


Strategic labour inspection in fissured workplaces and transnational employment relations: Lessons from co-enforcement approaches and transgovernmental cooperation

European Journal of
Industrial Relations
2024, Vol. 0(0) 1–19
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DOI: 10.1177/09596801241267115
journals.sagepub.com/home/ejd


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Abstract

This paper examines strategic enforcement approaches relying on co-enforcement and transgovernmentalist. It examines three cases in the construction industry in Austria, Asturias (Spain), and Poland, as well as three cases in maritime shipping in Finland, Spain, and Poland, focussing on Labour Inspection's (LI)s motivations for engaging in co-enforcement and transnational cooperation. Data collection involved desk research, semi-structured interviews (39 construction and 14 in maritime), observation of

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inspections, and participant observation in EU seminars we organised together with regulatory actors (specific details are provided in the appendix). Findings show that LI's selection of co-enforcement and transnational alliances are driven by the specific and highly contingent challenges each organisation faces. LI organisations are seeking to exploit synergies, but both the material reality and perception of these depends on diverse pre-existing infrastructures and organisation-specific assets.

Keywords

labour inspection, co- enforcement, transgovernmental cooperation, fraudulent practices, construction, maritime shipping

Introduction

The reorganisation of State, through rescaling and deregulation, has also affected labour inspection (LI), confronting LI with new challenges, but also providing new resources and opportunities (Weil, 2014). LI is the organisational means by which states ensure compliance with labour law; its role overlaps with that of trade unions in some respect, and increased challenges to LI enforcement can also be seen in light of trade union decline. LI organisations have had to become more strategic in a context where many employers systematically and strategically seek to evade and undermine regulation. Various projects, integrating co-enforcement and transgovernmentalism, have emerged to reinvent LI activities on multiple scales in flexible ways, prompting the question of what kind of partnership constellations are emerging, for what purpose, at what scale, and why?

Maritime shipping and construction are paradigmatic examples of employers exploiting 'off-shoring' techniques to dissemble transnational capital structures and regulation to reshape labour relations via worker mobility (Lillie, 2010). Each industry has also seen efforts by EU, national, and regional sectoral coalitions to reform LI and more effectively combat the evasive strategies developed by many employers. The more open regulatory field, however, presents LI with opportunities to strategically manoeuvre and innovate, through, among other things, alliances with social partners, and with LI organisations in other countries.

This paper examines three cases of LI strategy in the construction industry in Austria, Asturias (Spain), and Poland, as well as three cases in maritime shipping in Finland, Spain, and Poland, focussing on LI's motivations for engaging in co-enforcement and transnational cooperation. We find LI's selection of co-enforcement and transnational alliances are driven by the specific and highly contingent challenges each organisation faces. LI organisations are seeking to exploit synergies, but both the material reality and perception of these depend on diverse pre-existing infrastructures and organisation-specific assets. These infrastructures shape articulations of co-enforcement and transgovernmental cooperation between geographic, policy-making, and implementation levels, and conflicts regarding who is included and excluded from each co-enforcement coalition.

Strategic enforcement, co-production, and co-enforcement

Comparative research on LI is limited and complicated by the fact that it is not a ‘*monolithic concept, let alone a single organisation*’ (De Baets, 2003, p. 39). Labour inspectorate functions are often divided among various bureaucracies, and even quasi-public bodies; some assume a wide array of functions, while others focus on specific aspects of working conditions such as OHS (Walters, 2016). Research theorising LI as strategic industrial relations actors with agency is sparse, perhaps because, unlike unions, they are not their own masters, but rather are extensions of state policy and labour law, and can be abstracted into that. Still, the professional norms and organisational interests of functionaries are important for explaining policy implementation and outcomes (Lipsky, 1980), so the strategic agency of LI deserves attention.

In many European countries, LI funding has been cut in recent years (Iannuzzi and Sacchetto, 2019; Martínez Lucio, 2016; Walters, 2016), even as the tasks facing them become more challenging, so there is a sense they must ‘up their game’ in order to perform their core functions (Čaněk, 2018). Strategic enforcement is a way to do this. It can be carried out in a number of ways: by prioritising, through analysing the underlying causes of infringements, and by proactive changes in employer behaviour. Prioritising means targeting sectors where infringements are most frequent. Analysis of the underlying causes of infringements, such as long chains of sub-contractors, enables targeting to be based on the impact on the system. Proactive changes in employer behaviour can be carried out by supporting them in setting up compliance schemes (Fine, 2021; Hardy and Howe, 2015; Weil, 2018). Similar to Fine (2017), we find that a common thread behind these methods is seeking to do more with less. While Fine classifies strategic and co-enforcement separately, in our cases, we see co-enforcement and transgovernmentalism bundled together in strategic thinking and embedded in an overall pattern of strategic enforcement activity.

Co-enforcement and transgovernmental cooperation

Co-enforcement is the application of co-production principles to enforcement; in the context of labour standards, where the co-enforcement concept originated, this means close coordination between state regulators and unions or other non-governmental actors in labour standards enforcement (Amengual and Fine, 2017; Fine, 2017). Co-production is broader, arising from the insight that state, quasi-public, and private organisations have different sets of resources and constraints, providing opportunities for synergistic cooperation, in which the payoff is greater than the sum of resources committed (Ostrom, 1996; Pestoff, 2012). While co-production often invokes normative goals such as democratic participation and representation, depending on the *type* of co-production (Pestoff 2012), the co-enforcement literature has focused on the benefits of sustained partnerships between LI and workers’ centres or trade unions in sectors with many labour violations (Amengual and Fine, 2017; Fine, 2017). In contrast to liberal economies such as United States and Australia where co-enforcement coalitions are rather built between trade unions and community organisations, in Europe, employers, their organisations, and

trade unions, form *social partner* constellations relying on co-enforcement principles. Each actor brings unique capabilities to improve enforcement, including unions' tacit knowledge of work processes, the states' right to set and enforce labour standards, and employers' ability to establish best practices. For example, [Huwiler and Mauron \(2019\)](#) describe how, in Switzerland, the social partners were given competence to inspect and sanction, to address social dumping, reducing the prevalence of underpayment by foreign service providers in Switzerland, and stabilising wages. The authors believe the social partners' familiarity with workplaces and labour markets of their sectors made the co-enforcement approach effective.

