

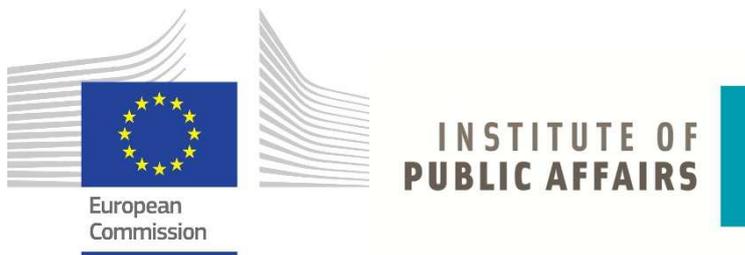


SPLIN

Polish report – construction sector

Fair working conditions: Exploring the contribution of cooperation initiatives between Social Partners and Labour Inspection authorities in the Polish construction sector

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Introduction

The persistence of different forms of fraudulent contracting work has attracted scholars' interest on labour standards enforcement. Labour inspection is a central response to the gap between formal regulations and outcomes for workers which has been widely studied (Weil, 2014). Scholarly debates have also concentrated on trade unions and enforcement, but they have largely neglected the existence and potential for partnerships between labour inspectors and social partners. Generally, actions developed by public authorities and social partners tend to be analysed separately (Eurofound, 2016). This oversight has deprived scholars of the tools to understand the relationships between these actors and, perhaps more importantly from a policy-research approach, has limited the range of policy options considered by reformers (Amengual & Fine, 2017).

This report, which is part of the EU funded SPLIN project, relies on a line of research on co-enforcement (Amengual & Fine, 2017; Fine, 2017; Fine & Gordon, 2010; Hardy, 2011) that incorporates the potential contributions of worker and employer organisations for co-enforcing labour standards jointly with national labour inspection institutions. Co-enforcement action has been defined as ongoing coordinated efforts of state regulators and social partners to jointly produce labour standards enforcement (Amengual & Fine, 2017; Fine, 2017). Empirical research on co-enforcement has inferred a number of mechanisms justifying the relevance of this approach and highlighting its specificity compared with traditional enforcement approaches. It has particularly shown how co-enforcement relies on the non-substitutable elements of state and social partners. Co-enforcement incorporates the unique capabilities to improve enforcement that each partner adds (the unique capacity of the state to set labour standards, trade unions' unique capabilities to share their tacit knowledge on the work processes, etc.). Secondly, empirical literature has shown that co-enforcement relies on a sort of "strategic enforcement" approach (Weil, 2010) which focuses on specific sector. When social partners focus on a specific sector, they are in a better position to understand how companies operate and what the main causes of the frauds and abuses are. Literature has also identified how co-enforcement contributes to build political support between state authorities and social partners (Amengual & Fine, 2017; Fine, 2017).

Co-enforcement in the construction sector is studied in the SPLIN project because it is one of the most problematic sectors in terms of enforcement, clearly calling for innovative strategies aiming to improve compliance with labour standards (Eurofound, 2017).

This report analyses co-enforcement actions in Poland selected for the SPLIN project, namely, the Agreement for Safety in the Construction sector (ASC), the Agreement on Minimum Wages in the Construction sector (AMW) and the Agreement for Occupational Safety for the Operation of Cranes (AOSOC). Each of the agreements has been concluded between companies or employers' organisations on one side and trade unions on the other side in order to fill the gap of sectoral collective agreement. These initiatives aim at establishing minimum standards in the construction sector (in the area of occupational health and safety [OSH] or wages) in autonomous dialogue, enabling predictable business operation in ever changing circumstances and counteracting the fraudulent practices that are still common in the sector. The key issues encountered in the construction sector in Poland include malfunctioning of the public procurement procedures (predominance of the lowest price as a sole selection criterion), distributed responsibility (also in terms of OHS) of multistage subcontractors, abuse of civil law contracts and self-employment, undeclared work and difficulties in assuring safe working conditions for migrant workers. The National Labour Inspectorate has been involved in each of the three analysed initiatives as an official signatory or as a supporting entity, which gives strong legitimacy to the agreements. Cooperation of the National Labour Inspectorate and the partners

in these co-enforcement actions has enhanced the capacity of the partnerships in establishing and maintaining labour standards.

The report is preceded by an explanation of the research objectives and methodology. The main body of the report consists of four major parts. The introductory chapter outlines the background information on working conditions and the key issues in the construction sector in recent years, with special emphasis on the most frequent fraudulent practices and abuses. Also, some initiatives at the national level are presented (e.g. limitations on the duration of temporary contracts, partial coverage of civil law contracts with social contributions or the introduction of an hourly minimum wage) aiming at counteracting some of the fraudulent practices. The second chapter presents the objectives of the three initiatives (the ACS, AMW, and AOSOC) and their implementation in the construction sector, while the third chapter develops the issue of their effects. The report closes with some conclusions and attempts to position the analysed initiatives in the structure of the industrial relations system in the country.

1. Research objectives and methodology

The objective of the study was to analyse the three co-enforcement initiatives in the construction sector outlined above with the view to show their impact on working conditions.

The report has been prepared on the basis of methodology comprising three main research instruments:

- *Desk research*: review of the relevant literature and data on the key economic indicators and working conditions in the construction sector, with special focus on health and safety issues.
- *In-depth interviews (IDIs)*: ten semi-structured interviews with the key actors engaged in the establishment and implementation of the agreements. The interviews were conducted in line with the methodological guidelines prepared by the project partnership. The full list of the interviews containing the profile and number of interlocutors is presented in Table 1 below.
- *Direct observation*: two days of direct observation of enforcement actions (the Agreement for Safety in the Construction sector and the Agreement for Occupational Safety for the Operation of Cranes) on two building sites in Warsaw.

Table 1. Number of interviewees and interview profiles

Organisation	Interview profile	Number of interviews
Public administration/labour inspection	Civil servant in charge of designing, implementing and or monitoring co-enforcement agreement	2 IDIs National labour Inspectorate
Employer organisation	Officer responsible for design, negotiation and/or monitoring of the co-enforcement action	2 IDIs Confederation of Construction and Real Estate, leader of the Agreement for Safety in the Construction sector
Trade union	Officer responsible for design, negotiation and/or monitoring of the co-enforcement action	2 IDIs Budowlani trade union, Trade Union "Wspólnota Pracy" Committee for Tower Crane Operators
Enforcement actors	Enforcement actors of the co-enforcement actions contracted by labour inspection or social partners' organisations.	4 IDIs 2 OSH managers from the Agreement for Safety in Construction sector and 2 crane operators

2. Working conditions and main “fraudulent practices” in the construction sector: state of the art

2.1 Working conditions in the construction sector

In Poland, the construction sector depends heavily on public infrastructure investments (with a significant share of EU funds) and the effectiveness of public procurement procedures. Employment in the sector was higher in the later years of the 2007-2013 EU programming period, when public investments were coming to an end. New investments supported by EU funds between 2014-2020 accelerated after 2017, which was also reflected in the growth of employment (see Table 2). However, the increase did not yet reach the peak from 2012. In October 2015, the election was won by the largest opposition party, the right-wing Law and Justice party (PiS), defeating the governing Civic Platform (PO) and the Polish People’s Party (PSL). This resulted in decreased public procurement and a decrease in employment in the construction sector. In effect, the share of employed in the construction sector decreased, while general employment has been constantly growing in the economy. Despite these fluctuations, the share of employment in the private sector as compared to the public sector was stable and high (over 97%).

