



SPLIN Policy Brief #2

Co-enforcement of labour standards in construction and the maritime sector – lessons learnt and options for transferability



February 2021

SPLIN analysed outstanding practices of social partners and social partner institutions in cooperation with Labour Inspectorates that adopted a co-enforcement approach. Co-enforcement actions can be defined as the ongoing coordinated efforts of state regulators and social partners to jointly produce labour standards enforcement. SPLIN selected promising examples of co-enforcement from two industries: construction and maritime shipping. When businesses make a strategy of depriving workers of their rights, using complex and transnational business models to exploit regulatory loopholes and undermine fair competition, as it occurs in both industries, innovative inspection practices can make the enforcement of labour standards more effective. We derive conclusions, lessons learnt and options for transferability of co-enforcing labour standards from the following cases:

- Construction Workers' Holiday and Severance Payment Fund (Bauarbeiter-Urlaubs- und Abfertigungskasse, BUAK), Austria
- Commission on Health and Safety and Hiring Prevention (Comisión de Seguridad y Prevención de Riesgos Laborales y Contratación, COPREVAS), Spain
- Agreement for Safety in Construction (Porozumienie dla Bezpieczeństwa w Budownictwie, ASC), Agreement on Minimum Wages in Construction (Porozumienie w sprawie stawki minimalnej w budownictwie, AMW), and Agreement for Occupational Safety in the Operation of Cranes (Porozumienie na rzecz Bezpieczeństwa Pracy przy Obsłudze Żurawi, AOSOC), Poland
- Inspectorate network of the International Transport Workers' Federation

SPECIFICITIES OF THE CO-ENFORCEMENT ACTIONS

1. The good practices of co-enforcement we have analyzed are due to a **long-standing, continuous and attentive effort** of these institutions to achieve certain objectives at the political, organisational, and implementation levels: namely, to secure and improve labour standards in their respective sectors and to make business competition fairer in terms of good employment. Institutions in the cases of BUAK, COPREVAS/Labour Foundation or ITF have evolved as strong bodies and have developed high capacities and assertiveness over decades in implementing their policies.
2. Social partner (institutions) and state authorities not only cooperate for single joint inspections, but **co-design aims and procedures of enforcement tools**, whether at the political level with the aim of changing or introducing legal regulations or at the implementation level, where the concrete shape of the measures is at stake. Labour inspectorates benefit from additional personnel resources and social partners' inside knowledge.
3. Social partners (institutions) are endowed with inspection competences and can **bring in their industry expertise into inspection**. Inspectorates have **targeted** (e.g., sectoral) but **comprehensive competences** (e.g., inspection, verification and complaint). In the case of BUAK, the social partner institution not only inspects construction sites but has started as a contact point for claiming social entitlements. As such, the institution is well-known and considered as reliable with low-threshold access among workers and employers. In Spain, COPREVAS/Labour Foundation play also an advisory role, helping companies to meet OHS standards.
4. Employer organisations are aware of their role to actively promote compliant employer behaviour. If employers' organisations are actively on board to co-enforce compliance with labour standards, e.g., through financing, their declared aim is to promote and ensure that **all employers act in compliance with the regulations**.
5. The case of the ITF inspectorate network is an outstanding example **how union power resources** (e.g., in the form of embargoes) can **be effectively combined with inspection activities**, including inspections of state authorities, to secure and improve labour standards on vessels.

TRANSFERABILITY OPTIONS TO OTHER INDUSTRIES

In a series of stakeholder workshops at national and EU level, we have assessed the transferability of SPLIN research results about co-enforcement to other institutions and sectors. Two sectors were selected for exploring transferability potentials: the road transport sector (Poland, Austria) and hotel and tourism HORECA (Spain). The workshop in maritime shipping assembling stakeholders from national and European level focused on the transnational cooperation and the improvement of inter-institutional cooperation between Port State Control and ITF-inspectors.

SIMILARITIES AND DIFFERENCES IN SECTORAL PATTERNS OF NON-COMPLIANCE WITH LABOUR REGULATIONS

In **construction**, key and common labour law related infringements comprise bogus self-employment, underpayment, including the underpayment of posted workers, misuse of working time regulation, occupational health and safety irregularities, undeclared work, the irregular classification of workers in collective agreements, and the establishment of bogus companies, including in a cross-border context.

In **road transport**, two concerns were emphasized: non-compliance with occupational health and safety standards and working time regulations (including driving and rest times) in Poland, and underpayment in cross-border freight transport in Austria.

Similar factors as in construction **contribute to wage and social dumping in Austria's road (freight) transport sector**: circumvention of the posting of workers directive, complex cross-border company constructions to evade labor standards, complex sector regulations and strongly decentralized competences of authorities and supervisory bodies. In contrast to the construction industry, cross-border road transport is characterised by a high mobility of employees (as a matter of fact) and by companies' strong business relations abroad. While Austrian transport companies concentrate their business activities mainly on domestic transport services, cross-border transports are carried out by foreign companies, which may also be subsidiaries or subcontractors of Austrian companies.