We extend this insight to transgovernmental forms of cooperation because, similarly to co-production, these rely on interorganisational synergies involving the state, trade unions, and employer organisations. Transgovernmental synergies arise from different capacities of the organisations and the ability to operate in different geographic jurisdictions. Given that workers and companies move across borders, and contracts and laws are often applied extraterritorially in the EU construction industry ([Lillie, 2016](#)) as well as in global maritime operations ([Piñeiro, 2016](#)), transgovernmental relationships become important.

Transnational cooperation between LIs is *transgovernmental* cooperation, which is well-described in the political science literature ([Keohane and Nye, 1974](#)), but little researched in relation to LI. An exception is [Hartlapp and Heidbreder \(2018\)](#), who note that European free movement limits the ability of states to offer services to their citizens, creates additional administrative burdens on agencies, and imposes negative externalities (such as labour market instability). In the EU, these challenges are addressed through systems of *horizontal* transgovernmental administrative cooperation. In construction, worker posting is common, meaning that much labour migration occurs through workers being sent abroad as dependent employees. Host and home countries share responsibility to verify compliance with social and labour standards. Administrative cooperation is essential and can take the form of information exchange (data sharing), procedural cooperation (joint administrative practices), or organisational cooperation (establishment of stable cooperation networks and infrastructures). [Hartlapp and Heidbreder \(2018\)](#) observed all three forms of cooperation intensifying, both through initiatives from front-line inspectors in response to investigation demands, and top-down from the EU. Administrative cooperation has been better institutionalised by setting up the European Labour Authority (ELA) in 2019. It has the legal mandate to strengthen LI cooperation and enforcement in the free movement context. In these ways, the Commission promotes pan-European networks of public, quasi-public and private actors, who at once face towards the EU, and cooperate with each other, but are also embedded in local/national networks related to their co-enforcement activities.

Maritime shipping has its own separate and parallel LI system, achieved through Port State Control (PSC), a complex global system for inspecting ship safety based on international agreements, which has recently been extended to cover labour inspection ([Graziano et al., 2018](#)). PSC therefore has only recently assumed LI responsibilities, leaving many organisations scrambling to learn about how to conduct LI inspections.

Methods and empirical specifications

We selected our cases to compare the construction and maritime sectors, as sectors tend to have unique characteristics in terms of regulation, corporate governance, and workforce characteristics (Keune and Pedaci, 2020). Our results reveal that while sectoral logics are influential, each country case was driven by far more specific contingencies. These were: (1) the specific problems the actors seek to resolve, (2) the synergies on which each relationship is based, including pre-existing infrastructures and organisation-specific assets, (3) the articulation of co-enforcement and transgovernmental cooperation between geographic, policy-making, and implementation levels, and (4) the conflicts embodied in who is included and excluded from each co-enforcement coalition. Each of these variables is dealt with in the results section for each case and compared in the discussion section. With respect to agency, we divide between policy-making and implementation of co-enforcement; identify the key actors responsible for proposing, negotiating, and implementing co-enforcement; and analyse their interests, strategies, and legacy.

In construction, our case studies are the Austrian Construction Workers' Leave and Severance Payment Fund (BUAK), the Health and Safety and Hiring Prevention Commission (Comisión de Seguridad y Prevención de Riesgos Laborales y Contratación, COPREVAS) in Asturias/Spain, and in Poland, three tripartite agreements¹ introducing and enforcing labour and occupational health and safety standards. In maritime shipping, we studied the activities of Port State Control authorities, and International Transport Workers' Federation (ITF) (union) inspectors in Finland, Poland, and Spain. Data collection involved desk research, semi-structured interviews (39 construction and 14 in maritime), observation of inspections, and participant observation in EU seminars we organised together with regulatory actors (specific details are provided in the appendix). Field work was conducted between July 2019 and April 2020 in the framework on an EU funded project.

Results

Drivers of Co-enforcement: Inspection systems and common challenges

Employer strategies of regulatory evasion characterise significant segments of both construction and maritime shipping. Regulatory evasion occurs when employers seek cost advantage through manipulating rules and/or avoiding enforcement, usually through defrauding or abusing their employees (Arnholtz and Lillie, 2023). In maritime and construction, such employer behaviour exploits worker mobility and isolation, as well as contractual circumlocutions to lower labour costs, made possible through (false) self-employment and/or transnational corporate structures. Both sectors are characterised by mobility and migration, and strong labour segmentation based on nationality and ethnicity (Alho, 2013; Lillie, 2010; Meardi et al., 2012). Underpayment, neglect of health and safety standards, and inadequate coverage of social protection are all common consequences for workers.

In both industries, labour inspection faces challenges in collecting employment information, either because of the transnational nature of the employment relationship, or because of informality, or both. This means LI must research the firms, ships, and worksites they inspect both transnationally and on-site. They must find out about the work processes, wages owed, payments made to workers and social funds, and conditions in the workplaces, and accommodations.

In construction, extensive subcontracting is nearly universal, and in many places, temporary agency work is common. Self-employment contracts, both legitimate and bogus, are common (Behling and Harvey 2015; Eurofound 2017; Sanz De Miguel 2021), meaning that the employer's identity must also be established. Seafaring presents few opportunities for subcontracting (at least on cargo ships), but many shipowners use recruiting companies, called manning agents, which can be problematic. At the low end of the industry, ships are often owned through difficult to trace off-shore shell companies, complicating pay claims, because the employer can allow the owning shell company to go bankrupt. Shell companies are also a problem in construction, where subcontracting provides opportunities to outsource liability (Cremers and Houwerzijl, 2021). In both industries, enforcement requires both local inspection and enforcement, as well as in many cases transnational capacity to investigate and to act.

