



**SPLIN**

**Austrian report – construction sector**

## **BUAK Construction Workers' Holiday and Severance Payment Fund – social partner strategies to enforce employment standards in the Austrian construction sector**

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This publication was produced for the project “Fair working conditions: exploring the contribution of cooperation initiatives between Social Partners and Labour Inspection authorities” (SPLIN) (VS/2019/0080) funded by the European Commission, DG Employment, Social Affairs and Inclusion. The opinions expressed in this report reflect only the authors' view. The European Commission is not responsible for any use that can be made of the information contained therein



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## Introduction

The persistence of fraudulent practices to circumvent labour regulations has attracted scholars' interest on labour standards enforcement. Labour inspection is one central response to the gap between formal regulations and outcomes for workers which has widely been studied (Mustchin & Martínez Lucio, 2020; Piore & Schrank, 2008; Walters, 2016; Weil, 2014). Scholarly debates have also focused on trade unions, their role in setting and enforcing labour standards (Baccaro & Howell, 2017; Doellgast et al., 2018; Gumbrell-McCormick & Hyman, 2013; Lillie & Greer, 2007), but they have largely neglected the existence 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-oriented approach, has limited the range of policy options considered by reformers.

A co-enforcement approach, i.e. combining authorities' and social partners' endeavours to enforce labour standards, seems to be particularly promising, as scholars identified a weakening in the power of industrial relations institutions, foremost of trade unions, "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). At the same time, resources of labour inspectorates, in terms of manpower and competences, are in debate or even in decline (Walters, 2016).

This report theoretically 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 ongoing coordinated efforts of state regulators and social partners to jointly produce labour standards enforcement (Amengual & Fine, 2017; Fine, 2017). Empirical research on co-enforcement has inferred a number of mechanisms which justify the significance of this approach and highlight its specificity compared with traditional enforcement approaches. Co-enforcement literature has particularly shown, first, how co-enforcement relies on the non-substitutable elements of state and social partners. Co-enforcement encompasses the unique capabilities to improve enforcement that each partner adds (the unique capacity of the state to set labour standards, the unique capabilities of trade unions to share their tacit knowledge on work processes, etc.). Second, co-enforcement relies on a "strategic enforcement" approach (Weil, 2010), which focuses for instance on the peculiarities of a specific industry. In doing so, stakeholders in enforcement better understand how companies operate and which are the main causes of the frauds and abuses. Literature has also identified how co-enforcement contributes to build political support between state authorities and social partners (Amengual & Fine, 2017; Fine, 2017).

The SPLIN project<sup>1</sup> studies co-enforcement in Austria, Spain, Poland and Finland in the construction sector and the maritime sector, for being two of the most problematic sectors in terms of enforcement of labour standards, clearly calling for innovative strategies aiming to improve compliance (Eurofound, 2016; Lillie, 2010). This report presents and discusses findings from the construction sector 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

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

firms and cheats on working time can be identified as the most common practices to circumvent existing regulations for minimum remuneration and working conditions. The legislator reacted to these developments and to European provisions (posting of workers directive, enforcement directive) in enacting the so called “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, to verify suspected cases of wage and social dumping and to submit formal complaints to the district administration authority. This constituted an innovation in the Austrian context, because these competences have been before exclusively under the domain of other institutions, namely the financial police and the health insurance providers. This report describes the evolvement of the social partner institution in terms of new tasks that have been assigned in the course of the new law, analyses its practices and policies in the field of labour standards enforcement (particularly in relation to remuneration) and assesses successes and challenges to fulfil this mission.

In the Austrian case study co-enforcement is interpreted in terms of (1) strategic enforcement, as a social partner institution with high industry expertise was endowed with enforcement competences; in terms of (2) the routinisation of information flows about infringements and problematic practices in the industry between the authority (BUAK) and the social partners in construction; in terms of (3) a joint direction and effort of social partners and the authority (BUAK) to engage for an improvement of inspection and compliance in the construction sector; the fourth aspect of complementarity of the authority’s and social partners’ unique competences is peculiar, as the social partners do not engage inspectors cooperating directly in the field with the authority but have an advisory and supervisory function in the authority’s board.

The report is structured as follows:

Following this introduction, the second section gives a brief overview over the case study’s research objectives and methods. The third section analyses the main causes explaining fraudulent practices in the construction sector in Austria. The fourth section presents the co-enforcement action in detail, elaborating on its design, drivers and elements of implementation. In the fifth section, we will assess the co-enforcement action’s outcome and effectiveness. Finally, some conclusions are presented.

# 1. Research objectives and methodology

The main research objective of this report is to analyse in-depth a co-enforcement action identified as relevant and innovative in the construction sector Austria.

The specific objectives of the report are:

- Summarizing main data on and analysing main dynamics of employment, working conditions and fraudulent practices in the construction sector in Austria.
- Analysing the political, societal, sectoral factors which explain the development of the co-enforcement action identified.
- Explaining the main features of the co-enforcement action.
- Presenting the key points of its implementation and dynamics.
- Presenting the action's contribution and effectiveness in promoting fair working conditions and preventing and/or tackling fraud and inequalities in working conditions.

The main research strategy to analyse the co-enforcement practice was a case study of BUAK (Construction Workers' Holiday and Severance Payment Fund).

The analysis is based on three different research methods:

- Desk research: revision of the existing relevant literature and data with regard to economic and employment related developments in the construction sector; identification and analysis of relevant regulations and policy documents of the action as well as of procedural documentations (e.g. handbook); identification and analysis of data to assess enforcement actions (e.g. internal activity reports).
- Interviews: 19 Semi-structured interviews with main stakeholders involved in the design and the implementation of the enforcement action (see table 1 below). The interviews were recorded, anonymised and transcribed. Each of the interview partners signed declarations of consent in line with data privacy and data protection regulations. The interviews were conducted following an interview guideline adapted to the interviewee's expertise.
- Fieldwork: 3 days direct observation of enforcement actions:
  - 2 days observations of construction site inspections: 1 day in Vienna, 1 day in Styria;
  - 1 day observation of consultations of construction workers at the BUAK customer service centre in Vienna.

Two researchers accompanied BUAK staff when inspecting construction sites respectively when counselling construction workers in the customer service centre. At the two construction sites in Vienna and near Graz (Styria), site supervisors were informed in advance of the researchers' accompaniment. Normally, inspections are not announced in advance. The inspections and consultations themselves were conducted as usual. The researchers were introduced as researchers, however often perceived as part of the BUAK staff. Researchers could ask the informants for clarification during the field visit. The three field visits were documented with field notes. Before respectively after the field visits, the inspection staff were interviewed.

We decided to conduct the construction site visits in two Austrian areas: in the city of Vienna and in Styria. Vienna was selected as the BUAK headquarter is situated in the

capital and it is where strategic management is situated. The majority of construction sites in Vienna are huge and of corporate character (rather less private home construction). Styria was selected because it is the region close to the Slovenian boarder where the issue of posted workers is of great importance. This was also evident during the construction site visit where we met a couple of posted workers whereas none were present at the Viennese construction site.

Table 1. Number of interviews and interviewees' profiles

Organisation	Position of interviewees	Responsibilities	
Public administration	Head of labour law & central labour inspection (Federal Ministry of Labour, Family and Youth)	Regulatory authority of the BUAK, supervision (1 woman)	1
Employer organization	Member of advisory committee Consultant at Economic Chamber	Strategic decisions, supervision (2 men)	2
Trade union	Member of board Member of committee	Strategic decisions, supervision (2 men)	2
Enforcement actors (Staff of BUAK)	Director of BUAK Head of coordination unit (KORS)	Operative management (1 man, one woman)	2
	Construction site inspectors in Vienna and Graz (Styria) (including head of SBB department/ construction site inspections, head of Styrian BUAK department)	Responsible for conducting the inspections at construction sites, including heads of department (3 men, 3 women)	6
	Legal office staff (including head of department)	Responsible for filing formal complaints to the responsible district administrative authority in cases of underpayment (3 women, 1 man)	4
	Customer service centre (including head of department)	Consultation in multiple languages (leave/severance pay entitlements, bad weather compensation, etc. as well as suspected underpayment) (2 women)	2

## 2. Working conditions and main “fraudulent practices<sup>2</sup>” in the construction sector: state of the art

### 2.1 Employment trends and working conditions in the construction sector

#### *Recent employment trends*

The construction sector is currently the fifth largest employment sector for employed and self-employed workers in Austria (Riesenfelder et al., 2019). In absolute figures, the construction sector accounted for 271,330 employees, 14,082 employees in minor employment (without social security protection, except accident insurance) and 41,802 self-employed persons in 2019 (see table 2).

In the decade 2009-2019, the share of self-employed was between 12.44% and 12.78% of total employment in construction. Broken down by foreign and native workers, a trend of foreign workers being less likely to work as self-employed is visible (graph 1). In 2009, 13.22 % of all foreign construction workers were self-employed, in 2019, their share was at 9.23%. For the total economy, the share of self-employed workers remained stable at 10.5% in 2019 compared to 2009 with a dominance of foreign workers (at 11.56%) in 2019.

The number of employed workers in construction has risen in the last decade, with a significant surge between 2010 and 2012 and from 2015 onwards, especially among foreign workers. The total number of native workers stagnated between 2009-2019, and the total number of foreign workers increased by 39%. From 2004 until 2011, Austria imposed labour market restrictions to workers from the then newly accessed countries from Eastern Europe. In 2011, these restrictions were lifted and persons from Slovenia, Czechia, Hungary, Slovakia, Poland (as the major sending countries) could enter the Austrian labour market; this political momentum explains the surge in foreign employees in construction. The recent rise in total employment reflects the recent economic boom (before the Corona Covid-19 crisis) in construction. This is an important aspect, as personnel is highly demanded, the order situation for construction companies is prosperous, and prices have risen. The economic survey of statistics Austria recorded a total production value of €21.7 billion in 2017 - this corresponds to an increase of almost 9% compared to 2016. 2017 was thus the year in which the highest production value in the three-year observation period of completed business years was achieved. Incoming orders in 2017 increased by 13.8% and order backlogs by 7.3% compared to the previous year. 2018 shows a 13.4% increase in new orders and a 17.4% increase in order backlog. The public sector with around 20% of incoming orders is one of the most important clients in the construction sector (Oberrauter, 2019, pp. 18–19).

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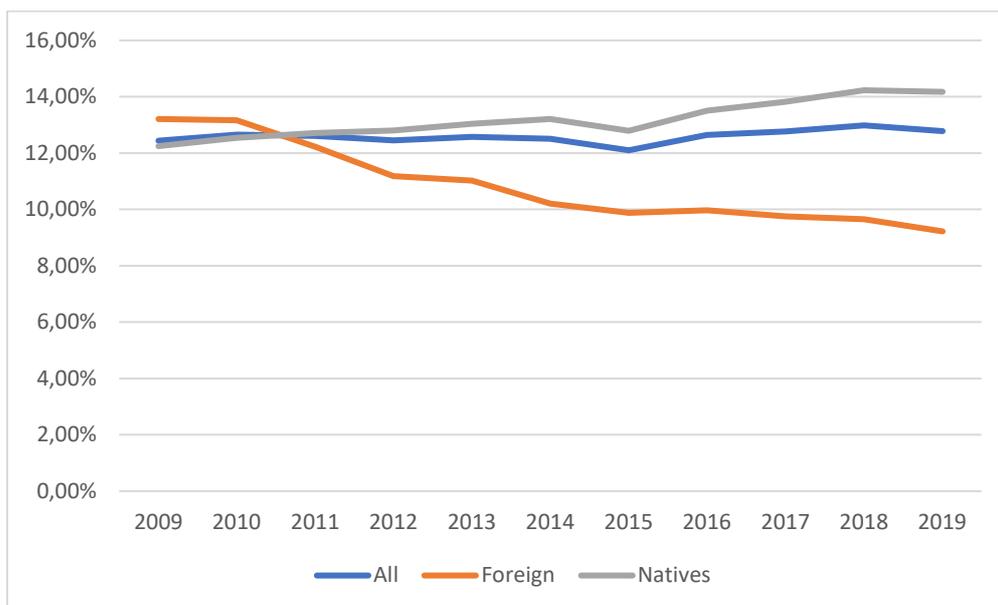
<sup>2</sup> It is possible to identify the fraudulent use of an employment/contractual relationship when two conditions are simultaneously met: (1) A specific employment/contractual arrangement is used to hire workers or to subcontract certain activities which involve the performance of work; (2) the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

Table 2. Employed persons in construction by employed, in marginal employment, self-employed, natives and foreign workers, 2009-2019 (Annual averages), absolute

		2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Employed	Native	195,627	193,723	193,577	192,290	189,529	187,289	185,644	185,344	184,715	186,984	190,365
	Foreign	47,472	47,946	51,793	55,776	57,591	59,510	59,917	63,241	68,191	74,434	80,965
	Total	243,099	241,669	245,370	248,066	247,120	246,799	245,561	248,585	252,906	261,418	271,330
Self-employed	Native	28,748	29,281	29,760	29,854	30,068	30,197	28,894	30,705	31,418	32,844	33,266
	Foreign	7,461	7,516	7,493	7,319	7,458	7,092	6,920	7,366	7,734	8,273	8,536
	Total	36,209	36,797	37,253	37,173	37,526	37,289	35,814	38,071	39,152	41,117	41,802
Minor employment	Native	10,301	10,578	10,909	11,020	11,075	11,136	11,349	11,316	11,248	10,976	11,067
	Foreign	1,506	1,641	2,011	2,348	2,586	2,916	3,218	3,287	3,338	3,052	3,015
	Total	11,807	12,219	12,920	13,368	13,661	14,052	14,567	14,603	14,586	14,028	14,082
	Total	291.115	290.685	295.543	298.607	298.307	298.140	295.942	301.259	306.644	316.563	327.214

Source: Bali Database, <https://www.dnet.at/Bali/>

Graph 1. Self-employed workers in construction by foreign, native, all workers, in % of self-employed in this group



Source: Bali Database, <https://www.dnet.at/Bali/>

The majority of employees in the construction sector are found in preparatory construction work, building installations and other finishing trades, with a share of around 69% in 2019; around a further quarter is employed in building construction. Concerning self-employed in the construction sector nearly 96% work in preparatory construction work, building installations and other finishing trades.

