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No 1/2011

CLR News

Recruitment Practices in Europe

CLR

European Institute for
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Note

from the editor

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06-03-2011

The European Parliament reserved a substantial budget line in the EU budget for 2009-2010 for research in the field of the free movement and the posting of workers. The European Commission tendered this budget in the autumn of 2009. In the meantime the first results have been published. The outcome of this research could have a major impact on the Commission's preparation for a legal instrument with regard to posting that has been announced for the end of 2011.

Colleagues from the CLR-Network have been involved in several of these projects. Two important studies are still pending:

- A *legal assessment* (12 countries) executed by the Radboudt University, lead by Mijke Houwerzijl (her PhD was based on our archives and she has contributed in the past to our publications). The planning was for a report at the end of the summer (end of August) of 2011. This has been postponed and in the meantime the EC has decided to add an additional study on the 15 countries

not covered. The focus was and is the national implementation, problems with coordination, cooperation and compliance with the rules covering twelve countries, and two industries: construction and temporary agency work.

- *The socio-economic assessment*, lead by a Belgian consultancy, called *ideaconsult*, member of the *Ecorys*-group. From the start I had my doubts about their expertise and they had serious trouble to finalise the report (that is still not available). Also here the planning was a report shortly after the summer of 2010. The focus was on the economic and social impact of posting in 8 countries, with 4-5 industries targeted: agriculture, construction, temporary agencies, transport, hotel/restaurants.

CLR was directly involved in another research project commissioned by the EFBWW. With a team of experts, we investigated the functioning of the principles formulated by the Posting of workers directive

(Directive 96/71/EC) in practice on worksites. In the resulting 12 country reports, information is collected on national compliance with the posting rules and on experiences with monitoring, enforcement and sanctioning.

During a meeting at the Westminster University the book version of our final report was launched (*In search of cheap labour in Europe - Working and living conditions of posted workers* - CLR-Studies 6). On Friday 25 February Jan Cremers (University of Amsterdam), Line Eldring (Fafo, Norway), Justin Byrne (CEACS, Madrid), Kjell Skjærvø (Fellesforbundet TU, Norway) and Ian Fitzgerald (University of Northumbria) contributed to the regular monthly seminar of the British Universities Industrial Relations Association (BUIRA) Central London Branch. The title of our talk was *Posted workers in Europe* and we discussed and presented the results of the research, including comparative perspectives on the new realities of posting, organising posted workers locally and the clash between workers' rights and economic freedoms in practice – one that continues to place a critical role in industrial relations.

In this issue of CLR-News, we have collected the contributions of the

London meeting and completed the issue with several reviews that fit in the theme. CLR-Studies 6 with a synthesis of the research, short country reports and conclusions and recommendations is available in English: <http://www.antenna.nl/i-books> . Extended syntheses are available in German and French: www.clr-news.org

Subject articles

Jan Cremers,
AIAS

In search of cheap labour in Europe - Working and living conditions of posted workers¹

The cross border provision of services with posted workers is an integral part of the economic freedoms in the EU internal market. In the best case, this provision is a logical part of a genuine division of labour at European scale between contractors and specialised subcontractors. In the worst case, the cross border provision of services can be used falsely as a method to recruit cheap temporary labour.

The EU Posting of Workers Directive (Directive 96/71/EC), established in the mid 1990s, tried to settle posting rules that could guarantee the rights of posted workers within the territory where the work was pursued. The starting point was that a foreign employer, who temporarily delivers services, with workers posted, has to respect a large part of the applicable labour standards in the host country. The basic thinking behind the Directive was to formulate a 'hard core' of minimum provisions, combined with conditions of employment on matters other than those referred to, to be applied in a non-discriminatory manner, and based on mandatory rules (of labour law or generally applicable collective agreements).

Posting was first used in the field of the coordination of social security in Europe. The coordination rules are based on the principle of application of one legislation at a time. The rules aim to guarantee equal treatment and non-discrimination by the application of the *lex loci laboris* or the host country principle. This means that, as a general rule, the legislation is that applicable in the Member State in which the person pursues his/her activity as an employed or self-employed person. In the coordination framework as formulated, derogation from the general rules is made possible in specific situations that justify other criteria of applicability. Posting is one of these exceptions.

A team of CLR-experts has investigated the functioning of the principles formulated by the Posting of Workers Directive in practice on worksites. Our report, commissioned by the European Federation of Building and Woodworkers, with underlying research financed by the European Commission has been written on the basis of earlier research of the CLR network and recent additional surveys in 12 EU/EEA countries. In the resulting 12 country reports, information has been collected on national compliance with the posting rules, and on experiences with monitoring, enforcement and sanctioning.

The posting of workers in the framework of the provision of services can be defined in a relatively clear way. Based on article 1.3, it can be subdivided in several important elements:

- a. It presupposes the existence of an employment contract in the home country (or in the case of posted self-employed the continuation of the same economic activity). Posted workers are subject to a direct labour contract signed with the posting undertaking/employer in the home country.
- b. The posting undertaking/employer is a genuine company, registered and normally carrying out its activities in the home country. The posting undertaking/employer has signed a commercial contract for the temporary provision of services with a user/client in the host country. The provision of services is thus for a limited period.
- c. The posted worker is supposed to work on the request and under the control of the posting undertaking/employer. Posted workers perform paid work related to the services that are written down in the commercial contract between the posting undertaking/employer and the user/client.

The Posting of Workers Directive has in recent times been the subject of a series of court cases. The outcome of these cases has demonstrated that the European Court of Justice

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and the European Commission are working towards a narrow and restrictive interpretation of this Directive. According to the ECJ, the list of provisions regarding labour and working conditions is exhaustive. Additional mandatory rules are limited to rules, 'which, by their nature and objective, meet the imperative requirements of the public interest' (Observation 32 - Luxemburg case). According to the ECJ, it is not up to the Member States to determine the public policy that justifies additional mandatory rules beyond the minimum provisions listed in the Directive. This restriction of the ECJ means, in practical terms, that a higher level of protection than the minimum cannot be imposed on foreign undertakings with their posted workers. The ECJ judgements create a situation whereby foreign service providers do not have to comply with mandatory rules that are imperative provisions of national law and that therefore have to be respected by domestic service providers.

This interpretation contradicts the aim of the legislator as the Posting of Workers Directive was formulated and concluded: 'This Directive shall not preclude the application by Member States, in compliance with the Treaty, to national undertakings and to the undertakings of other States, on a basis of equality of treatment, of terms and conditions of employment on matters other than those referred to in the first subparagraph of Article 3.1 in the case of public policy provisions' (article 3.10 of the PWD). The ECJ has also seriously blocked the possibilities for Member States to control and enforce the posting rules.

One of the main conclusions of our practical evaluation is that the use of the posting mechanism ranges from normal and decent long-established partnership between contracting partners to completely fake letterbox practices of labour-only recruitment. In the final report, four different features of posting-related cross-border recruitment are distinguished.

1. Normal posting with specialised subcontractors providing temporary services in another EU Member State with well-

paid skilled workers or qualified staff both belonging to the posting companies' core workforce.

2. 'Perfectly legal' posting where the calculation is made between engaging a domestic workforce and bringing in a workforce from abroad under the banner of the free provision of services. Here, at first sight, nothing is wrong. But, the calculation is simple: a subcontractor that can provide a basic workforce from a country with low social security payments is cheaper than a domestic subcontractor. If this is combined with long working hours and poor living and working conditions, one can question the legal character of the posting.
3. Questionable practices of 'legal' posting where the recruited workforce is confronted with deductions for administrative costs, for lodging and transport, tax deductions and the obligatory refunding (after the return back home) of (minimum) wage payments. These are practices that are in breach with the provisions of the Posting Directive.
4. Finally, different types of 'fake' posting, varying from: the copying and distribution over a whole gang of E 101/A1 forms; recruitment of posted workers who were already in the host country or workers turned into bogus self-employed; posting via letter-box companies and unverifiable invoices for the provision of services. Posting is the alibi in the case of control on site.

Posting has become one of the channels for the cross-border provision of (cheap) labour in the single market. Its use for the labour-intensive segments of our labour markets does not necessarily lead to a deterioration of working conditions, but it has certainly created an opening for new and unintended forms of recruitment.

Based on our research, we have to conclude that monitoring of posting rules is difficult and hampered by the ECJ limitations; enforcement lacks strong sanctioning, fines are weak in an extra-territorial context and - in most countries - there are no specific posting-related enforcement instruments.

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Posting is by most countries not seen as a problem or ignored, given the size of the phenomenon or the estimated impact. A condition for a properly-functioning and genuine provision of services is, however, that actors and competent authorities involved take contract compliance and posting rules seriously. Therefore, national and bilateral cooperation has to be improved, supervisory mechanisms have to be freed from the serious handicaps created by the European Court decisions and institutional coordination has to be guaranteed and strengthened. It is necessary to restore the aims and purposes of the Posting rules. There is an urgent need to repair this part of the Community Charter of Fundamental Rights of Workers. In the final report we have listed our conclusions and recommendations. I refer to CLR-Studies 6 and thank you for your attention.

1. Title of CLR-Studies 6, the new report on Posting of workers, ordered by the EFBWW, January 2011. The report with a synthesis of the research, short country reports and conclusions and recommendations is available in English: <http://www.antenna.nl/i-books>; extended syntheses in German and French on: www.clr-news.org

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Posted workers in Norway: Win-win or lose-lose?

