employment), and then supporting their independent action through consultation and advice. In this way, the autonomous activities of social partners (or other stakeholders) are legitimised by a respected institution. This model of operation also fills gaps in the institutional capacity of the National Labour Inspectorate and extends the implementation of its goals to partnership signatories. The National Labour Inspectorate aims to provide various resources to partnership signatories (expertise, conferences, trainings, communication tools, etc.), and coordinates dedicated activities with them.

The Polish agreements, involving employer and employee representatives and the Chief Labour Inspectorate, provide an autonomous response to fraudulent practices in construction. Rather than an enforcement tool, the agreements function as a precondition for conducting predictable and sustainable business in the unfavourable institutional and business environment of the construction sector.

6 Conclusions

The different co-enforcement actions focused on the discovery and prosecution of specific infringements: OHS issues, underpayment, and bogus self-employment. The actions aimed at sustainable and ongoing compliance through social partner and company involvement in safeguarding labour standards and promoting a fair competition culture.

The construction sector has several characteristics which make this sector particularly vulnerable to fraudulent practices: a high degree of labour intensity, widespread use of subcontracting strategies and a high degree of segmentation, with segments of the industry corresponding to different worker profiles and being subject to different working conditions (particularly immigrants and/or posted workers). Consequently, workers are not covered equivocally by decent working condition standards and many workers are exposed to different forms of fraudulent and irregular practices/non-compliant behaviour of employers, such as insufficient health and safety provisions, bogus self-employment or underpayment.

The report has provided empirical information about the sectoral state of affairs on the one hand, and efforts to raise and adhere to labour standards in construction, on the other hand. It has described and analysed co-enforcement initiatives that have been developed in different institutional contexts with a view to improve compliance with labour regulation in the construction sector. The comparative analysis of the three case studies highlights four main conclusions related to the co-enforcement initiatives' context, design and functioning.

THE CRUCIAL ROLE OF SOCIAL PARTNERSHIP FOR CO-ENFORCEMENT

The cases researched in Austria and Spain both rely on strong social partnership approaches to co-enforcement. This contrasts with most of the empirical experiences studied in the co-enforcement literature which mainly analyses cooperation between trade unions and public authorities and, in some cases, big firms (Amengual & Fine, 2017; Fine & Gordon, 2010). In Austria and Spain, co-en-

forcement actions are the result of social partners' historical joint efforts in improving enforcement through social dialogue in cooperation with the state. In Austria, the longstanding sectoral social partner institution BUAK was endowed with new competences by law in 2011. These new competences were about controlling and inspecting underpayment in construction. The decision to endow BUAK with further competences was taken due to BUAK's deep knowledge of the sector, its high reputation among both worker and employer representative organisations, and the active role of BUAK social partners in the legislation process to seize these competences. In the Asturias region of Spain, social partners at regional level developed a two-pronged strategy (autonomous enforcement actions and strategic engagement with public authorities), which they pursued until a formal agreement for cooperation was concluded with the regional labour administration and the regional operation of the National Labour Inspectorate.

In Austria and Spain (Asturias), the crucial and specific role played by both trade unions and employer organisations in enforcement, in cooperation with the state, does not fit well with some of the theoretical foundations of co-enforcement theory. Particularly, with the tripartism model (Ayres & Braithwaite, 1992) on which co-enforcement theory rests, which seems more pertinent to cases where only one single social actor (generally a trade union) cooperates with labour enforcement institutions. For understanding these cases of cooperation and, in particular, the policy processes of tripartite concertation, greater explanatory potential could be found in neo-corporatism literature focused on elements of political exchange (Molina & Rhodes, 2002).

Another relevant feature of these cases is that social partners play a key role in setting labour standards through collective bargaining, whereas the co-enforcement literature mainly attributes the setting of labour standards to the state (e.g. in the form of minimum wage). This is a consequence of most co-enforcement examples to date concentrating on experiences developed in liberal industrial relations models, where “associational governance” resting on sectoral collective bargaining plays a minor role (Meardi, 2019).

The Polish industrial relations context has, to some extent, more commonalities with empirical cases from the co-enforcement literature, since it has a particularly complex institutional environment where sectoral regulation based on social dialogue or collective bargaining is less developed. In this context, co-enforcement initiatives have relied on soft-regulatory mechanisms based on non-binding agreements. In some cases, as in the Agreement for Occupational Safety in the Operation of Cranes, the design is also closer to co-enforcement theory, with trade unions cooperating with enforcement authorities to improve compliance and regulation. In other cases, as in the Agreement for Safety in Construction, the main role is played by big companies with trade unions playing a less important role. In this last case, it is also complex to analyse the action based on the tripartism model, bearing in mind that the main cooperation only exists between the regulated agent (company) and the regulator (labour inspectorate).