### Working time and wages

Compared to the overall economy, part-time work is not widespread in construction. It is at 10.8% (2018), while 28.8% of the whole workforce work part-time (Riesenfelder et al., 2019, p. 10).

Hence, it is an industry where full-time work prevails. Construction is a male-dominated sector, with a share of only around 15% women in total workforce (Source: Bali database).

Eppel et al. (Eppel et al., 2017) differentiate analytically between stable and instable employment. While stable employment means continuous employment over the year, unstable employment is defined as interrupted employment due to seasonal employment or other reasons. At 56.4%, twice as many foreign workers were affected by unstable employment as native workers (27.9%). According to Eppel et al. calculations, in Austria, in 2015, around one third of employees was in instable employment; in the construction sector, the share of instable employment was comparably high at 54.7% in 2015. This is due to the seasonal character of construction.

According to the general income report<sup>3</sup>, median yearly income of employed construction workers was in 2017 at € 30,397. This is higher than the median income across all sectors (€ 27,545). The median yearly income of those in self-employment in the construction sector was at € 16,608 (€ 12,085 across all industries). Data on median hourly wages are available for 2014<sup>4</sup>: Median hourly wage in construction was at € 14.51, while the median hourly wage across all industries was lower, at € 13.87.

Minimum wages are determined by collective agreements in place in the construction sector. Numerous collective agreements (for each trade, for blue-collar and white-collar workers, and for each county/Bundesland) regulate the construction sector in Austria. As an incidence, the collective agreement<sup>5</sup> for the construction industry and building trade (Bauindustrie und Baugewerbe) in place for blue-collar workers employed in the territory of Austria foresees from 1<sup>st</sup> May 2020 onwards an hourly minimum (gross) wage of € 12.82 for unskilled workers, going up to € 13.50-15.04 for semi-skilled and € 15.04-16.63 for fore(wo)men. BUAK<sup>6</sup> provides a comparison of average minimum wages for blue-collar workers which was at € 13.80 across all collective agreements in construction and across Austria in September 2019.

### *Working loads in the construction sector*

Employees in the construction industry are confronted with a wide variety of stress and strains when carrying out their work. Among the work-load factors typical for the construction industry are the handling of heavy loads, static holding work, work in forced postures and vibrations. The main causes of high workload values in the building industry are (Haider, 2015):

- Time pressure and climatic conditions;
- Properties of the loads to be used, e.g. heavy, unwieldy, difficult to grip;
- Environmental factors, e.g. lack of space, working on ladders and roofs, troughs, unpaved transport routes;
- Non-ergonomic postures, e.g. bending, twisting, kneeling, squatting, working above shoulder height

<sup>3</sup> [https://www.statistik.at/web\\_de/statistiken/menschen\\_und\\_gesellschaft/soziales/personen-einkommen/allgemeiner\\_einkommensbericht/index.html](https://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/soziales/personen-einkommen/allgemeiner_einkommensbericht/index.html).

<sup>4</sup> [https://www.statistik.at/web\\_de/statistiken/menschen\\_und\\_gesellschaft/soziales/personen-einkommen/verdienststruktur/index.html](https://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/soziales/personen-einkommen/verdienststruktur/index.html).

<sup>5</sup> <https://www.kollektivvertrag.at/kv/bauindustrie-und-baugewerbe-arb/bauindustrie-und-baugewerbe-beilage-lohn-gehalt/388837>.

<sup>6</sup> [https://www.buak.at/cs/Satellite?blobcol=urldata&blobheadername1=content-type&blobheadername2=content-disposition&blobheadervalue1=application%2Fpdf&blobheadervalue2=inline%3B+filename%3D%22Vergleich\\_der\\_KV\\_Stunden%25C3%25B6hne.pdf%22&blobkey=id&blobnocache=false&blobtable=MungoBlobs&blobwhere=1342702919395&ssbinary=true&site=BUAK](https://www.buak.at/cs/Satellite?blobcol=urldata&blobheadername1=content-type&blobheadername2=content-disposition&blobheadervalue1=application%2Fpdf&blobheadervalue2=inline%3B+filename%3D%22Vergleich_der_KV_Stunden%25C3%25B6hne.pdf%22&blobkey=id&blobnocache=false&blobtable=MungoBlobs&blobwhere=1342702919395&ssbinary=true&site=BUAK).

When talking about stresses and strains in the building industry, physical stresses are primarily thought of, but above all mental stress caused by intensification of work has increased. Work is meticulously timed, so there is detailed knowledge of how long it has to take for a particular job. The following working conditions can lead to and intensify stress reactions, especially if they occur regularly (Haider, 2015):

- Increasing deadline and time pressure;
- Acceleration, work intensification, multitasking;
- Lack of information;
- Repetition of the same work processes in short time intervals;
- Scarce personnel assessment;
- Blurring of the boundaries between work and leisure time;
- Lack of room for manoeuvre and lack of opportunities for participation;
- Isolated working without the possibility of social contact;
- Noise, heat, cold, forced postures, confined spaces.

The construction sector is also known for the high number of accidents at work compared to other employment sectors. In 2017, the frequency of accidents in this sector was twice as high as the average, with almost a sixth of all accidents occurring in the construction sector (Leoni & Böheim, 2018).

In addition, it is almost impossible to retire at the standard retirement age (65 years) in the construction industry. Many have to end their working life much earlier due to illness. According to a WIFO study from 2013 55.6 percent of new pensioners in the construction sector were granted a disability and occupational disability pension between 2008 and 2011 (Huemer & Mayrhuber, 2013). According to the Austrian Work Climate Index more than half of those employed in the construction sector do not believe that they will be able to hold out until retirement. Only 47 percent of employees in the construction sector consider it very or rather likely that they will still be able to do their job at 65 (Haider, 2015).

## 2.2 Posted workers in the construction sector

Next, we will describe the development of posted workers in the Austrian construction sector, since it is considered as one of the key enabling factors explaining employment and working conditions in this sector. As we will show later, fraudulent employer practices are strongly connected to the posting of workers.

Posted workers are workers whose employer is established abroad sending its employees for a limited period of time into another country for the provision of services. Posted work is regulated at EU-level by the directive 96/71/EC<sup>7</sup>, recently revised by the directive 2018/957<sup>8</sup>. Principally, posted workers are subject to different sets of laws: social security is governed by the rules of the sending country, as is the labour contract. At the same time, posted workers are entitled to a set of core labour rights in force in the host Member State: minimum rates of pay; maximum work and minimum rest periods; minimum paid annual leave; the conditions of hiring out workers through temporary work agencies; health, safety and hygiene at work; equal treatment between men and women. Austria is one of the top receiving countries of posted workers in Europe, particularly in construction.

We refer to two main sources when indicating the number of posted workers in the construction sector: (1) European-wide comparable data on A1 portable documents (PD) (De Wispelaere et

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<sup>7</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31996L0071>.

<sup>8</sup> <https://eur-lex.europa.eu/eli/dir/2018/957/oj>.

al., 2019; De Wispelaere & Pacolet, 2018) and (2) BUAK data referring solely to the situation in Austria.

According to de Wispeleare and Pacolet, the construction industry can be identified as the most relevant sector related to the posting of workers in Austria: 64.1% of all A1 PDs issued in 2017<sup>9</sup> were issued for employees active in the construction sector (De Wispelaere & Pacolet, 2018, p. 32). Construction is the far most important sector for companies posting workers to Austria.

In total numbers, around 120,000 A1 PDs have been issued to posted workers for working in Austria in 2018, going down from around 140,000 in 2017 across all sectors (De Wispelaere et al., 2019, p. 24). This number refers to the number of A1 PDs (=notifications) issued; it is not broken down to individual persons. This is an important data validation as one person may be posted several times a year in one country. BUAK adjusts the data accordingly.

According to BUAK data, a decline has been recorded since 2014, after a constant rise of numbers of posted workers in construction (table 3). Of the workers posted to Austria between 2013 and 2018, about 23% were posted from Hungary, 20% from Slovakia, 19% from Slovenia, 13% from Poland and 25% from other countries. The majority of posted workers were employed for 6 to 12 months (see table 4). As a comparison: In 2018, all posting notifications (submitted as so called *ZKO notifications* to the Ministry of Finance) amounted to 230,192. If one adjusts for double counting of notifications (e.g. in case construction sites start earlier or later or due to any other change of the construction workflow, new notifications have to be submitted), their number declines to 56,129. If not notifications as such but individuals are counted, a number of 11,525 posted construction workers remains (BUAK statistics on posted workers and companies).

Table 3. Posted workers to Austria in the construction sector (2013-2018)

	2013	2014	2015	2016	2017	2018
Total	11,942	14,404	13,622	13,622	12,910	11,525

Source: BUAK, Statistics posted workers 2013-2018

Table 4. Duration of posting of workers to Austria (2013–2018)

Origin of workers	Under 1 MO	%	1-6 MO	%	6-12 MO	%	12-18 MO	%	18 and more MO	%	Total	%
Poland	1,943	26.25	3,867	52.24	819	11.06	290	3.92	484	6.54	<b>7,403</b>	<b>13.26</b>
Slovakia	4,249	38.63	4,969	45.18	1,223	11.12	441	4.01	117	1.06	<b>10,999</b>	<b>19.70</b>
Slovenia	3,400	31.61	5,381	50.02	1,313	12.21	393	3.65	270	2.51	<b>10,757</b>	<b>19.27</b>
Hungary	4,594	35.92	6,116	47.81	1,492	11.66	374	2.92	215	1.68	<b>12,791</b>	<b>22.91</b>
All the rest	4,287	30.90	6,569	47.35	2,070	14.92	562	4.05	386	2.78	<b>13,874</b>	<b>24.85</b>
Total	18,473	33.09	26,902	48.19	6,917	12.39	2,060	3.69	1,472	2.64	<b>55,824</b>	<b>99.99</b>

Source: BUAK, Statistics duration of postings of workers 2013-2018

<sup>9</sup> Numbers for 2018 broken down by receiving country and sector are not available in the most recent report on A1 PDs.

An interesting aspect is how the nationalities of posted workers from each country have changed over time. It is striking that of Hungarian and Polish workers, the majority (over 90%) is of Polish and Hungarian citizenship, respectively, throughout this 5-year period. However, only about 50% of posted workers posted from Slovenia have Slovenian citizenship. The second most important country of origin (25%) of posted workers from Slovenia to Austria is Bosnia, that is a third country.

### 2.3 Fraudulent practices and abuses in the construction sector

Interviewed experts named the following as the most important drivers and factors of fraudulent practices in the construction sector: The high degree of labour intensity leads companies to foster competitive advantages based on lowering labour costs which may include fraudulent practices. Subcontracting chains may be a way for the general contractors to cut costs and put pressure on the subsequent elements of the chains. According to a study commissioned by the Styrian Economic Chamber, competition in the construction industry on the basis of optimal factor productivity is jeopardised by referring to illegal practices that lead to far too low and unrealistic cost calculation (Hofstadler, 2016). Another important key driver is the practice of posting workers to Austria by companies established abroad. Such companies are often at the bottom-end of complex sub-contracting chains where price pressure is high. Posted workers more often than native workers lack information about labour rights in the host country, and in case of infringement have limited access to support (Haidinger et al., 2018) making them more vulnerable to cheating.

