



SPLIN Policy Brief #1

Co-enforcement of labour standards in
construction and the maritime sector
– main conclusions and policy recommendations



February 2021

SPLIN conducted research on strategic and innovative practices of social partners and labour inspectorates to improve the efficiency of enforcing labour standards, especially in sectors with an inclination to non-compliant employer behaviour. This policy brief will highlight main conclusions of the actions explored and formulate policy recommendations based on the research findings.

In the **construction sector**, SPLIN has selected and analysed **several co-enforcement practices** developed in **Austria, Spain and Poland**. In **maritime shipping**, SPLIN has focused on studying **the characteristics of the International Transport Workers Federation (ITF) inspectorate network**. The research has compared the implementation of this action in **Finland, Poland and Spain**.

THE CONSTRUCTION SECTOR: ENFORCEMENT CHALLENGES AND SOCIAL PARTNERSHIP RESPONSES

NON-COMPLIANCE WITH LABOUR REGULATIONS IN CONSTRUCTION

SPLIN has identified several common as well as nationally specific non-compliant employer behaviour in the three countries studied (Austria, Spain and Poland). A **key and common labour law related infringement is bogus self-employment**, that is disguising employment relationships with self-employed, commercial contracts to save on labour costs. Other relevant fraudulent practices include underpayment, misuse of working time regulation, occupational health and safety irregularities, undeclared work, the irregular classification in collective agreements, and the establishment of bogus companies.

In Poland, the problem of **underpayment** is particularly linked to civil contractors and self-employed workers, given the fact that the government regulated a minimum wage for some self-employment contracts. In Spain and Austria, underpayment is related to incorrect payment of wages, social security contributions, and allowances, supplements and special payments which are regulated in sectoral collective bargaining. While in Spain underpayment mainly affects local workers, in Austria it mainly is an issue of posted workers.

Misuses or violation of working time regulation were particularly highlighted in Austria and Poland. In Austria, it affects, on the one hand, posted workers who consent to working more than

the legally permitted working hours per day, per week or per month. On the other hand, it is related to abusing part-time work: workers who are registered as part-time workers with social insurance providers while in fact work longer hours, usually full-time. In Poland, labour inspection audits have revealed considerable abuses in registering working time, a significant part of which occurred in SMEs in the construction sector.

Circumvention of health and safety regulation is a crucial aspect in construction, given the comparative high number of accidents that this sector records. In Spain the high incidence of labour accidents is associated with extended subcontracting practices where subcontractors, particularly SMEs, were not fulfilling health and safety regulations.

CO-ENFORCEMENT IN THE CONSTRUCTION SECTOR

In construction, SPLIN took a closer look at co-enforcement actions, where (institutions of) social partners take on inspectorate roles or where an intense cooperation between public authorities and social partners to jointly enhance the capacities of inspectors and to improve the enforcement of labour standards, take place.

In **Austria**, the **co-enforcement action** studied is **related to the state delegation of enforcement competences to a social partner institution** (*Bauarbeiter-Urlaubs- und Abfertigungskasse*, BUAK) with high industry expertise, **following the enactment of the Anti-Wage and Social Dumping Act** (*Lohn- und Sozialdumping-Bekämpfungsgesetz*, LSDB-G). Competences delegated to the social partner institution include the right to inspect wages at construction sites, to verify suspected

cases of wage and social dumping, and to submit a formal complaint to the district authority. An innovation in the Austrian context, because previously such competences have been exclusively under the domain of other institutions, namely the financial police and the health insurance providers. The decision to endow BUAK with further competences was taken due to BUAK's deep knowledge of the sector, its high reputation among both worker and employer representative organisations, and the active role of BUAK social partners in the legislation process to seize these competences.

In **Spain** (Principado de Asturias), SPLIN studied the institutionalised cooperation between the Asturian regional offices of the Spanish National Labour and Social Security Inspectorate (*Oficina Regional del Principado de Asturias de la Inspección Nacional de Trabajo y Seguridad Social*) and the Asturian sectoral social partners through the Commission on Health and Safety and Hiring Prevention (*Comisión de Seguridad y Prevención de Riesgos Laborales y Contratación*, COPREVAS). The co-enforcement action aims **to promote fair competition, improving working conditions, and better enforcement of health and safety standards**. The main outcome of this cooperation concerns the introduction of social partners' delegates in 1999, who were mandated to carry out inspections aiming to enforce health and safety, and labour contractual regulation. Since then, social partners strategically engaged public authorities (particularly labour inspectorates) with a view to improve the efficiency of their enforcement actions. This cooperation proved to be beneficial for both. Thus, in 2017, **a formal co-enforcement agreement** between the social partners and the state authorities was reached. This tripartite agreement institutionalises regular exchange and transfer of information between social partners and the labour inspectorate, and created accountability and coordination mechanisms.