Table 2. Employment, average wage and hours worked in the construction sector in Poland as compared to the national average in the period 2012-2018

	2012	2013	2014	2015	2016	2017	2018
Employed in the sector (in thousands)	491.4	462.6	432.2	411	408	421.9	438.8
Private sector (in %)	97.2%	97.2%	97.3%	97.2%	97.4%	97.6%	97.6%
Public sector (in %)	2.8%	2.8%	2.7%	2.8%	2.6%	2.4%	2.4%
Share in employed (in %)	5.8%	5.4%	5.0%	4.7%	4.6%	4.6%	4.6%
Employed in the country (in thousands)	8446.9	8509	8608.7	8711.9	8946.6	9244.9	9481.2
Average monthly wage in construction (in PLN)	3702.29	3727.83	3887.51	4076.93	4252.02	4534.57	4901.82
% national average wage	105.1%	102.1%	102.8%	104.5%	105.1%	106.2%	106.9%
National average wage (in PLN)	3521.67	3650.06	3783.46	3899.78	4047.21	4271.51	4585.03
Average hours worked in the sector in the year	1797	1807	1826	1834	1817	1814	1813
% national average hours worked in the year	107.0%	106.8%	107.3%	107.2%	106.7%	106.8%	107.1%
National average hours worked in the year	1679	1692	1702	1711	1703	1699	1693
Unemployment (in %)	10.1%	10.3%	9.0%	7.5%	6.2%	4.9%	3.9%

Source: Statistics Poland (2012-2018) *Zatrudnienie i wynagrodzenia w gospodarce narodowej*; Eurostat

Wages in the construction sector have been higher as compared to average wages and have grown constantly in the period under scrutiny, corresponding with general trends in the economy. Moreover, due to economic growth, unemployment has been decreasing after the peak in 2013 – especially in 2017, 2018 and onwards. These circumstances had a strong impact on the

construction sector – low unemployment, combined with the growth in public investments, caused significant problems with labour shortage. It is estimated that as many as 100,000 vacancies were awaiting workers in the sector in 2019. This caused wage increases at a slightly higher pace as compared to increases in average wages in the economy. In 2018, the largest share of employees in the construction sector (41%) earned over PLN 6,000 (approx. € 1,410) and the next 16% earned between PLN 5,000 and 6,000 (€ 1170-1410), which is above the national average (PLN 4585.03 / € 1080) (Table 3).

Table 3. Wage structure in the construction sector in Poland in 2018

	up to 2100 PLN	2100-3000 PLN	3000-4000 PLN	4000-5000 PLN	5000-6000 PLN	more than 6000 PLN
Number of employees (in thousands)	14	230	234	274	188	286
100%	6.0%	10.8%	14.2%	17.6%	15.9%	40.9%

Source: Statistics Poland (2012-2018) *Zatrudnienie i wynagrodzenia w gospodarce narodowej*

Average hours worked in the sector per employee have been higher as compared to the national average and had been increasing until 2015 (Table 1). In the period 2016-2018, they stabilised at the level of approximately 1,814 hours per year per worker. These changes reflected general trends in the economy, thus the average of hours worked in the construction sector compared to the national average stood at the same level throughout the entire 2012-2018 period (approx. 107%).

One of the key factors having an impact on working conditions in the construction sector is the issue of migration from third countries, which has been one of the responses to labour shortages. According to the estimates of the government (Ministry of Family, Labour and Social Policy), immigration volumes started to rise in 2014, with a total of 1.6 million permits (simplified statements) issued in 2018 (an increase of 400%).¹ Employees from Ukraine constitute as much as 96% of this total. At the same time, 2.5 million Poles live abroad and many of them are working (Statistics Poland, 2018). Thus, the vacuum created by emigration to some extent failed to increase domestic labour market participation rates and, instead, attracted immigrant workers from Ukraine.

According to an EWL study (2018), Ukrainian migrants usually stay in Poland no longer than six months (54% up to three months, 40% between three and six months). Their main motivation to migrate is the possibility to earn more money as compared to wages in Ukraine (69%). As many as 13% of the study's respondents mentioned that they are allowed to work longer hours, which might be an indicator of fraudulent practices on the labour market in Poland. Nearly one-third of the respondents don't speak Polish at all and 23% speak the language poorly. Only 17% of the respondents declared that their knowledge of Polish is good or fluent. At the same time, nearly half answered that they need Polish in their daily job and 73% declared that they want to learn Polish. Only 30% declared that they recognise the differences between various forms of employment in Poland (employment contract, civil law contract, etc.). Half of the respondents stated that they work between 10 and 12 hours per day, 37% between 8 and 10, and only 11% work 8 hours or less. Nearly 59% would accept a working week with only one day off, 8% with no day off (only 33% would prefer regular working time). As many as 41% would accept a minimum hourly wage of PLN 9-11 net for their work, 33% between PLN 11 and 13, 18% between PLN 13 and 15, and 9% over PLN 15. As many as 29% of the respondents declared that

¹ Number of simplified statements: in 2014 – 387.4 thousand, in 2015 – 782.2 thousand, in 2016 – 1,314.1 thousand, in 2017 – 1,824.5 thousand, in 2018 – 1,582.2 thousand.

they have been a victim of a dishonest employer. At the same time, 26% of the respondents reported that they have already worked without registration (without an agreement).

2.2 Fraudulent practices and abuses in the construction sector

According to the National Labour Inspectorate's (PIP's) annual report for 2018, the construction sector is one of the most inspected parts of economy and, at the same time, one of the sectors with the highest proportion of fraudulent labour practices in Poland. Out of over 4,800 inspections carried out in 2018 in the construction sector, as many as 4,400 (93%) irregularities in the area of health and safety were found. As many as 24.3% of all accidents verified by PIP took place in the construction sector, and 28.6% of all fatal accidents were noted in this sector. Table 3 shows, however, that the number of accidents at work was decreasing in the 2014-2018 period, with the exception of the year 2017. The most common causes include incorrect worker behaviour (45%), inappropriate general organisation of work (15%), technical reasons (40%).

Table 4. Accidents and injuries in accidents at work in the years 2014-2018 in the construction sector

Year	Number of examined accidents at work		Number of victims in accidents		
			In total	including:	
				fatalities	severe injuries
2018	In total	513	540	70	171
	including collective accidents	31	58	5	11
2017	In total	628	678	94	215
	including collective accidents	34	84	6	11
2016	In total	537	583	81	197
	including collective accidents	36	82	6	8
2015	In total	576	625	94	194
	including collective accidents	45	94	4	23
2014	In total	591	657	96	202
	including collective accidents	44	110	8	24

Source: National Labour Inspectorate (2019). *Sprawozdanie z działalności państwowej Inspekcji Pracy w 2018 roku*

The PIP audits showed that 11.5% of the inspected workers in the construction sector were unregistered (illegal work) in 2018, and 9.5% in 2017 (one of the highest shares as compared to other sectors). The sector also has the highest share of the unlawful incidence of civil law contracts instead of employment contracts – 14.5% of all fraudulent cases related to civil law contracts in the country. The report points out that in many cases, the date of signing civil law contracts (regardless of the worker's nationality) falls on the day of the audit or just a few days before the audit date. This may lead to the conclusion that at least some of the formal contracts were signed as an effect of the inspection and that earlier the workers had been unregistered.

Companies in the construction sector respond to the high fluctuation in investments by proposing fixed-term employment contracts, civil law contracts and self-employment. According to Statistic Poland, there are over 100,000 companies in the construction sector, and as many as nearly 160,000 solo self-employed, a large part of whom are probably bogus self-employed. This phenomenon, when combined with the very general provisions of the Labour Code regulating the employer's obligations in the field of health and safety in relation to persons employed on a basis other than an employment relationship, translates into a low level of safety in conducting construction works.

Also, the issue of hourly minimum wage payment is relevant in the construction sector. Over 25% of all civil law contracts controlled by PIP showed signs of abuse – one of the highest shares as compared to other sectors. Audits also revealed abuses in terms of registering working time. The lack of working time records or their unreliability was disclosed in every fourth entity. Working time records were not regularly updated or only days or hours were recorded. Irregularities occurred particularly in small and medium enterprises (SMEs). Discrepancies were also found between the amounts on payrolls and the actual salaries paid.