The most common fraudulent practices include underpayment, bogus firms, bogus self-employment and violations of health and safety standards. Table 5 gives an overview of fraudulent practices detected and formal complaints submitted by BUAk in construction. We will come back to these statistics in the subsequent chapters.

Table 5. Fraudulent practices in construction

Fraudulent practices in construction	(Suspected) Cases 2018
Underpayment in AT companies	402 workers/115 AT companies → 1% of inspected companies (2015: 0.53%)
Underpayment in posting companies	3,603 workers/1,034 foreign/posting companies → 46% of inspected companies (2015: 26.87%)
Formal complaints underpayment	5 AT companies/9 workers // 260 posting firms /900 workers
False part-time work	1.903 cases
Bogus self-employment	564 suspected cases
Undeclared work	448 suspected cases
Underreporting of workers with BUAk	7,061 cases
Contractor liability	24 cases

Source: BUAk, Statistics 2019

### *Underpayment and false working time documentation*

Underpayment and incorrect (or missing) working time documentation are the most problematic issues identified in the literature (Riesenfelder et al., 2019; Sardadvar et al., 2014; Schmatz & Wetzel, 2014) and mirrored in the statistics provided by BUAk.

With regard to underpayment, the most important types of violations are: disregard of minimum wages and applicable collective agreements concerning wage and salary levels of posted workers; incorrect payment of allowances, supplements and special payments; use of home country's legal framework for setting pay rates, against the Posted of Workers Directive provisions; salary deductions on rent of accommodation provided and other expenses or parts of the initially correctly paid salary reclaimed by employers when posted workers return home (Hollan & Danaj, 2018; Schmatz & Wetzel, 2014). Other practices include the payment of transfer from posting countries to the place of work, as well as overrated prices for accommodation.

Underpayment occurs mainly in posting companies: in 2018, 46% (2019: 37%) of inspected posting companies by BUAk were suspected of underpaying their employees compared to only 1% (0,8%) of Austrian companies. In 2019, against 529 companies with 2,198 posted workers, formal complaints (underpayment, thwarting of inspections) have been filed amounting to requested fines of almost € 5 million.

Posted workers are affected by such violations because of several factors. Due to the fear of losing their job and the high dependence on the income they receive in Austria, posted workers often do not dare to complain, which makes detection difficult. Also, language barriers are a hindrance in getting in contact with trade unions or other institutions which might be able to provide support and information (Hollan & Danaj, 2018). Third-country nationals are in an even more vulnerable situation. Their stay in the European Union depends on a valid work visa, so they become particularly dependent on their employers. In addition, due to low wage levels or limited job opportunities in sending countries, posted workers often consent to working more than the legally permitted working hours. Our interview partners confirmed these findings; BUAk statistics of fraudulent practices in the construction sector point in the same direction (see table 5).

Between 2011 and 2019, all in all against 1,398 companies with 5,556 posted workers formal complaints have been issued. Ahead with 435 companies (with 1,361 posted workers) is Slovenia. 44% of all formal complaints have been brought in in Vienna and Styria.

In terms of working time documentation, the main problem is related to feigning minor employment or part-time work upon registration with social insurance providers while in fact employees work longer usually full-time or even above (Schmatz & Wetzel, 2014). Presumably, they receive the remaining part of their salary in an undeclared manner. This kind of violation is – according to our informants – a domestic issue, not that of foreign (=posting) companies.

### *Social security fraud through subcontracting and bogus companies*

In addition, bogus companies and bogus self-employment often found in sub-contracting chains and in extended corporate networks (also at a transnational level) obscure payment procedures (Sardadvar et al., 2014; Schmatz & Wetzel, 2014). Companies use such constellations to pay less social insurance contribution, taxes and wages. First is to say, subcontracting is a perfectly legal company strategy to optimise costs. According to Hofstadler (2016), the trend to subcontracting has increased substantially in the last decade. Due to opaque subcontracting cascades, fraudulent practices are more likely to occur in such constellations.

Fraudulent companies operate as follows: companies (often letterbox companies) are established by straw men with false identities, (foreign) employees are registered at the social security

institutions, but do not actually perform work for the (alleged) bogus company; instead, they work for a company higher up in the subcontracting chain. The contracting company saves social security contributions on the respective employees. The bogus company does not pay the contributions, either; when this becomes evident with the social security institution, the bogus company declares insolvency. As there is no capital left, the state 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 soon thereafter opened.

One of the lawyers at BUAKE explains fraud in the realm of the BUAKE as “*the fraudulent registration of employees to BUAKE*”.

*“The offence [of fraud], §153, paragraph 2, criminal code, is deemed to have been committed if the employee's registration with the BUAKE is made by the company with the knowledge that the accrued supplements will not be paid in full, and consequently, are not actually paid.” (BUAKE legal office staff, interviewee 2)*

To detect fraud, meticulous investigations have to be carried out.

*“In the case of domestic companies, I receive a lot of information from the BUAKE company inspections, e.g. a suspicion that one particular company might be a bogus company, i.e. with a letter-box address. (...) For companies based abroad, it may be helpful to check IMI [internal market information exchange system] or to obtain information from the BUAKE inspectors. Construction site inspections play an important role here, for example, when I receive information from the inspector that the employees, he encountered today were found at company XY three months ago as employees at company Z.” (BUAKE legal office staff, interviewee 2)*

The aim to detect social fraud is, on the one hand, to uncover bogus companies, i.e. companies without any operational infrastructure, or to detect fraudulent networks, on the other hand. The latter implies, businessmen set up one company, this company goes bankrupt after a short period of time, a new one is founded and employees are re-registered with the new one.

*“To this end, we check the commercial register to see whether, for example, a person has set up a new company again, or we look at the flow of employees. Often, as soon as the company becomes insolvent or ceases operations, the employees are with the next company. This is again an indication that information given to the BUAKE was – on purpose - not correct.” (BUAKE legal office staff, interviewee 2)*

The issue of *bogus firms* has specifically been addressed in the so called Social Anti-Fraud Act [Sozialbetrugsbekämpfungsgesetz - SBBG]. Among other provisions in order to detect social fraud, the Austrian federal ministry of finance is obliged to publish a list of companies that have been finally adjudicated as bogus companies. This list is permanently updated and available online since January 1st, 2016<sup>10</sup>. For today (9 July 2020), the list contains 365 entries. Most of the bogus companies are companies that have to be attributed to construction, some are 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. Pursuant to § 9 SBBG, the contractor is liable for claims on the statutory, regulation or collectively contractual pay for work in connection with the assignment of employees of the

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<sup>10</sup> <https://service.bmf.gv.at/service/allg/lisu/>.

bogus company if the contractor knew at the time of the assignment or had to know that companies acting as subcontractors were bogus companies.

In a prominent case<sup>11</sup>, the Vienna Chamber of Labour sued a Viennese construction company, a profiteer of such a bogus-company arrangement. It employed 8 workers from Romania who in fact have been re-registered with another company. However, this company neither paid social insurance contributions, taxes nor wages. The workers were paid by the head of the original company, though much less than they were entitled to. Instead of € 5,300 they were only paid € 800. In addition, they were requested to sign time recordings that stated less than they have been working in fact. The Chamber of Labour sues the wages for the workers from the actual employer who was profiting from this bogus-company arrangement. All in all, in January and February 2017 more than 100 Romanians have been registered at the Vienna health insurance fund by the bogus company. The case is still pending.

*Bogus self-employed* are workers falsely classified as self-employed. This means they do not carry out a definable, warranty-compliant trade, but a simple manual activity, and instructions are imposed by the contracting company. Other indications for the assessment of bogus self-employment include: no clients from other companies, performance related remuneration; regular payment and fix working times; no warranty coverage; tools belong to another company; subordinate relationship to the client; no tax registration (Riesenfelder et al., 2019; Sardadvar et al., 2014).

The BUAK statistics show 564 cases of suspected bogus self-employment in 2018, among a total number of 41,117 self-employed in construction (see table 2); 1.4% of all self-employed are suspected (not convicted) of being bogus self-employed. This number is also rather small compared to the numbers of suspected underpayment (4,000, see table 5). To examine bogus self-employment, BUAK distributes questionnaires to workers indicating they work as self-employed that they are asked to complete.

### *Infringements of occupational health and safety standards*

According to the inspection report of the Austrian labour inspectorate (Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz, Zentral-Arbeitsinspektorat, 2018), the accident rate (accidents per 10,000 employees) is highest in the construction sector. It is at 667, compared to 283 across all industries. The inspection report also indicates that not only non-compliance with OSH provisions but also organisational deficiencies such as errors or incompleteness in work preparation and work planning are very often the starting point for dangerous conditions.

Again in this field, posted workers are particularly affected according to a study about occupational health and safety of posted workers (Hollan & Danaj, 2018, p. 2): firstly, employers pay less attention in terms of OSH training towards them; secondly, their temporary status marks them as workers who are easier to exploit and to accept unsatisfactory working and OSH conditions; thirdly, due to their relatively short stay, they tend not to inform themselves sufficiently about their rights and the regulations in Austria. Finally, a lack of integration and a feeling of not belonging into the Austrian system, often entails that they do not report dangerous working conditions or that they go back to work too early after sickness or injury. Another problem is that OSH and posting are two matters that are often handled by different authorities in Austria. “*This structural separation hampers the well-functioning of protective mechanisms.*” (Hollan & Danaj, 2018, p. 4)

<sup>11</sup> <http://wien.orf.at/news/stories/2852431/>, VGW-041/036/1281/2019-8.



### 3. Co-enforcement action: responsibilities of BUAK in the context of the Anti-Wage and Social Dumping Act

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

#### 3.1 Objectives and drivers of co-enforcement

The before-mentioned aspects of undermining minimum remuneration and (partly) working conditions standards in the construction industry were responded by the legislator with the enactment of the Anti-Wage and Social Dumping Act (LSDB-G)<sup>12</sup> in 2011. The Construction Workers' Annual Leave and Severance Pay Fund (BUAK) received wide reaching responsibilities in implementing the law, including the right to inspect wages at construction sites, to verify suspected cases of wage and social dumping and to file formal complaints to the district authority. Before equipping BUAK with these competences, other institutions were exclusively in charge of the inspection (financial police), verification and formal complaint of such cases (health and insurance providers). Now, an additional authority, the BUAK, shares these responsibilities for the construction sector. This re-organisational move can be regarded as a strategic novelty for the enforcement of labour standards.

In the following, we will describe the distinctiveness of BUAK as a social partner institution and take a look at the institutional and political process and matter-of-fact considerations behind the decision to endow BUAK with these responsibilities.

##### *BUAK's legacies and responsibilities as a social partner institution*

BUAK is a statutory body under public law, tasked with the autonomous administration of statutory duties in defined trades of the construction industry (*Selbstverwaltung*). The Fund was founded in 1946 (as the Construction Worker's Holiday Fund, BUK). It also serves as the social partners' institution in the construction industry. BUAK is one of Austria's oldest social partnership institutions. It employs 245 people (March 2020).

BUAK is a public corporation whose leadership is nominated on equal terms by workers' organisations (Construction and Woodworkers' Union Labour – *Gewerkschaft Bau-Holz* in agreement with the Chamber of Labour) and the employers' organisation (Economic Chamber). BUAK's administrative bodies are the Committee (*Ausschuss*), the Board (*Vorstand*) and the Supervisory Committee (*Kontrollausschuss*). There is an Advisory Committee (*Beirat*) for each federal state (*Bundesland*). Members of the administrative bodies are assigned for a five-year term. The BUAK board is the political body in parity representation where strategic ideas are discussed, compromised and political decisions are taken. BUAK's two directors who run the

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<sup>12</sup> <https://www.entsendeplattform.at/cs/Satellite?blobcol=urldata&blobheadername1=content-type&blobheadername2=content-disposition&blobheadervalue1=application%2Fpdf&blobheadervalue2=inline%3B+filename%3D%22Anti-Wage+and+Social+Dumping+Act+%2528Lohn-+und+Sozialdumping-Bek%25C3%25A4mpfungsgesetz%252C+LSD-BG%2529+.pdf%22&blobkey=id&blobnocache=false&blobtable=MungoBlobs&blobwhere=1342632474969&ssbinary=true&site=Z04>.

operative business are nominated by the Board and appointed by the Committee after consultation with the Supervisory Committee: one is appointed by the workers' organisations (construction union, *Gewerkschaft Bau-Holz*), the other by the of the employer's organisation. The Federal Ministry of Labour (and Family and Youth) functions as the regulatory authority.