Co-enforcement in construction: Tripartite social partnership cooperation and EU transgovernmental cooperation

The construction industry is seeing a multilevel adaptation of LI enforcement to a transnational pan-EU labour market. European free movement rules make it possible for firms to take advantage of the jurisdictional limitations of national authorities to evade enforcement (Arnholz and Lillie, 2019), while on the other hand, EU institutions facilitate transgovernmental cooperation and co-enforcement activities (Hartlapp and Heidbreder, 2018). National authorities, such as in Spain and Austria, have revised legislation to facilitate co-enforcement, involving social partners in enforcement activities such as collecting and administering employer contributions and social benefits for construction workers, including posted workers.

Co-enforcement is shaped by existing LI and tripartite institutions, which in Austria are strong at the national level. In the Spanish region of Asturias, the regional institutions have more coherent cooperation than at the national level. In Austria and in Asturias, sectoral social dialogue arises out of strong local/national social partnership traditions, embedded in sectoral collective bargaining, as well as bipartite and tripartite social dialogue institutions (Aistleithner and Flecker, 2017; Sanz De Miguel, 2021). In Poland, social dialogue has been characterised as 'PR corporatism', legitimating austere government policies (Bernaciak, 2013), in the context of weak collective bargaining and trade unions (Czarzasty and Mrozowicki, 2022). Co-enforcement is built on a thinner institutional infrastructure than in the other two countries, which does not grant as much authority to social partners.

LI organisational structure and capacity also matters. In Austria, LI is fragmented, in that fraudulent wage practices (e.g. underpayment) and OSH are inspected by different

enforcement bodies. Spain and Poland have in common a centralised and unitary labour inspectorate with comprehensive competence (including wages, undeclared work, OSH, and so on) (EPSU, 2012; Walters, 2016). In both countries, LI faces budget constraints and are poorly resourced (Martínez Lucio, 2016), as was confirmed in the fieldwork.

Despite institutional differences, co-enforcement, based on coordination between the state, the unions, and the employers, is key. However, the depth of institutionalisation of co-enforcement greatly varies as does the enforcement approach, policy-making, and operational roles. In Austria and Asturias, social partners' sectoral institutions (BUAK and COPREVAS, respectively) involve state, unions, and employers directly in both policy formation and implementation. The social partners not only contribute to the design and evaluation of enforcement measures but also to ensuring compliance through worksite inspections, and deciding enforcement priorities. Co-enforcement occurs both on an operational and policy level, involving the same organisations on both ends, while in Poland cooperation between enforcement bodies and social partners is less systematic.

Asturias (Spain). In Asturias, a regional sectoral collective agreement concluded in 1997 marked the beginning of an autonomous social partner approach to enforcement. Under this legally binding agreement, social partners appointed their own inspectors. These were authorised to inspect all companies covered by the sectoral agreement, to conduct interviews with both workers' representatives and employers, and to recommend the suspension of work in the event of serious health risks. In the early years, during the 2008–2012 economic crisis, cooperation with LI was informal, but the process, exchange of information, and increasing LI awareness of fraudulent practices, in particular of bogus self-employment, paved the way for a formal cooperation agreement. A tripartite agreement officially institutionalised information sharing, formalised cooperation mechanisms, and established accountability procedures:

The agreement is a result of the cooperation in information sharing that has been maintained for years. For example, during the economic crisis of 2008–2012, the social partners provided data that alerted the LI to cases of bogus self-employment (...), the agreement specified the demands of each stakeholder (CON-ESP-6).

LI inspectors highlighted how the regular formal complaints submitted by the social partners and, particularly, the geolocation information provided, help them maximise use of their limited human resources by better selection of inspection sites.

A union and employer consensus in favour of co-enforcement developed out of the sectoral policy pursued by the social partners since the 1980s, aimed at improving productivity and the social protection of workers. The hallmark of this model was the creation of the Labour Foundation in 1988, which was the first 'bipartite' body in the construction sector in Spain. Since then, it has served as a vehicle for investment in training, equipment, and various social benefits. This model is threatened by 'outside' companies circumventing certain aspects of labour legislation. Some construction companies classify their activity under collective agreements from different Spanish regions, to escape the stricter regulation of the Asturian construction collective agreement.

This also allows them to save on the comparatively higher costs of health and safety, and vocational training which have to be paid to the Labour Foundation in this region. Similarly, bogus self-employment has the effect of reducing employers' contributions to be paid to the Labour Foundation.

You cannot understand our joint labour inspection without considering the Construction Labour Foundation, which was the first bipartite foundation in Spain. This foundation is very positive for the sector as it funds important policies supporting our companies. But it creates of course additional costs for the employers from Asturias (CON-ESP-3).

Although the motives for establishing co-enforcement are clear, actually realising the potential advantages required an extended process of strategic negotiation and consensus building between and within organisations, which needed to be defended against firms seeking advantage through reducing labour costs. During the financial crisis (2008–2012), many companies pressured the employer organisation to suspend co-enforcement. Rather than going this route, on the suggestion of the employers' organisation, trade unions and employers' organisation delegated authority to union and employer worksite inspectors to ensure broad and equitable enforcement, helping to prevent outsiders from undermining the agreement. The focus of these inspections, and of the formal complaints they turn over to LI is on those problems (such as bogus self-employment), with direct implications for business competitiveness, and on maintaining funding for sectoral policies. In the field of health and safety at work, the co-enforcement agreement places a strong emphasis on educational and supportive measures rather than immediate punitive sanctions.

