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

**Year:** 2024

**Version:** Accepted version (Final draft)

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**Please cite the original version:**

Haidinger, B., Lillie, N., Sanz de Miguel, P., Saksela-Bergholm, S., & Arasanz, J. (2024). Strategic labour inspection in fissured workplaces and transnational employment relations : Lessons from co-enforcement approaches and transgovernmental cooperation. *European Journal of Industrial Relations*, OnlineFirst. <https://doi.org/10.1177/09596801241267115>

# Strategic Labour Inspection in Fissured Workplaces and Transnational Employment Relations: Lessons from Co-enforcement Approaches and Transgovernmental Cooperation

## 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 organisations have had to become more strategic, as 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 disassemble transnational capital structures and regulation to reshape labour relations via worker mobility (Lillie, 2010). Efforts by EU, national and regional sectoral coalitions have reformed LI to more effectively combat the evasive strategies developed by many employers. The more open regulatory field presents LI with opportunities to strategically manoeuvre and innovate, through alliances with social partners, and LI organisations in other countries.

This paper examines three cases of LI strategy in construction in Austria, Asturias (Spain), and Poland, and three cases in maritime shipping in Finland, Spain, and Poland, focusing 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 seek to exploit synergies, but both the material reality and perception of these depends 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 labour inspection is limited, and complicated by the fact that labour inspection 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 theorizing 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 LI’s strategic agency deserves attention.

In many European countries, LI funding has been cut in recent years (Martínez Lucio, 2016; Walters, 2016; Iannuzzi and Sacchetto, 2019), even as the tasks facing them become more challenging, so there is a sense they must “up their game” to perform their core functions (Čaněk *et al.*, 2018). Strategic enforcement is a way to do this. It can be carried out in various 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. **For example, Cremers (2019) shows how part of the Dutch labour inspectorate's response to companies using complicated cross-border corporate arrangements to evade enforcement was to form a new specialised unit that based its inspections on principles of prioritisation and systemic impact. This strategic enforcement followed co-enforcement principles, using trade unions' sector-specific knowledge of business practices and collective agreements to detect violations. Lis encourage** proactive changes in employer behaviour by supporting them in setting up compliance schemes (Hardy and Howe, 2015; Weil, 2018). Similar to Fine (2017), we find 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 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 invokes normative goals such as democratic participation and representation (Pestoff 2012), the co-enforcement literature focuses 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 US 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 stabilizing 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 (Piñeiro, 2016), transgovernmental relationships become important.

*Transgovernmental* cooperation is well-described in the political science literature (Keohane and Nye, 1974), and there is a small but growing literature about transgovernmental LI cooperation (Hartlapp and Heidebreder 2018). Recently, the labour law scholars and ELA experts have published in this area (Stefanov and Mineva, 2019; Houwerzijl, 2022). Hartlapp and Heidebreder (2018) 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). 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 Heidebreder (2018) observes all three forms of cooperation intensifying, through front-line inspectors responding to investigative demands, and top-down from the EU. By setting up the European Labour Authority (ELA) in 2019, which has a mandate to strengthen LI cooperation and enforcement, the EU seeks to institutionalize this cooperation. In these ways, the Commission promotes pan-European networks of public, quasi-public and private actors, who both face toward 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 global system for inspecting ship safety based on international agreements, recently extended to cover labour inspection (Graziano, Mejia and Schröder-Hinrichs, 2018). PSC has only recently assumed LI responsibilities, leaving many organisations scrambling to learn how to conduct LI inspections.

### **Methods and Empirical Specifications**

We compare sectors, construction and maritime, as sectors tend to have unique characteristics in terms of regulation, corporate governance, and workforce characteristics (Keune and Pedaci, 2020). However, while sectoral logics are influential, country case are driven by more specific contingencies. In our cases, 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 coalition. Each of these variables is addressed in the results section for each case and compared in the discussion. We divide between policymaking and implementation, 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 agreements<sup>i</sup> introducing and enforcing labour and OSH 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 organized 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 characterize 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 characterized by mobility and migration, and strong labour segmentation based on nationality and ethnicity (Lillie, 2010; Meardi, Martín and Riera, 2012; Alho, 2013). Underpayment, neglect of OSH (occupational health and safety) standards, and inadequate social insurance coverage are common consequences for workers.

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

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 (Eurofound 2017; Sanz de Miguel 2021), meaning 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, 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 outsources liability (Cremers and Houwerzijl, 2021). In both industries, enforcement requires local inspection and enforcement, as well as in many cases transnational capacity to investigate and act.