In the **Polish road transport sector**, comparable to construction, **health and safety risks of drivers are due to insufficient equipment and facilities, and too long working hours**. While in transport

detailed working time (including driving and rest time) regulations exist, the problem lies in enforcement. Better infrastructure (rest, food and accommodation facilities) would contribute to the improvement of drivers' health and safety. The driving forces behind activities to improve working conditions in the Polish construction industry were large companies that stressed to standardize and improve occupational health and safety at their subcontractors. This mechanism of "trickle down" does not translate into the more fragmented road transport industry.

For both deficiencies (non-compliance with occupational health and safety standards, underpayment) that also are found in the road transport sector, construction social partners in cooperation with state authorities succeeded in developing measures and practices to better enforce existing labour standards and regulations.

In **Asturias' HORECA sector (Spain)**, one main problem is related to the **circumvention of working time regulation**. Compared to the construction sector, bogus self-employment and problems related to subcontracting processes are of minor significance. Another important difference relates to public tendering: as it is barely important in HORECA, employers do not have to adhere to selection criteria and do not have the same incentives to develop practices of fairer competition as in construction. When it comes to the assessment of occupational health and safety risks and prevention, trade unions from the HORECA sector perceive that the Labour Inspectorate seems to concentrate on acute ("deadly") risk industries such as construction, while neglecting the improvement of inspection and standards in HORECA. While social partners and the Labour Inspectorate in Asturias developed targeted tools to tackle fraudulent business practices in construction, such a strategy in the HORECA industry is lacking.

TRANSFERABILITY OPTIONS

In **Poland**, the successful agreements for better worker protection in the construction industry concluded between the social partners in cooperation with the Labour Inspectorate (*Agreement for Safety in Construction (Porozumienie dla Bezpieczeństwa w Budownictwie, ASC)*, Agreement for Occupational Safety in the Operation of Cranes (*Porozumienie na rzecz Bezpieczeństwa Pracy przy Obsłudze Żurawi, AOSOC*) were the starting points for discussing transferability options to the road transport sector. Representatives from both workers and employers' organisations from construction and road transport examined through which measures

the improvement of drivers' occupational health and safety (in terms of road safety, nutrition on long trips, health prevention) can be achieved. The successful measures in the construction sector raised great interest. However, in a country with general underdeveloped industrial relations, road transport stands out as particularly weak in terms of consensual social dialogue. In road transport, both trade unions and employers' organisations represent a relatively small industry segment as small transport companies dominate the sector and are not well represented by social partners. Moreover, tripartite social dialogue is inexistent.

Hence, a central recommendation from the discussion among Polish stakeholders from construction and road transport industry was to start focused, manageable and fundable initiatives with a focus on health prevention and road safety, involving few but strong social partner organisations.

On the one hand, workers representatives in road transport need to exploit their power resources originating in market developments. In transport, labour shortage is an acute problem that should induce employers to adopt **health-promoting measures targeting active drivers to remain healthy and motivated in their driver jobs**. On the other hand, **companies should invest into and social partners should lobby for establishing decent parking and hotel infrastructure along the most important road transport routes**. When it comes to the enforcement of working (including driving and rest) time regulations, the cooperation between inspection authorities and social partners needs to be improved. Concerning the latter, some progress can be expected when the so-called smart tachographs will be introduced in heavy commercial vehicles.

Joint proposals brought forward by road transport social partners in Austria include the demand for a uniform inspection authority for freight transport in which all control competences are under one (state authority's) roof, as is in place with the construction social partner institution BUAK, or the demand for client liability, as has been implemented by law in the construction industry.

In **Austria**, the social partner institution BUAK was able to effectively counter problems connected to underpayment in the construction industry with certain measures, such as inspection on construction sites, and new areas of responsibility. As this institution is not simply reproducible, concrete proposals of co-enforcement practices being adopted in road transport primarily focused on **enhanced social partner cooperation in road transport resulting in joint proposals for establishing new legal standards to combat wage and social dumping**. In Austria, social partners often provide information and expertise in the preparation of new policies, the shaping of economic, social and labour-market legislation and the implementation of legal norms. Although over the last decades the influence of social partnership in Austria has significantly decreased, up until now, their institutional power is still seen as one of their main resources to implement changes.

The **high cross-border mobility of drivers and highly internationally entangled road transport industry** require regulatory competencies at EU level, which have been implemented following the EU-wide liberalization of cross-border road transport. What is lacking, is effective enforcement of comprehensive legislation and the bundling of competencies in cross-border inspections. Hence, some conclusions about the necessarily transnational dimension of co-enforcement measures can be drawn from maritime shipping: The ITF inspectorate network is an effective cross-border control instrument that improves the working conditions of seafarers in international shipping. Here, **decades of international campaigning against the Flag of Convenience system by the ITF, the precise formulation of objectives and design of inspection procedures and training**, and the successful **cross-border and cross-union cooperation of inspectors** have contributed to a better monitoring of problematic working conditions in maritime shipping. In addition, port authorities have the competence to monitor labour standards, among other things, on the base of an international convention, the ILO Maritime Convention 2006. Parallels in the problems in working conditions between the two transport modes are obvious. Though, as is the case with other evolved institutions such as BUAK or COPREVAS, such institutional solutions cannot simply be reproduced in another industry, answers to similar problems can also borrow from successful measures and concepts from the ITF experience.