Austria. In Austria, co-enforcement manifests through BUAK (Construction Workers Severance and Holiday Payment Fund), whose role, since 1946, is written into a sector-specific law (Construction Workers Severance and Holiday Payment Act). Thus, authority which in most countries would reside with the financial police or social insurance authority in Austria has long resided in a quasi-public body jointly managed by the social partners. The traditional tasks of BUAK involve compensating employees for income losses due to seasonal fluctuations, financed by employer contributions to the BUAK fund. BUAK received new and additional responsibilities in the Anti-Wage and Social Dumping Act (LSD-BG) in 2011. This law was a legislative response to wage and social dumping, due to increased worker posting in construction. It transposed the EU Enforcement Directive (2014/67/EU) into national law.

BUAK is actively involved in shaping national policy and legislation to combat wage and social dumping in construction, so in this way, the institution BUAK and social partners are involved both on the operational level and in policy-making. In response to posting, BUAK's inspection competence has expanded, including additional public funding, staff recruitment and reallocation, and staff training. Both the trade union and employer organisation mobilised their sectoral expertise in support of delegating inspection authority to BUAK, which was a main driver behind the decision, as emphasised by a BUAK board member:

What we achieved was not a result of politicians' demands but that of social partners in the construction sector. (...) We needed an authority, an institution, that can inspect the entire construction site, all companies, whether domestic or foreign (CON-AT-4).

Sectoral regulation in both Asturias and Austria is threatened by companies gaining cost advantage by circumventing labour standards. In Austria, this is through foreign companies circumventing minimum wages and collective agreements through posting, and local companies falsely registering workers as part-time instead of full-time. BUAK has the right and operational capacity to inspect building sites, including accessing the records of foreign and domestic companies and to interview workers. It has gathered many of the competences (i.e. inspection of both domestic and foreign companies and the filing of formal complaints) in a single institution. Between 2015 and 2018, BUAK doubled the number of construction site inspections (5883 to 10,161).

Austrian LI engages in sporadic, if increasingly frequent *horizontal administrative cooperation* with authorities in other EU countries. Austria is a major receiving country of posted construction workers (Geyer et al., 2022, p. 29; Wispelaere et al., 2022), and posted work is the main driver for underpayment in construction. BUAK is active in horizontal information exchange, for example, using the Internal Market Information System (IMI), to send and receive requests for data with LI in other EU member states about companies suspected of fraudulent practices. Other forms of horizontal cooperation are not well developed.

Although BUAK is a social partner institution, it has law enforcement authority within its area of competence. Its effective use of its enforcement power, however, is limited by disagreement between the social partners about how much authority to allow BUAK:

The worker receives official information about underpayment. (...) BUAK's aim was to inform not only the worker but also the Chamber of Labour about the formal complaint to assist in claiming wages, but here we failed politically. The workers' and employers' side did not agree on this point (CON-AT-6).

Poland. Poland's LI context is defined by outward migration driven skill and labour shortages in the construction industry, combined with an inward flow of Third Country National (TCN) migrants, mainly from Ukraine. In Poland, the State Labour Inspectorate (PIP) is the main organisation responsible for labour inspection. Poland is the largest sending country for posted workers in Europe (Wispelaere et al., 2022), and PIP is responsible for coordinating with foreign inspectorates to investigate labour violations by Polish posting firms. PIP is therefore tasked with answering many IMI queries, usually in regard to Polish workers posted to other EU member states (Państwowa Inspekcja Pracy, 2021). Firms employing migrant workers are a source of many complaints and violations. Abuse of atypical employment has led to the deterioration of working conditions, with skilled Polish workers increasingly seeking employment outside the building industry or working abroad. Unskilled workers have been recruited to replace them, resulting in skilled labour shortages and increased accident rates.

Large public contracts have many layers of subcontractors. All levels need to work efficiently and on time, as contractors depend on each other to complete their tasks. Employment based on civil law contracts and self-employment extends the area of uncertainty; an employee can leave almost overnight and staff shortages cannot always be filled with skilled workers (CON-PL-3).

The cooperation between social partners and the National Labour Inspectorate is weaker and less institutionalised than in the Austrian and Asturian cases, in that it is only expressed through agreements between the social partners, and not through operational enforcement cooperation. Also, the co-enforcement initiatives¹ rely on soft-regulatory mechanisms and on non-binding agreements. Lacking operational inspection or enforcement powers, the social partners' role in co-enforcement is more pedagogical and supportive and less punitive. Co-enforcement in this context might be more accurately labelled as co-production of environment enabling compliance with labour standards. Employer interest in co-production arises from the negative impact on fair competition of companies circumventing health and safety standards and employment regulation. Polish construction trade unions are relatively weak, and therefore willing to cooperate with state authorities, because this presents an opportunity to set standards and leverage state and employer efforts to promote compliance. LI uses the multiplier effect of employers' good practices to ensure minimum labour standards:

We are pleased to cooperate with ASC (Agreement for Safety in Construction) signatories and support their activities. We see that they create and implement new OSH standards in their partnership firms. We show these good practices during our trainings and social campaigns. We hope that the effects will spread throughout the entire sector (CON-PL-1).

Co-enforcement in Poland foresees a limited role to social partners, in particular the trade unions. Indeed, one of the co-enforcement agreements (ASC) was only signed by lead construction companies and the LI, while the remaining two agreements barely grant any trade union role in terms of enforcement (AOSOC and AMW). The low level of union organisational resources in any case limits their opportunities to implement inspections. As one trade union officer stated in relation to the AOSOC agreement, *'Our capabilities are quite modest. Our main success is reaching an agreement on new OSH regulations in crane operation'* (CON-PL-6).