Since its foundation in 1946 one main objective of BUAk is to compensate disadvantages of seasonal fluctuation for workers in the construction industry. This includes the administration and pay-out of leave and severance pay entitlements and of bad weather compensation. In 2014 the bridging allowance (an interim supplement paid to unemployed construction workers prior to retirement) became an additional area of BUAk's tasks<sup>13</sup>. These "traditional" BUAk responsibilities and related employees' claims for the different types of allowances, pays and compensations are financed by supplements paid by the Austrian company or foreign company (of posted or temporary (hired out) workers) into the BUAk fund: the work performed by a construction worker, including posted workers, gives not only rise to pay claims but also to obligations to pay social security funds contributions and contribute wage supplements to the BUAk Fund.

For the purposes of our research area, a particular important milestone were BUAk's new and additional responsibilities laid down in the Anti-Wage and Social Dumping Act (LSDB-G) in 2011, revised in 2017. This act was how the Austrian lawmaker responded to increasing problems with wage and social dumping and how it implemented the enforcement directive 2014/67/EU of the posted workers directive<sup>14</sup> into national law. The construction industry received particular attention in this law, and BUAk was endowed with respective competences to implement the regulations.

LSDB-G's aims 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. In short: to secure workers' entitlements on the one and fair competition on the other hand. These aims correspond to the self-perception of the social partner organisations in the construction sector, as the citations of two social partner representatives show:

*"We have a social partner cooperation, which is in the interest of the construction industry, because it is a very specific seasonal and difficult sector. We want to find the best possible solutions in all areas. In the areas of holidays, severance pay, winter holiday pay, bridging allowance, bad weather compensation, company funds, and ultimately also in the fight against wage and social dumping." (Member of the BUAk board, construction union Bau-Holz)*

*"The BUAk has parity representation. So, it's naturally in both sides' interests that such things [wage and social dumping] are stopped. If the entrepreneur - let me say this now - cheats or commits fraud or evades taxes, then it is of course bad for the other entrepreneur who does not do so and does business properly - which is the case for the majority of all [construction] businesses in Austria. Then it is necessary to filter out the black sheep. And we are of course very much behind the idea that this distortion of competition should not take place." (Member of BUAk Advisory Committee, Economic Chamber)*

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<sup>13</sup> For a detailed description of BUAk's "traditional" tasks, see ANNEX I.

<sup>14</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0067>.

BUAK is an institution that has high sectoral and detailed knowledge about sector-specific regulations (e.g. collective agreements), which made it possible to develop tailored measures to combat fraudulent practices prevalent in this industry, on the one hand. On the other hand, both social partners stand behind the institution's inspection policies and practice.

*“We have the advantage that we probably know the companies better. We are better able to identify the collectively agreed wages that are to be applied during the inspection. It is a certain challenge for anyone outside the industry to determine: what wage should the person really receive? This cannot be decided on the basis of documents alone, and where I, as a pure layman, would not be able to judge whether the person in question is an unskilled worker or a semi-skilled or skilled worker. So, the correct classification is a certain challenge in itself. And that, I think, we can do better. And in addition, we have the advantage of being able to control everything [domestic and foreign companies] we find there [at the construction site] and to get a picture of the whole thing.” (Director of BUAK)*

*“Through the contacts with the social partners, I believe that we are more likely to learn something by hints as well. And my impression, although I am certainly biased, would be that our controls are more readily accepted, including by employers. So, I think that the acceptance by the institution like the BUAK is greater than if the state authority or the police turned up.” (Director of BUAK)*

As a social partner institution, BUAK has the influence to co-produce regulations at several levels (Amengual & Fine, 2017). First, BUAK has authority as a well-functioning social partner institution with high industry expertise. BUAK's proposals to the competent ministries or the legislator to improve industrial relations and compliance in the sector are based on profound experience and balanced social partner positions. Second, social partners representatives in the board and committee of BUAK are often also in another political function – in the parliament or in a political party – and have as such a say in co-producing regulations, their implementation and enforcement.

An example is the way BUAK was authorized to inspect underpayment within the legal framework of the LSDB-G. The political decision was born, discussed and taken at social partner level in the board's meetings, as a board member of BUAK describes it.

*“What we have now created with the BUAK was not a result of politicians' will but that of social partners in the construction sector. (...). We proclaimed: "Since the construction industry is something special, where foreign and domestic companies overlap in the processing of orders, we need an authority, an institution that can inspect the entire construction site with all companies, whether domestic or foreign". Such an effort and success are only possible when active stakeholders instead of simple administrators dominate in both rows (i.e. both social partner organisations).” (Member of the BUAK board, construction union Bau-Holz)*

Respective proposals were brought to the administrative and political bodies, the ministry and parliamentary committee in charge who would prepare the legislative bill. BUAK's task – as an institution - then was the practical implementation of measures that have been negotiated and compromised at social partner level and then been incorporated into the LSDB-G. It was important that BUAK received competences independently of other inspection authorities, as it is an authority of its own, financed predominantly not from taxes but from the industry itself, and with a high sectoral expertise. Before 2011, BUAK has already begun to show presence at construction sites and to provide voluntary consultations on-site.

*“It was common knowledge that the construction industry was a sensitive one. The political stakeholders were aware of BUAK’s activities and they finally authorised us - not only the health insurance institutions and finance police - to carry out inspections in the construction sector.” (Director of BUAK)*

*“What we didn't want at all was for the BUAK inspectors to be subordinated to the Ministry of Finance. This is because they are financed from the employers' contributions, not from the taxpayers' money, they are financed from the industry. So, the one who pays should be the one to give instructions. “(Member of the BUAK board, construction union Bau-Holz)*

*„Ultimately, the experts for the construction industry are in BUAK. No regional health insurance company, no financial police can find out what our inspectors find out. “ (Member of the BUAK board, construction union Bau-Holz)*

### *“New tasks” in the context of the Anti-Wage and Social Dumping Act (LSDB-G)*

In 2011, and revised in 2017, the LSDB-G has come into force. In Austria, regulations stipulated in this law intend to combat wage and social dumping, especially in cross-border constellations. It covers all workers who have an employment based on a contract under private law with an Austrian employer as well as workers who have their habitual place of work in Austria or are posted or hired out to Austria but are employed by a foreign employer. In January 2017, a revision of the LSDB-G became effective, stipulating claims that can be made for entitlements based on labour law and measures to protect them specifically in case of posting and hiring-out of workers. The LSDB-G is meant to facilitate the enforcement of anti-wage-dumping measures and specifies penalty fees in the range of € 500 to 20,000 for omitting notifications of postings to the Austrian authorities, for thwarting wage controls, for not keeping wage documents available and for underpaying workers.

For the construction sector, more concretely for all employees who are subject to the Construction Workers’ Annual Leave and Severance Pay Act (BUA-G)<sup>15</sup>, BUAK is one of the key stakeholders to implement the law. The LSDB-G defines several tasks for BUAK. Pursuing §15 of LSDB-G, BUAK is authorised to inspect and verify relevant documents such as payslips to implement the aims of this law and to file formal complaints with the responsible district administrative authority when violations are detected.

The tasks in detail:

One of the main new tasks of BUAK are *inspections on underpayment*, including posting or cross-border temporary agency work in construction. The most important activity of BUAK in this context is the wage inspection at construction sites (see in detail next section).

The second new task of BUAK are the *investigation of the details on which workers’ pay claims are based and the support of employees* in calculating the amount of claimed wages and in identifying the client potentially liable for covering the claim.

A third new task (since 2017) is *the inspection of and investigating contractor liability for wages in construction*. This means to verify whether the client of the posting undertaking is liable for pay claims held by posted or hired out workers, when the worker is not paid by its direct employer. In many cases, posted workers work within the framework of a service contract, agreed upon by

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<sup>15</sup> [Bauarbeiter-Urlaubs- und Abfertigungsgesetz] (BUA-G)  
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008275>.

the client and the contractor and perhaps another sub-contractor. Thus, client liability is an additional option for employees to obtain the pay to which they are entitled.

A fourth new task is *the administration of a newly introduced construction site data base*<sup>16</sup>. This database is to provide quick and transparent information about start and end dates for every construction site in Austria. This gives inspectors significantly faster access to information about the location and start dates of construction projects and allows for inspections – as long as the construction site still exists and there are employees on-site.

For fulfilment of these particular tasks, BUAK employs 36 inspectors and 10 lawyers. Principally, BUAK is financed by employer contributions. For these specific tasks BUAK receives additional € 2 million per year from the Federal Ministry of Labour (and Family and Youth) (source: BUAK annual report 2018, not published).

### 3.2 Design of the co-enforcement action

#### *Main activity: Wage inspection at construction sites*

One of the main activities is, as already mentioned, the wage inspection at construction sites. The strategy is to check as many construction sites as possible throughout Austria. Certain attention is paid to larger construction sites. This means that larger construction sites can and are inspected several times, including all important construction phases (shell construction, dry construction, façade, interior fittings). The aim of this strategy is to have direct contact to as many companies and workers as possible. In 2018 one inspector inspected on average 500 Austrian companies and 1,279 workers in Austrian companies, 153 foreign companies (posting companies) and 268 posted workers (source: BUAK annual report 2018, not published).

The headquarters of BUAK are based in Vienna, but there are also BUAK offices in the provincial capitals in each province, from which construction site inspections are planned and carried out. The following table 6 shows the inspection activities in the years 2015 to 2018.

Table 6. Inspections, inspected companies, inspected workers

	2015	2016	2017	2018
Inspected construction sites	5,883	6,444	7,458	10,161
Inspected companies total	8,719	8,918	11,496	13,665
Inspected workers total	32,007	34,542	41,510	49,462
Inspected AT companies	7,238	7,285	9,701	11,443
Inspected workers in AT companies	25,228	27,038	33,882	40,821
Inspected part-time registrations				2,341
Inspected posting companies	1,481	1,632	1,795	2,222
Inspected posted workers	6,779	7,504	7,628	8,641

Source: BUAK annual report 2018, not published

<sup>16</sup> Specified in the BUA-G.

The base for the selection of construction sites to inspect are the construction site database, own perceptions of inspectors, and information from construction workers, who come to the customer service centre and report any irregularities. Criteria of the concrete selection are

- “problematic” companies with a history of infringement;
- the size of the construction site;
- the notification of posting companies and posted workers;
- construction sites of public authorities (since 2019) and;
- the number of registered part-time workers.

Regarding the practical selection of the construction sites, the head of the SBB department (Sozialbetrugsbekämpfung/combating of social fraud department that coordinates the construction site inspections) explains:

*“Yes, there are various sources on how we get to construction sites. One source is the construction site database, where it is standardized when which construction site has to be reported. (...) have an overview of when it (the construction site) begins and when it will end. And I am given an estimate of the number of workers there. And, yes, of course, larger construction sites will be more interesting for me. (...) Then since March 2019, it is the obligation that public authorities have to register in the BUAK construction site database when awarding construction contracts with a contract value of € 100,000 or more. And of course, it is their priority that we check construction sites there. Then there are the notifications that the posting companies have to make, the ZKO notifications before the start of the assignment. (...) One thing is the notification: the company itself indicates when it wants to or will work there, but we check: Are they really there? What people are there? And are they properly paid? Then there are, relatively new, because the legislator has tightened it up, part-time registrations on the building site. The legislator said: Okay, you not only have to report the situation of part-time work, but also the respective construction site [where and when the part-time work takes place]. Then there are workers who come to us (customer service centre of BUAK) and say: "I work for a construction company; the construction company didn't report me". And then they also announce building sites: "I'm on the building site now", for example. That is also a possibility.”(BUAK head of SBB department/ construction site inspections)*

The head of the coordination unit emphasizes the institution’s need for information about the number and type of workers present at construction sites. Employers’ obligatory supplements are based on this evidence:

*“We have different parameters as to why we carry out a building site inspection. On the one hand, we have the posting notifications that we receive. After all, we charge contributions to the posting companies for the workers posted to the construction industry. If the contributions are not paid, then we have to sue. And as the claimant, you have to prove that the employee was actually in Austria on the day on which the contributions were prescribed. In other words, I need the inspection as the basis for a possible lawsuit. We are, of course, concentrating on new companies there, and on those that are problematic. Then, we have the announcements from public clients. We naturally have the own perceptions of the inspector when he is on the road. In this way, we try to carry out the weighting. (BUAK head of coordination unit)*

### *Wage inspection at construction sites – formal implementation*

*“The aim is to inspect the whole construction site and to check the wage of everyone who is there at that moment.” (BUAK inspector 1)*

Generally, BUAK inspectors are granted the right of access to construction sites and site trailers on construction sites, in addition to the right to information and inspection of numerous (wage) documents. These rights, the obligations and inspection procedures are based upon §23 of the Construction Workers’ Holiday and Severance Pay Act [BUA-G]. Accordingly, BUAK inspectors must notify the employer or its authorised representatives of their presence on entering the construction site. The start of the construction site inspection may not be unnecessarily delayed. The employer, its client or their authorised representatives are free to accompany the BUAK inspectors during the inspection of the construction site; at the request of the BUAK inspectors, they are obliged to do so. The inspection of the construction site must be carried out as far as possible without disrupting operations.