Introduction¹

In January 2007 one of Norway's largest employers' associations - The Federation of Norwegian Industries (Norsk Industri) voiced concerns over lack of labour, and demanded the government to do more to facilitate the mobility of foreign workers to Norway. The organisation estimated that there would be a need for 100,000 workers in the years to come. But – as their Director General said – “this must not be mixed up with labour migration. Mobility of services means that workers come here for a limited period and then go back

home". Norsk Industri stated that "service mobility is a win-win-situation" – and emphasised that the posted workers should receive good wages, but with their home countries' and not with Norwegian wage levels as the benchmark.²

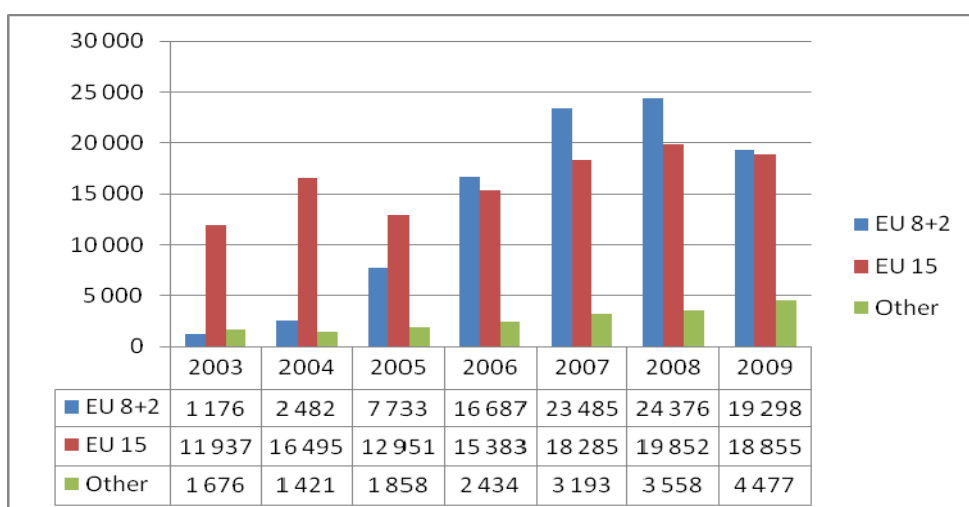
Throughout Western Europe, the inflow of labour from the new Member States in Central and Eastern Europe has challenged the national labour market regimes - both because employers have used the opportunity to save costs and due to regulatory conflicts between national and EU law, as in the controversial rulings of the European Court of Justice in cases like Laval, Viking Line and Ruffert. The situation has triggered intense political as well as academic debate on migrant workers rights, and in particular related to posted workers. Most often there is an underlying assumption that ordinary labour migrants and posted workers are groups that could be clearly distinguished from each other - as illustrated by the example above. Although it is no big surprise that employers see the benefits of using cheap and flexible labour, Norsk Industri's statement was an unusually straightforward expression of employer's strategic choices when it comes to recruiting migrant labour through posting rather than through ordinary employment. As will be outlined in the following, the increased mobility of labour has indeed challenged Norwegian labour market regulations and standards. In the article I will give a brief overview of the situation regarding posted workers in Norway in terms of numbers, regulatory responses and working conditions.

Labour mobility to Norway in the wake of EU enlargement

The Norwegian construction sector was booming in the period from 2003 to 2008, and had a huge demand for labour. EU enlargement provided an excellent opportunity to extend the recruitment base, and very rapidly Polish and Baltic workers became a common sight on construction sites. In 2004, Norway introduced certain restrictions on the access to the labour market for individual job seekers from the new EU

member states. According to the transitional arrangements a work permit would only be granted if the applicants could document that their wage levels were in accordance with 'normal' Norwegian standards, and that they had close to full-time jobs. However, the restrictions did not seem to hamper the inflow of migrants. In the period from May 2004 to May 2009 more than 150,000 new work permits and around 135,000 renewals were issued. Most of the permits were granted to workers from Poland and the Baltic states, with construction being the dominant recruiting sector.³ The transitional restrictions did not apply for the provision of services and, in addition to the registered individual labour migrants, a huge number of posted workers, service providers and migrants without permit entered the labour market (Dølvik and Eldring 2008, Friberg and Tyldum 2007, Dølvik et al 2006). Although there is a lack of reliable information on the number of posted workers, available data indicate a large growth during the last years. As displayed in Table 1, there has been a substantial increase in the number of registered posted workers, in particular from the new EU Member States.

Table 1. Registered posted workers in Norway, 2003-2009. Source: Central Office – Foreign Tax Affairs



In 2009, close to 42,630 persons were registered, against 14,789 in 2003. The peak year was in 2008, with close to 48,000 registered posted workers. In 2009, the largest groups came from Poland (10,894), UK (6,131), Lithuania (4,650), Sweden (3,776), Denmark (2,980) and Germany (3,115). Although Norway was less hit by the financial crisis than most European countries, the construction sector was definitely affected, which is also reflected in the reduced numbers in 2009. Up until the autumn of 2004, the obligation to register only applied to construction and the offshore petroleum sector, but was then extended to posting in all sectors. According to the tax authorities most of the registered posted workers are still to be found in construction or related activities. Non-registration to the tax authorities has been rampant, so the increasing numbers over these years may reflect a higher degree of registration, as well as an actual rise in the in-flow of posted workers. In 2004, the authorities estimated that less than half of the posted workers were registered according to the regulations. This estimate was based on the fact that controls on sites revealed huge numbers of undeclared foreign posted workers. Since then, registration has most probably improved, due to more control, information, sanctions and a new requirement for ID-cards on construction sites, but there is still reason to believe that the real numbers are considerably higher than the official statistics.

Two Fafo-surveys among Polish migrants in the Oslo area in 2006 and 2010 give unique information in the sense that they captured all migrants, regardless of their formal status on the labour market (Friberg and Tyldum 2007, Friberg and Eldring, 2011). The studies document that the overall majority of male Polish migrants in Oslo worked in the construction/building sector. Table 2 shows the employment status of these construction workers (who were all men) in 2006 and 2010.

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Table 2. Employment status among Polish construction workers in Oslo, 2006 and 2010. Percent (N=277/244). Source: Fafo's Polonia surveys 2006 and 2010⁴

Employment status	2006	2010
Employed in Norwegian construction company	31	40
Employed in Norwegian temp agency	24	20
Employed in foreign temp agency (posted)	9	2
Employed in foreign construction company (posted)	23	25
Self-employed	13	13
Total	100 (N=277)	100 (N=244)

Close to one quarter of Polish migrants in construction in the Oslo area in 2006 and 2010 could probably be classified as posted workers. In this group, more than one third worked illegally; they had not registered, did not pay taxes either in Norway or in Poland, had no contracts, received payments in cash etc. It was evident that the number of posted Polish workers far exceeded the official statistics. Furthermore, the studies revealed surprisingly small differences between posted workers and migrant workers employed in Norwegian companies when it came to length of stay, as well as future plans regarding how long they wanted to stay. In other words, the surveys clearly indicated that the borders between posting and 'ordinary' employment were quite shady. In 2006, the transitional regulations were still in place (demanding 'Norwegian' wages), while the collective agreement for construction had just been made generally applicable in the Oslo area. Thus, it was clearly favourable for employers to use posted workers rather than offering direct employment. Although the regulatory situation was different in 2010, the proportion of workers employed by foreign subcontractors was almost the same as in 2006.

This can probably be explained by the fact that posted workers still tend to accept inferior conditions (see below), and as such remain an attractive labour source for certain employers in the construction industry.

Regulatory responses

Soon it became clear that the inflow of migrant labour, and in particular posted workers, represented a huge challenge for the trade unions when it came to upholding established standards. Trade union density is low in Norway compared to the other Nordic countries, and in the private sector only 58 percent of the employees are covered by collective agreements (Nergaard and Stokke 2010). Furthermore, there is no statutory minimum wage in Norway, and upon till 2004 the *erga omnes* mechanism for making collective agreements generally binding had never been applied. Thus, the inflow of posted workers from the accession countries exposed already existing weaknesses in the regulatory system, with a large section of the labour market being left more or less open for low wage competition and 'social dumping' (Alsos and Eldring 2008). In construction, trade union density is 37 percent, and only 60 percent of the workers are covered by collective agreements (Nergaard and Stokke 2010). However, the minimum wage provisions in the sector's collective agreement have traditionally had a normative effect on wage setting even in companies without collective agreements. The huge recruitment of Central and East European workers into construction – especially through posting and subcontracting - who were willing to work under inferior conditions, changed this situation. Norwegian companies with collective agreements were faced with fierce competition from companies with low-paid workers, and there were numerous examples of Central and East European (CEE) workers earning far less than what could be considered a living wage in the Norwegian context.

After some consideration and internal debates The Norwegian Confederation of Trade Unions (LO) decided to apply for

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extension of the collective agreement in construction through the long-dormant Act relating to the general application of collective agreements. The legal extension of collective agreements became a crucial element in protecting posted workers from social dumping. The main purpose of the Act relating to the general application of wage agreements is to ensure that wage levels and labour conditions offered to foreign workers are equal to those of Norwegian employees. Employees in Norwegian enterprises and posted workers from foreign firms, unionised and non-unionised alike, are all encompassed by the generally applicable provisions. The precondition for enforcing an extension is that it is probable that foreign workers perform work under conditions that are generally inferior to the norms stipulated by nationwide collective agreements for the relevant occupation or industry, or to the general conditions prevailing in the relevant location or trade. The decision to enforce an extension is made by the Tariff Board (*Tariffnemnda*), which comprises three independent members, one representative from the employers' organisations and one from the trade unions. To date, parts of four collective agreements have been legally extended, the most significant being in construction. After being extended in some areas of the country from 2004, the construction industry agreement has been generally binding nationwide since January 2007. The regulations comprise provisions on minimum wage rates, working hours, payment for overtime and shift work, as well as those regulating travel, board and lodging, and some other issues. An employer who fails to comply with regulations is liable to fines, and affected employees or their trade union may institute private prosecution.

Soon after the first legal extension of a collective agreement in 2004, the Labour Inspectorate was given the responsibility for controlling that companies comply with the regulations in generally binding collective agreements. In 2008 and in 2010, the Act relating to generally binding collective agreements was further revised, with the introduction of new

regulations to strengthen the control and enforcement mechanisms. From 2008, the main contractor/operator and subcontractors in sectors that are covered by generally binding agreements are obliged to inform about and ensure that all companies in the supply chain meet requirements on wage and working agreements. Very significantly, the trade union in the main contracting company has the right to require access to documentation on compliance with the regulations. If there is no union present in the main contracting company, the union in the next company in the supply chain has the same rights. Another landmark has been the introduction of joint and several liability related to generally binding collective agreements. From January 2010 a contracting entity shall be liable for the obligations of contractors further down in the chain of subcontractors to pay wages pursuant to regulations in generally binding collective agreements.

In 2005, the red-green alliance won the parliamentary elections and, with strong support from the unions, the new government launched an action plan against social dumping in 2006. Core elements in the plan were the strengthening of the Labour Inspectorate, a requirement for identity cards for all workers at construction sites, a new register for temporary work agencies, chain liability in construction, and certain revisions in the Act relating to the general application of wage agreements (as mentioned above), while regulation of wages was still left to the labour market parties through collective bargaining. In May 2009, the transitional arrangements for EU-8 workers were repealed, including the requirement of "Norwegian wages", which meant that potential areas for wage dumping became even larger. LO is still strongly against the introduction of a statutory minimum wage, which they fear will lead to a downward pressure of wages in general, as well as a weakening of the collective bargaining system. LO's main strategy to combat the increased low wage competition has been two fold: on the one hand, to support union recruitment efforts towards labour migrants and, on

the other, to apply for legal extension of collective agreements in a few selected areas.

Posted workers' wage and working conditions

The Labour Inspection Authority's efforts to combat social dumping gained momentum as a result of the government's action plan. The funding of the Labour Inspectorate has increased over recent years, with some of the allocations being earmarked for inspections related to the programme on social dumping. The main activity in the programme is related to inspections and control of work places and sites with migrant workers – above all in construction. In 2006, a total number of 1,158 inspections related to social dumping was conducted. By 2009, the number of inspections had increased to 2,408. More than 75 percent of the inspections in 2009 resulted in some kind of action or sanction, mostly related to lack of compliance with the generally binding collective agreement, the Immigration Act or requirements regarding the working environment. The increased frequency of inspections seems to have had a positive effect, but there still seem to be huge challenges related to following up complicated cases, which often involve the 'worst' companies (Andersen et al 2010). A survey among construction companies that used labour from CEE countries in 2009 showed that less than half of the companies normally asked for documentation on wages and working conditions had specific requirements related to this when subcontracting. Only 5 percent of the company managers were negative towards the generally binding collective agreement in the sectors, but this was obviously not necessarily followed by efforts to ensure compliance (Andersen et al 2009).