Summary. The choice of co-enforcement or transgovernmental cooperation as a response to inadequate enforcement of labour standards was motivated by a number of factors: the defence and further development of a sectoral social partner model that is threatened by non-compliant employers, who often exploit regulatory loopholes in complex subcontracting chains (Austria and Asturias); the proliferation of health and safety risks, even to the detriment of the construction industry (Poland); the lack of staff in public enforcement bodies (Poland and Asturias); or the lack of sectoral expertise and fragmented responsibilities in public bodies (Austria). In Austria and Asturias, co-enforcement is articulated at political and operational level. Here, employers' organisations play a key role in the

political negotiations between the social partners in advocating and designing the action, and at the implementation level in enforcing it (Asturias). In Poland, employers are the main actors for implementation. In Austria, foreign companies and references to foreign legal systems are frequently encountered, so that transgovernmental cooperation becomes an embedded part of co-enforcement strategy, in the form of information exchange (administrative cooperation). In Poland and Asturias, the transgovernmentalism is related to a lower prevalence of foreign firms and foreign work contracts, because employers' evasive strategies don't require transgovernmentalism to counter. Synergies are based on complementary competences (law enforcement, sectoral expertise) and information resources of social partners and the enforcement authorities (all cases). Conflicts relate to the different interests between employers (compliant, supportive of the sectoral agreement, and non-compliant, foreign) and between the social partners (wage claims backed by the co-enforcement action or not).

Co-enforcement in maritime shipping: Transgovernmental cooperation via global framework agreements and local trade union-inspectorate cooperation

Maritime shipping is a unique and highly insular sector, both from the perspective of workplace operations as well as in its global and transnational regulation. The recent advent of effective LI via Port State Control (PSC) and the ILO's Maritime Labour Convention (MLC) occurred as an outgrowth of the International Transport Workers' Federation's (ITF) global collective bargaining regime. Nonetheless, despite obvious synergies between the PSC and ITF inspection regimes, and despite growing out of explicitly tripartite global governance processes, operational co-enforcement is localised and unsystematic. Europeanisation occurs in maritime not as a process of moving 'up' to a transnational scale, but rather as EU actors asserting their relevance within global systems and processes. DG MOVE, which is charged with developing EU policy in maritime shipping regulation, and the European Maritime Safety Authority (EMSA), seek to build greater EU level transgovernmental cooperation, to improve the regional PSC cooperation and competence in LI (DG for Mobility and Transport (EC), 2020).

When a ship enters a port in another country, it remains under the regulatory sovereignty of the flag it flies, but international agreements give port states certain enforcement rights. PSC has a mandate to inspect whether a ship complies with the MLC, even if the country the ship is flagged in has not ratified the convention (Graham and Walters, 2021). A detailed inspection can be carried out if there are clear risks to the health and security of seafarers, or in response to a complaint by a seafarer, or by ITF inspectors or other related professionals. PSC organisations routinely carry out random or targeted inspections as well, according to their rubrics. Most PSC officers have a technical background with little expertise on labour issues, and their inspections mostly pertain to technical safety (Graziano et al., 2017). National LIs seldom take an interest in foreign flagged ships in our case countries. PSC inspectors were more inclined to turn to the ITF for help than to ask LI.

The main reference points for seafaring labour standards are the ILO's 2006 MLC and ITF collective agreements. Both standards are widely accepted in the maritime industry,

including shipowners, who through the International Maritime Employers Committee (IMEC) negotiate with the ITF industry level global collective agreements. The MLC acts as a common guide for ITF and PSC inspections in certain respects, and the agreements supplement each other, both being needed for adequate coverage, as they address different things. ITF collective agreements specify wages, and core aspects of work and compensation, but do not detail every aspect of shipboard life. The MLC is very comprehensive but does not specify wage levels (Lillie, 2006).

Both maritime regulatory authorities and trade unions engage in transgovernmental and transnational cooperation to enforce standards. In terms of the labour regulations, PSC has tools available, but its impact is secondary to the ITF and the maritime unions, who have a long history of transnational coordination. PSC authorities and ITF inspectors each have their own digital inspection programs for exchanging information about (FOC) vessels enabling a smooth transfer of technical information. ITF transnational coordination is more developed and involves more personal contacts than PSC, with joint training courses and meetings of inspectors, and of other union officials who participate in ITF campaign management. Since 2020, in the EU, DG MOVE and EMSA have begun PSC initiatives to build European cooperation, training PSC inspectors to conduct labour inspections and cooperate more closely.

Maritime shipping has strong global and local institutions, but relatively weaker European ones. Shipping is specifically excluded from EU labour regulation, such as the Posting of Workers Directive, on the basis that such regulation should receive a bespoke directive. This is not to say that European coordination has not mattered; the ILO's MLC's entry into force resulted from European shipowners and the European Transport Workers' Federation (ETF) pushing for the EU Council to pass a directive on the MLC, giving the MLC sufficient ratifications. The support of European shipowners was crucial for securing the Directive via the EU's 'sectoral dialogue' process (Directive, 2009/13/EC).

There is a strategic LI sectoral approach 'baked in' to the design of the system of PSC under the Paris MOU, through participation in systems which provide information on which ships are selected for inspection, through 'white lists' (low risk ships) and 'black lists' (high risk ships). These are important for insurance, flag registration, and classification, so there are various interrelated regulatory incentives for compliance, of which labour enforcement through PSC is a part. PSC inspection reports influence the odds of subsequent PSC inspections, and the actions of flag states and private actors such as classification societies and insurance companies. Even if PSC inspections are 'one-offs', they can nudge employers towards compliance.