In Poland, **three autonomous (non-binding) agreements containing some co-enforcement elements were analysed**: the Agreement for Safety in Construction (*Porozumienie dla Bezpieczeństwa w Budownictwie*, ASC), the Agreement on Minimum Wages in Construction (*Porozumienie w sprawie stawki minimalnej w budownictwie*, AMW), and the Agreement for Occupational Safety in the Operation of Cranes (*Porozumienie na rzecz Bezpieczeństwa Pracy przy Obsłudze Żurawi*, AOSOC). In all three agreements, **co-enforcement** results from the **cooperation of the National Labour Inspectorate with social partners** regarding certain different elements, particularly those related to knowledge sharing and technical advice. In addition, it

is worth noting that the National Labour Inspectorate has played a key role in promoting the autonomous agreements.

DIFFERENCES AND SIMILARITIES OF CO-ENFORCEMENT ACTIONS

The cases researched **in Austria and Spain both rely on strong social partnership approaches to co-enforcement**. Here, co-enforcement actions are the result of social partners' historical joint efforts in improving enforcement through social dialogue in cooperation with the state. Another relevant feature of these cases is that social partners play a key role in setting labour standards through collective bargaining. On the contrary, **the Polish industrial relations context is embedded into a weak institutional environment** where sectoral regulation based on social dialogue or collective bargaining is less developed. In this context, co-enforcement initiatives have relied on soft-regulatory mechanisms based on non-binding agreements.

Concerning co-enforcement design principles, the Austrian and Spanish experiences show how social partner **actors play both political and operational roles in enforcement policies**. In both countries, social partners do not only contribute to the design or evaluation of enforcement policies, but also play an active role in ensuring employer compliance with labour standards through inspections in the workplace. On the contrary, in Poland, social partner inspection activities are only superficially defined, and inspection was not the outstanding element of the actions studied.

Second, the cases studied in the three countries reflect a **strategic enforcement approach**. They focus on a sector with fragmented supply chains and vulnerable workers; and are aimed at sustainable and ongoing compliance through social partner and company involvement in safeguarding labour standards and promoting a fair competition culture.

Third, the success to improve working conditions and to tackle fraudulent practices is also the result of the **non-substitutable elements that each partner, ie. social partners and state authorities, provides**. This is related to how the actions benefit from tacit knowledge of social partners on construction industry on the one hand, and from public authorities' enforcement competences backed by the state on the other hand. In addition, social partners contribute to improving enforcement by adding to Labour Inspectorate's information base, human and material resources.

THE MARITIME SHIPPING SECTOR: TRANSNATIONAL INDUSTRY AND TRANSNATIONAL TRADE UNION ACTIONS

CIRCUMVENTING LABOUR REGULATION IN MARITIME SHIPPING

In maritime shipping, the Flag of Convenience system has removed much of the world's shipping beyond the bounds of national labour regulation and collective bargaining. The FOC system is a long-standing practice consisting of registering a ship in a state other than that of the shipowner's in order to circumvent all kinds of regulations and to reduce costs. As a counterbalance, ITF created the FOC campaign with the aim to end the FOC system and to improve seafarers' working and living conditions by implementing **ITF inspections and global industry level collective bargaining**. In addition, **the Maritime Labour Convention (MLC 2006)** is the most significant convention establishing minimum requirements for decent working and living conditions for seafarers.

Despite this international regulation based on the MLC 2006 and the ITF collective agreements, a lack of regulatory enforcement results in various kinds of labour violations, safety violations and fraudulent employer activities, which ITF (and government) inspectors find on international shipping. The type of deficiencies and fraudulent practices discovered by ITF inspectors in the three countries studied (Finland, Spain and Poland) include **problems with owed wages, double bookkeeping** including false overtime records, **absence of proper rest time, lack of collective agreements and/or inadequate ITF agreements, non-compliance with international standards, substandard living and working conditions** (such as the lack of food or water supply) and **medical deficits**. Another problem faced by ITF inspectors concerns the situation when a shipowner fails to cover the cost of the seafarers' repatriation once their work contracts have ended. On rare occasions even an abandonment of the ship takes place which requires special supervision by the inspectors.