The BUAK inspectors must obtain the information necessary for fulfilling their inspection tasks from all persons present at the construction site and engaged in work there. Employees are obliged to present their identity cards to the BUAK upon request. The employer or his authorised representative is obliged to provide them with the information required, including the inspection of all necessary documents (i.e. documents such as pay slips or contracts specifying employment relationships, the type of employment and wages).

As a rule, site inspections are carried out by one BUAK inspector. In the case of large construction sites or construction site inspections at the weekend, the inspections are also carried out by two or more BUAK inspectors. The inspection takes place without announcement.

To facilitate and support the work of the BUAK inspectors, a manual was developed, which describes the tasks of the BUAK inspectors and the procedure of an inspection in detail.

*“We have an SBB (Sozial-Betrugs-Bekämpfung – combat of social fraud) handbook. The different cases are listed in practical examples. You can look them up here. For newcomers, this is very useful, because one can really study different cases. Sometimes, even I don't know exactly what to do in each case. Then you look it up and go through it. Because some procedures, you only have them once or twice a year. And others you encounter every day. So that's routine, and the other ones you have to look up. For this, the manual is good. It is regularly updated, and, it provides practical examples, not just fictitious, but real examples of (wage) calculations.” (BUAK inspector 3)*

### *Wage inspection at construction sites – the practice*

BUAK employed 35 inspectors (*Außendienst-Mitarbeiter*) in 2018 (source: BUAK annual report 2018, not published) that are part of the SBB (combat of social fraud) department. They are in charge of one crucial aspect to implement the aims of the LSDB-G: the on-site inspection of construction sites. Their research results are the basis for any further investigation or even legal proceeding.

In the following, we will describe a typical process of such an inspection. The description is based on interviews with six inspectors, two of them head of departments in Styria and Vienna, as well as on two observations at constructions sites, one in Vienna, the other one near Graz (Styria).

The first step in an inspection is to *announce the BUAK's* presence with the site manager:

*"We approach the construction site management and say: "Hello, we are here!" Then, we ask for data that only the site managers have knowledge of, such as: Which companies are there? With how many people are they there? To which trade do they belong?" (BUAK head of SBB department/ construction site inspections)*

Following this, the construction site is inspected, mostly in the presence of the site manager or a foreman to obtain an overview of the construction site.

*"That makes sense on a large construction site. Because, if you go alone through a mega construction site, you will be lost, you will be searching endlessly for all the workers." (BUAK inspector 2)*

The *immediate observation and perception of the workers and their actual activities* through the inspector(s) is of central importance. It is the main basis for assessing the type of work they are performing. Different types of work (e.g. auxiliary, semi-skilled or skilled work) entail different level of wages according to the collective agreement applicable for the trade. For documentary reasons, photographs are taken of the workers' actual work. Attention is paid to ensure that the activity can be clearly identified on the photos (bricklayer, shuttering, facade, iron layer with tools/pliers etc.). In addition, photos of the construction site are taken by the inspectors. Such precise documentation is of high importance to prove evidence in the course of a legal proceeding against a company that is suspected of violating the LSDB-G.

What was striking in our direct observation was the inspectors' very attentive view on the construction site and everything around it.

An example: Conversation between inspector and site foreman:

*Inspector: "There aren't any tilers at the construction site?"*

*Site foreman: "No"*

*Inspector: "Then to whom belongs the tiler's car outside on the parking space?"*

*(Direct observation, Vienna, July 3rd 2019)*

An inspector explains this focussed view as a key attribute of her job:

*"When I am on a construction site I need all my senses. We are trained for the surrounding. You hear it, see it and know it. You look much more closely than laymen. You learn all that. You have somehow internalized it and keep this attitude also when you are not on duty. I always say it in a funny way: Occupational disease. I mean, you just see things that you as a normal person certainly do not see. (...) you can recognize the different workers from their clothes, right? The drywallers, for example, have white robes, and the roofers have red soles by their shoes." (BUAK Inspector 2)*

The head of the SBB department/ construction site inspections emphasises the rules (law) and guidelines as well as the training on the job as the main foundations of an inspector's job :

*"There are guidelines, people are trained, so to speak. In other words, how a building site inspection is to be carried out, there is a guideline, an internal guideline, which, of course, is based on the legal framework: we may enter the building site and inspect the trades. Because one thing is what the site*

*managers tell us, but the other is of course our own perception, and the colleagues know what has to be done. First: Who is here today? I can see that at a glance. Maybe not all, but a lot. For instance, I see cars parked there, that perhaps have a company sign indicating a trade.” (BUAK head of SBB department/ construction site inspections)*

In a next step a *survey* of the employees of each of the relevant trades is prepared and coordinated between the inspectors and the construction site manager. This includes to arrange, in which order the employees of the different trades are interviewed and where this procedure happens. Sometimes it is possible to conduct the surveys at the workers’ own workplace, sometimes they are conducted at the “office” of the construction site, usually a container.

Concerning this coordination, an inspector explains:

*“We start with the workers who have time, because we must not stop the construction site and the workers. In other words, if we get there now, and the dry walling contractor has just enough time, then we check him first and then the vein of the facade, for example. Or screed layer, you stand next to him and do it [the interview] right there with him, because he can't get out now with 3 kilos of screed on his boots and walk to the office.” (BUAK inspector 2).*

Prior to the survey, the employees are asked to hand over their identity cards (e-card or construction site identity card) to the BUAK inspectors. In return, they receive a questionnaire (survey) in their mother tongue, if available. The questionnaire covers the following topics on which the employees have to provide information:

- Personal details (name, social insurance number, date of birth)
- Information about (mainly) work on the construction site
- Information about vocational training for work carried out or/and trade licence for work carried out
- Details about remuneration (monthly wage in €, reimbursement of expenses for work in Austria, any allowances or grants)
- Details about working time (hours/hours worked per week, length of employment)
- Information about the employer
- Information about the foreman

The questionnaires are currently available in 19 languages. Many inspectors also speak different languages, including Serbo-Croatian, Turkish, Polish, Czech, Slovakian, Hungarian. The inspectors ask in what language the questionnaire should be handed out. If the workers need help in filling out the questionnaire, inspectors first approach them in German, then – if possible – in their mother tongue or another preferred language.

*“Well, I only start talking to them in their mother tongue when they don't understand me in German. The three workers from before [during the inspection], they wanted to have an Albanian form, but could not read or write Albanian because they are from Kosovo, yes, and they speak Serbian there. And that's why the interview was in Serbian and not only in Albanian”.*  
(BUAK inspector 1)

Another important part of the inspection is to *collect the documents available* as evidence of the work performance (e.g. employment contracts, service contracts with subcontractors, for foreign employers also wage documents, etc.) from the construction site manager and to examine them. Any documents that are not available at the construction site are requested to be sent to BUAK within two working days. If documents are not submitted as required, employers can be fined.

Further inspection steps at the construction site include to check if employees are correctly registered with BUAK, the social insurance authorities and – if applicable – as posted workers. The inspectors are equipped with laptops with an online access to different data bases (BUAK database, ZKO data of the Ministry of Finance, social security data base) that can be consulted. In 2021, BUAK plans to introduce a so-called “Bau-Card”, as was agreed upon by the social partners in the BUAK bodies. This card is intended to facilitate the inspection activities, as all relevant data will be recorded on this card. Companies will not be obliged to use the Bau-Card; however, clients could make it obligatory for their contractors to use them.

### *Conduct of BUAK inspectors on the construction site*

The aim and leading principle of BUAK is to inspect the regularity of the construction site and the compliance of the company and not to prosecute the construction workers.

*“The construction site is inspected, the employee is asked what his salary looks like, if he is registered. But it is not an act which should be directed against the employee. We should not create a situation where people are afraid of us.” (Director of BUAK)*

This is also reflected in the way the inspectors deal with construction workers. Inspectors act with determination and clarity on the one hand and in a friendly and respectful way on the other hand. At the same time, they are met with respect by the employees and the site manager/foreman. What we observed is that humour plays an important role in this context. Joking also has a strategic reason. It is used to ease up the inspection, especially at the beginning, and to create or maintain a constructive atmosphere.

*“I mean, the construction industry is a driven, hectic industry. It could be that the foreman has a bad day or had just a conflict with somebody on the site. Then we come along. And he is not really happy about us. But the point is that we say with a certain friendliness, but also with persistence: “Here we are. We are not going away just because you don't like it. Sometimes we are also joking. Until now I never have had a situation where that approach didn't work.” (BUAK inspector 3)*

As BUAK employees inspect large construction sites in different construction phases they often know site managers and even some of the workers. Again, an example: Conversation between inspector and site foreman:

*Inspector: “We are back.”*

*Site foreman: “Third time this year, right?”*

*Inspector: “And you still not finished”*

*(Both are laughing)*

*(Direct observation, Vienna, July 3rd 2019)*

It is noteworthy that some workers feel confident with the regular 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. This is experienced by the workers as a service.

*“It's actually... so, yeah, vacation-related issues, bridging allowance, severance payment etc. What else?” (BUAK inspector 1)*

*“Or whether his data is still correct. Or address changes, bank changes. Of course, you have to send them to the BUAK office, because they need a bank confirmation that has to be filled in. But as far as we...anything we can help on the construction site, we'll do it.” (BUAK inspector 2)*

In addition, inspectors also assist construction workers in completing the questionnaire if questions are unclear to them. This was done in a very considerate way during both observations. In one of the observations, the inspectors (competent of 4 different languages) switched into the native language of the construction workers to clarify issues. Such an accessible manner towards the informants (this is what the construction workers are) helps to build up trust on the one hand, i.e. workers will be more willing to provide correct information, and to carry out the interrogation in an efficient way, on the other hand.

#### *Follow-up of inspections and documentation (reporting)*

The precise documentation of inspections is a very essential tool and resource to prosecute suspicious cases further. One main focus of BUAK's advancement is the improvement of documentation procedures and the quality of reporting.

Following the inspection at the construction site, 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, on the basis of the on-site inspection, there is no suspicion of underpayment, no other potential false statements (e.g. on working hours) are identified and all the necessary documents were collected and controlled, the documentation of the site inspection is completed.

If suspicious cases arise, they are passed on to the legal department of BUAK. The department is based in Vienna and consists of 10 legal experts. They examine in detail the documents collected, compare construction workers' 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 IMI (European Internal Market Information System). This is a very meticulous process. Principally, the basis for the legal experts' handling of cases are the respective laws (i.e. LSDB-G, SBB-G, BUA-G) as well as the past experiences with handling cases in the form of protocols or memos.

*“It's a lot of learning by doing, going straight into practice. I can read the law twenty times; I can read the government bills. But it is also important to have the concrete case to learn. For the newcomers, we have a buddy system, me or an experienced colleague who accompanies [the process until a formal complaint is filed].” (BUAK head of legal department)*

BUAK can be testimony or party in a legal proceeding. All legal proceedings where BUAK plays a role either as a party or as a testimony, are analysed, and verdicts are considered for the future processing of cases. This is particularly important for the filing of future complaints.

Every case of suspected infringement is proceeded by the legal staff. One legal expert describes the detailed procedure as follows:

*“We get the inspectors' reports. We then check the information provided by the employees [in the questionnaire]: what did they tell us [the inspectors] on the construction sites? We check the wage documents, which must be available on the construction site. What does the employment contract say? What is written in the wage slips? Do we have payment receipts for the wages? Does this match with the working time records? Is the classification of the respective employees correct, yes or no? And if everything is in order,*

*then the suspicion has not been substantiated. If the suspicion is substantiated, then we file a formal complaint to the respective district administrative authority, where we explain ‘The suspicion has arisen for the following reasons.’ Of course, we must also explain what the suspicion is based on. Then we send the report to the district administrative authority or to the magistrate and they'll process it further and conduct the administrative prosecution” (BUAK legal office staff, interviewee 3)*

As a working principle, the legal department works closely with the inspectors who carry out the field work.