Moreover, the highest share of fraudulent practices in employing migrant workers (most of whom were Ukrainians – 83%) were found in the construction sector – 16.3% of all audited workers in the sector in 2018 (13.6% in 2017). The following violations are the most frequent: false name on the simplified statement enabling employment in Poland; violation of employment conditions defined by the simplified statement; violation of employment conditions defined by work permit (especially regarding payments); illegal stay in the country and therefore unregistered work; lack of migrant workers' registration for obligatory social insurance and Labour Fund. The form of employment is one of the key problems in regulating migrant work in the construction sector. According to the Ministry of Family, Labour and Social Policy, a civil law contract was declared as the form of employment in nearly 1.1 million simplified statements and in 117,000 seasonal work permits. PIP has repeatedly raised the need for legislation limiting the employment of foreigners only to employment contracts and to civil-law contracts to which the social security obligation applies, including accident insurance. The PIP report notes some difficulties with inspecting the employment status of migrant workers because they often do not recognise the difference between various types of contracts. Moreover, they stay for only a short period of time (a couple of months), and therefore finalising investigation on compliance with employment regulations is troublesome. Another problem raised by the PIP report is the language barrier, which is a crucial issue for obligatory health and safety trainings in the construction sector. According to Polish regulations, the employer is obliged to present an agreement in a language familiar to the worker, but this obligation does not cover OSH instructions, employment form and company level work regulation.

2.3 Legal initiatives counteracting fraudulent practices

Since 2015, some legal initiatives (regardless of sector) have been undertaken in order to limit the spread of civil law contracts and fixed-term employment contracts which contribute to segmented labour markets. These regulations significantly impact the construction sector as it uses civil law contracts more frequently than other sectors. In 2015, an amendment to the Labour Code limited the maximum number of consecutive fixed-term employment contracts to three, and further limited the combined length of those contracts to 33 months.² Another reform of the coalition government of Civic Platform and the Polish People's party introduced obligations to pay full social-security contributions up to the level of the minimum wage (gross rate of PLN 1,680 / €400

² With the addition of a three-month trial period, this means no employee may work with a limited-duration contract for more than three years. The new law came into effect in January 2016.

per month in 2016) in the case of civil-law contracts. As a result, civil-law contracts became less attractive to employers due to the increase in labour costs. Some mild impact of both reforms has been observed. The share of temporary contracts dropped from 28.3% in 2014 (its historical peak in Poland and the highest share in the EU for that year) to 24.3% in 2018. However, the result has also been influenced by other general trends such as overall economic growth and labour shortages (new job creation was driven mostly by the use of permanent contracts). Nevertheless, Poland is still a country with one of the highest shares of temporary contracts in the EU (just behind Spain); therefore some further reforms are necessary.

In 2017, the government commenced significant year-to-year raises of the minimum wage for those employed under a labour-code contract. In 2017, it rose from PLN 1680 (€ 400) per month to PLN 2000 (€ 475); in 2018, up to PLN 2100 (€ 500); in 2019, up to PLN 2250 (€ 535); and in 2020, up to PLN 2600 (€ 620). The minimum wage raise was relatively high (55% in the period 2016-2020) and had a significant impact on the wages in the construction sector as well. Currently, the ratio of the minimum wage to the average wage is roughly 50%, with some 10% to 15% of employees having earnings close to the minimum wage.

In addition to mandating significant minimum-wage increases for those employed under labour-code contracts, in 2017, the government adopted a new law that for the first time set a minimum hourly wage for those employed under so-called contracts of mandate (a specific type of civil-law contract).³ Before this reform, there was no bottom limit for the hourly wage under civil law contracts, and monthly minimum wage was set only for employment contracts. Due to the fact that there were incidents of civil law contracts with remuneration amounting to € 1 per hour, if such a worker was engaged full time, monthly remuneration would be approximately € 170 gross, compared to the poverty threshold (social minimum) of approximately € 270 net in 2017. The new law sets the hourly wage as a ratio of the monthly minimum wage (valid for employment contracts), so that both must rise in the same proportion. In 2017, the minimum hourly wage amounted to PLN 13 (€ 3.1), and it will rise to PLN 17 (€ 4) in 2020. A substantial increase in the monthly minimum wage, along with the introduction of an hourly minimum wage, will ultimately contribute to a significant reduction in the in-work poverty rate and reduce fraudulent practices (such as paying well below the hourly minimum wage, which often took place in some sectors – outsourcing, cleaning, security, the hospitality industry – especially among migrant workers, often leading to working long hours⁴ in order to make ends meet).

In 2019, the government discussed the liquidation of the flat tax scheme (flat rate – 19% of personal income tax regardless of income amount) in place for self-employed and to replace it with the general (progressive) personal tax rules that apply in the case of employees. The rationale for this was to prevent the disproportionately lower personal taxes paid by the self-employed using the flat tax rate. Currently, since most of the self-employed earn above the second taxing threshold (over which the 32% taxing rate applies as compared to 18% under the threshold), the flat tax

³ There are two main types of civil law contracts regulating work in Poland: (A) contracts of mandate and (B) contracts to perform a specific task, with (partial) social contributions and hourly minimum wage applying only in the former. In both types of contracts, personal tax applies. Both of the two types of civil law contracts are covered by workers protections (with some exceptions, i.e., OSH regulations), unlike in the case of employment contracts covered by the Labour Code and statutory monthly minimum wage. Self-employment is another legal form (other than civil law contracts and employment contracts) allowing for providing services to contractors. In this case, full social contributions apply, but the self-employed are allowed to make contributions calculated from the level of 60% of the mean wage in the country regardless of income. Also, the self-employed may choose their personal tax schemes: flat tax scheme (19%), general (progressive) scheme (17% / 32%), lump sum scheme or tax card (the last two schemes are addressed to specific activities). For further details see: Czarzasty (2018), Legal aspect of atypical employment forms in Poland, [in:] Dominik Owczarek, D. (ed.). *New forms of work in Poland*, Institute of Public Affairs, Warsaw.

⁴ Overtime payments do not apply to civil law contracts.

scheme allows them to pay a lower personal tax (i.e., 19%). This could be interpreted as a legal loophole allowing for tax evasion. Discussions on this reform, however, have been dropped due to massive discontent among the self-employed in the election year, and the issue is not expected to be introduced in the nearest future.

3. Co-enforcement action

3.1 Objectives and drivers

Here, we will discuss three noteworthy initiatives in the construction sector that have been introduced in recent years addressing challenges regarding health and safety and wage-related issues.

- A. **The Agreement for Safety in the Construction Sector (ASC)** [*Porozumienie dla Bezpieczeństwa w Budownictwie*] (2010)
- B. **The Agreement on Minimum Wages in the Construction Sector⁵ (AMW)** [*Porozumienie w sprawie stawki minimalnej w budownictwie*] (2014 and yearly renewed and updated);
- C. **The Agreement for Occupational Safety for the Operation of Cranes (AOSOC)** [*Porozumieniona Rzecz Bezpieczeństwa Pracy przy Obsłudze Żurawi*] (2017).

Each of the agreements involves both representatives of employers and employees. The Chief Labour Inspector is a signatory in the ASC and is one of the supporting institutions of the AMW and AOSOC.

The Agreement for Safety in the Construction Sector was concluded in 2010 between the largest construction companies operating in Poland. The main aim of the alliance is to improve occupational safety on construction sites. It introduces certain systemic Health and Safety at Work solutions for construction works projects, such as shared documentation templates for controlling OSH procedures, a model for confirming professional qualifications of construction workers and periodic training. The alliance members intend to promote a culture of safety – to raise awareness of the threats related to work on a construction site and, in consequence, to eliminate their risk.⁶ A jointly agreed template for occupational health and safety requirements is to be annexed to the contracts that alliance members sign with subcontractors.⁷ Another template lists the minimum requirements of the scope of training for subcontractors' staff.⁸ Such rules are binding only for alliance members and they have no reference to subcontractors' wage policies.