TRANSNATIONAL TRADE UNION ENFORCEMENT ACTION IN THE MARITIME SHIPPING SECTOR

The ITF inspectorate network is an efficient instrument to protect seafarer welfare and ensure the viability of the ITF's wage bargaining strategy. **The implementation rules of an ITF enforcement have their origin in the FOC campaign. Currently, there are more than 100 ITF inspectors**

worldwide who conduct the FOC campaign with the aim to promote fair working conditions in the international maritime community, using tools of union organizers and labour inspectors.

An enforcement action can be comprised of a routine inspection or a more detailed inspection depending on the reason for an inspection. Routed enforcement comprises of annual inspections of FOC ships, control of agreements including ITF or other collective bargaining agreements (CBAs), and inspection of possible problems related with occupational working and living conditions. Routine inspections can result in a negotiation of an agreement between ITF union and ship owner if the CBA does not meet ITF standards, is lacking or not valid. The inspectors may also require shipowners to solve possible problems related to the working and living conditions of seafarers, such as correction of working hours and payment of unpaid wages. If such problems cannot be solved through negotiation with the shipmaster and the owner, an embargo may take place. An embargo is a partial or complete stop to loading or unloading the ship, or in some cases a stop to other services too. In the realization of an embargo, it is common that ITF inspectors ask for help from ITF affiliated unions, or sometimes other unions. Other forms for pressure such as contact with port state authorities may also be mobilized.

CO-ENFORCEMENT IN MARITIME SHIPPING

The realization of ITF enforcement actions, as embargoes and ITF inspections, sometimes occurs entirely through the ITF's own resources, but often also involves diverse forms of **co-enforcement cooperation between ITF inspectorates and their cooperation partners**. These include **other public authorities** such as Port State Control (PSC) and labour inspectorates or **unions from other countries and industries, i.e., the dockers, belonging to the ITF**. The actors bring different methods and interests to their enforcement activity, but also share many common goals. The ITF is primarily interested in protecting seafarer wage levels and working standards via collective agreements, while Port State Control and labour inspectorates have their own slightly different priorities set out in national laws and international agreements (MLC).

In Finland, the cooperation between ITF inspectors, labour inspectors and port state controllers has remained underdeveloped partly because of the diversity of tasks each inspectorate is in charge of: the ITF inspectors focus on ensuring the fair

payment of wages and correct hours of work and rest; PSC is the lead actor for enforcing national regulations and is in charge of giving either approval or disapproval for MLC 2006 certificates for FOC ships; the labour inspectorate (AVI inspectors) check on the occupational health and safety of the seafarers (mainly on ships under the Finish flags). On the contrary, **cooperation between ITF inspectors and other transport unions** has proved to be an **effective way to force shipmasters and/or owners to take responsibility of their FOC ships** that lack agreements or pay substandard wages

In Poland, **cooperation** between **PSC authorities** and **ITF inspectors** has worked **efficiently**, whereas **cooperation** between the **ITF inspectors** and the **Polish national labour inspectorates** (PIP) in FOC ship inspections **seldom** takes place. The PIP inspectors focus their inspections rather on vessels flying under the Polish flag (although there are only few Polish vessels which are not under FOC ships). As in Finland, **cooperation between ITF inspectors and other union representatives is strong**. ITF inspectors in Poland can rely on the help of dockers in circumstances where a FOC ship lacks an ITF agreement or CBA, or when problems related to occupational work and safety appear.

In Spain, **important cooperation** takes place between **ITF inspectors** and **Port officers**. **Labour and Social Security inspectorates do not intervene** as they do not have competence to enforce the MLC 2006, according to the Spanish legislation. The ITF inspectorate in Spain does not have other significant trade union cooperation partners, such as dockers who could help realizing an ITF co-enforcement action. This has chiefly to do with seafarers and dockers belonging to separate unions.

OUTCOMES AND POLICY POINTERS

All the co-enforcement actions studied in SPLIN have achieved promising outcomes at different levels:

1. They improved compliance with health and safety in two sectors where accident and health risks for employees are very high (Asturias/Spain, Poland, ITF);
2. They provide targeted and efficient inspections of bogus self-employment (Asturias/Spain) and underpayment (Austria);

3. They include negotiation, setting and efficient inspection of minimum labour standards (Poland, ITF);
4. They achieved better information for employers and workers about rights, standards, and obligations concerning occupational health and safety, wages, and other working conditions (Austria, Asturias/Spain, Poland, ITF).