*“A suspicion may arise based on the worker's information [during the inspection]: what he declared as his wage does not correspond to the activity he performed or to the classification of his work. In case of posting companies, it may be the case that they pay the same wage as abroad [and not what is applicable in Austria]. In the case of domestic companies, for example, that they classify workers according to a wrong collective agreement that does not corresponded with the trade license. Or, according to construction diaries (Bautagebücher), working time records are false. It is also possible that various supplements for height, tunnels, group leader or other things are simply not billed. These are all points where cases of suspicion can come up, because the LSDB-G not only secures the basic wage, but also wage components like Christmas bonuses, overtime bonuses, tunnel bonuses, group leader bonuses, altitude bonuses, dirt bonuses.” (BUAK legal office staff, interviewee 3)*

### *Consultation at the customer service centre*

Another operational department of BUAK is the customer service centre, consisting of 12 employees. The main areas of consultation are related to leave and severance pay entitlements, bad weather compensation, winter holidays, interim supplement paid to unemployed construction workers prior to retirement (the “traditional” BUAK tasks). Recently, they also take in cases of suspected underpayment. The target groups are construction workers employed in Austrian companies as well as construction workers employed in posting companies.

The aim is to advice, support and help workers:

*“Our highest priority is to provide them [the clients] with proper and professional advice in the maximum possible way. We want to help the employee and check whether he gets the claims he is entitled to. You know, the employee does not have the choice whether his company pays the supplements or not.” (BUAK head of customer service centre)*

BUAK offers personal – face-to-face – consultation as well as consultation by phone in multiple languages. The languages are Romanian, Turkish, Russian, Serbo-Croatian, Slovak, Czech, Albanian, Macedonian, English, Hungarian, Spanish, Portuguese and Polish. The customer service centre has long opening hours and no registration is required. Another option is written consultation by email, also in multiple languages. All in all, the centre offers a relatively low threshold access for construction workers.

*“We offer mother tongue consultation, so we cover many languages. When a worker comes along and cannot make himself understood in German, we find out which language he speaks. Then we either get the colleague who speaks his mother tongue or, if this colleague is not present for the moment, we arrange a call back. In this case, the colleague calls back to get to know what his case is all about and tells him when to come for a consultation in his native*

*language or whether he has to come at all, whether it is just for information or if there are more things to clarify.” (BUAK head of customer service centre)*

In 2018 16,839 workers received personal advice in the customer centre, from January to September 2019 12,748 workers, as the head of customer service specified. According to our interviewees and observation, most of the workers ask questions concerning the “traditional” tasks of BUAK (leave and severance pay entitlements, etc.). In a few (but increasing) cases, posted workers come to the customer service centre and report irregularities. An example:

*“The employee asks: ‘I would like you to check whether I was or am registered with the company.’ This we do. If we find out that we have not received a registration (Meldung) from the company, a questionnaire is submitted to the company. We need to know what kind of work the worker has carried out. All this is covered in the questionnaire. Then we compare. We look at the wage tables. On the intranet we have the wage tables taken from the respective collective agreements. We compare what he said, what he has received or what was agreed upon. Then we can see whether there is a suspicion of underpayment or not. When we conclude yes, it is a suspicion of underpayment, then an e-mail is forwarded to the colleagues from the legal department.” (BUAK head of customer service centre)*

During our direct observation at the customer service centre, the BUAK employee (competent of two - including German - three languages) consulted six very diverse cases, ranging from holiday entitlements to bridging allowance to suspicion of underpayment. The workers spoke German at different levels; the BUAK employee dealt very patiently with the problems of his clients, in one case also in a foreign language. *“It is important that they really understand what I explain to them”*, the counsellor emphasised. One client explicated that he suspected his employer to have him registered incorrectly. The BUAK counsellor listened attentively to the worker’s explanations. He then decided to inform his colleagues from the inspection (SBB) department to arrange a construction site visit for the next day. This incidence shows very evidently the very close cooperation between the different BUAK departments, the “short” and unbureaucratic ways of communication as well as the immediate reaction to a (in this case worker’s) complaint.

Another important incident to consult posted or hired-out workers is client liability. Pursuant to § 9 LSDB-G, the employee must personally and actively inform the BUAK of unfulfilled remuneration claims for their work in the construction sector and give details about his case. This has to be done within eight weeks of the remuneration becoming due. After BUAK has reviewed the matter, the client receives a letter to inform him of the liability pursuant to § 9 LSDB-G including the specific amount. Liability is established upon receipt of this written information and is limited to the amount specified in the letter. In addition to the client, the information letter is also sent to the contractor (=employer) and the employee.

*“Contractor liability under the LSDB-G is dependent on an employee informing us that he or she has not received remuneration. But it must be an employee who has been posted or posted by a temporary agency. (...) In this case, the BUAK has the role of being the contact person for the employee, but he must **actively** inform the BUAK of this. This is also laid down in the law, the employee must inform BUAK and provide specific details. He cannot simply say: “Pww, I didn’t get my money”, that is not enough in a case of client liability. We invite the employees, i.e. they have to come by so that we can question them, specifically. They then have to state which building project they were on, what pay was not received, who they worked for, or are working for, so give concrete details. It would be best if the employee also brought*

*along documents, records of working hours. We will then take a look at it: Who is the client anyway? Were there any site inspections? What information did he provide there? The employees must come to BUAK no later than 8 weeks after the payment is due. This means that if the employee comes today, on 22 August, and he says that he has not received the January pay for 2019, then he is too late. In that case, he can make a claim, but it is impossible that this amount will create liability. (...) Prompted by the employee's details, we write to the client: Dear client, Mr X has contacted us. This is a case of § 9 LSDB-G, and with this and that amount is the liability, that is the liability amount. We also explain how we identified this amount. Both, the employee and his employer also receive a notification". (BUAK head of legal department)*

The head of the customer service centre describes such an incident, when - during a conventional consultation - the issue of contractor liability comes up:

*"The workers do not know what a client liability is. They just come to announce that they were not paid. In one case, workers came and reported that they have worked at a posting company and that they didn't get paid, yeah? Then this case was recorded. We then have always a colleague from the legal department present. There's a specific, very detailed list of questions to be filled out. It takes quite a long time to actually deal with it, because there are a lot of questions to be answered. The questionnaire is scanned and then forwarded to the legal department. We take down the statement and they continue to work on the case." (BUAK head of customer service centre)*

Between the instalment of the law in 2017 and summer 2019, 24 cases of client liability have been handled by BUAK, according to the head of legal department.

#### *Employee (including posted workers) information in written form*

All employees/construction workers receive a letter of information on all claims<sup>17</sup> that may be asserted against the BUAK on a quarterly basis (4 times a year), called "Arbeitnehmerinformation – ANI". It also includes – if applicable – information about a formal complaint about underpayment that has been made against the respective company on the basis of an assessment of BUAK. This is a very important means for employees to learn about an employers' (potential) misconduct and conviction on the basis of the LSDB-G. The claims for forgone wages, however, have to be pursued by the employee himself. BUAK is not in charge of suing individual claims.

At this point, one of the crucial lacunae in BUAK's activities to fulfil LSDB-G's aims (fair competition, secure construction workers' wages) appears. After BUAK has submitted a formal complaint to the district administration authority against an employer suspected of underpayment, BUAK is only entitled to *inform* the employee about this fact but it is not entitled to claim any individual wage claims on the employee's behalf. The employee is left to his own devices in this matter. According to one interview with the construction workers' union (Gewerkschaft Bau-

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<sup>17</sup> This periodical information includes inter alia: information about payments, periods of employment since start of year, listing of all employment contracts/relationships of the year, a chronological listing of personal leave entitlements at the time when the employee information was prepared, information about possible severance pay entitlements, winter holiday provision, information on claims to winter holiday compensation and bad weather compensation, information whether bad weather hours have been claimed for the worker by the employer, information on interim supplement paid to unemployed construction workers prior to retirement, information on weeks that can be considered for the provision on interim supplements and/or information about the interim settlement ([https://www.buak.at/cms/BUAK/BUAK\\_3.2/fuer-arbeitnehmerinnen/arbeitnehmerinnen-br-information](https://www.buak.at/cms/BUAK/BUAK_3.2/fuer-arbeitnehmerinnen/arbeitnehmerinnen-br-information)).

Holz) who is running the bilingual advisory centre “Faire Arbeit”<sup>18</sup> in the south of Styria where they consult and support construction workers, in particular posted construction workers from Slovenia and other parts of former Yugoslavia, the time lag between the reception of the employee information and the expiry date to claim wages hinders employees in asserting their claims.

*“Through this employee information (ANI), the worker is getting the hint: wage and social dumping, suspicion of underpayment, ok? But the workers only receive this information four times a year, every three months, right? According to the collective agreements [in the construction industry], I have an expiry period of 3 months for current claims. That means that 4, 5 or 6 months will pass, until the employee receives the information, he understands it, and until he comes to us on his own initiative. So, people come much too late, yes, when we can no longer assert any claims because the claiming period has already expired.” (Member of the BUAK committee, construction union Bau-Holz)*

What is more, BUAK has also published a number of multi-lingual brochures about different BUAK services and entitlements. They are available online from the BUAK website<sup>19</sup> or in printed form at the customer service centre.

### 3.3 Key points of implementation and dynamics identified

We distinguish two factors for BUAK’s accomplishment to implement the enforcement action:

First, BUAK depicts an *organisational culture* that is managed to the end of enforcing fair competition and compliance in the construction industry (Piore, 2011). Through, as Piore states, specific recruitment and selection of new entrants to the organization, specific socialization and training of (new) personnel to accommodate to the organisational culture of the institution, and through an ongoing discussion about practices within the work process, BUAK’s agents (inspectors, lawyers) develop incrementally and are at the same time consistent and responsive to “the values established through political process, law and the administrative hierarchy.” (Piore, 2011, pp. 154–155)

Second, BUAK’s enforcement approach can be identified as social partner driven and a “strategic one” (Weil, 2010, 2018), as it concentrates on one industry. Through the commitment of key stakeholders of that industry and through the institution’s own expertise, it is able to identify widespread fraudulent practices and most central factors for non-compliance with the regulatory framework, such as posting of workers, bogus firms, or subcontracting cascades, and to find efficient ways and tailor-made means to counteract non-compliance.

#### 3.3.1 Organisational culture

##### *Judicious organisational and personnel policy*

The first key point concerns the careful organisational personnel policy of BUAK. This includes personnel recruitment, training-on-the-job and organisational development.

In the past 10 years, parts of the coordination unit, the inspectors and legal experts are assigned to, has expanded quickly. New personnel had to be employed, e.g. for inspectorate activities. The recruitment is done by the institution BUAK; social partners have no whatsoever influence in the recruitment process. The inspectors are recruited partly from other BUAK departments and partly

<sup>18</sup> <http://www.faire-arbeit.at/>.

<sup>19</sup> [https://www.buak.at/cms/BUAK/BUAK\\_10.3.5/for-employees/downloads](https://www.buak.at/cms/BUAK/BUAK_10.3.5/for-employees/downloads).

from outside. The educational background of inspectors is mixed; some are technical engineers with experiences in construction, some have a qualification as an accountant.

What distinguishes BUAK in the area of personnel policy is a very careful selection of personnel. Important requirements for new inspectors are knowledge of the construction industry, commercial knowledge, foreign language skills and specific soft skills.

*“I need to be able to talk to people. I would say though this sounds somehow romantic: You have to like people to be able to do this job well. If not, if I have problems approaching people, then I'm wrong the wrong person. That is a basic requirement for me, a certain ability to communicate, a certain appreciation of the person, even if the employee [that is inspected] does not understand everything or cannot write well. That happens sometimes. One must deal with such situations well, one must not devalue the workers, but respect them.” (BUAK head of SBB department/ construction site inspections)*

After recruitment, employees receive comprehensive initial job training. The basic theoretical training takes three months. After the basic theoretical training, newcomers accompany inspectors to the site inspections in a practical on-the-site training.

*“On the first day it's like this: You are watching what your colleague is doing and help out, but of course based on the instructions of an experienced site inspector. You are not allowed to do anything alone. It was just observation at the first times.” (BUAK inspector 2)*

After this basic training, all employees continuously receive further training. Further training has to be seen in the context of overall organisational development. As the department for inspecting cases of wage and social dumping has grown substantially within the last 10 years, so have acquired knowledge and accumulated cases.

In the course of the expansion to more than 50 people concerned with this issue in one or the other way, new tools, new structures, and new communication means have had to be developed incrementally. The head of the coordination unit emphasised that BUAK tried and also succeeded to accomplish the organisational development on its own. Employees were and are substantially integrated into the organisational processes and the development of new or improvement of existing tools.