“Our goal is to set high OSH standards in our companies, because we know that one zloty invested in this area means three zlotys of benefits resulting from the lack of accidents and work stoppages. But above all, the highest value for us is the lives and health of our employees.” (Coordinator of the ASC).

Although the activity of the alliance does not refer directly to fighting bogus self-employment, it may be useful for this purpose indirectly. The health and safety requirements regarding subcontractors precisely specified by the leading construction companies indirectly help to eliminate smaller companies that fail to meet such standards (because they rely on bogus self-employment in their operations) from the market of the large construction contracts. It should be

⁵ Full name of the Agreement: Agreement on the hourly minimum wage in the construction sector for construction and installation works and real estate management services implemented in Poland in 2014 [*Porozumienie w sprawie minimalnej godzinowej stawki kalkulacyjnej wynagrodzenia w budownictwie dla robót budowlano-montażowych oraz usługach w zakresie gospodarowania nieruchomościami realizowanych w Polsce w 2014 roku*].

⁶ <http://www.porozumieniedlabezpieczenstwa.pl/historia.html>

⁷ http://www.porozumieniedlabezpieczenstwa.pl/doc/83/Standardy_minimalnych_wymagan_wobec_podwykonawcow_zapisy_umowne.pdf.

⁸ http://www.porozumieniedlabezpieczenstwa.pl/doc/83/Standardy_minimalnych_wymagan_wobec_podwykonawcow_szkolenia_i_dodatkowe_kwalifikacje.pdf

added that this is a voluntary commitment of the large companies and is not subject to labour inspection enforcement.

However, the National Labour Inspectorate is one of the signatories of the ASC and officially supports the idea of the Agreement. Following the unsatisfactory results of its inspections, the National Labour Inspectorate incentivised the key companies in the sector to introduce autonomous OSH regulations binding them internally and their subcontractors. A group of companies striving for more stability in business operations and in hopes of counteracting unfair competition initiated discussions and established the ASC.

The Agreement on Minimum Wages in the Construction Sector was concluded on April 8, 2014 by the “Budowlani” Trade Union, NSZZ “Solidarność” – Secretariat of the Construction and Wood Industry on the workers’ side, and the Confederation of Construction and Real Estate, the Polish Crafts Association, the Polish Association of Employers in Construction and Employers of the Lublin Region on employers’ side.⁹ The main driver of the agreement was to counteract fraudulent practices with regard to wages and the economic exploitation of workers. Before introduction of the national hourly minimum wage in 2017, payments under civil law contracts – often used in the construction sector, especially among migrant workers – were well below the hourly minimum wage later introduced for some groups of workers. These practices were also a challenge for construction companies bidding for public procurements, because companies employing workers under civil law contracts not covered by minimum wage regulations represented unfair competition. The signatories of the agreement decided not to compete on minimum wage standards, which was supported by trade unions, and the parties agreed on a mechanism calculating an hourly minimum wage in the sector.

“When we started working on the AMW in the construction sector in the first decade of the 21st century, there were no regulations regarding the minimum wage for contracts of mandate. Therefore, there were pathological cases of paying a few zlotys per hour, on which it was obviously impossible to make a living. Large companies are also bothered by the lack of regulation in this area, because it is impossible to run a fair business if minimum wage standards are not used by all competitors in public tenders. The need arose to establish independently minimum standards to eliminate these pathologies.” (“Budowlani” trade union)

The mechanism assumed yearly indexation of the gross hourly minimum wage in line with the statutory monthly minimum wage. On top of this amount, some additional costs were added: costs accompanying an employment contract that do not occur in civil law contracts and sector-specific costs (e.g., equivalents for workwear, equivalents for workwear laundry, medical examinations, etc.). The national hourly minimum wage introduced in 2017 adopted this mechanism. Therefore, after 2017, the hourly minimum wage agreed in AMW has been equal to the national hourly minimum wage plus additional costs. The agreed minimum wage in 2014 was PLN 14.29 (€ 3.40), in 2019 it amounted to PLN 19.03 (€ 4.53), and in 2020 to PLN 21.65 (€ 5.16).¹⁰

The parties of the AMW also agreed to take measures to ensure that the principles of the agreement are applied by their members and that they will act to promote the agreement and implement its provisions in other companies –the contractors and subcontractors of construction and installation works. It was also agreed that information about the AMW will be published on the organisation's websites, and that the signatories will conduct legal and organisational activities in order to prevent unfair competition in the construction sector and in real estate management.

⁹ <http://www.forum-budowlane.pl/aktualnosci/minimalna-stawka-kalkulacyjna-kosztow-pracy-w-budownictwie/>

¹⁰ <http://zzbudowlani.pl/?cat=73>

The agreement has also been supported by several other organisations (chambers, an employer organisation, an NGO – for details, see Table 5). The AMW is an open initiative, and other legal entities may submit their declaration by having their authorised representative sign the agreement.

The Agreement for Occupational Safety for the Operation of Cranes was signed on November 17, 2017, during a meeting initiated by the "Budowlani" Trade Union and the Committee for Tower Crane Operators of the Trade Union "Wspólnota Pracy".¹¹ This co-enforcement action aims at combining the efforts of actors in the construction sector and related industries, public and local government institutions, certifying institutions, and in particular, employers and crane operators in pursuit of reducing the risk of accidents at work. The initiative is being implemented by:

- the exchange of experiences and good practices;
- organising OSH training for crane owners and crane operators;
- organising conferences and seminars on occupational health and safety;
- unifying the approach to occupational safety issues (an attempt to create common standards) for crane owners, investors, equipment tenants and construction contractors.

The agreement provides far-reaching cooperation with state organs and public institutions working for work safety. The AOSOC is an open initiative and can be joined by any organisation with an interest in ensuring the safety of crane operators and construction workers. Signatories of the Agreement may be employers in the construction sector and related industries as well as crane owners. Supporting entities may be trade unions, chambers, associations, employers' organisations, public institutions and offices. One of the main triggers of the initiative was the need to introduce new legislation on OSH for the crane operators in the country. Therefore, the key stakeholders decided to organise a group that would take part in the process of preparing the draft bill and enforcement of the new regulations once adopted.

“Due to the fact that regulations on the OSH of crane operators' work ceased to apply, the unions took the initiative to introduce new regulations that would ensure decent working conditions and up-to-date regulations.” (Trade Union “Wspólnota Pracy”)

¹¹ <https://wspolnota-pracy.pl/porozumienie-na-rzecz-bezpieczenstwa-pracy-przy-obsludze-zurawi/http://zzbudowlani.pl/?p=3142>

Table 5. Agreements in the construction sector and their signatories

	Year	Signatories
The Agreement for Safety in the Construction Sector (ASC)	2010	<p><i>Chief Labour Inspector</i></p> <p><i>Trade union:</i> Polish Association of Construction Engineers and Technicians</p> <p><i>Companies:</i> Porr Infrastructure, Budimex, Hochtief Polska, Polimex Mostostal, Skanska, Warbud, Mostostal Warszawa, Mota Engil C.E, Erbud, Unibep, Strabag, Karmar, EIFFAGE Polska Budownictwo</p> <p><i>Supporting entities:</i> Central Institute for Labour Protection – National Research Institute, National Insurance Institution, Polish Chamber of Construction Engineers, MCKB Sp. z o.o., Grupa NDI, Polish Chamber of Scaffolding, “Budowlani” Trade Union, NSZZ “Solidarność” – Secretariat of Construction and Wood Industry, Polish Organisation of Employers in Construction, All-Poland Association of H&S Service Employees</p>
The Agreement on Minimum Wages in the Construction Sector (AMW)	2014, yearly renewed and updated	<p><i>Trade unions:</i> “Budowlani” Trade Union NSZZ “Solidarność” – Secretariat of the Construction and Wood Industry</p> <p><i>Employers organisations:</i> Confederation of Construction and Real Estate, Polish Crafts’ Association, Polish Association of Employers in Construction, Employers of Lublin Region,</p> <p><i>Supporting entities:</i> All-Poland Real Estate Chamber, Polish Scaffolding Chamber, Silesian Chamber of Construction, Federation of Employers in West Poland, Association of Plaster Producers “Polish Plaster”</p>
The Agreement for Occupational Safety for the Operation of Cranes (AOSOC)	2017	<p><i>Companies (crane owners):</i> Trinac Polska, Herkules, Corleonis, Mazur Żurawie, Dźwigmar, Baukrane</p> <p><i>Organisations, chambers and initiatives supporting the Agreement:</i> Chief Labour Inspector Polish Chamber of Construction Engineers, Polish Organisation of Employers in Construction, Agreement for Health and Safety in Construction sector (AH&S), All-Poland Association of H&S Service Employees,</p> <p><i>Trade unions:</i> Trade Union “Wspólnota Pracy” Committee for Tower Crane Operators, “Budowlani” Trade Union, NSZZ “Solidarność” – Secretariat of the Construction and Wood Industry, Polish Association of Construction Engineers and Technicians</p>