Beyond those common challenges, there are also sectoral and regulatory specificities with different implications for enforcement. In the construction sector, the contractors and their workforce mainly come from inside the EU. Construction work, is to a great extent covered by binding sectoral agreements and EU regulation, so transnational operators who have not signed are legally obliged to abide by the collective agreements and related regulations. Thus, there is a regulatory frame, even if compliance is not guaranteed and enforcement is often weak. In contrast, the global character of the

maritime has led to international tripartite agreements and regulations rather than intra-EU LI cooperation. However, as will be discussed in the following sections, despite explicitly tri-partite global governance processes, operational co-enforcement is localized and unsystematic.

### **Co-enforcement in construction: tripartite social partnership cooperation and EU transgovernmental cooperation**

In construction LI enforcement is adapting at multiple levels to a transnational pan-EU labour market. European free movement rules make it possible for firms to evade enforcement by taking advantage of the jurisdictional limitations of national authorities (Arnholtz 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 and other enforcement organisations 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 the national ones. In Austria and in Asturias, sectoral social dialogue arises out of strong local/national social partnership traditions, embedded in sectoral bargaining, as well as bipartite social dialogue (Aistleithner and Flecker, 2017; Sanz de Miguel, 2021). In Poland, social dialogue has been characterized 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 matter. 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 centralized 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).

Despite institutional differences, co-enforcement, based on coordination between the state, the unions, and the employers, is key. However, the 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 ensure 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 1997 regional sectoral collective agreement marked the beginning of an autonomous social partner approach to enforcement. Under this legally binding agreement, social partners appointed their own inspectors. These were authorized 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. During the 2008-2012 economic crisis, cooperation with LI was informal, but the information exchange raised LI’s awareness of fraudulent practices (in particular, bogus self-employment) paving the way for a formal agreement. A tripartite agreement officially institutionalized information sharing, formalized 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 alerting 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 maximize 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 workers' social protection. The hallmark of this model was the creation of the Labour Foundation in 1988, the first 'bipartite' body in the construction sector in Spain. Since then, it has served as a vehicle for investment in training, equipment and social benefits. This model is threatened by "outside" companies, circumventing 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 agreement. This also allows them to save on the higher OSH, and vocational training costs, 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 realizing 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 problems (such as bogus self-employment) with direct implications for business competitiveness, and on maintaining funding for sectoral policies. In the field of OSH, the co-enforcement agreement places 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 Labour Inspectorate, the financial police or social insurance authority, in Austria's **construction sector** has long resided in a quasi-public body jointly managed by the social partners. **The competences of BUAK are sectorally unique as the general Labour Inspectorate in Austria only has competences in OSH (and partly working time) and therefore plays a minor role labour regulator enforcement beyond OSH issues.**

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 mobilized 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)*

. In Austria, sectoral regulation is threatened by byforeign 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 (5,883 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, Premrov and Danaj, 2022, p. 29; Wispelaere, Smedt and Pacolet, 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 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:

*BUAk's aim was to inform not only workers but also the Chamber of Labour about [when] a formal complaint [is filed] 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, combined with an inward flow of 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, Smedt and Pacolet, 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 about 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 deteriorating 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 skill 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 extend 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 institutionalized than in the Austrian and Asturian cases, in that it is only through operational cooperation. Also, the co-enforcement<sup>1</sup> relies on soft-regulatory mechanisms and non-binding agreements. Lacking operational inspection or enforcement powers, the social partners' role is more pedagogical and supportive and less punitive. Co-enforcement in this context might be more accurately labelled as co-production of an environment enabling compliance with labour standards. Employer interest in co-production arises from the negative impact on fair competition of companies circumventing OSH standards and employment regulation. Polish construction unions are relatively

weak, and therefore willing to cooperate with state authorities, because this presents an opportunity to 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 for social partners, in particular the 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 union enforcement role (AOSOC and AMW). Weak union organisational resources in any case limit their inspection capacity. As one 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 exploit regulatory loopholes in complex subcontracting chains (Austria and Asturias); the proliferation of OSH 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. In Poland, employers are the main actors for implementation. In Austria, foreign companies and references to foreign legal systems drive transgovernmental cooperation, as an embedded part of co-enforcement strategy, in the form of information exchange (administrative cooperation). In Poland and Asturias, transgovernmentalism is less prevalent 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 insular sector, both from the perspective of workplace operations as well as in 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 tri-partite global governance processes, operational co-enforcement is localized and unsystematic. Europeanization occurs in maritime not as a process of moving “up” to a transnational scale, but rather as EU actors assert their relevance within global systems and processes. DG MOVE, 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 seafarer complaint, or based on information from ITF inspectors or related professionals. PSC routinely carries 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 are more inclined to ask 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 maritime, including by 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 comprehensive, but does not specify wage levels (Lillie, 2006).