### *Clear and precise working procedure*

On the one hand, BUAK aims to have as many inspections as possible. On the other hand, another aim is to improve inspection procedures. This does not necessarily have to entail a rise in the number of detected suspected cases (Blanc, 2018). An optimisation of inspection procedures shall result in a more complete and valid documentation of cases. This can be accomplished by very precise face-to-face inquiry 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.

### *Handbook for inspectors*

The “handbook” for inspectors is an important means to look up typical inspection procedures for different situations. The handbook is fed by the experiences of the inspectors, by feed-back of colleagues from the legal department and by management explaining updated regulations or juridical verdicts that need to be considered. It is permanently revised and updated. It is planned

to develop a similar handbook for the employees in the customer service centre since procedures, laws and competences become more complex and comprehensive.

#### *Efficient communication and inter-departmental cooperation*

The flow of information from the ‘field’ to the management is of utmost importance. To support this flow of communication at regional but also between and within departments, information coordinators (*Infostellenleiter*) have been installed. In addition, workshops and meetings are held regularly. The high importance of communication and information exchange within the organisation also results in a high degree of cooperation (direct, unbureaucratic) among legal and inspectorate staff and the customer service centre.

*“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 handling in practice, there are sometimes other problems than you see from the desk. You often don’t even realize how much effort is involved before a case even comes to us, i.e. which inspecting steps are necessary beforehand. In addition, perhaps, if one or the other topic should be emphasised 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 final point is the permanent updating and feed-back loops of investigative tools (as was explained with the handbook). The revisions are carried out jointly by the management and the employees of different departments.

#### *Comprehensive and low-threshold information strategies*

Another aspect concerns BUAK’s information strategies. It is comprehensive, including many channels of information such as brochures about different BUAK services and entitlements as well as personal information letters (ANI) in written form. BUAK also provides face to face and telephone consultation, at the customer service centres, at inspections on construction sites. In addition, the website [www.entsendeplattform.at](http://www.entsendeplattform.at) gives information particular to posted worker.

Principally, information is provided at low- threshold level, as is multi-lingual and accessible as regards opening hours at the customer service centres and direct contacts at construction sites.

### 3.3.2 Strategic enforcement and the role of social partners

One key point of implementation of the co-enforcement action is BUAK’s long-standing experience and great expertise in the construction sector. The industry is a highly complex one with a high variety of trades and respective collective agreements, and with an inclination (compared to other industries) of wage and social dumping. The high level of expertise is crucial for the implementation of the action, where BUAK employees have to prove an in-depth knowledge of sequences of work and operations on construction sites to efficiently carry out inspections.

*“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 countless collective agreements exist 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 success point.” (BUAK head of coordination unit)*

This point is also crucial when it comes to the rationale behind the implementation of the enforcement action. BUAK’s decision makers, i.e. social partners in the construction industry, know about the problematic issues in the industries.

*“We agree with the trade union, that we have to pay the same wage for the same work ... at the same workplace, so to speak, because otherwise I have a distortion of competition, of course, a relatively strong one. In other words, it is cheaper, not because the offer is more cost-efficient but, but because the employer cheats, that is why it is cheaper, or it is cheaper because it does not comply with the laws.” (Member of BUAK committee, Economic Chamber)*

On the basis of a social partner dialogue and mutual consent to ensure fair competition and decent labour standards, social partners of the construction industry proposed and prepared targeted measures to combat wage and social dumping in construction, they were formalised (in the form of legal stipulations) and finally implemented. This was a step-by-step process between the institution BUAK (implementing the action), the social partners (as BUAK’s decision makers) and the Ministry of Labour as the supervisory authority. In the beginning (2008), BUAK started to carry out counselling at construction sites – on a voluntary basis. The legal basis granting BUAK the right to inspect construction sites was introduced later (2009) in the BUA-G that stipulates BUAK’s competences. In 2011, the LSDB-G came into force. At that time, BUAK has already carried out construction site inspections to better ensure the payment of employer supplements. However, they were not in charge of inspecting construction workers’ wages and of detecting underpayment. This was a competence they received through the LSDB-G in 2011.

Due to the organisational structure of BUAK - leadership nominated on equal terms by workers’ organisations and employers’ organisations (Economic Chamber) - regular communication and regular exchange of information takes place. Hence, one of the most important influencing factors of implementation and dynamics is the commitment of both social partners of the construction sector towards the enforcement action.

*“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)*

## 4. Co-enforcement actions' contribution and effectiveness for promoting fair working conditions and preventing and/or tackling fraud and inequalities in working conditions

### 4.1 Monitoring and evaluations

BUAK is a statutory body under public law, tasked with the autonomous administration of statutory duties in defined trades of the construction industry (*Selbstverwaltung*). As such it is subject to a “review of legality” (*Rechtmäßigkeitskontrolle*) by the Ministry in charge (for the time being – March 2020 – called Federal Ministry of Labour, Family and Youth). This means the ministry as the supervisory authority attends and controls all sessions and assemblies of BUAK, i.e. assembly of committee, assembly of board, assembly of the supervisory committee. As BUAK is a social partner institution, the members of the diverse bodies are nominated on equal terms by the employers' representative organizations (Economic Chamber) and the employees' representative organizations (construction union Bau-Holz). The ministry is obliged to monitor if the resolutions taken by BUAK's bodies are in line with the law. If resolutions are not in line with the law, the ministry must appeal against it or repeal it. In addition, the ministry approves the statement of account (*Rechnungsabschluss*) or the service regulation (*Dienstordnung*).

*“Our supervisory authority is also the one that prepares the legal ground of our activities. These are the same people. The ministry is present at all our meetings. That means that each report prepared for the board is at the same time presented to the supervisory authority, i.e. the ministry. Since we have received this financial contribution [for the performance of the tasks within the framework of the LSDB-G], regular and specific reports on the inspection activities of the BUAK are submitted to the Ministry.” (Director of BUAK)*

The annual report that is submitted to the board and to the ministry presents the activities and results of the unit “*Sozialbetrugsbekämpfung-SBB/*combat of social fraud”. The report contains detailed headcount numbers, statistics about construction site inspections broken down by region, by inspected domestic and foreign companies, by inspected employees. Next, it presents the numbers of companies suspected of wage and social dumping again broken down by region, domestic and foreign companies and by employees affected. The report also contains statistics about underreported employment of domestic companies with BUAK (*Nachmelden von Beschäftigtenzeiten bei inländischen Unternehmen*), suspected cases of undocumented work (*Schwarzarbeit*), bogus self-employment (*scheinselbständige Tätigkeit*), weekend inspections (*Wochenendkontrollen*), imposition of supplement payments (*Zuschlagsvorschreibungen*), and part-time inspections (*Teilzeitkontrollen*). Finally, an overview over formal complaints on the basis of the LSDB-G is included, broken down by type of complaint (underpayment, thwarting (*Vereitelung*) of the inspection), region, fine requested, number of employees affected, number of companies affected, type of employer (public contracting), cessation of the procedure, request for interdiction of service (*Untersagung der Dienstleistung*).

The ministry is perceived as an important stakeholder for BUAK, as it is not only the supervisory authority but also a crucial advisor when it comes to legal revisions.

*“We experience them [the ministry] as very, very supportive. On the one hand because they are anchored in the committees as a supervisory authority, and on the other hand because they advise us in good time on what is actually*

*possible under EU law.” (Member of the BUAK board, construction union Bau-Holz)*

## 4.2 Input: staff and financing

Principally, BUAK is financed from contributions of employers to the BUAK. All in all, BUAK employs 245 people. For the inspection activities on construction sites and for the preparation of formal complaints on the basis of the LSDB-G, 35 inspectors and 10 persons for the legal office staff are engaged. Additionally, employees of other departments (e.g. customer service centre) are concerned with issues of wage and social dumping (among other tasks, of course).

BUAK receives € 2 million per year to combat social and wage fraud from the ministry in charge. This was the result of a negotiation process, as the interviewee from the Ministry of Labour, Family and Youth explains:

*“At the beginning, in 2011, there was no co-financing from the ministry. I personally did not find this justified, because it is a state task that BUAK additionally takes on and it is the responsibility of the state to finance it. The current amount has simply been negotiated. We have financed this increase in personnel. But in fact, BUAK is financing what has been done before and what will continue to be done, from the employers' contributions.” (Ministry of Labour, family, youth; supervisory authority)*

The director of BUAK justifies the co-financing with the positive outcome the intensified inspections trigger:

*“I also think that it [the inspection activities of wage and social dumping] has paid off overall. Let us just think of this thing with part-time workers: because we are pursuing it with so much energy, it is worth something, because several thousand people are now employed full-time rather than part-time. That probably brings in many times over in terms of taxes and social security contributions, doesn't it? So, if you create the proper conditions, it always pays off economically.” (Director of BUAK)*

From an operational point of view, financial means and personnel to fulfil the foreseen tasks are appropriate, according to the head of the coordination unit. It is of utmost importance to balance additional means and organisational development to keep the highest level of quality possible. Quality in this sense means to adequately train additional personnel, to develop procedures, communication and management tools accordingly (see section 3.3.1), and to sustainably orient the organisational development towards the aim of combatting wage and social dumping.

## 4.3 Output and outcome of BUAK's activities against fraudulent practices in construction

As already mentioned above, the dominant inspection strategy of BUAK is to inspect as many construction sites as possible and to show presence. However, some priorities are set, e.g. with regard to construction sites where inspectors already perceived irregularities (for details of the selection process which construction sites are inspected, see section 3.3.1). The focus of inspections is on underpayment in the context of the LSDB-G and recently on the detection of fraudulent part-time work.

Success and efficiency are interpreted in terms of the numbers 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 substantiality 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 BUA-K were suspected of underpaying their employees, whereas in 2019 the percentage dropped to 37%. Of domestic (Austrian) companies, 1% was suspected of underpayment, in 2019 the percentage was at 0.8% (Source: BUA-K annual report 2018, not published).

When it comes to fraudulent part-time work, a success factor is when the number of part-time employees goes down. Hence, a good example for demonstrating the effectiveness of BUA-K inspections is the detection of the misuse of part-time employment. It is also an elucidating example of BUA-K's self-perception as a social partner organisation *co-producing* regulations and hands-on implementation (Hardy, 2011).

In 2018, the social partners agreed upon an amendment of BUA-G to inspect part-time employment in construction more efficiently. The rationale behind it was that BUA-K identified in its statistics an implausible number of part-time employments in construction. Analysing the statistics, it became obvious that some, in particular small and medium domestic companies, had a 90% quota of part-time employees what cannot match with real working time. Construction workers are registered for part-time work, the rest of the working time is paid in cash. With the existing registration and inspection practices, it was easy to cheat on working time. Hence, the social partners negotiated the following obligations to record working time that included the positioning of working time, i.e. at what times exactly employees were at work/ at the construction site:

*“The employer must report the part-time employee. We knew he was a part-time worker even before. So, the employer has to declare additionally: How many hours does he work? He has to declare place of the construction site so that we can find him. And he has to announce the positioning of the working time and every change in working time.” (Director of BUA-K)*

If during an inspection the employer does not adhere to this working time recording, a formal complaint is made to the district administration authority and a fine can be imposed (§32 BUA-G). In addition, the employer has to repay BUA-K supplements for the preceding months. This new regulation led to an effective reduction of part-time employment in the construction sector, according to the BUA-K director.

BUA-K perceives itself not only as an inspection authority but also as a social partner institution servicing its clients (employers and workers). Hence, another indicator for the effectiveness of BUA-K's activities is the number in consultations BUA-K provides. In 2018, BUA-K had 16,839 face-to-face consultations and 23,202 by email. Information is also provided at the inspections on construction sites and via the ANI.

*“Our task is, on the one hand, to ensure that the employee is informed that the BUA-K exists, that he knows about his claims. But of course, it is a difference to know about these facts and to actually get them. We have to admit that even the claims against the BUA-K [e.g. holiday supplements] are dependent on the employer's payment. We only get part of them. (...) And as far as the worker's wage claims are concerned, we inform him about the formal complaint. But what he continues to do is a gap that we haven't been able to close yet.” (Director of BUA-K)*

This citation tackles one key question that remains, namely how the step from information to concrete support of construction workers could be accomplished. A major hinderance in that is BUAK's social partner structure and its competences established by law. The respective regulations do not foresee the individual support of workers to claim their wages. It is restricted to ensure compliance with public law (among others LSDB-G, BUA-G) but not to prosecute individual claims. This is a somewhat frustrating and incomplete role in the end, as affected workers need to turn to another institution, such as the Chamber of Labour or the union, to receive support for this final step of becoming right and material compensation. Sometimes, however, it is too late for raising a claiming when claiming periods have already expired.