Not surprisingly, systematic information on posted workers' conditions is scarce. Due to the temporary nature of their work, most workers will not be included in official databases that are otherwise used for analysis of wages, working time etc. And, even for those included in the statistics, it is very complicated and in many cases impossible to determine

who are posted and who have ordinary employment. However, we do have some evidence on posted workers' situation deriving from other sources. The surveys among Polish workers in Oslo in 2006 and 2010 documented that in general Poles tended to have inferior conditions compared to native employees. This was in particular the case for posted workers, as indicated in Table 3.

Table 3. Share among Polish construction workers in Oslo that earned less than the legal minimum rate, by form of employment. Source: Fafo's Polonia survey 2010

Employment status	Share that earned less than 127,50 NOK (minimum wage rate February 2010)
Permanently employed in Norwegian company	0 %
Temporary employed in Norwegian company	23 %
Employed by temporary work agency	6 %
Employed by foreign sub-contractor	38 %
Total (N=244)	19 %

38 % of the posted construction workers earned less than the stipulated minimum wage (NOK 127.50). Among the posted workers, 39 % did not pay taxes in either Poland or Norway and did not have an employment contract. The best conditions were found among Polish migrants that were employed directly by Norwegian temporary work agencies or companies. However, although the majority reported to be skilled workers, they did not receive the corresponding wage. It is also worth noting that the majority of Polish construction workers in Oslo still were in temporary employment in Norwegian companies, or employed by hiring agencies or by foreign sub-contractors. In 2010 only 19 % had permanent employment in Norwegian companies, compared to 15 % in 2006.

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The first decision on legal extension of a collective agreement came into force in 2004 and covered seven onshore petroleum installations. In 2007, a survey among posted East European workers (that constituted between 14-25 % of the work force) on two of these sites documented that they were mainly paid according to the minimum rates. But only 9 percent of the skilled workers received the skilled workers' rate. Although the wages were more or less in accordance with the statutory regulations, wage differences between the posted and national workers were huge. Compared to the average Norwegian wages on the sites, they earned far less than their co-workers. Regarding working hours, regulations were followed, although the posted workers tended to work more hours (Alsos and Ødegård 2007).

In its yearly report in 2008, the Labour Inspectorate stated that their controls on construction sites documented an improved situation in labour migrant's wage and working conditions. More workers than earlier had legal conditions, but there was still a higher risk of social dumping among posted workers. They also reported that breaches on working time regulations were still rife. However, in the 2009 report, the Labour Inspectorate expressed concerns about worsening conditions among migrants in construction. As a result of the financial crisis, more workers were found in unorganised parts of the sector, doing work on smaller and less transparent sites. The Inspectorate also reported that they received more tips on social dumping than the year before and that the situation was worrying, both on private and public construction sites.

The precondition for enforcing an extension is that it is probable that foreign workers perform work under conditions that are generally inferior to the norms stipulated by nationwide collective agreements for the relevant occupation or industry, or to the general conditions prevailing in the relevant location or trade. The party that requests that an agreement should be made generally binding must document that

this is the case. This requirement has triggered harsh debates and conflict among the social partners, who do not agree on what is sufficient documentation, and whether the Tariff Board has made its decisions based on just fulfilling information. After the collective bargaining round in 2010, LO applied to the Tariff Board for a renewed extension of the generally binding agreements. In its application relating to construction, LO referred among other things to documentation from the Labour Inspectorate, based on 28 inspections. 14 percent of the workers on these sites earned less than the minimum rate, and the average hourly rate among these was 78 NOK. They also referred to a memo where the Labour Inspectorate stated that in their opinion not much had changed when it comes to social dumping; “we still reveal a number of cases with serious violations in the wage and working condition regulations. (..) Earlier we have roughly estimated that 20 percent of the companies in construction constitute a problem when it comes to social dumping”. In its application, LO pointed to a huge number of media reports that document that social dumping of posted workers is still rampant in construction.

Win-win or lose-lose?

There has been a large growth in the number of posted workers to Norway over the last years and in particular in construction. In 2009, close to 20,000 of the registered posted workers came from CEE (EU8+2), while 19,000 were posted from the old EU15 countries. Unfortunately, statistics on posting are poor, and it is difficult to establish accurate numbers. Over the last years the growth in service mobility and posting has triggered a wide range of responses from the political authorities and the social partners in order to ensure equal conditions for domestic and foreign labour. The Nordic countries have followed different strategies with regard to implementing the host country principle in the EU’s Posting of Workers Directive (96/71EC). While Sweden and Denmark based their strategies on the ability of the trade unions to enter into collective agreements with foreign service enter-

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prises, Finland, Iceland and, to an increasing extent, Norway made use of legislation and the generalisation of collective agreements in order to enforce minimum standards and create opportunities for public control. Irrespective of the strategy, it has proven to be a highly demanding task to register, control and enforce compliance with legislation and agreements (Dølvik and Eldring 2008).

There was not very much attention paid to posting in Norway before 2004 – apart from more general campaigns relating to problems with undeclared construction work. After the EU enlargement of 2004, the main focus was on the different regulatory framework for individual labour migrants from the accession countries and for the provision of services and posted workers. Since then, a number of measures have been put in place to combat social dumping on the labour market; several of which are now under evaluation, and it is still too early to conclude on their functionality. However, the increased efforts of the Labour Inspectorate have clearly had some positive effects, although there still are documented numerous cases of wage dumping and poor working conditions. It is also obvious that in construction, the nationwide legal extension of the collective agreement has been an important measure to improve the conditions for posted workers. But, as most Norwegian workers earn more than the collectively agreed minimum rates, the majority of posted workers probably still get paid less than the sectoral average. Nevertheless, it is beyond doubt that without regulation, wage dumping would have been rampant in construction.

A simple answer to the question posed in the headline is 'yes and no'; posting seems to be a 'win-win' situation for the employers and a 'lose-lose' situation for the workers. In reality things are a bit more complicated. Norsk Industri's 'dream scenario' of having a large reserve army of cheap labour that smoothly moves in and out of the labour market, depending on the day-to-day labour demand of con-

tractors, has to a certain extent been hampered by the introduction of new national regulations. One example is, according to Fellesforbundet, that they do now observe a tendency of employers to prefer agency workers from agencies that are based in Norway rather than subcontracting to companies with posted workers, especially within the shipbuilding industry. The extension of the collective agreement within shipbuilding has been very controversial among the employers, and in particular with regards to the regulations on lodging and home travel that apply to posted/commuting workers. By setting up local labour hiring agencies, they reduce costs by claiming that the workers are 'local' rather than 'posted'. In other words, within a few years the strategy has shifted from preferring posted rather than locally-employed migrant workers (who were protected by the transitional regulations upon till May 2009). This illustrates the generally tendency of some employers to select whatever arrangement gives the lowest labour costs, and indeed the importance of avoiding parallel regulations with different standards.

For the domestic-based building industry, the increased use of posting has by no doubt increased its capacity as well as flexibility. On the other hand, a sector dominated by temporary employment, hired labour, ethnic segmentation and with continuous downward pressure on working standards may have large problems in recruiting and qualifying young workers in the future. In recent years the organised employers have raised their concerns regarding future recruitment, productivity and competence development in the sector. Furthermore, the inflow of foreign service providers with cheap labour has definitely been perceived as a threat for locally-based companies. As a result, the majority of employers in the building sector have been positive towards the introduction of a generally binding collective agreement (Eldring 2010).

For a 'classic' posted worker, being on a temporary assignment in Norway is probably not too bad - if regulations are followed. However, there is strong evidence that a significant proportion of posted workers constitutes a bottom segment in the labour market on a more permanent basis, and that being 'posted' excludes them from a number of social and workers' rights. The Fafo surveys among Poles in the Oslo area revealed that in real life the distinction between posting and labour migrants is unclear. In many cases posting seemed to be more an alternative channel for labour migration than a temporary assignment abroad.

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Spain: the single market in practice?

When in 2003-2004 the EFBWW carried out its first transnational research project into the implementation and application of EC Directive 96/71, Spain seemed to be a posting backwater. At the national level at least, posting went on largely unregistered, unnoticed, and unmonitored. With the number of posted workers reportedly running into hundreds rather than thousands, neither the authorities nor the social partners appeared to be particularly concerned about the presence of posting companies and workers. This was true in

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the economy as a whole, as well as in the construction industry, despite the fact that construction was the sector with the highest concentration of posted workers and that union organizers in some regions were worried about the working and living conditions of these mainly Portuguese workers (Cremers, 2004). Seven years on, the EFBWW's latest research project into posted workers in the construction industry has found both change and continuity. There has been change, most importantly, in the scale of posting and in the awareness, particularly within the Spanish and Portuguese Labour Inspectorates, of the problems this can pose. On the other hand, we found continuity in terms of the fundamental dynamics of posting in the industry and of the major obstacles that exist to effective regulation of posting companies and workers (Cremers, 2011).

Growth and development of posting

Even though posting companies are obliged to notify the Spanish authorities of all postings of over 8 days, there are no official statistics for postings to Spain. As a result, our knowledge about the scale and development of posting is inevitably incomplete and imprecise. Nonetheless, data compiled by the European Commission on E101 forms issued for posting in 2005-2009 confirms that Spain is now one of the four or five most important destination countries for posted workers in the EU. With 65,000 E101 certificates issued for postings to Spain in 2005, 60,500 in 2006, 86,500 in 2007, 55,000 in 2008 and 63,500 in 2009, Spain comes in well behind the main destinations of Germany, France and Belgium, but at a par with the Netherlands in absolute terms. This E101 data also shows that the vast majority of workers posted come from old EU 15 Member States. There is a significant presence of posted workers from France, Germany, Poland and the United Kingdom, but Portugal is still by far the single largest country of origin of posted workers in Spain, the 24,000 certificates issued in Portugal accounting for 37% of the total in 2009. While this proxy indicator of postings to Spain does not permit a structural analysis of the

labour market impact of postings (distribution by sector, duration of postings, hours worked, etc.), all qualified sources indicate that construction is the destination for most posted workers. They also confirm that skilled and unskilled workers posted to larger building and civil engineering projects by Portuguese subcontractors have, become, albeit on a limited scale, an established feature of the labour market in certain regions, notably including Galicia and the Basque Country.