The FOC campaign, which sets the industry context for wages, gives the ITF direct relations to seafarers and national unions, and assures that the ITF has leverage in global regulatory politics. Through the ETF, it influences EU policy. The ITF conducts global industry level collective bargaining, through a global collective agreement, and coordination of national agreements of important maritime states. This is supported by a global network of union inspectors who conduct ship inspections, and coordinate with dock worker unions to apply industrial leverage (Lillie, 2006). The ITF headquarter in London coordinates a network of more than 100 official ITF inspectors, trained in inspection, networking, and mobilising locally. ITF inspectors rely both on relationships with local

unions, and with other port actors. Dock workers are key actors in this as they provide information about problems on ships and take formal or informal industrial action to give leverage to the ITF inspector to negotiate with ship captains and owners. National agreements are checked and approved to ensure that wages and labour costs do not deviate from globally agreed minimums.

In *Finland*, the inspection of FOC vessels remains divided between the PSC and ITF. ITF inspectors can occasionally rely on dockers unions' solidarity to force a shipowner to cooperate under the threat of a ship embargo, or slowing down of the loading process. As a Finnish ITF inspector expressed it: '*Nowadays, dockers are familiar with this system. In those [cases] where the dockers pressure on the ship, we do not need an [actual] embargo*' (MS-FI-2). This kind of cooperation provides a strong sanction capacity through 'intra-union' cooperation. Among our interviewees, neither PSC nor ITF inspectors had given much thought to co-enforcement. During our seminar, however, both Finnish PSC and ITF inspectors expressed an interest in developing collaboration.

In *Poland*, interviewees stressed that PSC officers occasionally invite ITF inspectors to joint inspections or ask them about the interpretation of collective agreement provisions (MS-POL-3). Polish ITF inspectors acknowledge exchanging of information with PSC, but remarked on bureaucratic hindrances to cooperation. Like the Finns, Polish ITF inspectors rely on mobilising dock workers to embargo FOC vessels. There have been efforts to involve Poland's labour inspectorate in ship inspection but, as one interviewee noted: '*they [PiP] are constantly pretending that ships under a flag other than the Polish flag are not subject to their jurisdiction*' (MS-PL-2).

The *Spanish* case reveals substantial, if ad hoc, cooperation between the ITF inspectorate and PSC authorities, following the implementation of the MLC, as illustrated by the Spanish ITF coordinator:

[Before the MLC] When PSC found a problem, they phoned to tell me that I had to deal with that problem [...] Now, when there is a problem, the very threat of getting the PSC involved is enough to force the shipowner to deal with it (MS-ESP-1).

For the ITF, this is fortunate, since in most Spanish ports', cooperation between the ITF and the dock workers is nearly absent. Dockworkers instead are organised in the International Dockers Council, which is a competing organisation to the ITF. Solidarity strikes in Spain are not legal, limiting dockworkers' cooperation and involvement in the event of an embargo. ITF inspectors in Spain sometimes turn to PSC in the event of serious infringements. Likewise, PSC may seek the involvement of ITF inspectors to negotiate with shipowners to remedy deficiencies.

The ITF inspectors in all three cases are backed with strong global reputation and most seafarers prefer dealing with them rather than with PSC authorities in case of trouble.

Discussion

In all our cases, enforcement is strategic, more or less, and based around sectoral labour market and regulatory structures. Co-enforcement and transgovernmental cooperation are

driven in all cases by a perceived need to collect information, incentivise employer compliance, and maximise enforcement outcomes given available resources. In maritime, there is a gap in time and space between the policy design of the MLC, and the ground-level strategies of PSC. Co-enforcement in ports occurs in reaction to a set of incentives and priorities set out by the global regulatory regime, which is based on tripartite negotiations. In construction, these policy and operational aspects are much more unified in geographic scope, even being embodied in a single organisation in the Austrian case. Co-enforcement in construction in Poland falls short of this, possibly due to union weakness, or possibly because the institutions are younger and have had less time to develop.

In all cases, LI and unions engage in co-enforcement and transgovernmental cooperation to leverage synergies, which fit with a normatively strategic approach to LI of doing more with less. Synergies are possible because different organisations have different capabilities. In our cases, these include: (1) leverage over non-compliant firms through public authority, legal sanctioning capability, or industrial action; (2) knowledge of production processes, business operations, and legal frameworks; (3) access to information from other geographic jurisdictions; (4) trust of management; and (5) trust of workers. However, not all organisations succeeded to the same extent in leveraging all theoretically available synergies. Sometimes this was because of poorly developed interorganisational relationships, as between the Finnish PSC and Finnish ITF inspectors, but other times it reflected a lack of political consensus, as between the Austrian social partners around enforcement of wage levels.

The sectoral approach is closely related to the principle of creating systemic effects through inspections; for the maritime cases, as well as for the Austrian construction case, a sectoral approach drives transgovernmentalism, because of the prevalence of posted workers. PSC's multifaceted and multilevel global infrastructure is set up on an assumption that hypermobility is the norm on ships they will be inspecting; BUAK's strategy relies on an EU infrastructure set up by EU institutions for cooperation between public authorities. Asturian and Polish construction industry co-enforcers showed less interest in intra-EU LI cooperation, despite the availability of systems and processes, possibly because the migrant workers in their jurisdictions are not usually on foreign work contracts.

Co-enforcement in our construction cases is tripartite, with sectoral unions, state authorities, and social partners involved. In Poland, the relationship is only slightly institutionalised via the collective agreements, but in Asturias and Austria, it is embodied directly into the enforcement organisations. This means they design and implement enforcement measures consensually with the prospect to sustaining compliance and changing behaviour of employers; there is a punitive aspect to prevent firms from making low-cost, non-compliance a strategy, but also a pedagogical emphasis, assuming that firms would rather comply than not, if they know how. Strong alliances between sectoral unions and employer organisations facilitate the investment in institutional infrastructure needed to do this. For both trade unions and employer organisations, enforcement is partly anchored in defending a sectoral model oriented towards improving productivity and workers' social protection.