Source: own elaboration

3.2 Design of co-enforcement action

The Agreement for Safety in the Construction Sector (ASC)

The ASC was established in 2010 as an initiative of the Chief Labour Inspector. Its signatories were the largest construction companies operating in the country dealing with general contracting (list of member companies in the table above). Currently, the members of the agreement constitute

about 40% of the construction market in Poland, and this share is constantly growing. The cooperation between the Labour Inspector and companies in the sector started during individual talks between the stakeholders. Also, the need for amending the public procurement law and improvement of OSH standards had been raised in many sectoral reports and conferences. Finally, the signatories decided to propose an agenda aiming at autonomous improvement of OSH standards and mutual support, which has been also legitimised by the Chief Labour Inspector's contribution to the partnership.

“The role of the National Labour Inspectorate is to inspire and support autonomous stakeholder initiatives. We share our experience and resources, and we are ready to support them with our advice—we invite them to our conferences and trainings, we include them in our social campaigns, we distribute leaflets, publications, etc. If possible, we coordinate our activities with OSH partners. Nevertheless, our role is an assisting role. Companies and employees must be the main actors in the process of implementing OSH regulations.” (National Labour Inspectorate)

The main motivation to establish the initiative was the strong need to establish tangible OSH standards in the construction sector. The problems with compliance with OSH regulations resulted from very poor law enforcement in this respect. This was related to the limited resources of the National Labour Inspectorate, which, despite the special attention paid to the construction sector, was not able to ensure effective law enforcement. An important factor affecting the low standard of compliance with OSH was the need to reduce costs in investments resulting from public procurements regulations ruled by the lowest price criterion. Public procurement rules entailed structural problems that led not only to lowering OSH and labour protection standards, but even to the bankruptcy of many companies.¹² Paradoxically, these adverse consequences co-existed with all the prerequisites for successful investments, such as access to financial resources, developed construction companies and properly prepared public institutions (investor) capable of carrying out complex procurements and investments. The largest problem in reducing OSH standards concerned the subcontractors of general contractors and small companies operating in a semi-professional manner. In recent years, the considerable influx of migrant workers from the East who have filled the gap in the labour market after the emigration of skilled workers from Poland to the Western countries has been a challenge in this regard. The first wave of migration from the East brought experienced and competent workers, while the adherence to high OSH standards among newer migrants is currently very diverse. On top of the economic factors related to the lowest price principle for public procurement, construction companies were motivated by autotelic values aiming at the elimination of fatal accidents and a significant reduction in other accidents to preserve the lives and health of their employees. Especially in the case of foreign companies operating on the Polish market, it was important to transfer OSH culture and attachment to high OSH standards to their subsidiaries in Poland.

“The main problem we were facing a few years ago was the lowest price criterion in public procurement. The tender could be won only if all possible costs were cut. And the easiest area to cut is OSH costs and standards. This of course had its consequences – a lot of accidents, especially at a high pace of work. It was also almost impossible to enforce OSH standards with

¹² One frequent bankruptcy scenario was caused by winning public procurements due to the very low labour costs possible before introduction of the hourly minimum wage for civil law contracts. Once winning, companies had difficulties with finding workers or subcontractors who would carry out the assigned tasks, or difficulties with finalising assignments due to numerous accidents at poorly paid and badly secured building sites.

*subcontractors who were paid as little as possible due to a limited budget.”
(Coordinator of the ASC)*

A large number of accidents, including fatal ones, would also have a negative impact on a company's image, as well as causing financial losses related to downtime and the need to carry out repairs after damage. Representatives of companies in the study emphasised that investments in OSH standards pay back several times in financial value.

The Agreement on Minimum Wages in the Construction Sector (AMW)

The origins of the AMW can be traced back to 2002, when the idea of introducing a minimum wage in the construction sector was first discussed. However, the discussions took on new urgency after a series of construction company bankruptcies following the EURO 2012 football championship investments and when an official agreement on minimum wage was reached in 2014. The AMW signatories (see table above) have committed to maintaining this minimum standard in their companies.

*“The spread of so-called junk contracts – alias Civil law contracts – has become a devastating threat to workers and the welfare state. The agreements do not provide stable employment, holiday leave, and you can easily dismiss an employee almost on the spot. Until 2017, there was also no hourly minimum wage, so you could pay employees the equivalent of a bowl of rice.”
(“Budowlani” trade union)*

The idea of introducing a minimum wage appeared in the context of widespread atypical employment practices in Poland based on civil law contracts. Wages under employment contracts are subject to minimum wage regulations. In order to reduce labour costs, many employers in Poland used civil law contracts that were not covered by such protection. Atypical employment practices, including self-employment, have also spread throughout the construction sector. The initiative to introduce a sectoral minimum hourly wage – **regardless of the form of the contract** – emerged to counteract these practices by introducing a minimum floor for remuneration. The abuse of atypical forms of employment in the first decades of the 21st century led to the deterioration of the profession and the fall of its prestige. As a consequence, qualified employees were increasingly looking for a better job, including abroad, and unskilled workers were recruited. Lower wages enabled a stalemate in innovativeness, since no investments were necessary to gain profit.

Moreover, the public procurement law forced construction companies to compete with labour costs due to adoption of the lowest price criterion as the sole criterion for winning tenders. This was an important factor in the increase of civil employment in the construction sector. This situation changed only recently when a social clause was introduced demanding employment under an employment contract, thanks to which companies stopped competing with labour costs.

“The Polish economic model builds its competitive advantages based on low labour costs. Civil law agreements were introduced that allowed these costs to be further reduced. However, it turned out that in the long run this leads to serious difficulties in providing good quality construction services, sometimes even making it impossible. In consultation with the trade unions, we came to the conclusion that competing with labour costs must be eliminated and a minimum standard should be set. Thanks to this, dishonest companies lowering order costs will disappear from the market.” (Confederation of Construction and Real Estate)

In 2017, the government introduced a minimum hourly wage for contracts of mandate (a type of civil law contract), which had a positive impact on wage growth in the construction sector as well.

Nevertheless, contracts of mandate are not fully covered by social security contributions and employee rights, and workers are not entitled to annual leaves. In addition, specific task contracts (another form of civil law contract) are still not subject to the minimum wage, nor to any social insurance or employee rights.

In recent years, labour shortages in the construction sector have emerged as a problem (see introduction) that has led to longer working hours as well as active measures to attract employees from the East. In turn, migrant work is associated with difficulties in communication, differences in competences, low loyalty of employees (due to their short stay), as well as with the abuse of workers' rights by unscrupulous employers.