The upsurge in posting in general, and the construction industry in particular, in the middle of the decade came at the peak of Spain's decade-long economic boom. Largely driven by a credit-fuelled, often speculative expansion in residential house building, the construction boom generated labour shortages in some trades and regions which posting helped alleviate. However the persistence of considerable posting today, in an industry in which has shed almost a million jobs since the slump began in 2007, points in another direction: posting as a source of cheap, and particularly vulnerable labour in an industry itself long vulnerable to deregulation (Byrne and van der Meer, 2002).

High-, low- and bottom-end posting

Not all posting is driven solely by the search for cheap labour or the possibilities it offers for abuse. Posting can be, and sometimes is, a functional response to demand for labour that cannot be satisfied by local companies or workforces, helping in this way to avoid bottlenecks and contribute to economic efficiency and growth. This would be the logic behind, most typically, specialist sub-contractors providing skilled labour, for example in structural concrete work, steel-fixing or masonry (specialities which the Portuguese have a long established reputation in Europe and beyond), or brick-laying. Highlighting the failure of Spain's fragmented, diversified, relatively unorganized and deregulated construction industry to meet its own skill needs, this type of "high-end" posting is reported on building sites in Galicia, the Basque Country and elsewhere.

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Over and above their skills and experience, bona fide Portuguese subcontractors of this type enjoy two other competitive advantages over Spanish companies. Most importantly, there is the widely reported willingness of Portuguese tradesmen to work for longer hours and less money than their Spanish counterparts. This is explained by the differences in wage levels in the two countries - much higher in Spain - as well as mass under- and unemployment in North West Portugal where most of these workers come from. It makes sense for Portuguese workers to accept wages below local Spanish rates. It is also legal for them to do so. By law they must receive the official minimum rates set out in Spain's provincial-level collective agreements. However, even in the current slump real market wages are thought to be typically 20%-30% higher than the official rates, so workers can be paid the legal minimum and but be still be working below the market rate. Secondly, employers' social security costs are significantly lower in Portugal than in Spain, representing a further saving in overall labour costs even for those posting companies who comply with all their obligations and otherwise respect standards. Our research suggests, however, that such companies account for only part, and quite possibly only a small part, of all postings in the industry.

"Low-end" posting, involving both tradesmen and labourers formally employed by Portuguese sub-contractors would appear to be at least as common. Companies engaged in this type of posting compete almost exclusively on labour cost (wages and employers' social security contributions). While they may act perfectly legally in this respect, low-end companies are more likely to infringe the spirit and the letter of the EC Posting Directive and Spanish legislation with respect to the existing requirements for posting companies to have a formal structure and operate in their home country, that the postings are temporary, and that posted workers remain under the supervision of the posting company. In practice, many of these companies seem to be little more

than labour-supply agents, employing workers only or almost only in Spain (and in some cases in other EU Member States too). These “false postings” are by nature irregular, and extremely resistant to effective inspection, and sanction. Even when perfectly legal, “low-end” posting, competing essentially on cost, represents a form of unfair competition, generating labour market segmentation and social dumping. Indeed, the disparities existing between the employment and working conditions and labour costs of posted workers and their Spanish counterparts are in many cases the driving force behind posting in construction.

At the bottom end of the continuum, there are posting companies, or more usually agencies or even individuals, which take advantage of the “shadow of transnationality” to provide extremely cheap and flexible labour by flouting the law. Our research, drawing largely on interviews made with labour inspectors and union organizers, highlighted the practical, technical, and legal difficulties that labour inspectors face in ensuring effective compliance of labour legislation and standards by companies based abroad. The transnational character of posting creates opportunities for *mala fide* companies to engage in systematic and continued illegal, fraudulent practices regarding conditions (working and living conditions), evasion of social security and tax obligations, or health and safety standards and norms. These include making illegal retentions in wages for lodgings or management costs, paying below official minimum rates and ignoring overtime rates, systematically extending the working day, and not paying workers’ social security contributions or their own taxes in Portugal. All this is bad for the workers involved, but also for bona fide companies and workers, through the downward pressure exerted on prices and standards, and for the authorities in their countries of origin, due to the loss of tax and social security revenue.

“High-end”, “low-end”, and “bottom-end” posting should be seen not so much as separately, well-defined categories of

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posting companies and working conditions, but as points on a continuum. Any given company could in some respects be engaged in top-end posting, but in others be undermining employment standards or even committing fraud, characteristics associated with low and bottom end posting respectively. It is impossible to quantify the prevalence one or other type of posting or the real level of abusive practices. Nonetheless, both unions and the Labour Inspectorates report comparatively high level of irregularities among posted companies. Some of these are linked precisely to the transnational character of posting, the specific legal obligations this imposes on employers (in terms of the characteristics of posting companies' activities in their country of origin, employment relations, notification, calculation and comparison of wages and tasks). "False posting" would appear to constitute a significant proportion of the total, and be the long-term reality for many posted workers and posting companies in the sector. Other abuses identified with posting companies do not derive from the transnational nature of the activity, but are rather generic, and in some cases endemic, to employment relations in the Spanish construction industry as a whole. For example, the social partners and Labour Inspectorate have long seemed resigned to their inability to impose existing rules on working time across Spanish construction sites. Nonetheless, there is a widespread perception in Spain that Portuguese posted companies play a critical role in undermining standards and promoting labour market segmentation in terms of workplace health and safety, and, above all, hours and wages. In this respect, it is feared even if relatively limited, the quantitative presence of posted workers may well be outweighed by the qualitative impact of posting on the industry.

Conclusions

The research leaves little doubt as to the potential that posting has to threaten posted workers' rights, undermine labour standards and facilitate unfair competition among enterprises subject, in theory and even more so in practice, to

different rules and systems of regulation. In this way, the analysis of posting in Spain gives substance to the Commission's concerns regarding both the operation of the single market and labour standards. In contrast to what is sometimes suggested, the promotion of free movement and competition and the protection of workers' rights should not be seen as necessarily competing or conflicting goals, but rather as complimentary and interdependent. The effective and efficient functioning of the single market requires the maintenance of workers' rights and labour standards: social dumping and unfair competition are two sides of the same coin.

The Spanish case also suggests the type of action that can be taken in different spheres and at different levels to meet the challenges posed by posting. On the one hand, the problems surrounding posting are common to the construction industry as a whole, and the challenge primarily one of ensuring effective regulation across the industry. The measures introduced in 2007 to regulate sub-contracting in Spain appear to have eliminated (or just driven further underground?) the most flagrant labour-only subcontractors from the sector, and helped promote awareness and enforcement of health and safety legislation, two areas of particular importance in postings. A similar commitment from the social partners, and the support of the Labour Inspectorate, would be needed, for example, to attempt to enforce working time rules and legislation, another area in which posting companies are seen as particularly likely to violate existing rules, to the prejudice of their own employees and employers wanting, or obliged, to respect the rules.

On the other hand, the essential problems derive from the transnational character of posting, and hence require transnational solutions. The Spanish Labour Inspectorate has made great progress in this respect, establishing stable and effective mechanisms for cooperation with the labour inspectorates in Portugal as well as in other countries of origin of posting workers. Bilateral cooperation between countries

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and/or regions linked by important flows of posted workers is crucial to effective diffusion of information and enforcement: the nature of posting is such that the Labour Inspectorate in one country requires information from another, so anything that can be done to improve communication between them will facilitate enforcement. The Spanish, and in particular Galician experience, points, to the benefits of frequent personal exchanges of information, monitoring of the phenomenon and joint inspections. The latter permit what one labour inspector termed the 'integral inspection' of posting companies, i.e. effective control of compliance with the relevant legislation of both countries, something that in theory and practice is beyond the reach of the inspectorate of the host country alone.

Bilateral initiatives alone, however, are not enough. First, because the Spanish case also suggests that Member States require pressure from Brussels in order just to fulfil their existing obligations regarding posting. Second, because the challenges that posting poses for fair competition and the effective protection of workers' rights would appear to require further and deeper integration of regulatory systems of all types, and this requires initiatives at the European level. Thus, for example, the inclusion of social security costs in the comparison of wages would help level the playing field between employers from different countries, and discourage the most abusive, overtly cost-cutting type of posting. Even more importantly, and regardless of the specific content of European and national legislation on posting, it is difficult to see how the single market can operate effectively and fairly without movement towards the mutual recognition and implementation of evidence, actions and crucially sanctions for those who violate the existing rules. These are issues being addressed by the CIBELES (Convergence of Inspectorates Building a European-Level Enforcement System) Project, a Spanish-led initiative of the EU Senior Labour Inspectors Committee (Páramo 2010). This is an important project which merits the attention and support of all those interested in the development of a genu-

inely single market and the future of posting in Europe.

Our research in Spain confirms, finally, that these are issues, which are not just of economic and social importance for those directly involved, but also of considerable political importance too. In the Basque Country and Galicia, unions and labour inspectors express concern about growing hostility towards posted workers, who, through their willingness to do more for less, are seen as undermining labour standards and threatening jobs. The wildcat strike which took place in La Naval shipyards in Sestao (Basque Country) in April 2009 in protest at the employment of posted workers by subcontractors from Portugal and Eastern Europe paying below the minimum wages give credence to these concerns. The resolution of these types of tensions, not least through legislation and actions designed to promote a single market that precludes unfair competition and guarantees workers' rights, is a key challenge facing the EU.

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London, February 2011

Organising migrant workers locally, the Oslo experience

I think my union *Fellesforbundet* has made some good choices with regard to eastern European workers. I should like to make five points on this. First, we have been telling ourselves all along that we are not running trade unions for Norwegian workers. We run trade unions for workers that work in Norway, regardless of nationality. These are not merely words. It is our everyday work. In my local union, the Oslo Building Workers' Union, four out of ten of the members are eastern European citizens, mostly Polish, Lithuanian and Latvian workers. We also serve some members of the Latvian building workers union, LCA, which we collaborate with, as if they were our own members. We are really available to the eastern European workers. They can address us in their own language any day of the week. In our daily work, we deal with Polish, Latvian, Lithuanian or Russian. We are also open in the evenings on Tuesdays and Wednesdays. Many of the workers know about us. And we have a fairly good reputation among them, even if not all of them know exactly *what* we are.

What are we doing for them? The usual trade union stuff: wage claims, most often, a lot of wage claims; claims for holiday money; providing assistance when they are dismissed; and in all sorts of cases against their employers, against tax authorities, migration authorities, social security authorities. So we are organizing the eastern European workers in our regular unions.

Secondly, we have extended the minimum wages within the collective agreements. We have done so in construction, in the shipyard industry and in agriculture. We have had a transition period as well, from 2004 to 2009. For the employers the transition rules meant that it was much cheaper to employ the EE workers in Poland, one of the Baltic States,

or even in the UK. So that is what they did. The transition rules led to phoney posting of workers on a large scale. For workers employed by Norwegian companies, the transition rules meant that to be employed by a Norwegian company, you had to have a work permit. To get a work permit, you had to have the minimum wage of a collective agreement. If you did not really get this minimum wage, and this came to light, you risked the work permit being withdrawn and being thrown out of the country. To the foreign workers this meant that they could not have anything to do with trade unions. At least that is what they thought, and that is what their employers told them.