In this sense, the actions can serve as good and exemplary practices to counteract and reduce fraudulent practices in two highly problematic sector, through different degrees and forms of cooperation between social partners and state authorities.

SPLIN research identified some key features in these actions as particularly capable to strengthen enforcement and to improve the inspection of labour standards, including in a transnational context.

COOPERATION BETWEEN SOCIAL PARTNERS AND STATE AUTHORITIES BEYOND MERE CONCERTATION

SPLIN has gathered evidence which confirms the relevance of co-enforcement approaches to improve fair working conditions. In the cases studied, cooperation between social partners and state authorities in enforcement policies goes beyond concerted actions. It entails that social partners have either **operative functions and contribute to the implementation of enforcement policies** in a long-term manner and/or accomplish this jointly with state authorities. In doing so, **social partners share resources and relevant information of the labour process and business models with state authorities** which enhance efficiency of enforcement policies: Public authorities can access the unique type of information that social partners can gather. At the same time, social partners benefit from the increased transparency on how cases brought to the Labour Inspectorate are carried out, and, as a result, they can gain legitimacy in the eyes of their members. In terms of resources, trade unions can enhance operational capacities of labour inspectorates by providing inspectors with additional external resources. This is particularly important in times of labour inspectorates facing budget constraints. Moreover, enforcement benefits when **social partners or social partner institutions have important roles in co-designing aims and procedures of enforcement tools** in political processes or in implementation processes.

SOCIAL PARTNERS AND UNION POWER RESOURCES

SPLIN has analysed several initiatives in the construction sector which illustrate a social partnership approach aiming to enforce labour standards. While autonomous trade unions' actions are essential, **social partnership approaches can be more effective to ensure sustainable and ongoing compliance due to the unique role employers may play in promoting a fair competition culture.** When employer organisations are “on board”, for example by co-financing the action, they are aware of their role to actively endorse and ensure compliant employer behaviour.

Conversely, in maritime shipping, the ITF's ability to enforce standards is based (and limited) mainly on (by) the **power resources of the unions themselves**; this means the greater the union power resources, including the ability to execute “embargoes” through union cooperation, the higher the level of shipowner compliance with regulation that can be expected.

STRATEGIC ENFORCEMENT

Strategic enforcement is a successful way to concentrate resources on specific sectors, specific problems (e.g., OSH, underpayment) and business models or specific regions. When inspections focus on a specific sector, they are in a better position to understand how companies operate and identify the main causes of fraud and abuses. An essential feature of effective enforcement is that **inspectors not only have targeted but also comprehensive competences**, including for instance the inspection, verification and complaint of abuses.

TRANSNATIONAL CO-ENFORCEMENT AND COOPERATION

To strengthen transnational cooperation between trade unions and state authorities is a promising response for industries relying on a mobile and international workforce. SPLIN shows that ITF inspectors have an exemplary model of transnationally coordinated labour inspection which contributes to improve enforcement of labour standards in a sector where transnational business strategies deprive workers of decent working conditions. Here, rather uniquely, one **transnational organisation** (the ITF) concerters inspection objectives, inspection tools and inspector training, and as a strong international representative body, supports and guides its member unions actions.

Although Port State Control inspectors are also well embedded in transnational enforcement systems they primarily focus on shipping safety and technical issues rather than labour standards, despite having a mandate to check labour standards under the ILO's Maritime Labour Convention of 2006. While ITF and PSC inspectors could develop an even better mutually beneficial co-enforcement style cooperation, the strong transnational cooperation found in maritime shipping could be exemplary to improve working conditions in other industries.



<http://splin.forba.at/>

SPLIN Policy Brief #1

Co-enforcement of labour standards in construction and the maritime sector – main conclusions and policy recommendations

February 2021

This policy brief was produced for the project SPLIN (Fair working conditions: exploring the contribution of cooperation initiatives between Social Partners and Labour Inspection authorities) that receives funding from the EC within the budget line „Improving Expertise in the field of Industrial Relations“, GA VS/2019/0080. The European Commission is not responsible for any use that can be made of the information contained therein.