The first attempts to establish a minimum hourly rate in the construction sector were met with great reluctance. This proposal was not met with the approval of the then central-liberal government of the Civic Platform and the Polish People's Party. The Office of Competition and Consumer Protection (UOKiK) issued a position that the minimum rate violates the principles of free competition. Despite unfriendly attitudes in the general public debate, unions (namely the "Budowlani" Trade Union and NSZZ "Solidarność" – the Secretariat of Construction and Wood Industry) were able to convince key employers' organisations (especially the Confederation of Construction and Real Estate, Polish Crafts' Association, Polish Association of Employers in Construction) in the sector that the introduction of a minimum floor for wages will introduce standards and enable predictable operations of businesses in the sector, and that it will eliminate, or at least discourage, the fraudulent practices of unfair competitors to some extent. For employers, it was crucial to eliminate pay-related risks in complex investments (conducted usually for public investors) especially on the subcontractors' side (stable and uninterrupted access to labour thanks to decent wages and working conditions). Otherwise, the risk of subcontractors' bankruptcy and failure of investments was high.

“Implementation of large public contracts is an extremely complex dependency system. In addition to the general contractor, there are several, and sometimes even many, levels of subcontracting. One cannot afford that particular levels do not work efficiently and on time, because the performance of tasks by other contractors depends on it. Civil law employment and sometimes also self-employment extend the area of uncertainty; an employee can leave almost overnight, and staff shortages cannot always be filled with qualified workers.” (Confederation of Construction and Real Estate)

The agreement was reached in 2014, which is just three years before the Law and Justice party (PiS) introduced an hourly minimum wage. The AMW was of key importance for the sector during this interim period. After 2017, it continues to play an important role as it includes additional obligatory payments to workers (over the minimum floor of the national hourly minimum wage) and prevents other illegal practices like unregistered work (especially among migrant workers), the abuse of specific task contracts, bogus self-employment, etc. Additionally, the process of setting the minimum wage each year requires some dialogue between the signatories and building trust between the social partners.

The Agreement for Occupational Safety for the Operation of Cranes (AOSOC)

Several factors triggered the establishment of the AOSOC. Following the economic crisis in 2008 and the malfunctioning of the public procurement law, a number of companies and their subcontractors in the construction sector went bankrupt. Moreover, the spread of employment based on civil law contracts and the increasing scale of self-employment (including bogus self-employment) led to a deterioration of working conditions, in particular, for crane operators. A common practice in the sector involved crane operators setting up one-person companies and leasing a crane from a contractor or another third party. In this way, the majority of crane operators

were no longer employed in construction companies but worked as self-employed. In effect, greater responsibility for ensuring occupational health and safety rested on the operators and to a much lesser extent, on the main contractors. This prolonged shifting of responsibility to self-employed (or employed under civil law contracts) crane operators resulted in a significant increase in accident rates. Working conditions were also controlled to a much lesser extent, especially in terms of working time and wages, as well as working conditions such as the temperature in the cabin or the inability to take a break from work at height due to the lack of elevators or their poor quality (which did not allow for going down quickly and returning to work). Due to unstable forms of employment, new cranes were not invested in, and the average age of cranes began to approach 20 years, which in itself posed a threat at the construction site.

“Work on cranes is dominated by self-employed workers. Employees with employment contracts are very rare. Self-employed workers usually do not own cranes but lease them from another company. In this situation, it is difficult to build solidarity amongst crane operators, because everyone is potential competition. As a consequence, the collective struggle for working conditions is very difficult. It was only the need to prepare new OSH regulations for cranes to win various favourable regulations.” (“Wspólnota Pracy” Trade union)

However, the main factor behind the commencement on the AOSOC agreement was the outdated regulation on the health and safety of crane operators. In 2016, it was repealed, but no new regulations were introduced. This led to a legal loophole and, consequently, to the deterioration of work standards in the sector. The initiative to improve the working conditions of crane operators – mainly through the preparation of a proposal to amend the outdated regulation – was taken by crane operators in the “Workers' Initiative” trade union. This initiative was then joined by representatives of the “Budowlani” trade union. As a result, a separate organisation was established, the Committee for Tower Crane Operators of the Trade Union “Wspólnota Pracy”, which focused exclusively on crane operators and functioned as a regular fee-based union with no external funding. Ultimately, the AOSOC agreement was concluded on November 17, 2017, during which the preparation of new health and safety regulations for crane operators were dealt with in the first period of operation. Other workers and employer organisations joined the initiative in order to establish a new law and to promote OSH in the highly deregulated sector (see full list of signatories above).

“We shared our experience and knowledge in the field of OSH in crane operation. The operators presented their postulates in the area of working conditions, while the National Labour Inspectorate controlled the postulates' compliance with applicable state and EU regulations.” (National Labour Inspectorate)

The initiative has been supported by the Chief Labour Inspector, which gave counsel on the proposed provisions of the regulation. A first draft was prepared by the unions and then consulted with other signatories. The majority of provisions were supported by the employers' organisations. After two years of operation, new employers' organisations joined the initiative. The draft bill was submitted to the Ministry of Infrastructure with the strong support of the signatories of the AOSOC. In effect, the new draft bill was adopted in 2018 and went into force in February 2019.

3.3 Key points of implementation and dynamics identified

The Agreement for Safety in the Construction Sector (ASC)

The ASC is a well-structured partnership between the largest companies in the construction sector and enjoys the support of the Chief Labour Inspector, key public institutions like the Central Institute for Labour Protection and the National Insurance Institution, and trade unions and employers' organisations. Currently, it has no legal entity, but there are plans to establish a formalised association in order to get all powers to conduct professional operation. The partnership is chaired by the CEOs of associated companies for a two-year term (rotating system). In February 2020, Jacek Leczkowski, vice president of ERBUD, was elected chairman and thus initiated the tenth year of the ASC's operation. Activities of the partnership are coordinated by Michał Wasilewski – originally employed by Skanska and currently occupied solely with the initiative. The CEOs of the signatories meet every quarter in order to manage developments of the partnership. The activities of the ASC include as many as 14 thematic priorities (projects). Each of the projects is led by the OSH manager employed by one of the companies and he/she is responsible for delivering the tangible effects of the project and for managing implementation of OSH standards in all associated companies. The effects of the projects are widely commented and supported by the CEOs. Representatives of the Polish Association of Construction Engineers and Technicians and the National Labour Inspectorate are involved in the partnership's activities: they participate in meetings and study visits of the ASC and consult the OSH standards and procedures produced by the partnership. Both the Inspectorate and the trade union play an advisory and consultative role in the partnership. The Labour Inspectorate also shares information and educational materials with the ASC, and they coordinate trainings and promotional events and initiatives with each other. The ASC's operation is financed by the companies (an annual fee of 50,000 PLN / approx. € 12,000). After establishing a formal association, the partnership plans to apply for public grants in order to increase its scale of operation and develop OSH standards in the whole construction sector.

According to the interviewees, as many as 18 thematic OSH standards and over 200 advanced OSH procedures have been elaborated and implemented in the partnership. Representatives of the ASC (mostly CEOs and OSH managers) organise study visits and inspections in the associated companies in order to assure execution of the standards. The study visits are attended by the representatives of all signatories, if possible, including trade unions and the National Labour Inspectorate. The visits are aimed at presenting and promoting best practices implemented in particular companies so they can be developed in other companies of the partnership. There are also challenges, such as implementation of the standards in all subsidiaries of associated companies and in subcontracting companies. This is due to the fact that the partnership operates on a voluntary basis and also has limited capacity to execute implementation of its standards among the subcontractors.

“Operation of the agreement has so far brought the intended effects. We are expanding our membership and developing further OHS standards. Together with the improvement in the economic situation, we are counting on more securely implemented contracts.” (Coordinator of the ASC)

The partnership is developing dynamically. Only in the last two-year term of the ASC, three new companies joined the partnership – EIFFAGE Polska Budownictwo, MCKB, the NDI Group – and the Polish Chamber of Commerce for Scaffoldings has signed on as a supporting entity. In cooperation with the Chamber, a new standard was developed containing the minimum requirements to be met to ensure safety during scaffolding operations. The ASC also signed a letter on cooperation with the Central Institute for Labour Protection. Areas of regular cooperation

with the Chief Labour Inspector have also been defined. Moreover, the ASC began a cooperation with the Faculty of Civil Engineering of the Warsaw University of Technology under the title "Occupational health and safety in construction". The ASC has produced video recordings for trainings and brochures, as well as posters for migrant workers. The OSH standards elaborated by the partnership have been translated into Ukrainian and Russian.