The extension of collective agreements had the opposite effect. Many employers that had flagged out to avoid the transition rules, now flagged home again, to avoid paying the workers for travel, board and lodging. It all comes down to whatever is cheapest for the employer at any given time.

And the eastern European workers made a new discovery: to get this new "Norwegian minimum wage", that is what they called it - that they had become entitled to, they *had* to, have something to do with trade unions. And the trade unions also made a discovery: Polish workers who were willing to work for 6 Euros an hour were willing to work for 16 Euros as well!

So, in terms of organizing foreign workers, the transition rules did not do us much good. But the extension of the collective agreements did. The transition rules placed trade unions in some kind of policing role, controlling the foreign workers. The extension of the collective agreements gave the foreign workers rights, and it placed us in a trade union position towards them. Which I think is the more becoming.

Thirdly, we are organising in the hiring out companies. We really hate these companies. And some trade union people think that we should not touch them with a ten-foot pole. But that would mean that we were denying hired out workers

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trade union membership. So we organize them, and we work to establish local trade unions and collective agreements in the hiring out companies. Most eastern European workers work in hiring out companies. If we did not organize them, we would not have much to do with the eastern European workers.

Fourth, we are organising so called bogus self-employed workers. Bogus self-employment by the way is not a big problem in our professional building industry (even if it is in the private customer's market). This might have something to do with the fact that we have won two court cases on this: one for Polish members and the other for Latvian members. In both cases, the court decided that the workers actually were employed workers and entitled to the minimum wages of the collective agreement of the building industry.

Fifth, when for instance some Lithuanian guys show up at our office, and they have not been paid for a couple of months, and they do not have the faintest idea what a trade union is, we do not tell them "sorry mates, you are not members here". Usually we do not take on board cases for workers that are not members at the time their problems came about. But, in this respect we have had a "transition period" for the Polish workers, and we still have one for the Baltic workers. So we tell them: "Register, and we'll see what we can do". So they register, and we do what we can.

When the financial crisis hit our shores, a lot of building workers lost their jobs, both Norwegian and foreign workers alike. So a lot of eastern European workers were working while Norwegian workers had to go home. But there were never really any Norwegian workers complaining about being out of work, while Polish workers were still working - no demonstrations, no blockades, no resolutions, no protests. And I think this had something to do with the Norwegian and the eastern European workers being members of the same unions.

Organising migrant workers locally: British Jobs for British Workers?

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The worst fears of many European trade unionist materialised in early 2009 when xenophobic headlines of 'British jobs for British workers' were displayed throughout Europe. At the centre of these headlines were the Lindsey Oil refinery disputes and an overzealous condemnation of the UK workers' action throughout Europe both in the media and within unions (Meardi, 2009). These disputes, though on major projects in engineering construction, were part of an ongoing number of stoppages and walkouts over the Posting of Workers Directive (PWD), which dates back a number of years. As in other EU countries, UK unions have met the threat of wage dumping with fierce resistance, but this time a potentially dangerous and distasteful side had been added to the argument.

The spectre of xenophobia has now loomed large and the UK's single largest ever migration, that from the Central and Eastern European (CEE) countries, came into the spotlight (see the New Statesman *The Staggers* blog, 23/11/10 08:00). The speed, scope and indeed density of this migration meant that, in some local communities where CEE workers were present, there appeared a seeming mismatch between central government funding for service provision and the increased numbers of people trying to access those services. In short, words such as 'swamped' were used when referring to the CEE migration in the UK media and in television interviews local people, including residents of Asian and West Indian origin, spoke of 'enough being enough' with regard to the introduction of CEE residents into communities.

This though takes us temporarily wide off our subject area as the foreign workers at Lindsey were not from CEE but from old Europe (Italy and Portugal). Even though ethnicity was involved, the dispute was very much about equal access to

local jobs, the undermining of national and local collective agreements and job regulation (Unite, 2009). The Lindsey disputes overall were such a concern that the then Labour government appointed Mark Gibson to review productivity and skills in the industry (Gibson, 2009). To discuss this further, I take major projects in the engineering construction subsector as the main arena where trade unions have encountered posted workers. In doing so, the trade union response to posted workers is considered first, then key issues are highlighted with regard to UK workers' voice and, finally, four key challenges facing unions in the future are considered.

The Posting of Workers Directive: The trade union response

Even though the recent unprecedented migration into the UK of CEE workers (Salt and Millar, 2006) is not initially significant with regard to Lindsey, it is with regard to engineering construction, the PWD and the union response. As noted UK unions are all too aware of the potential for social dumping from the new Member States (NECC, 2004) but, to understand their current responses to posted workers, we must briefly discuss the past. As with other European unions, UK unions historically have displayed both racism and exclusion when encountering immigrant workers (see for example Virdee, 2000). This ranged from all out marches against the employment of black workers through to demarcation and quotas which limited the number of black workers employed (Wrench and Virdee, 1996). Undoubtedly this was sector-based, but included construction workers, although time and extensive education has improved the situation. It is perhaps not surprising to report that, by the time the May 2004 accession came, UK unions took a more inclusionary approach (Fitzgerald and Hardy, 2010; Fitzgerald, 2006). This has occurred not only at the national levels of unions, including those in construction, but in workplaces and through local campaigns; CEE workers have been accepted and indeed supported by trade unionists (Fitzgerald, 2009).

However, as increasing numbers of CEE migrants entered local communities and workplaces, the issue of immigration was very much on the agenda and Lindsey perhaps caught the anti-immigrant 'mood of the moment'.

This does though provide a poor analysis of the trade union response in engineering construction and a more accurate discussion should note two key themes with regard to the sector from which Lindsey comes. The first is that of the market and regulatory environment that defines engineering construction. The market is the global energy economy as much work in the industry is on energy-based projects. Therefore, from an employer point of view, engineering construction is a very competitive subsector with many clients, their contractors and some sub-contractors being multinational organisations (Gibson, 2009). In short these are able to supply and call upon skilled foreign workers that have the potential to undermine regulation on short-term projects. Foreign workers have indeed provided a growing source of labour for a number of years. From a regulation perspective, there are well-established national rates of pay and allowances contained in the National Agreement for the Engineering Construction Industry (NAECI). This agreement came into force in the early 1980s following a number of 'unofficial' stoppages. Even though the agreement is voluntary, it is on the whole adhered to, as disruption to projects can mean large financial penalties for clients and contractors alike. However, with the availability of skilled CEE workers on low rates of pay, this now provides an increasingly tempting source of labour for companies trying to compete in a competitive global market. Given this, the second main theme is how trade unions have responded when foreign workers have been introduced into the industry. It is welcoming to report that the evidence seems to point to an inclusionary approach. The most obvious example of this was initiated in 2005/2006. Here, at the EDF owned Cottam Power Station, the German utility company RWE was subcontracted to undertake part of the project. It in turn subcontracted to the Austrian firm SFL that proceeded

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to supply both Austrian and Hungarian posted workers, with the Hungarians coming through an SFL subsidiary - SAB Ltd. However, the Hungarians were poorly treated, particularly with regard to their wages. In short the regulation in force was undermined. UK workers in Amicus (later merged with T&G to form Unite) and the GMB undertook unofficial strike action to maintain this regulation and in support of the Hungarian posted workers. Overall this situation also involved some Hungarian workers joining the unions and the UK workers supporting one Hungarian in particular socially (providing sustenance and temporary accommodation). What was significant here was the development of an audit process for Hungarian workers' wages. Here the posted workers' wages were 'checked' by an independent auditor to make sure that they were at the agreed local rates. Importantly, when it was identified, via a Hungarian union member, that the improved wages actually reaching the Hungarian bank accounts of workers had a managing fee that reduced them to their original low level, UK workers again took strike action. Following this new development, Yorkshire based bank accounts were set-up for the workers and their wages were paid directly into them. Overall then, positive contact was made with the posted workers and indeed social bonds were formed through Hungarian workers becoming part of the union.

This type of engagement though is difficult to establish and maintain, for example at Lindsey where foreign workers were based on barges in a local harbour with no known contact with the local community or trade union members. It is not surprising then to report that, in these circumstances, from a trade union perspective it is becoming increasingly difficult to maintain the local regulation of the national agreement, although the audit process has offered a useful means of maintaining regulation. Importantly, the trade unions and UK workers have been positive when reacting to employer challenges to the national agreement and tried to show solidarity with the posted workers that needed it

most. So some three years later and the Lindsey oil refinery disputes what has happened with workers' voice?

Workers' voice: Xenophobia or not?

Without being involved with Lindsey workers either prior, during or after the disputes, one can never be really sure of what their sentiments were and why the slogans arose. A number of important points can be made which go to the heart of workers' voice. First, undoubtedly an undercurrent of anti-CEE feeling was present at Lindsey. But the unions and their members made sure that fascist and racist political parties played no part in the picket lines and demonstrations. Placards were also changed from 'British jobs for British workers' to official union placards containing phrases such as 'equal access to jobs' or 'equal opportunities for workers to work'. However, engineering construction web-based forums do exist where a xenophobic sentiment runs through much of the discussion amongst those engineering construction workers who are present.

So why has there been this seeming move to the right? Having begun to be involved with some of these workers and their officials, what can be detected is fear - an underlying fear that 30 years of industry regulation is being slowly and methodically undermined. At a recent forum of the NAECI shop stewards, the spectre of the civil side of construction was highlighted as a future path for the industry. Here the regulation of the Working Rule Agreement provides limited protection for an increasingly contingent workforce. There are an alarming number of similarities between these two sides of the industry, including an aging workforce, an inflexible thus shrinking skills base (Clarke, 2005; Brockmann et al., 2009) and the growth of contingency (Forde et al., 2009).

If the age of the engineering construction workforce is considered first, over forty percent of workers are over 50 and sixty-five percent over 40 (Gibson, 2009). With a situation such as this, what is vital is to encourage younger workers to

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join the industry and to make sure that they are trained in an appropriate way. Existing workers may also fear that, if the workforce becomes ever more global, they could well find themselves unemployed at an age where developing a new skill is difficult to imagine.

With skill, this is a particular challenge for the UK as the 'single-skill' craft focus (Clarke, 2005; Brockmann et al., 2009) and the demarcation that comes from it does not sit well with the Gibson encouragement of improved productivity. The continental European notion of occupational capacity is more attuned to this and provides a window to understand why conflict on a project may arise between UK and posted workers. Here a UK worker will normally not undertake a task which is part of another worker's skill set, whilst a posted worker may well be willing to be more 'flexible'. Hence misunderstandings can arise, with UK workers wrongly believing that posted workers are knowingly undermining UK custom and practise regulation. Although, even if the UK skills base is adequate for the projects ahead, when the aging workforce leaves it is simply not being replaced. Gibson (2009: 5) recommends a one hundred percent increase in on site apprentices to 1,000 by 2011 and an increase in training places offered on projects. This loss of skilled workers is further compounded by the fact that there is a low level of nuclear knowledge in the industry. Whatever happens with nuclear investment following the tragic Japanese Fukushima catastrophe, there will still be a need for the decommissioning of reactors and a continental European skills set may well be the easy option taken by projects. The industry does have a training levy in place, but there is continued union and worker disquiet over how many apprentices are actually being taken on.