For the **HORECA sector in Asturias, Spain**, two options for transferability from experiences of the construction industry were assessed: (1) a better

cooperation between trade unions and employer organisations to ensure decent working conditions, fair competition and enforcement and (2) the development of regular cooperation and exchange of information between social partners and labour inspectorate.

Relations between trade unions and employer organisations in HORECA are rather adversarial and uncooperative, a bipartite foundation, as is in place in construction, to fund joint and strategic initiatives is lacking, and no statutory regulations aiming to improve enforcement in the sector are in place. HORECA companies (mainly small companies) have fewer incentives to jointly develop actions to promote fair competition, partly because public tendering only plays a marginal role in sectoral companies' activities.

Hence, improved and targeted cooperation between HORECA social partners, seems unrealistic for the time being, as relations are characterised by competition and differing interests, and do not foster the idea of an industry based on consensus-oriented principles.

Regarding the option to establish regular cooperation and exchange of information between social partners and Labour Inspectorate, two conclusions for transferability can be drawn:

Employers' organisations welcome and support campaigns launched by the Labour Inspectorate in HORECA. In contrast, HORECA trade unions did not envisage much potential for effective cooperation between social partners and the Labour Inspectorate.

While employers' organisations in HORECA were positive about their cooperation with the Labour Inspectorate, it remains superficial, reduced to information exchange on specific campaigns with no input from the employer organisation. Unions identified various reasons for poor cooperation: lacking human resources on the side of the Labour Inspectorate to inspect enough company sites, weak responsiveness of the Labour Inspectorate to formal complaints submitted by trade unions, Labour Inspectorate's little knowledge about health and safety concerns in the HORECA sector.

LEGACIES OF STRONG INSTITUTIONS AND CLASS COMPROMISES: LIMITS OF TRANSFERABILITY

The examples of BUAK (as a strong social partner institution in construction), ITF (as a strong union in transport), and COPREVAS/Labour Foundation (bipartite body based on strong industrial relations in construction) show that state authorities benefit from the complementary knowledge and competences such as social partner (institutions) provide in enforcement processes.

Co-enforcement approaches need strong industrial relations, social partners or social partner institutions .

While Austria is often referred to as an example of well-functioning industrial relations, **social partners' success in achieving good working conditions also depends heavily on its institutional power.** The institutional power varies from industry to industry. In construction, the importance of the social partners, not least through the bipartite social partner institution BUAK, is relatively high; in the road transport industry, such an institution simply does not exist. The influence of social partners on both the objectives and the concrete implementation of authorities' control competences is rather low. In this respect, transport social partners' weight is often limited to demands to the legislator. In Poland, social dialogue is poorly developed, however **in construction strong employer organisations and unions paved the way for concrete and targeted proposals to improve working conditions.** In Spain, HORECA appears to be a sector where social partners' social dialogue and collective bargaining has a narrower scope than in construction, focusing mainly on collective bargaining and without a sectoral bipartite body developing sectoral policies. Hence, HORECA social partners seem unlikely to develop a similar co-enforcement measure as the one, COPREVAS, implemented in the construction sector.

Social partnership-based interventions can be based on broad and well-negotiated consensus, but they must also work through the internal contradictions of class compromise.

Employers and workers pursue different interests. In this context, there is a risk that the willingness to compromise on enforcement policies dilutes goals and instruments aimed at improving working conditions, or that implementation ideas are so far apart that no agreement can be reached. The latter can be observed in Spain's HORECA sector displaying rather conflictual industrial relations.

At the same time, the ITF derives its strength and the effectiveness of the ITF inspectorate network also from a conflictual approach that draws on union power resources, i.e., associate and structural power of seafarers and dockers unions. The threat and fear of an embargo that inhibits vessels to land and the axiomatic partiality of the ITF towards seafarers are successful strategies to achieve better or even decent working conditions in the industry.

POLICY POINTERS

- The involvement and commitment of powerful actors (in terms of members, institutional power, positional power, instruments) to the co-enforcement measure is conducive and essential for successful and sustainable implementation.
- A sectoral focus helps to develop tailored measures to improve the enforcement of labour standards.
- Pursue a strategy of launching focused (e.g. OSH, minimum labour standards) and fundable co-enforcement initiatives, especially in industries with weak industrial relations institutions.
- Transnational and cross-institutional cooperation needs to go beyond one-off events. Designing and implementing co-enforcement measures in order to establish a sustainable practice needs its time.
- The SPLIN examples are institutionally „evolved“ and anchored interventions, whose effectiveness is also due to the strength, persistence, and long-lasting experience of the institutional actors involved.



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