Other barriers of enforcing wage and entitlement claims, and fines imposed due to wage and social dumping are of structural nature. When it comes to the cross-border enforcement of claims of BUAK supplements, BUAK faces major difficulties to get them. Only around 60% of claims for BUAK supplements from foreign (=posting) companies are paid, however the trend is rising (Source: BUAK annual report 2018, not published).

## Conclusions

The co-enforcement measures scrutinised for this report affect the construction industry. This is an industry where – compared to other industries – underpayment, in particular of foreign companies active in Austria, is one of the main problems in terms of fraud. Another issue is – or was – the registration of workers as part-time workers although they work full-time on construction sites. Other fraud-related topics are bogus self-employment and bogus companies in connection with long sub-contracting chains.

### *New and integrated enforcement competences for a social partner institution*

Since 2011, BUAKE – a social partner institution in the construction sector – has been increasingly endowed with the inspection and verification of the above-mentioned infringements. Up until 2011, the financial police and the (at that time regional<sup>20</sup>) health insurance providers were the only 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 rather diffused. The inspection of minimum wage is in the scope of competences of the financial police if Austria is not the worker's habitual place of work (= also in case of posting of workers). The financial police carry out checks at the working places (e.g. construction sites). They announce suspicious cases to the Competence Centre LSDB. This centre verifies suspicious cases of underpayment and files the formal complaint on the basis of the LSDB-G if the suspicion is confirmed. For Austrian companies, the regional health insurance providers are competent to check minimum wages at the premises of a company.

This means, different authorities are in charge of inspection, verification and the filing of the formal complaint for the same case; and different authorities are in charge whether it is a foreign or a domestic company. Institutions such as the financial police, or the social insurance providers are overwhelmed with a variety of tasks. Construction in particular is a complicated trade, with a high incidence of wage and social dumping. Hence, to entrust BUAKE as an additional institution with the whole process of inspection, verification and filing of the formal complaint was a step that led to more 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.

To sum up, BUAKE is a statutory body under public law and as such entrusted with a number of tasks, services and responsibilities in the construction sector. On the one hand, it administers specific social security contributions of employers (such as holidays and severance pay, entitlements, bad weather compensation etc.). On the other hand, since 2011 onwards it was entrusted with additional tasks, such as the inspection of wages, the submission of formal complaints (e.g. underpayment) to the district authority, the registration (e.g. construction site data base) and inspection of foreign/posting and Austrian companies in the context of the LSDB-G. These activities help to protect wage levels in the construction industry and to sustain a level playing field for domestic and foreign companies active in the construction sector.

BUAKE is an institution with high trust from both employer and employee side. In the construction industry, it is well known as it is entrusted with the administration of compulsory supplements and pay-out of the respective entitlements to the workers. Hence, BUAKE shows continuous presence and provides detailed information about its services to both employers and employees,

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<sup>20</sup> Since January 2020, the regional social security institutions have been subsumed under one body: the Österreichische Gesundheitskasse.

including posted workers. Information and consultation are provided in different languages and in a low-threshold manner.

At the same time, BUAK's self-perception is that of a social partner institution and of an authority enforcing the respective laws. They make clear that they act in the interest of the industry, of both employees and employers. This is an important aspect when it comes to the claiming of wages on behalf of construction workers. There is on the one hand a lacking social partner commitment to compromise on this issue and on the other hand a lacking legal basis for supporting the enforcement of workers' entitlements. Hence, no specific counselling is given to workers how to proceed with claiming entitlements when an employer is sentenced to a fine because of underpayment, and the support of workers to claim client liability is rather insufficient and not enough from the (cheated) workers' perspective.

There are several advantages to equip BUAK with inspection and enforcement competences related to the inspection of wages: first, the high expertise of the institution, especially about collective agreements in place; second the "short ways" between the institution and the social partners of the industry to discuss flaws and successes of the measure (responsive regulation); third the high awareness of employers and employees about 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 individual level while pure collective enforcement brittles (Baccaro & Howell, 2017).

### *Co-producing regulation*

BUAK itself is one of the authorities that inspects potential fraudulent practices in the construction industry. At the same time, it is a parity social partner institution. As such it was involved in the co-production and in refining the implementation of the respective regulations. Both social partners have a high commitment to a "clean industry" that is compliant with the existing rules against wage and social dumping. As a social partner institution that knows the working conditions industry very well, it was evident to be entrusted with overseeing compliance.

The entrustment of these competences to BUAK was a clear political aim of BUAK's board, and consequently pursued. As an institution with high sectoral knowledge about the most relevant infringements, it launched in 2009 an internal project to inspect construction sites – at that time on a voluntary basis and without enforcement competences. Subsequently, BUAK's board as the decision-making body initiated – in cooperation with the competent ministry – the process for effecting BUAK's competences to inspect and verify construction workers' wages in the new LSDB-G. This means, BUAK was through its board involved in co-producing the formal and legislative framework of combatting wage and social dumping in the construction industry, and it developed the optimal way to enforce this framework by judicious implementation measures (Hardy, 2011; Piore, 2011). This step was a strategic orientation of BUAK towards additional competences, including staff recruitment and staff redirection towards the new tasks. It is important to note that these new competences did not lead to a disruption or complete reorientation of the institution. Still, prevalent is the administration and organisation of the "old tasks". The new ones have been adopted step by step, accompanied by prudent organisational development.

Following the respective literature, we can identify two roads of better enforcement when analysing BUAK's strategies and actions:

On the one hand, they encompass what (Hardy & Howe, 2015; Weil, 2011, 2018) call strategic enforcement. This includes a (somehow natural) prioritisation what and where to enforce: it is industry-specific with a focus on "fissured employment" in terms of vulnerable workers and

fragmented supply chains. The strategies and actions aim at sustainable and ongoing compliance, i.e. towards an institutionalisation of positive compliance, as inspections are carried out often and information to employers and employees is outreaching. In addition, they target systemic effects and want to find out what are the drivers of compliance (e.g. efficiently prepared inspections).

On the other hand, BUAK's strategies and actions rely on co-enforcement (Amengual & Fine, 2017) where actors play both political and operational roles. State regulators and authorities (such as BUAK) have coercive power, inducing to force compliance, and have a high knowledge of the complexities of law at national (LSDB-G) and European level (e.g. posting regulations, enforcement regulations). Industry-specific social partners have high sectoral - accurate and complete - knowledge of the industry, including working conditions, tacit knowledge, first-hand experiences, and direct communication networks. These two stakeholders (authorities/state regulators and social partners) are acting in a complementary manner to co-produce the regulations at a political and co-enforce the action at an operational level.



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## Abbreviations

ANI: Arbeitnehmerinformation (Worker Information Sheet)

BUA-G: Bauarbeiter-Urlaubs-und Abfertigungsgesetz (Construction Workers Holiday and Severance Payment Act)

BUAK: Baurarbeiter-Urlaubs-und Abfertigungskasse (Construction Workers Holiday and Severance Payment Fund)

IMI: The European Internal Market Information System

LSDB-G: Lohn- und Sozialdumping-Bekämpfungsgesetz (Anti-Wage and Social Dumping Act)

SBB-G: Sozialbetrugsbekämpfungsgesetz (Anti-Social Fraud Act)

ZKO: Zentrale Koordinationsstelle (Central Coordination Unit at the Ministry of Finance)



# ANNEXES

## ANNEX I

### *“Traditional tasks” of BUAK*

BUAK’s main aim is to compensate disadvantages of seasonal fluctuation for workers in the construction industry. This concerns the management of leave and severance pay entitlements and of bad weather compensation. In 2014 the bridging allowance (an interim supplement paid to unemployed construction workers prior to retirement) became an additional area of BUAK’s tasks.

#### Leave entitlements (holiday provisions):

The aim of the holiday provision is to ensure that construction workers whose employment rhythm is marked by seasonal interruptions are also able to acquire and use annual leave days. This provision is company-independent and industry-specific. The worker may build up the qualifying weeks required for their holidays through work in several different companies, if these fall within the scope of application of BUAG. The worker takes his qualifying weeks and leave entitlements with them to the next company. The leave itself can also be consumed while working for a company at which the employee has not yet qualified on the basis of his current employment contract. BUAK’s tasks include data administration and organising companies’ payment of contributions, as well as managing and investing the capital that has been paid in, and ultimately paying it to the employee. For leave entitlements that are not used in the form of a holiday, the employee can be reimbursed with a compensation payment or holiday compensation<sup>21</sup>. Since 2005 workers posted to Austria or cross-border workers whose usual place of work is outside of Austria have been included in the BUAK holiday fund procedure.

#### Severance pay entitlements:

This provision applies to construction workers who have fulfilled the requirements for the acquisition of compensation entitlements. Requirements are: 156 weeks (= 3 years) of continuous employment at a single company or at least 92 weeks of employment within the 3-year period in the course of one or several employment contracts with the same employer. Any breaks between employment contracts must not be longer than 22 weeks.

#### Bad weather compensation:

Weather is a significant factor in work operations in the construction professions. For companies, unfavourable weather conditions result in problems posed by the cost of lost working hours. In the case of construction workers who perform the majority of their work outdoors, bad weather conditions result in work disruptions which are associated with loss of earnings. The bad weather provision aims to resolve this problem. It provides for the reimbursement of the incurred costs to the companies, as well as compensation for the loss of earnings that arises when work is interrupted due to bad weather. Bad weather compensation is regulated by the Construction Workers’ Bad Weather Compensation Act [Bauarbeiter-Schlechtwetter-Entschädigungs-Gesetz] (BSchEG) Previously, the term ‘bad weather’ was used in connection with the cold, rain, snow, etc. As the result of new factors (climate change), extremely hot temperatures have also been included under the term since 2013. The compensation is equal to 60% of the worker’s actual

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<sup>21</sup> BUAK at a glance, 2020:  
[https://www.buak.at/cms/BUAK/BUAK\\_10.3.1/fuer-arbeitnehmerinnen/leistungen](https://www.buak.at/cms/BUAK/BUAK_10.3.1/fuer-arbeitnehmerinnen/leistungen).

wage. Supplements in this area are not collected by BUAK; rather, the relevant amount is collected directly by the regional health insurance fund.

Bridging allowance (an interim supplement paid to unemployed construction workers prior to retirement):

For the social partners in the construction industry, the goal was to provide construction workers who have worked in construction for many years and cannot continue to work until retirement age (old age, manual labour and “corridor pension”) with advance protection in the form of an interim supplement - a monthly compensation for the last eighteen months - until they actually retire.

*Financing of “traditional” tasks – Paying of supplements*

In order to be able to pay employees’ claims, amounts known as supplements are collected from BUAK for the various areas. The supplements are paid by the company or employer-company of posted or hired out employees. For instance concerning leave entitlements (holiday provisions) the employer pays for each worker, a holiday supplement into the holiday fund for every qualifying day. Five qualifying days make up one qualifying week. The daily supplement is calculated on the basis of the worker’s hourly wage as per their collective agreement, increased by 20% and multiplied by a factor which is taken from the worker’s normal weekly working hours.

## ANNEX II

When determining whether the BUAG<sup>22</sup> is applicable, the key consideration is whether the type of work performed in Austria can be classified under one of the types of businesses and activities listed below:

Master builder  
Master mason and bricklayer  
Construction firms  
Bending and installation of structural iron  
Demolition companies  
Businesses whose owners are licensed to carry out masonry and bricklaying  
Earth-moving, digging and ditching  
Earthworks  
Concrete drilling and cutting  
Water regulation businesses  
Torrent control and avalanche protection  
Improvement work  
Road construction firms  
Agricultural road construction  
Grinding out chimneys and flues  
Thermal insulation of building façades  
Master stone masonry businesses  
Businesses whose owners are licensed to carry out the stone masonry trade  
Cast stone manufacturing  
Terrazzo installation firms  
Roofing  
Paving  
Stove fitting businesses (except for manufacturing only)  
Pavers and tilers  
Master well sinker  
Businesses whose owners are licensed to carry out the trade of well sinking  
Deep drilling companies  
Scaffolding rental  
Construction equipment rental with operating personnel  
Thermal, acoustic and fire insulation  
Asphalting businesses  
Bituminous pavers  
Sealing against moisture and water under pressure  
Stucco and drywall installation  
Plasterwork  
Installation of xylolite flooring  
Screed manufacturing businesses  
Carpentry  
Businesses whose owners are licensed to carry out the carpentry trade  
Parquet flooring businesses  
Temporary work agencies hiring out workers to construction works

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<sup>22</sup> [Bauarbeiter-Urlaubs- und Abfertigungsgesetz] (BUAG)  
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008275>.