Underlying these key issues is the fear of a growth in contingency; at the forums attended, representatives spoke of a growth in temporary contracts and the supply of labour through agencies. Gibson (2009: 10) in fact identifies that,

even though there is a high proportion of workers with permanent employment status, they are in reality only employed for a fixed period of short duration. Gibson recommends that some employers make a business case to support continuous employment, leading to better-trained and committed employees.

Lastly, underpinning these three key areas of age, skill and contingency is a near common belief that significant energy installation investment over the next ten years will not guarantee jobs. In fact, it is feared that employment opportunities will go instead to posted and migrant workers who are younger, have a more rounded skills base, and - most important of all - are less expensive. Given this, what are the key challenges facing the unions in the coming years?

Trade union challenges in the future

First, it is important to note that the issue overall is not the PWD itself, but how this and other migration legislation is being used by some employers to undermine long established regulation throughout the EU. This to some extent can be campaigned against at European and national levels, and indeed negotiation can take place with employers. The key area of engagement is, however, on sites where posted or migrant workers spend their daily lives and in the localities they inhabit. Here unions must find ways to effectively engage to make sure that these workers are receiving the rate and terms of the job. A key issue is though how to engage with posted and migrant workers if they are kept separate, as was the case at Lindsey. One way is through the audit process that challenges bad employer practices. This process is now integrated into the latest NAECI agreement and an independent auditor - amongst other procedures - makes sure that the agreement is being followed by all contractors on a major project.

However, whilst this is one key positive feature of industrial relations for the trade unions, there are four main challenges that they face. These are considerably more important than

the success of securing agreement on the auditor role. The first is that UK trade unions must begin to effectively engage with their continental European counterparts. Seemingly, much that occurs at European level that the British are involved in is institutionalised and, although important, will not allow cross-European innovation to develop. Lessons must be shared throughout Europe and an understanding of the issues, challenges and successes of each European partner shared. A start may be to see if the UK development of an auditor role could be used in a mainland European context. More important is that there is effective communication between Balkan, Eastern and West European trade unions. Whether correct or not, there also seems to be a belief that the UK is not willing to work with its mainland European compatriots; this must change. Agreement must be secured over a joint approach to dealing with the on-going short-term migration of engineering construction workers and, critically, this must be understood and supported by those at a site and local level.

Secondly, the UK and other European trade unions must make sure that xenophobia is challenged; it seems that the British are currently in the spotlight in this regard and so perhaps it is they who should be seen to take the lead. The engineering shop steward forums offer an opportunity for training and discussion, and this is one place to start.

Thirdly, the most pressing challenge for UK unions is to effectively train new and current engineering construction workers. There must be discussion with regard to the continued 'craft'-centred emphasis of UK workers, whether lessons cannot be taken from other European neighbours, such as those in the Netherlands or Germany, and with regard to integrated team working. This latter concept is already an agreed employer and union approach for major projects in the Joint Industry Board for the Electrical Contracting Industry handbook. Again, the shop stewards forum provides a good place to start debate and change.

Whilst much of the above may seem 'blue sky' brainstorming, it should be considered that there is the serious possibility that the current NAECI regulation may be undermined by a growing number of employers and clients. This is of course tied into the question of skills and the working practices used on site. The unions are trying to maintain and develop communication with employers, but ultimately there is only so much talking that can be done before cost or - more accurately - productivity becomes the arbitrator of who is employed on a major project. Although these are serious challenges for the unions, there is no reason to doubt that they can be overcome, as long as it is remembered that the NAECI came in originally because constant conflict was a disaster for all. Let us hope that we are not returning to that situation.

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Subcontracting Chains and (bogus) Self Employment in Switzerland: The Trade Union Position

The problem

Until recently, almost everybody in Switzerland underestimated the problems that can be caused by (bogus) self-employment and subcontracting chains in construction, cleaning and handcraft sectors. The Swiss trade union Unia has done some research concerning this phenomenon during autumn 2010. Our findings were that these have become threatening issues also in Switzerland. They are often linked with attempts to lower wage and social standards (wage and social dumping). Some forms of unfair competition have clearly reached Switzerland. In general we are confronted with two phenomena linked with

- Subcontracting chains in order to camouflage the 'real' contract relations

- (Bogus) self-employment in order to circumvent Swiss collective agreements and binding minimum wages especially concerning posted workers.

The situation in Switzerland today

These issues are more virulent in the border cantons, as in the canton Ticino and in the French speaking cantons, but they are also more and more appearing in German-speaking Switzerland. We mostly find (bogus) self employed today in construction (concrete reinforcement works) and affiliate trades (paving, flooring, painting, insulation, exhibition stand construction), cleaning and others, as in general craft sectors. Subcontracting chains are often chosen by general contractors in order to camouflage the 'real' contracting relations and conditions. We can see that subcontracting chains have the effect that at the – weakest – end of these chains (bogus) the self-employed are executing the work:

- The workload, which is claimed to be executed by self-employed persons, grew by two thirds between 2007 and 2010, compared to a growth of 18 per cent executed by posted workers. Certain groups of people are obviously declared as self-employed just to circumvent Swiss labour regulations, collective agreements, binding (minimum) wages, etc. Today approximately 15,000 persons who are declared as self-employed (mostly from the EU) execute approximately 550,000 days of work. Many of these persons used to be either posted workers or persons who were normally appointed as employees in Swiss companies. If we take a look at the checks which are done today, we find out that about 20 to 25 per cent of the controlled self-employed are in fact ***bogus*** self-employed. This means that, out of today's 15,000 self-employed persons in Switzerland, approximately 3,000 to 4,000 are in fact ***bogus*** self-employed.
- In many cases we have seen there is a close link between subcontracting chains and (bogus) self-employment. Often subcontracting chains are used to camouflage the real contract relations and – via many links – to use at the end

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of the chain (bogus) self-employed workforce. This makes sense from a general contractor's view because self-employed persons can be paid less than posted workers as we have a lot of binding collective agreements and (minimum) wages in Switzerland, which also apply to, posted workers.

- This means: (bogus) self-employed are paid less and are not under the scope of social insurance, either in Switzerland or – partly – in their home country. That makes the self-employed workforce substantially less expensive – and therefore attractive. The self-employed persons are willing to accept this status because they are still earning more than in their own country. Switzerland is well known as a high wage country. Besides they have often no other choice. Trade Unions suspect that (bogus) self-employment is squeezing the legally posted workers from the Swiss labour market. This form of employment contains a big risk of damage for Swiss labour relations system: It is far cheaper than legal work; it leads to wage and social dumping and jeopardises the functioning of the Swiss labour market.
- It is a danger for the social insurance system. Furthermore, the massive wage dumping leads to problems in the system of bilateral treaties between Switzerland and the EU. But the worst part of it is that these abuses are causing a growing xenophobia in Switzerland. Today's estimations say that the populist right wing party, the SVP, which polemicalises against foreigners and Switzerland-EU integration, can count on 30 per cent of Swiss voters.

Unia's answers, proposals and achievements

In the past the different cantons in Switzerland treated the above issues differently, due to Switzerland's federalist structure. There were some cantons that really tried to fight the misuse of self-employment while others did not see or did not realise the problems and/or did not want to interfere, due to neo-liberal economic policies. And there was also no common understanding about a definition about self-

employment and bogus self-employment. Recently we have made some progress:

- We have successfully introduced a new form of collective agreement which is legally binding: Foreign companies who want to work in Switzerland, have to pay deposits in order to be entitled to execute this work. This is the case - amongst others - in the following sectors: scaffolding, painters and plasterers, insulation, facility management and so forth. In order to make sure that companies treat their workers according to legally binding collective agreements, companies have to deposit up to 20,000 Swiss Francs per contract. This is to make sure that, in the case of violation of Swiss legislation or generally binding collective agreements, controlling agencies are able to execute the fines against the affected companies (as in some cases the fines are not enforceable in the country of origin).
- Under pressure from the trade unions and some employers associations, the Swiss government adopted a new directive concerning the fight against bogus self-employment (see box at the end of this document). Here we came to a clearer definition and larger fines. This directive has been in force since the start of 2011.
- After the adoption of this directive and due to our efforts, the SECO, our labour ministry, decided to create a tripartite working group with the task to develop the necessary measures for checks and enforcement of the rules against bogus self-employment within this year. In this context, we will try to deal with the introduction of a **joint liability respectively a general contractor liability system**.

We are convinced that a joint accountability/liability system is the best solution. It makes sure that in future general contractors are prevented from camouflaging "real" subcontracting terms via installing subcontracting chains. Further to this, we are striving for more:

- The extension of the application of generally binding collective agreements and generally binding minimum wages also to self-employed people.

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- In the case of a suspicion that self-employed are in fact employees, he/she shall be forced to prove his/her status. If the person is not able to do so, these persons shall be treated as employees.
- Clear and painful sanctions in cases of violation of Swiss labour law (i.e. exclusion from public biddings...)
- Sanctions have to hit general contractors, not executing persons (that is why we are going for a joint liability/general contractor liability system).

All in all we can state that Swiss Trade Unions have made significant progress in their attempts to fight social and wage dumping which results from ***bogus self-employment*** and ***subcontracting chains***. But there is still a long way to go. We will continue with our efforts.

The new directive regarding self-employment: a first important step

On January 1st 2011 the "SECO" (Switzerland's federal labour ministry) put into force a directive regarding self-employed activities in Switzerland. With this directive the controlling agencies can execute their controls under a common and clear definition.

1. Definition

In short, we can say that now one thing is clear:

- *Any self-employed has always to be able to prove his/her status, if a controlling agency is asking.*
- *We now have a clear definition about self-employment and bogus-self-employment.*
- *The directive delivers also clear criteria on how to execute the visits/controls:*
 - ⇒ *Either there is a "direct" control at the workplace*
 - ⇒ *Or there is a control in written form.*

In both cases the controlled person/enterprise has to deliver all documents concerning the own status.

- The key criterion is **not** his/her home country status, but the **actual** working and contract conditions in Switzerland. And concerning the **actual** contract conditions, the facts that are found by the controlling agencies (either cantonal or collective agreement-controllers) are more important than the papers that are delivered.

⇒ If there is a doubt concerning the status, the self-employed is treated as an employee (generally as posted worker or alternatively as employed to a Swiss company).

2. Sanctions

Along with this directive comes a set of (partly new) sanctions if cases of bogus self-employment are detected. They shall be unburdensome, dissuasive and efficient.

