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Protecting Workers Rights in the Subcontract Chain

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Context

- There is an increasing tension evident in the provision of a social dimension in Europe;
- Prime example of tension is the ECJ interpretation of the Posting of Workers Directive (PWD);
- ECJ Rulings pressured Commission to provide solution to issues over Directive. So Single Market Act had as priority better enforcement of PWD;
- To inform enforcement Directive an Impact Assessment and four ex-post evaluation studies.



Research

- One of four ex-post evaluation studies for Commission (2 x legal; 1 x economic and social aspects);
- Co-ordinated by Ghent University 28 country study;
- Based on audit and core reports;
- Four and five month deadlines;
- Overall aim of project “**assess effectiveness of existing mechanisms... which ensure protection of workers’ rights in subcontracting processes**”.



UK report

- Ghent as co-ordinators laid out template for audit report and thus questionnaire. Interviews and case studies also carried out for mainly core report;
- Audit report based on three main categories:
Legal; Social partner; NGO provision;
- Following audit in these areas a core report which considered effectiveness of protection;
- We decided on respondents and secondary data to include.



Main Legal Provisions

- Survey Report – what is available to protect workers in the subcontract chain?
e.g.
 - Employment Agencies Act 1973
 - Health and Safety at Work Act 1974
 - Employment Rights Act 1996
 - National Minimum Wage Act 1998
 - Working Time Regulations 1998
 - Gangmasters (Licensing) Act 2004
 - TUPE Regulations 2006

Main Legal Provisions - Enforcement

- Core Report - Problems in Practice:
 - Are those in the subcontract chain employees, workers or self-employed?;
 - Documented or illegal?;
 - Protection often relies on the worker bringing a claim, or whistleblowing;
 - No liability placed on main contractor for acts/omissions of subcontractors.

Labour & European
Law Review

Focus on TUPE

Applying TUPE
to transfers
Explaining the limits of
transfer covered by the
2006 TUPE regulations



Social Partner Provision

- Allocated into public and private sector agreements (construction);
- In public sector main provision was that related to two-tier workforce so codes of practice and PPP protocols;
- In private sector construction was chosen as this provided the clear example of social partner agreements;
- So currently nine agreements covering trades and general labourers;



Working Rule Agreement

National Agreement
Engineering Construction
Industry



NGO Provision

- Citizens Advice Bureaux
 - To provide free independent advice;
- London Living Wage Campaign
 - To improve pay and conditions of low paid workers in London;
- London Citizens
 - Group of 160 bodies including faith institutions, universities, schools and community groups established to challenge the low wages emanating from increasing outsourcing and subcontracting in London.



Conclusions

Impact of our Research:

- The study on liability in the subcontract chain, of which our reports formed part, informed the Commission's draft proposals of 2012 for an Enforcement Directive aimed at protecting posted workers;
- Draft Enforcement Directive.....
(Com(2012) 131 final);
- ETUC/EFBWW etc. concerned with current draft so likely to be long period of negotiation before a directive.