In maritime, local level co-enforcement (in ports) has not institutionalised to the same extent. The MLC arose from a global-level social partner initiative to institutionalise PSC's role in LI. For shipowners, the MLC was a way to marginalise low-standard shipowners, who are a competitive threat, creating negative externalities for non-compliant shipowners (Lillie 2006). The adoption of the MLC has resulted in local cooperation between PSC and ITF inspectors, but this remains sporadic, and dependent on individual initiatives and relationships. Shipowners are not directly involved in this cooperation, except in that it is their ships being inspected.

There are strong incentives for local co-enforcement in maritime, in terms of synergies, but actors have not yet realised them. Moreover, strong global transnational union cooperation and transgovernmental PSC cooperation is developing into LI cooperation. The adoption of the MLC 2006 opened new spaces for co-enforcement between ITF and PSC, since applicable collective agreements are part of seafarers' employment contracts and enforceable under the terms of the MLC. The FOC campaign and the global relationship based around ILO negotiations created this possibility, and the MLC's impact should be seen in the context of this broader collective bargaining relationship: in this sense, the MLC itself is a product of policy level co-design of an enforcement process, including in the way it was ratified in the EU.

The MLC presents to PSC inspectors as a set of rules to add to their inspection checklists, rather than as a co-enforcement relationship with the ITF, local unions, and employers. Co-enforcement occurs, but is ad hoc. PSC may seek the involvement of the ITF inspectors when dealing with social and labour issues, and they feel they are not competent to evaluate or to win the trust of crewmen. Conversely, the Spanish ITF inspector relies on the threat of PSC intervention to force negotiations, leveraging close contacts to local PSC inspectors.

For maritime shipping, ITF networks could provide epistemic support for transgovernmental PSC in the EU, but we saw no evidence of this in our fieldwork. Our findings suggest a more coordinated collaboration and systematic exchange of information between PSC and ITF inspectors at local level, as well as between PSC officers in different countries. This seems to be the direction DG MOVE and the EMSA are moving, similarly to the intra-European LI cooperation in construction. The fact it is happening only now, despite the obvious synergies, underlines the role that ideas of strategic enforcement play: co-enforcement does not automatically emerge under a certain set of conditions, but rather is a strategic attempt to chase synergies following ideas and models that are developed and applied over time.

Conclusion

Co-enforcement and transgovernmentalist LI strategies reflect a strategic attempt by LI to reasserting control over deregulated labour markets with limited resources. This occurs both in policy-making and in operational implementation, which may be unified as in construction, or distinct in space and time, as in maritime. There is an interplay between different regulatory levels that influences and is influenced by LI actor strategies. The greater unification of policy and implementation roles in construction in Asturias and

Austria, compared to the maritime cases, reflect the localisation of their activities. However, the Austrian BUAK's extension of its reach through IMI and EU networks reflects a reality of mobility more similar to maritime shipping, and if the geographic reach were to continue to extend, we might expect to see regulatory dynamic characterised by an EU scale policy regime, shaping local scale operational co-enforcement as well.

Social partnership-based interventions can follow a broad and well-negotiated consensus contributing to compliance and fair competition, but they must also work through the internal conflicts of interest between employers, workers, and the state. Organised employers want to exclude unorganised low-cost competitors, and workers have this same interest, but this can conflict with organised employers benefitting from exploitive work practices. Inspectorates might push state goals such as deporting workers without work permits. Unions might look the other way on safety or environmental violations if workers are receiving good wages and not complaining. Finally, bipartite social partner institutions and non-union sectoral enforcement bodies rarely actively help workers collect their wages, which is a crucial aspect of enforcement.

Declaration of conflicting interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: This work was supported by the European Commission (VS/2019/0080).

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Supplemental Material

Supplemental material for this article is available online.

Note

1. Agreement on Occupational Health and Safety in Construction (ASC), Agreement on Minimum Wages in the Construction Industry (AMW), and Agreement on the Protection of Workers in the Operation of Cranes (AOSOC).

References

- Alho R (2013) Trade union responses to transnational labour mobility in the Finnish-Estonian context. *Nordic Journal of Working Life Studies* 3(3): 133–154.
- Amengual M and Fine J (2017) Co-enforcing Labor standards: the unique contributions of state and worker organizations in Argentina and the United States: Co-enforcing labor standards. *Regulation & Governance* 11(2): 129–142.