- If the controlled person cannot give proof of being self-employed, s/he can be dismissed from the workplace.
- Even a ban from working in Switzerland can be the consequence.

There is also a differentiation concerning the question of whether a (bogus) self-employed person works for a Swiss or a foreign contractor:

- **Foreign contractor/employer.** In case the person is bogus self-employed, s/he will be treated as posted worker > the respective fines will be imposed. In these cases the posting law and posting directive will be deployed. Even a criminal case may be opened.
- **Swiss contractor/employer.** Swiss labour laws will be applicable > Swiss collective agreements shall be applicable, also (minimum) wages and announcement duties.

Reviews

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Bernt Bratsberg and Oddbjørn Raaum (2010), *Immigration and Wages: Evidence from Construction*, **CRAM Discussion Paper No 06/10**, Centre for Research and Analysis of Migration, University College London.

The number 6 issue of the CreAM Discussion Papers is dedicated to the topical question of the extent to which foreign labour affects the labour market opportunities of 'native' citizens and/or places downward pressure on their wages. The two authors, Bratsberg and Raaum, both related to the Ragnar Frisch Centre for Economic Research in Oslo, have tried to identify the relative wage impact of immigration. They studied the evolution of wages of workers in the Norwegian construction sector during a period of rising immigrant employment (the period 1998-2005). Although changes in demand conditions over the sample period were arguably similar, changes in immigrant employment turned out to be very uneven across different segments of the construction sector. Requirements for certain activities regarding certification and authorisation of skills according to national standards made it difficult for new immigrants to enter some segments (e.g. electrical installation and plumbing companies) but not others (e.g. carpentry and painting firms).

One result of their empirical analysis is that individual wage growth over the period is substantially lower for workers who face increases in the immigrant employment share than for other workers. A second finding is that immigration is associated with the exit of low-wage workers from the sector. A third finding is that price increases within the construction sector are significantly lower for services that saw large increases in immigrant employment than for services with no or small changes in the immigrant employment share. The data indicate that the direct cost reductions associated with the use of immigrant labour and indirect reductions through their impact on native wages combine to produce relative

price effects that are even larger in size than the relative wage adjustments.

They summarise the findings by stating:

Our findings underscore that, in the economic analysis of consequences of immigration, there are winners and losers. While 'native' workers directly affected by immigrant inflows face reduced wage growth and possible unemployment, the price dampening effect of immigrant construction labor points to direct benefits for a large consumer base and considerable gains in consumer's surplus. Depending on the composition of immigrant inflows, costs and benefits will be unevenly distributed across groups of 'natives' (page 3-4).

The study confirms that the search for cheap labour in Europe has a downward effect on the relative wages of (some segments of) the labour market, notably on the wages of low and medium skilled native workers. Wages of domestic skilled construction workers appear unaffected. The effect of immigration on relative wages is masked by a selective outflow of low-paid 'native' workers that leave the labour force.

Although the period investigated in this study was long before the crisis and the sample used is relatively small, the outcome of the study gives food for thought as it differentiates the effects of an increase in the foreign workforce. In a 2009 study, the ETUI concludes that the intra-EU labour flows in recent years has not had 'broad-based negative effects on competing domestic workers in receiving countries'.¹

The ETUI-authors indicate that employment opportunities and wage differentials are the key migration drivers, and that the migration flows, due also to the crisis, are not so much of a structural character but of a 'circular', shorter-term nature.

Even if this is the case, the wildcat strikes that took place in different countries in protest at the employment of posted

workers by subcontractors paying below the local labour standards give credence to political concerns. The outcome of the CReAM-study underlines that the resolution of this type of tension, not least through legislation and actions designed to promote a single market that prevents social dumping and guarantees workers' rights, is one of the key challenges in Europe.

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1. B. Galgóczi et al (2009), Intra-EU labour migration: flows, effects and policy responses, ETUI, Brussels, WP 2009/03.

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Further research on posting

1. *Posted workers in the European Union*

Dublin Foundation, November 2010, edited by Roberto Pedersini and Massimo Pallini.

The first comparative EIRO network study focusing on the implementation of EU Directive 96/71/EC was published in 1999. A follow-up study was carried out in 2003, through a series of national thematic features on posted workers. The purpose of this study was to update the findings, taking into account developments since 2003 and to include information from the new Member States (NMS), which were not yet part of the EIRO network at the time.

The authors conclude that 'the overarching EU goal of combining economic dynamism and competitiveness with social cohesion requires a careful assessment of the potential impact of the Directive on posting of workers – firstly, in terms of the impact on the national labour regulations and industrial relations systems and secondly regarding the impact on the balance between economic freedoms and fundamental social rights'. They recommend 'a strengthened role of the social partners at national and possibly also at European level, with a view to establishing a monitoring system and providing

some scope for regulating the employment and working conditions of posted workers would contribute to redressing a situation that at present appears to be characterised by the relative prevalence of the economic and European dimensions’.

The study is available on: <http://www.eurofound.europa.eu/docs/eiro/tn0908038s/tn0908038s.pdf>

2. Information provided on the posting of workers

Institut de travail of Strasbourg, completed in September 2010, published in January 2011.

This is in fact a guide produced in the frame of a project with the objective to explore the Member States’ obligations in the field of the provision of information. The result is split in two parts: *The necessity of information* and *A comparative analytical survey of websites set up by public administrations*. The second part assesses the different national websites and the site produced by the social partners in construction www.posting-workers.eu, in total 14 sites next to the content of the different information offices in the Member States. The outcome can be seen as a posting guide for companies and workers. <http://www.dialogue-social.fr/fr/information/id-1374/l-information-deliv> The recommendations are mainly focused on the accessibility and the quality of the information. The EC website is said to be very badly referenced and ‘only well informed users are able to access it’.

Denknetz Jahrbücher 2009, 2010

Jörn Janssen

A review of Denknetz Jahrbücher (Think Network Year-Books) is overdue for CLR-News. According to its regulations “Think network” (Denknetz) is an association of academics and practitioners in Switzerland dedicated to ‘Freedom, Equality and Solidarity’ – reminiscent of the French Revolution -, and in fact a think tank closely linked to the trade un-

ion movement. We take the opportunity to review the Year-Books of 2009 and 2010 as an expedient to advertise a number of most valuable contributions to the analysis of the 2008 global financial crisis. Significantly, the 2009 issue was published under the heading "Krise, global, local, fundamental" and contained two articles assessing the financial crisis as a result of the transformation of capitalism in the preceding decades: First, Jörg Huffschmid on "Die Krise der Finanzmärkte und die Antwort der Regierungen" ('The Crisis of Financial Markets and the Response of the Governments', pp. 10-20) and, secondly, Michel Husson on "Crise de la finance ou crise du capitalisme" ('Crisis of Finance or Crisis of Capitalism', pp. 22-28). Huffschmid pinpoints three developments as the trigger of the crisis, the increase of disparity in income and wealth, the privatisation in social security systems, and the liberalisation of capital markets. As a result money was less and less reinvested in the circuit of production and became increasingly concentrated in the financial sector. Husson agrees that "the rise of non-invested profits was feeding finances"(p. 24) but explains this as a consequence of "super-exploitation of workers at global level."(p. 27) He concludes, therefore, "we need [...] a different distribution of wealth and a different organisation of the world economy, two perspectives alien to capital." (p. 28, translations J.J.) A number of related articles complement the picture in highlighting special related aspects, e.g. the prevention of tax loopholes, a proposal for a new pensions system (by the working group 'political economy'), and lifting the veil of secrecy in the Swiss banking sector (by Olivier Longchamp).

Given the continuation of the crisis, the Year-Book 2010 carries forward the same debate under the heading "Zu gut für den Kapitalismus, blockierte Potentiale einer überforderten Wirtschaft" ('Too Good for Capitalism, Blockaded Potentials of an Overtaxed Economy'). In this issue again, two contributions, both collective work of the group 'political economy', stand out in addressing fundamental issues of the glob-

al financial crisis. The first one, "Zu reich für den Kapitalismus" ('Too Wealthy for Capitalism', pp. 20-37), discusses the limits of the production of consumer goods and, as a result, of decreasing investment in the growth of productivity. This development is evident since 1982 in the growth of the profit rate at the expense of the accumulation rate. The second one, "Zur 'Too big to fail'-Problematik" ('On the 'too Big to Fail' Problem', pp. 38-48), deals with the abundance of money and suggests ways to use this for public purposes and to transform the financial sector into a public service. These core papers are accompanied by contributions e.g. on the inherent nature of capitalism to go through crises and of the obsolescence of national boundaries vis-à-vis the financial market (Hans-Ulrich Jost, 'On the Doggedness of Capitalism and the Forgetfulness of the Human', pp. 5-11) and the fatal need of eternal growth leading to its eventual collapse, suggesting planning according to physical criteria (Claus-Peter Ortlieb, on 'The lost Innocence of Productivity', pp. 12-19).

Both issues of Denknetz-Jahrbuch publish a "Verteilungsbericht", annual reports on the 'the development and distribution of income from employment and assets in Switzerland' (Hans Baumann and André Mach). They show the continual long-term decline in the share of wages in gross national product, halted only in 2009, in Switzerland the same as in the European Union.

The more general articles on the crisis are global in their perspective whilst those more focused on practical economic reforms often relate strictly to Switzerland. However, the extensive work of Think Network on a fundamental overhaul of the social security system¹ ('Setting up a General Employee Insurance', translation J.J.), though tailored strictly for Switzerland, provides an inspiration for all the complex outdated systems in the classical industrialised states – hopefully in the near future for transnational arrangements. Both issues also contain special articles on a number of aspects in the wider field of social security.

Reviews

It is impossible to do justice to the variety of subjects addressed in these Year Books. On the website (www.denknetz-online.ch) virtually the whole production since 2005 is available according to subject. Occasionally the editors also add articles from other sources to this collection. Thus Denknetz, réseau de réflexion, pensiere in rete, think network, has become a treasury for labour politics in the tradition not only of the French Revolution but more specifically of the contemporary labour and trade union movement. Not all contributions are published in German; some are in French as for instance that of Michel Husson on the global crisis and of Olivier Longchamp on the banking secrecy in Switzerland. Compared to other institutions of the trade union movement, such as the Global Union Research Network (GURN), ILO International Institute for Labour Studies, European Trade Union Institute (ETUI), Wirtschafts- und Sozialwissenschaftliches Institut (WSI) of Hans-Boeckler-Stiftung, Denknetz is the most radical – or grasping reality - in its critical approach to employment relations and labour policies. Its resonance would be greatly enhanced if its publications were available also in English.

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1. Ruth Gurny and Beat Ringger (2009) ‚Die Schaffung einer allgemeinen Erwerbsversicherung‘, edition 8, Zürich

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Aragón Medina, J., Cruces Aguilera, J., Martínez Poza, A, Rocha Sánchez, F. (2010)

La integración laboral de las personas inmigrantes en España. Una aproximación al empleo y las condiciones de empleo Fundación 1º de Mayo. Madrid. 195 pp.

