

Exploring co-enforcement in the construction sector: three case studies

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Outline

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4. Co-enforcement in theory
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1. Introduction

- SPLIN research on construction sector focused on co-enforcement approaches (Amengual and Fine, 2017; Fine, 2017; Fine and Gordon, 2010):
 - Contributions of worker and employer organisations for co-enforcing labour standards jointly with national labour inspection institutions
- Several co-enforcement actions were identified and explored in three countries: Austria Spain and Poland



2. Methods: multiple holistic case study design

Three cases studies:

- Desk research
- Semi-structured interviews conducted with main stakeholders involved in the design and the implementation of the enforcement action (39 in total)
- Direct observation



3.1. Understanding fraudulent practices in the construction sector

- Labour intensive sector
- Complex subcontracting chains: “fissured workplace” (Weil, 2014).
- Institutional factors at EU (PWD) and national level -fiscal and labour law regimes- (Behling and Havey, 2015)
- Segmentation: supply side factors (Rubery, 2005; Reynieri, 2004; Meardi et al., 2010; Alo, 2013)



3.2 Fraudulent practices in the construction sector in Austria, Spain and Poland

Common fraudulent practices and domestic frauds, which reflect the impact of the national institutional framework and PWD in each of the countries studied:

- Bogus self-employment
- Bogus companies
- Underpayment
- Misuses or violation of working time regulation
- Circumvention of health and safety regulation
- Irregular classification in collective agreements



4. Co-enforcement in theory

- Co-enforcement: ongoing coordinated efforts of state regulators and social partners to jointly produce labour standards enforcement (Amengual and Fine, 2017)
- Co-enforcement draws on ideas of two main approaches
 - “Responsive regulation” and, particularly, the tripartism model elaborated by Ayres and Braithwaite (1991)
 - Co-production theory (Ostrom, 1996)



4. Co-enforcement in theory

Co-enforcement mechanisms (Fine, 2017)

- Non-substitutable elements of state and society
- Strategic enforcement approach
- Routinization of the flows of information and resources between state and society
- Building political support



5.1 Co-enforcement in Austria. BUAK experience

- BUAK: construction social partners inst. and statutory body
- In 2011 BUAK received new competences for the whole process on wages inspection (LSDB-G).
- New regulation was the outcome of previous social partners' agreement, who brought the proposal to public authorities
- Implementation:
 - Wage inspection at construction sites: individual questionnaires, IT system and observation
 - Verification of underpayment: law department
 - Customer service centre (ANI)
- Very positive assessment of actions' contributions to improve compliance with labour standards

5.2 Co-enforcement in Asturias (Spain)

- Social partners autonomous enforcement actions (CB):
 - Social partners delegates carrying out “labour inspections”
- Co-enforcement is driven by social partners’ strategic engagement of public institutions since 1998: regular communication, joint training actions, information sharing
- Co-enforcement was institutionalised in 2017 through a tripartite agreement which:
 - routinized the information sharing process
 - regulates accountability and coordination mechanisms
- Very positive assessment by social partners and labour inspection. Social partners’ delegates offer a more nuanced view (coordination difficulties)

5.3 Co-enforcement in Poland

- Three soft-regulatory agreements containing some co-enforcement elements were analysed
1. The Agreement for Safety in Construction sector (ASC), 2010
 - Non-binding agreement between largest companies in the construction sector, supported by the Chief Labour Inspection, EO and TU
 - Health and safety standards and protocols/solutions, company visits
 2. The Agreement on Minimum Wages in Construction sector (AMW), 2014
 - Minimum wage regardless form of the contract: annual indexation
 - TU enforce the agreement (low capacity)



5.3 Co-enforcement in Poland

3. The Agreement for Occupational Safety at the Operation of Cranes (AOSOC), 2017
 - In addresses vulnerability of crane operators (bogus self-employment, labour accidents, etc.), in a context characterised by outdated regulation about health and safety
 - Proposal to amend the outdated regulation on health and safety, led by unions. EO joined to the initiative. Labour Inspector provided technical support
 - New draft bill was adopted in 2018 and went into force in February 2019.



6. Conclusions

- Co-enforcement studied in very diverse context and institutional frameworks
- Different regulatory mechanisms and social partners' roles
- Evidences of some similar co-enforcement design principles
 - social partner actors play both political and operational roles in enforcement policies (AT and ES)
 - 'strategic enforcement approach': sustainable and ongoing compliance
 - non-substitutable elements
- Different social partners approaches to enforcement