- Arnholtz J and Lillie N (eds) (2019) *Posted Work in the European Union: The Political Economy of Free Movement*. 1st edn. Routledge.
- Arnholtz J and Lillie N (2023) Posted work as an extreme case of hierarchised mobility. *Journal of Ethnic and Migration Studies* 49(16): 4206–4223.
- Astleithner F and Flecker J (2017) From the golden age to the gilded cage? Austrian trade unions, social partnership and the crisis. In: Lehdorff S, Dribbusch H and Schulten T (eds) *Rough Waters – European Trade Unions in a Time of Crisis*, pp. 185–208. Brussels: ETUI.
- Behling F and Harvey M (2015) The evolution of false self-employment in the British construction industry: a neo-Polanyian account of labour market formation. *Work, Employment & Society* 29(6): 969–988.
- Bernaciak M (2013) Social dialogue revival or “PR corporatism”? Negotiating anti-crisis measures in Poland and Bulgaria1. *Transfer: European Review of Labour and Research* 19(2): 239–251.
- Čaněk M (2018) *Transnational Cooperation Among Labour Regulation Enforcement Agencies in Europe: Challenges and Opportunities Related to the Posting of Workers*.
- Cremers J and Houwerzijl M (2021) *Subcontracting and social liability: report & policy recommendations*. Brussels: ETUC. Available at: https://pure.uvt.nl/ws/portalfiles/portal/57781729/Subcontracting_and_social_liability_EN.pdf.
- Czarzasty J and Mrozowicki A (2022) ‘Unilateral crisis prevention and crumbling social partnership in Poland’, in Ebbinghaus B and Weishaupt TJ (eds) *The Role of Social Partners in Managing Europe’s Great Recession*. London/New York: Routledge, pp. 121–143.
- De Baets P (2003) The labour inspection of Belgium, the United Kingdom and Sweden in a comparative perspective. *International Journal of the Sociology of Law* 31(1): 35–53.
- DG for Mobility and Transport (EC) (2020) *Study on Social Aspects within the Maritime Transport Sector: Final Report*. Luxembourg: Publications Office of the European Union. Available at: <https://data.europa.eu/doi/10.2832/49520> (Accessed: 3 August 2023).
- EPSU (2012) *Mapping Report on Labour Inspection Services in 15 European Countries*. Brussels: European Federation of Public Service Unions (EPSU).
- Eurofound (2017) *Fraudulent Contracting of Work: Construction Sector*. Dublin: Eurofound. Available at: <https://www.eurofound.europa.eu/sites/default/files/wpefl7004.pdf>.
- Fine J (2017) Enforcing labor standards in partnership with civil society: can Co-enforcement succeed where the state alone has failed? *Politics & Society* 45(3): 359–388.
- Fine J (2021) Strategic enforcement and co-enforcement of U.S. labor standards are needed to protect workers through the coronavirus recession. In: *Strategic enforcement and co-enforcement of U.S. labor standards are needed to protect workers through the coronavirus recession*. Available at: <https://equitablegrowth.org/strategic-enforcement-and-co-enforcement-of-u-s-labor-standards-are-needed-to-protect-workers-through-the-coronavirus-recession/> (Accessed 11 October 2022).
- Geyer L, Premrov T and Danaj S (2022) Posted workers from and to Austria: characteristics, violations and the impact of the COVID-19 pandemic. Leuven. Available at: <https://www.euro-centre.org/downloads/detail/4317>
- Graham CA and Walters D (2021) Representation of seafarers’ occupational safety and health: limits of the maritime labour convention. *Economic and Labour Relations Review* 32(2): 266–282.

- Graziano A (2017) Port state control inspections in the European Union: do inspector's number and background matter? *Marine Policy* 88: 230–241.
- Graziano A, Mejia M and Hinrichs S- (2018) Achievements and challenges on the implementation of the European directive on port state control. *Transport Policy* 72: 97–108.
- Hardy T and Howe J (2015) Chain reaction: a strategic approach to addressing employment noncompliance in complex supply chains. *Journal of Industrial Relations* 57(4): 563–584.
- Hartlapp M and Heidbreder EG (2018) Mending the hole in multilevel implementation: administrative cooperation related to worker mobility. *Governance* 31(1): 27–43.
- Huwiler UJ and Mauron V (2019) *Flankierende Massnahmen: 15 Jahre Lohnschutz*. Die Volkswirtschaft, 43–46.
- Iannuzzi FE and Sacchetto D (2019) Italian labour inspectors facing posted workers phenomena. In: Arnholtz J and Lillie N (eds) *Posted Work in the European Union*. Routledge, 109–127.
- Keohane RO and Nye JS (1974) Transgovernmental relations and international organizations. *World Politics* 27(1): 39–62.
- Keune M and Pedaci M (2020) Trade union strategies against precarious work: common trends and sectoral divergence in the EU. *European Journal of Industrial Relations* 26(2): 139–155.
- Lillie N (2006) *A Global Union for Global Workers: Collective Bargaining and Regulatory Politics in Maritime Shipping*. New York: Routledge.
- Lillie N (2010) Bringing the offshore ashore: transnational production, industrial relations and the reconfiguration of Sovereignty1. *International Studies Quarterly* 54(3): 683–704.
- Lillie N (2016) The right not to have rights: posted worker acquiescence and the European union labor rights framework. *Theoretical Inquiries in Law* 17(1): 39–62.
- Lipsky M (1980) *Street Level Bureaucracy: Dilemmas of the Individual in Public Services*. Russell Sage Foundation.
- Martínez Lucio M (2016) Incertidumbre, indecisión y neoliberalismo emergente: El papel dual y complejo del Estado español en las relaciones laborales y de empleo. *Sociología del Trabajo* 87(2): 68–88.
- Meardi G, Martín A and Riera ML (2012) Constructing uncertainty: unions and migrant labour in construction in Spain and the UK. *Journal of Industrial Relations* 54(1): 5–21.
- Ostrom E (1996) Crossing the great divide: coproduction, synergy, and development. *World Development* 24: 1073–1087.
- Państwowa Inspekcja Pracy (2021) *On the National Labour Inspectorate's Activity in 2020 - Abbreviated Version for the International Labour Organization*. Warsaw. Państwowa Inspekcja Pracy.
- Pestoff V (2012) Co-Production and third sector social services in Europe: some concepts and evidence. *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 23(4): 1102–1118.
- Piñeiro LC (2016) Port state jurisdiction over labour conditions: a private international law perspective on extra-territoriality. *The International Journal of Marine and Coastal Law* 31(3): 531–551.
- Sanz de Miguel P (2021) Corporatismo y coproducción en la lucha contra el empleo irregular: un estudio de caso. *Revista Española De Sociología* 30(4): a77.
- Walters D (2016) *Labour Inspection and Health and Safety in the EU*. The European Trade Union Institute's (ETUI) health and safety at work magazine, pp. 12–17.14

- Weil D (2014) *The Fissured Workplace*. Cambridge, Massachusetts: Harvard University Press.
- Weil D (2018) Creating a strategic enforcement approach to address wage theft: one academic's journey in organizational change. *Journal of Industrial Relations* 60(3): 437–460.
- Wispelaere FD, Smedt L and Paolet J (2022) *Posting of Workers. Collection of Data from the Prior Declaration Tools - Reference Year 2020*. Brussels: European Commission - DG EMPL. Available at: <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8536&furtherPubs=yes>

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