In 2020, some new activities are planned. The ASC, in cooperation with the Chief Labour Inspector, will announce a nationwide prize entitled "Build Safely". This is a competition for contractors who introduce innovations in technical security and organisational activities. This year, companies and constructions outside the ASC will be awarded.

The Agreement on Minimum Wages in the Construction Sector (AMW)

As described above, minimum wages under the AMW in the construction sector are calculated according to an agreed-upon methodology and publicly announced in advance. The methodology is based on existing legal norms and consists of hourly minimum wage and obligatory sector-specific expenses such as equivalents for workwear, workwear laundry, medical examinations, etc. The signatories of the AMW commit to implement this obligatory minimum wage in their companies and to incentivise their subcontractors to comply with the legal provisions and the AMW as well. This mechanism plays several important roles. One involves disseminating information about the minimum wage in the sector so all entities may relate to it – both employers and employees – in wage bargaining (usually individually). This is especially important for migrant workers who frequently are not acquainted with the legal provisions regarding the level of the minimum wage and other obligatory sector-related expenses. The AMW played an important role before implementation of the national hourly minimum wage in 2017. The signatories of the AMW advocated for adopting such a solution countrywide. Currently, the AMW's advocacy role is still important, as it impacts on the enforcement of the legal regulations in the whole sector beyond the agreement, especially in SMEs (the business benchmark for the sector).

*"It can be judged that the AMW has modest ambitions because it only applies to mandatory pay standards. But at the time the agreement was made, there was no minimum hourly wage. The agreement itself contributed to the discussion in the public debate on the need to fill the legal gap. The AMW continues to play an important role – it is an instrument of pressure on dishonest employers before heavy-duty enforcement procedures, i.e. a lawsuit or labour inspection, are launched. A new dimension of the role of the AMW arose at the time of the increase of migrant workers from Ukraine, among whom not everyone knows their rights in terms of remuneration."
(“Budowlani” trade union)*

From a technical point of view, the partners agreed that the union “Budowlani” would be responsible for calculating the hourly minimum wage each year and for disseminating information about it among the signatories of the AMW. The union –in order to avoid criticism– invites well-known experts to do the calculation. The minimum wage in construction is set in advance and is announced publicly on the “Budowlani” union’s webpage.

The AMW fills a gap in the sector, as the employers’ organisations do not comply with the requirements for social partners to represent companies in sectoral social dialogue and, therefore, are not able to conclude a sectoral (supra-company level) collective agreement. Currently, the AMW is the sole sectoral agreement of this kind in the country.

The Agreement for Occupational Safety for the Operation of Cranes (AOSOC)

Currently, the AOSOC deals with enforcing the new law on OSH for crane operators and undertakes numerous actions aimed at improving working conditions. The signatories of the Agreement played an important role in the legislative process resulting in adopting the new law. Many of the proposals submitted by the signatories were eventually accepted. The partners monitor the effects of the new law (statistics and qualitative observations). In September 2019, a conference on the early effects of implementation of the regulation was organised.¹³ The conference was attended by representatives of the signatories of the agreement, the National Labour Inspectorate and experts. In general, the stakeholders assess the legal development positively – as a necessary step in order to assure minimum standards in crane operations and counteract fraudulent practices in terms of OSH, wages and working time. During the meeting, a new signatory joined the AOSOC – BAUKRANE Budownictwo, represented by Paweł Burzykowski. The first President of the AOSOC was elected –Wiktor Piwkowski, who is the secretary general of the Polish Association of Construction Engineers and Technicians. The key task of the president expected by the signatories is to set up a working group coordinating AOSOC activities in creating OSH standards for crane operators and to disseminate best practices in the sector. The next monitoring conference is planned to be organised in 2020.

“Our capabilities of the AOSOC partnership are quite modest. Our main success is finding an agreement on new regulations regarding OSH in crane operation. Currently, we mainly disseminate our experience over the internet among the members of the partnership and monitor on daily basis how the new regulations work in practice.” (“Wspólnota Pracy” trade union)

The leading partners have prepared practical guidelines for crane owners and crane operators on how the new law should be implemented on building sites. Moreover, best practices are discussed during the AOSOC meetings / seminars and disseminated in the country. Dissemination takes place online, mostly between signatories of the agreement.

One of the key challenges identified are insufficient resources for training crane operators in order to improve their skills and knowledge on the new regulations and on OSH in general after years of deterioration of work standards. Unions’ resources are poor in this respect. Companies issue certificates approving compliance with the new standards, but there is no official procedure of standards validation.

¹³ <https://dzwignice.info/baza-wiedzy/aktualnosci/spotkanie-porozumienia-na-rzecz-bezpieczenstwa-pracy-przy-obsłudze-zurawi>

4. Co-enforcement actions' contribution and effectiveness for promoting fair working conditions and preventing and/or tackling fraud and inequalities in working conditions

4.1 Input

The ASC is a relatively better funded initiative as compared to the AMW and the AOSOC. The associated companies commit to an annual contribution of PLN 50,000 in order to achieve the objectives of the partnership. On the top of the fee, each company finances its own OSH department with managers who run projects at the ASC. Therefore, adequate financial and human resources are provided to effectively achieve high OSH standards in the partnership. In addition, the ASC plans to raise public funds to expand its scope to other parts of the construction sector.

In the case of the AMW, the key activity of the partnership – which is setting an hourly minimum wage every year – does not require much in terms of resources. The challenge is to monitor compliance with these regulations in the partnership companies. This task is fulfilled by trade unions that report potential irregularities. Unfortunately, the low level of unionisation means that their whistle-blower role cannot always be fulfilled properly. According to CBOS, only 7% of respondents declared presence of a trade union at their workplace in the construction sector in 2017, which stood below the average in the country (31%). Unions operate only in the large companies; SMEs are free of unions in practical terms. However, this is a structural problem that is only partly associated with the implementation of the AMW in the construction sector.

As compared to the two other partnerships, the AOSOC appears to be the initiative with the least resources. All the actions under the AOSOC are undertaken voluntarily, mainly by trade unions and supported by employers' organisations in order to establish new regulations regarding the work of crane operators. Unfortunately, monitoring and enforcement of new regulations by AOSOC does not involve obtaining additional funds for these activities, which might pose a potential threat to the sustainability and effectiveness of the initiative.

4.2 Outputs and outcomes

The interviewees reported that each of the three initiatives brought significant improvement of working conditions in the construction sector in a direct way or indirectly by affecting the social partners and other key stakeholders.

The Agreement for Safety in the Construction Sector (ASC)

- The ASC has been gradually extended to other companies and the elaborated OSH standards have been implemented in large parts of the construction sector. Therefore, the main goal of the initiative to introduce a minimum floor for OSH standards is gradually being achieved proportionally to the scale of the partnership.
- The interviewees reported that the partnership allowed for better coordination of OSH process management within companies as well as between partnership companies. The agreed OSH standards are now better executed and are the same across the associated partners.
- The most tangible effect of the ASC is the successive reduction of accidents at work in partnership companies. The interviewees declared a reduction of over 2,000 accidents per year.

- Currently, thanks to regular meetings and executive cooperation between partners and public institutions, information flows have improved significantly, especially with the initiator of the ASC –the National Labour Inspectorate. In effect, better integration of the activities of the ASC and public institutions is taking place in the sector.