(available at <http://www.1mayo.ccoo.es>)

Produced by the Research Department of Comisiones Obreras' Fundación 1º de mayo, this report on the labour market integration of migrants in Spain constitutes a timely contribution to the growing literature on the subject. The importance of the topic is beyond doubt. First, due to the intense flows of migrants - mainly from North Africa, Eastern

Europe, and above all Latin America - to Spain in the last decade and a half, the migrant population (defined here as foreign nationals originating from non-EU Member States) grew from just 1.2% of the active population in 1996 to over 14% in 2009. Secondly, as this report fully confirms, Spain's 2.7 million migrant workers are concentrated in the worst segments of a highly segmented labour market. Putting it only a little too bluntly, in Spain as elsewhere migrants find work disproportionately in the worst jobs, in the worst conditions, and in the worst industries. For migrant women, this means work in hotel and catering and domestic service; for men, in agriculture and above all construction.

While many of the findings presented here will come as little surprise to those working in the field, the report's main claims to originality lie in its two central chapters. These are devoted, respectively, to presenting a set of 25 variables or indicators that can be used to measure the employment and working conditions of migrants relative to Spanish workers (Chapter Three), and to the construction and commentary of these indicators for the years 2006 and 2009 (Chapter Four).

Citing both the European Commission and the Spanish authorities in their support, the authors make a strong case for the pressing need to define a complete and coherent system of labour market indicators for migrants, a tool both for social analysis and policy design and evaluation. This poses a two-fold problem: agreement has to be reached on an appropriate system of variables, and the necessary data has to be collated in such a way that it can be used to construct the indicators in as disaggregated a form as possible. Both of these tasks are still pending in the Spanish case, hence the value of this report.

The authors prevent a comprehensive review of the available sources and their limitations with respect to the battery of 25 variables that form the heart of their proposal. Each variable is used to construct an indicator in the form of an index fig-

ure comparing the situation of Spanish and non-Spanish nationals, disaggregated - insofar as the data allows - by sex, age, and nationality of worker, and in some cases sector and occupation. The vast majority (19) of these indicators are directly related to work and employment, covering an impressively wide range of dimensions, from level of employment and unemployment, wages, contract-type, rotation, levels of over qualification for the job, accident rates, use of employment services etc...). These are accompanied by three indicators of education (relative levels of school dropouts, of attendance in non-compulsory education, and university education), and three other socio-demographic variables (relative weight of migrant population, of irregular residents, and of irregular migrants workers). While their proposal appears to satisfy the demands of relevance, measurability, appropriateness, realism and feasibility, this reader would have welcomed fuller discussion of its merits relative to other sets of indicators currently being used or under consideration in Spain or at the European level, the latter crucial for comparative purposes.

In Chapter Four they construct these 25 indicators using macro data from 2006, the final year of Spain's decade long economic, and particularly construction, boom, and 2009, when Spain was two years into the current deep depression. In doing so, they offer an unusually wide-ranging and precise analysis of the impact of the current crisis on the migrant population as a whole. It is impossible to do justice to the vast array of data presented in just a couple of lines, suffice to say that immigrants have been particularly hard hit by the crisis. Despite the few indicators showing a narrowing of the gap between migrant and Spanish workers (for example with respect to levels of temporary employment, long working hours, or unemployment benefit coverage), in 2009 migrants suffered much higher unemployment than Spaniards (28% and 16% respectively), were even more heavily concentrated and over-represented in poor quality employment than in 2006, and were still more likely to have insecure jobs for

which they were even more overqualified than their Spanish counterparts, compared to whom they also tended to work longer and for less.

Much of the data cannot be broken down by sector. As a result, the report has little specific to tell us about the construction industry. It does confirm that the sector is one of the principal destinations for male migrants of all nationalities, and one in which they are most clearly over-represented with respect to Spanish workers and to other sectors. One pull factor to the sector confirmed here is that migrants have been able to earn more in construction than in other sectors. Another draw may be the relative wage equality between Spaniards and migrants in the sector. Nonetheless, this provides cold comfort in a context in which migrants are overrepresented at the bottom of the skill and pay hierarchy - construction labouring is in fact the most disproportionately migrant occupation in any of the ten sectors analyzed here - and everything suggests a levelling out towards the bottom in construction. That is, in the context of mass unemployment, native workers lower their "level of acceptability", taking jobs in conditions that would previously have been considered unacceptable.

This report is rich in descriptive data of this type, but does not pretend to analyse the relations between the variables or the underlying causal mechanisms behind the labour market segmentation described. This is not the authors' objective, and different types of data and statistical and qualitative research methods would be required to do this. More problematic, perhaps, is their failure to question the validity of the categories they employ, and particularly the dichotomy of non-EU migrants versus Spanish workers. They give no consideration to the inherent limitations of any indicators constructed around this distinction, which will inevitably fail to capture the full extent and complex nature of ethnic labour market segmentation in a society with growing number of nationalized immigrants, and children of immigrants enter-

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ing the labour market. It will also, and here I declare a special interest, necessarily exclude any consideration of posted workers from other Member States, if anything even more statistically invisible than non-EU migrant labour, and probably set to become an increasingly important part of the Spanish and other European labour markets in the future.

None of this detracts from the merits of this report, which is recommended to anyone looking for an up-to-date, one-stop overview of the quality of employment and work of migrants in Spain, as well as to those interested in the development of labour market indicators at the Spanish or European level.

Calendar of Events

CENTRE FOR THE STUDY OF THE PRODUCTION OF THE BUILT ENVIRONMENT (ProBE)

SYMPOSIUM AND LAUNCH: AN INTEGRATED SYSTEM OF EDUCATION FOR THE BUILT ENVIRONMENT

DATE: Friday 20 May 2011, 10.00am – 17.30pm
VENUE: University of Westminster, Room M421, 35 Marylebone Road, London NW1 5LS
(Opposite Madame Tussaud's and nearly opposite Baker Street tube station)

For a full programme, see: <http://www.westminster.ac.uk/about/news-and-events/events/2011/centre-for-the-study-of-the-production-of-the-built-environment-probe-symposium-and-launch>

To reserve a place please contact: Amanda Willmott willmoa@westminster.ac.uk or 020 7911 5000 ext. 2702

For further information please contact: Colin Gleeson: gleesoc@westminster.ac.uk (020 7911 5000 ext. 3403); or Linda Clarke: clarkel@westminster.ac.uk (ext. 3158)

ABOUT THE SYMPOSIUM

The not-to-be-missed symposium offers the opportunity for an informed, critical, open and international discussion on an integrated system with a range of professionals, employers, employees, trade unionists, academics, researchers and all those interested to participate. It is an old subject, but one which does not go away and is becoming ever more urgent, and we hope that the outcomes of our discussions can inform policy and challenge the current unsatisfactory system.

The symposium presents an international perspective on the subject with leading speakers from as far away as Melbourne (Paolo Tombesi), Sri Lanka (Milinda Pathiraja), the Netherlands (Anneke Westerhuis), Denmark (Roger Taylor) and

Calendar of events

Rome (Riccardo Vannocci), as well as from Britain – including Tony Burke (Univ. Westminster), Tim Fenn (P3Eco & ECO₂H₂O), Fran Bradshaw (Anne Thorne Architects), Tom Hardacre (former Unite official) and Don Ward of Constructing Excellence. It is organised in association with the European Institute for Construction Labour Research and also provides an opportunity to formally launch ProBE to the outside world.

The day is organised around three key problem areas:

- *An industry wide and permeable VET system:* In Britain, education and training for different manual occupations has become narrower, with limited possibilities for career progression. In contrast, in other leading European countries, such as Denmark and the Netherlands, VET is based on the principle of broad occupations and a restricted number of professions. Theme 1 will focus on education, providing examples of more integrated systems, including in Australia.
- *Cooperation and conflict between built environment occupations:* There exist perennial problems associated with the range of different construction trades and professions and overlaps between them. These have wide-reaching implications, both for the education system and on site. Theme 2 will identify and illustrate some, from the perspectives of an educationalist, an architect, and a builder.
- *An integrated practice for construction:* There are alternative ways of approaching and integrating design and practice, despite all the difficulties of communication (especially given contractual relations). These have implications for the education system and for relations between a) professionals and labour and b) the different trades, which will be explored in this session.

The symposium will conclude with a platform discussion, intended to bring the different themes together. This will be followed by the formal launch of ProBE.

Calendar of events

9.30-10.00	REGISTRATION AND COFFEE	
10.00-10.15	Welcome: Symposium theme and housekeeping	Jean Woodall Linda Clarke
SESSION 1: AN INTEGRATED EDUCATION FOR CONSTRUCTION CHAired BY JEREMY TILL		
10.15-10.40	The Melbourne Model: professional education and design culture	Paolo Tombesi, University of Melbourne
10.40-11.00	Industry-wide VET in The Netherlands	Anneke Westerhuis, ecbo, NL
11.00-11.20	Education of the Danish Construction Architect	Roger Taylor, VIA University College, Denmark
11.20-11.30	TEA	
SESSION 2: COOPERATION AND CONFLICT BETWEEN BUILT ENVIRONMENT OCCUPATIONS CHAired BY COLIN GLEESON		
11.30-11.50	Barriers between the building professions	Tony Burke, Univ. Westminster
11.50-12.10	Designing for on-site labour training	Milinda Pathiraja, University of Moratuwa, Sri Lanka
12.10-12.30	Integrating occupations on site	Tim Fenn, P3Eco & ECO2H2O
12.30-12.45	Discussion	ALL
12.45-1.45	LUNCH	
SESSION 3 : AN INTEGRATED PRACTICE FOR CONSTRUCTION CHAired BY LINDA CLARKE		
1.45-2.10	Design, labour and politics in the construction process	Riccardo Vannucci, FAREstudio, Rome
2.10-2.30	Shared learning between professionals and labour	Fran Bradshaw, Annie Thorne architects
2.30-2.50	Conflict and cooperation on site	Tom Hardacre, former Unite senior official
2.50-3.15	Discussion	All
3.15-3.30	TEA	
PLATFORM DISCUSSION CHAired BY SUZY NELSON		
3.30-4.30	Plenary session with the day's speakers	Introduced by Don Ward Constructing Excellence
4.30-5.30	Launch Slide show: 'Picturing the building process', Christine Wall Drinks	Introduced by Jeremy Till and Toni Hilton

Calendar of events

ABOUT ProBE

ProBE (Centre for the Study of the Production of the Built Environment) is ideally placed to organise this symposium, being a joint research centre between Westminster Business School (WBS) and the School of Architecture and the Built Environment (ABE), one committed to the development of a rich programme of research and related activities, including projects, oral history, film, exhibitions, and seminars. ProBE provides a research hub, a forum for debate and discussion, and a focus for interdisciplinary and international activity related to the production of the built environment, as a social process, and its members have long experience of research on VET in the construction industry in Britain and abroad.

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