STRATEGIC ENFORCEMENT

In line with the co-enforcement literature, the cases studied in the three countries reflect the strategic enforcement approach to some extent (Weil, 2018). In the three countries, the actions focus on a sector with fragmented supply chains and vulnerable workers. Moreover, one of the experiences in Poland is devoted to an occupational category, crane operation, which shows specific problems in terms of compliance with labour standards and needs tailored solutions.

The different co-enforcement actions in the three countries studied focused on the discovery and prosecution of specific infringements: in the Polish case, OHS issues; in the Austrian case, underpayment; and in the Spanish case, OHS and bogus self-employment. Social partner institutions played a crucial role in selecting these priorities. In addition, all the actions studied aimed at sustainable and ongoing compliance through social partner and company involvement in safeguarding labour standards and promoting a fair competition culture.

DIFFERENT SOCIAL PARTNER ENFORCEMENT ROLES AND APPROACHES

The three case studies, particularly the Austrian and Spanish experiences, show how social partner actors play both political and operational roles in enforcement policies. In Austria and Spain (Asturias), social partners do not only contribute to the design or evaluation of enforcement policies, but also play an active role in ensuring employer compliance with labour standards through inspections in the workplace. In Austria, a statutory social partner institution was conferred powers by the state to control and inspect underpayment. In Spain (Asturias), collective bargaining conferred specific competences to social partner delegates in order to inspect different fields of employment regulation in the workplace, mandating them to gather information on frauds and infringements, which in turn is regularly shared with the regional office of the National Labour Inspectorate. On the contrary, in Poland, social partner inspection activities are only superficially defined, and inspection was not the outstanding element of the actions studied.

Social partners display different approaches to enforcement (Piore, 2011). The Polish case has a strong focus on pedagogical and support actions instead of punitive actions. In the Austrian case study, the sanctioning and deterrence character of the action is more salient, although counselling and information to both employers and employees is provided and emphasised as well. In Spain, enforcement actions in the health and safety field have a more pedagogical character compared with the actions focused on ensuring compliance with contractual regulation (subcontracting, bogus self-employment), the latter of which generally entails the submission of formal complaints to the National Labour Inspectorate.

NON-SUBSTITUTABLE AND COMPLEMENTARY COMPETENCES OF CO-ENFORCEMENT PARTNERS

In line with the co-enforcement literature, our findings show that the success of these experiences in improving working conditions and tackling fraudulent practices is also the result of the non-substitutable elements that each partner provides (Fine, 2017). In Austria, state regulators and authorities (such as BUAK) have coercive power, which can force compliance (both through deterrence beforehand as well as action after non-compliance takes place), and have a high knowledge of legal complexities at national (LSDB-G) and European

Social partner actors play both political and operational roles in enforcement policies in the SPLIN case studies. They do not only contribute to the design or evaluation of enforcement policies, but also play an active role in ensuring employer compliance with labour standards through inspections in the workplace.

The success in improving working conditions and tackling fraudulent practices in the construction industry is also the result of the non-substitutable elements to enforcement that the social partners and the state institutions in the action provides.

level (e.g. posting regulations, enforcement regulations). Industry-specific social partners have a high sectoral knowledge of the industry (both accurate and complete knowledge), including working conditions, tacit knowledge, first-hand experiences and direct communication networks. In the case of BUAK, as social partners are board members of BUAK, they have institutionalised ways to communicate, advise and even monitor the authority. These two stakeholders (authorities/state regulators and social partners) are acting in a complementary matter to co-produce the regulations at a political level and co-enforce the action at an operational level.

In Spain (Asturias), 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. Social partner delegates (COPREVAS) 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 Spanish 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 (Martínez Lucio, 2016; Sanz de Miguel, 2019). 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. The remarkable feature of the action is that 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 irregular classification of companies in collective agreements.

In Poland, thanks to social partner tacit knowledge about the sector, social partners have also contributed towards improving regulations in certain crucial matters (minimum wages under civil law contracts, and health and safety conditions for operation of cranes). On the other hand, the labour inspectorate supports social partner independent action through consultation and advice. In this

way, the autonomous (self-regulated) activities of social partners (or other stakeholders) are legitimised by an institution with sanctioning capabilities. At the same time, the institutional capacity of a notoriously understaffed Polish National Labour Inspectorate is strengthened when the implementation of its goals is extended to signatories of the partnerships it supports.