“We are pleased to cooperate with ASC signatories and support their activities. We see that they create and implement new OSH standards in their partnership firms. We try to show these good practices during our trainings and social campaigns. We hope that the effects will spread throughout the entire sector.” (National Labour Inspectorate)

The Agreement on Minimum Wages in the Construction Sector (AMW)

- According to the respondents – both employers and unions – the hourly minimum wage is respected in the associated companies, especially after the national hourly minimum wage entered into force in 2017. The regulation created a tangible wage benchmark for the entire sector. Respondents reported that the hourly minimum wage was taken as a point of reference in court trials before 2017, when fair remuneration was to be defined. The hourly minimum wage in the construction sector played an important role, especially before 2017. The advocacy role of the AMW is still valid, as it impacts the whole sector beyond the agreement, especially in SMEs.

“The rank and recognition of our autonomous agreement was a positive surprise for us. The hourly minimum wage in the sector has been cited repeatedly in court proceedings regarding the establishment of adequate remuneration.” (“Budowlani” trade union)

- The most significant improvement concerns migrant workers and unregistered workers whose rights were most often violated before implementation of the AMW.
- Still, despite the introduction of the AMW, the problem of labour shortage cannot be resolved because other factors also impact the difficulties with finding well-qualified labour. Additional attempts to solve this problem should be made within social dialogue, respondents argue. This especially includes revitalisation of vocational education (since 2017, a dual system has been developed in the country) to attract more workers to the sector.

“One of the main challenges currently in construction sector – in addition to reducing the number of accidents – is the issue of properly qualified staff. In the past, work in the construction industry was associated with the prestige of the profession, a construction worker was someone with concrete skills and well remunerated. Now we have to rebuild the qualifications of the workers as well as strengthen vocational schools and vocational teachers to get out of the period of degradation of the profession.” (Confederation of Construction and Real Estate)

The Agreement for Occupational Safety for the Operation of Cranes (AOSOC)

- The AOSOC established autonomous social dialogue between the key stakeholders in the sector, as it was largely neglected in this area. The cooperation on the draft OSH regulations for crane operators created partner relations and enabled a better mutual understanding of their perspectives.
- Both employers and unions appreciate the ongoing exchange of information in the area of signalling irregularities or violations of the AOSOC. Existing breaches are solved quickly. The agreement plays an important role in influencing other subcontractors to comply with OSH standards.

- In effect, a gradual expansion of the AOSOC partnership is observed, despite the fact that the partnership does not dispose of any dedicated funding.
- The respondents – from both the employers’ and unions’ side – declared that there is a noticeable improvement in the working conditions of crane operators. The agreement affected investments in cranes in order to adapt them to current regulations. Some new cranes have been bought, which significantly improves the working conditions of their operators. However, there are also considerable difficulties with adapting the oldest cranes to the new standards, which will be the focal point for the initiative in the upcoming years.

“The most tangible result of introducing the new regulations is the gradual replacement of cranes. Most old cranes did not meet standards and had to be withdrawn or renovated. The working conditions on the new equipment are much better – the cranes have a lift, air conditioning in the cabin and better technological solutions. This, in turn, attracts new employees and motivates people to train.” (“Wspólnota Pracy” trade union)

- Raising labour standards has attracted employees, which is an important development in the context of labour shortages. However, the problem is not yet fully solved, and the sector struggles with finding adequately skilled crane operators.
- There are also some challenges like difficulties in correctly recording working time, which, due to labour shortages, is one of the most frequent violations of the new regulations.
- The National Labour Inspectorate reported its limited resources (human resources, low wages, limited legal purview to conduct inspections), which hinder reliable controls and effective law enforcement. The interviewees expressed the need to train inspectors specialising in the inspection of crane operators. Currently, inspections are conducted by inspectors specialised in construction in general.

“The adoption of the new regulations on OSH in crane operation and the activities of AOSOC meant that the National Labour Inspectorate decided to prepare inspectors specialised in OSH of cranes. Due to limited human resources, we do not yet have properly trained inspectors. The challenge for us was to conduct effective control in professions with specific regulations.” (National Labour Inspectorate)

It should be noted that in all three cases there are noticeable deficits in terms of professional monitoring and evaluation studies on the effectiveness of the enforcement actions in practice. This would allow for better assessment of the initiatives and their impact on the working conditions in the sector. Currently available qualitative data (coming from the expert assessment of the interviewees) may give only a limited picture of the direction of the initiatives.

Conclusions

The above analysis shows that the agreements in focus are a sectoral bottom-up response to deficits in collective labour relations and enforcement institutions in Poland. The origins of the deficits can be enumerated as follows:

- No sectoral collective agreements or significant multi-establishment agreements that would have an impact on the working conditions in the sector;
- Weakness of social partners expressed in the low level of union density and inability of employers' organisations to conclude multi-employer or sectoral collective agreements;
- An unfavourable institutional environment in terms of law enforcement with limited resources:
 - The National Labour Inspectorate is underfunded, with an insufficient number of inspectors, a lack of specialist inspectors (e.g., for examining the working conditions of crane operators), limited legal powers in conducting inspections, low penalties for non-compliance with the regulations.
 - Slow proceedings and delays in labour and civil courts (lawsuits often take many months);
- Malfunctioning of the public procurement law, which until recently allowed for applying only the lowest price criterion in tenders and did not include a social clause requiring employment contracts for workers, which reinforced the use of civil law contracts and (bogus) self-employment;
- Fraudulent practices of employers in terms of form of employment (employment contract vs. civil contract) and compliance with OSH regulations operating in a highly competitive market.

These factors led to an advanced disfunction of labour relations and non-compliance with OSH regulations. One of the tangible results of these processes is segmentation of labour market: stable employment is a feature of those employed under employment contract covered by the Labour code, while those employed under civil law contracts cannot count on labour protection or employment predictability. Demanding compliance with OSH standards from the perspective of civil contractors is, in fact, illusory because contract termination is much easier and protection from the side of unions barely existent in the sector. This undesirable state of affairs culminated during the period of investments related to the EURO 2012 football championship, when numerous bankruptcies of large construction companies were noted. In recent years, an important challenge for the implementation of OSH regulations has been the influx of migrants from the East, who are more often affected by violations of their rights and OSH standards than Polish workers.

In the context of the insufficient capacity of public institutions and the weaknesses of social partners, compliance with OSH regulations and other legal employment standards poses a serious challenge. Nevertheless, the National Labour Inspectorate undertakes systemic initiatives to meet the most important problems in the construction sector. The model adopted by this institution is expressed by inspiring the main sectoral stakeholders to take autonomous initiatives aimed at solving a defined problem (OHS standards, compliance with minimum wage regulations or adequate forms of employment) and then supporting their independent action through their consulting and advisory capacity. In this way, the autonomous activities of social partners (or other stakeholders) are legitimised by a respected institution. This model of operation also helps to fill gaps in the institutional capacity of the National Labour Inspectorate and to extend the implementation of its goals to signatories of the partnerships it supports. To the extent available

for the institution, the National Labour Inspectorate tries to provide various resources (expertise, conferences, trainings, communication tools, etc.) to partners and coordinates its activities with the signatories.

All the agreements discussed here, namely the Agreement for Safety in the Construction Sector, the Agreement on Minimum Wages in the Construction Sector and the Agreement for Occupational Safety for the Operation of Cranes, provide an autonomous response to fraudulent practices in the construction sector in an area where neither collective labour relations nor public institutions are able to deliver acceptable standards. From the respondents' statements, one can even conclude that these agreements, which set minimum standards for employment and OSH, are rather a precondition for conducting predictable and sustainable business in the construction sector in the given unfavourable institutional and business environment. The goal of the agreements is not so much to raise existing standards, but rather to establish the standards and disseminate them throughout the entire sector. Leaving too much freedom for business entities, along with a faulty public procurement law and underdeveloped collective labour relations and incapable enforcement institutions led to circumstances in which doing business became nearly impossible. The autonomous initiatives of the key stakeholders supported by the National Labour Inspectorate and their advocacy activities led to the creation of islands within the sector where predictable business is possible and working conditions acceptable.

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