Both maritime regulatory authorities and 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, facilitating transfer of technical information. ITF transnational coordination is more developed and involves more personal contacts than PSC, with joint training courses and inspector meetings, and high level union official participation in ITF campaign management. Since 2020, in the EU, DG MOVE and EMSA, have begun encouraging PSC pan-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 it 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 an MLC directive, 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 system of PSC under the Paris MOU, through participation in information systems aiding in selection of ships for inspection, through "white lists" (low risk ships) and "black lists" (high risk ships). These are important for insurance, flag registration, and classification, providing 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 toward compliance.

The FOC campaign, which sets the industry context for wages, gives the ITF direct relations to seafarers and national unions, and assures ITF 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 mobilizing 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*, ITF inspectors can occasionally rely on dockers unions' solidarity to force shipowners to cooperate, by threatening 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 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 mobilizing 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' 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 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, incentivize employer compliance and maximize 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 more unified in geographic scope. Co-enforcement in construction in Poland falls short, 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, fitting with a normatively strategic approach 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; 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 mobile workers. PSC's multifaceted and multilevel global infrastructure assumes hypermobility as the norm on ships they inspect; BUAK's relies on an EU infrastructure set up by EU institutions for cooperation between public authorities. Asturian and Polish construction 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 tri-partite, with sectoral unions, state authorities, and social partners involved. In Poland, the relationship is only slightly institutionalized 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 of sustaining compliance and changing the 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 investment in institutional infrastructure, to do this. For both trade unions and employer organisations, enforcement is partly anchored in defending a sectoral model oriented toward improving productivity and workers' social protection.

In maritime, local level co-enforcement (in ports) has not institutionalized to the same extent. The MLC arose from a global-level social partner initiative to institutionalize PSC's role in LI. For shipowners, the MLC was a way to marginalize low-standard shipowners, who are a competitive threat, creating negative externalities for non-compliant shipowners. 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 realized them. Moreover, strong global transnational union cooperation and trans-governmental 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 bargaining relationship: 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, which 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 of ideas in strategic enforcement: co-enforcement does not automatically emerge under certain conditions, but rather is a strategic attempt to chase synergies following models that are developed and applied over time.

## **Conclusion**

Co-enforcement and transgovernmentalism allow LI to more efficiently use resources, and to extend its capacity to act, in the face of a more challenging regulatory environment. As Hartlapp and Heidbreder's (2018) analysis suggests, functional requirements drive cooperation. Co-enforcement, transgovernmental and transnational cooperation are driven by a search for more enforcement resources, through synergies as the coproduction/co-enforcement literature suggests (Ostrum, 1996; Pestoff, 2012; Fine, 2017).

This cooperation can occur both in policy making and in operational implementation, but the articulation between these elements differs from case to case. They sometimes occur in the same context, with the same actors both deciding to cooperate, and implementing the cooperation, as in our construction cases. Implementation can also be separate and distinct in space and time, as in maritime, where global institutions create an infrastructure incentivizing local cooperation - but those actors make separate decisions to co-enforce, or not, and to engage in transgovernmental cooperation, or not. The greater unification of policy and implementation in construction in Asturias and Austria, compared to the maritime cases, reflect the fact that these organizations have both policy and implementation competence within geographically bounded areas of operation. However, the Austrian BUAK's extension of its reach through IMI and EU networks reflects a reality of mobility similar to maritime

shipping, at tension with geographic boundaries. This could over time interact with the EU scale policy regime to shape the operation of local scale operational co-enforcement as well.

Finally, although we have shown that social partnership-based co-enforcement can contribute to compliance and fair competition, we also note that the conflict of interest between employers, workers and the state limits this. Organized employers want to exclude unorganized low-cost competitors, but may also benefit from exploitive work practices. Inspectorates sometimes must deport workers without valid work permits, while unions would rather close their eyes to this. Unions might overlook safety and environmental violations if workers are receiving good wages and not complaining. Bipartite social partner institutions and non-union sectoral enforcement bodies rarely actively help workers collect their wages, which is a crucial aspect of enforcement, due to employer reluctance.

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<sup>i</sup> Agreement on Occupational Health and Safety in Construction (ASC), Agreement on Minimum Wages in the Construction Industry (AMW), Agreement on the Protection of Workers in the Operation of Cranes (AOSOC)

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