FINAL REMARKS: DIVERSITY OF CO-ENFORCEMENT APPROACHES

To conclude, the three country case-studies exemplified co-enforcement actions, broadly understood as ongoing coordinated efforts of state regulators and social partners to jointly produce labour standards enforcement (Amengual & Fine, 2017; Fine, 2017). All have social partners playing a significant role in initiating, implementing, or supervising enforcement actions. In all the cases, social partners operate in close cooperation with authorities equipped with sanctioning competences.

However, comparison shows that the degree and institutionalisation of cooperation between social partners and public authorities greatly varies. For example, in Austria, the cooperation between state authorities and social partners has been institutionalised for a long time and is very strong. Meanwhile, in the Spanish example (Asturias), the cooperation was only recently made official, after a long process of fruitful informal cooperation which fostered political consensus between social partners and public authorities. In Poland, the connections between social partners and the National Labour Inspectorate is comparatively weaker and less institutionalised. Nevertheless, the examples showed that both partners benefit from the complementarity of their strengths to shape working conditions in construction for the good of workers and fair competition.

In any case, all the co-enforcement actions studied have achieved promising outcomes in terms of: improving health and safety compliance and regulations (Asturias/Spain, Poland); targeted and efficient inspections of bogus self-employment (Asturias/Spain) and underpayment (Austria); and in terms of better informing employers and workers about rights, standards, and obligations concerning OHS, wages, and other working conditions (Austria, Asturias/Spain and Poland). In this sense, the actions can serve as good and exemplary practices to counteract and reduce fraudulent practices in a highly problematic sector, through different degrees and forms of cooperation between social partners and state authorities.

The co-enforcement actions have achieved promising outcomes in terms of improving health and safety compliance and regulations; targeted and efficient inspections of bogus self-employment and underpayment; and in terms of better information about rights, standards, and obligations concerning OHS, wages, and other working conditions.

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Annex: Fieldwork

AUSTRIA

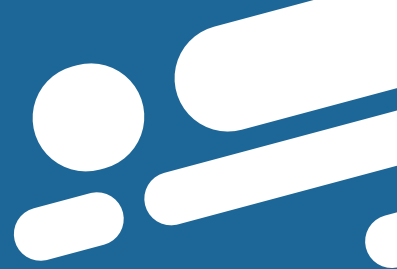
Organisation	Position of interviewees	Number of interviews
Public administration	Head of labour law & central labour inspection (Federal Ministry of Labour, Family and Youth)	1
Employer organization	Member of advisory committee Consultant at Economic Chamber	2
Trade union	Member of board Member of committee	2
	Director of BUAK Head of coordination unit (KORS)	2
Enforcement actors (Staff of BUAK)	Construction site inspectors in Vienna and Graz (Styria) (including head of SBB department / construction site inspections, head of Styrian BUAK department)	6
	Legal office staff (including head of department)	4
	Customer service centre (including head of department)	2

SPAIN

Organisation	Position of interviewees	Number of interviews
Trade unions	General Secretary of Health and Safety, Environment and Communication section, Construction Federation of CCCO. Member of COPREVAS governing board.	2
	General Secretary and Head of Health and Safety section of Industry, Construction and Agriculture Federation of UGT. Member of COPREVAS governing board	
Employer organisation	President of the employer organisation Confederation of Construction Sector Asturias (CAC-ASPROCON) and President of COPREVAS governing board	1
Bipartite (paritarian) body construction sector	Deputy Director Labour Foundation of Construction Asturias	2
	Head of Economic Department Labour Foundation of Construction Asturias	
Labour and Social Security inspection (Inspección de Trabajo y Seguridad Social)	Head Labour Inspector of undeclared work team in Asturias	1
Enforcement actors (COPREVAS)	Health and safety delegates appointed by EO (2) and TU (2)	4

POLAND

Organisation	Position of interviewees	Number of interviews
Public administration/ labour inspection	National labour Inspectorate	2
Employer organisation	Confederation of Construction and Real Estate, leader of the Agreement for Safety in the Construction sector	2
Trade union	Budowlani Trade Union	2
	Trade Union Wspólnota Pracy Committee for Tower Crane Operators	
Enforcement actors	Enforcement actors of the co-enforcement actions contracted by labour inspection or social partners' organisations. OHS managers from the Agreement for Safety in Construction sector and 2 crane operators	6



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