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- Industrial Relations in Construction as a pilot -

Jörn Janssen, Linda Clarke, Jan Cremers

NOTE FROM THE EDITOR

In the spring of 2001 the European Institute for Construction Labour Research (CLR) proposed a research project and applied for a grant from the European Commission within the framework of the programme *Industrial relations and social dialogue*. The European Commission decided to award this grant. The background to the project was the idea that an institutional frame or system of industrial relations at company and sector levels must be seen as the precondition for social dialogue. At first glance, sectoral industrial relations are underdeveloped in the EU applicant states. The question is, what is the perspective for a dialogue in such a situation? Construction was chosen as a pilot as the sector plays a pivotal role in East-West relations, given its mobility, e.g. transnational contracting, groups and subsidiary networks, and the migration of workers. A large part of the sector has become 'informal', there being neither a distinction between employer and employee (self-employment) nor between task-work and contracting, price and wage. Construction labour is highly casual and many workers still alternate with other occupations.

In contrast, the market for large infrastructure, industrial and commercial projects served by civil engineering and engineering construction is highly capital intensive and dependent on continuity with a stable workforce.

In the meantime we have finalised our study with a group of experts from EU and CEE countries.

The European Social Partners in construction have shown a great interest in the outcome and recommendations. The final report will be on the agenda of one of the future Dialogue meetings. The Building committee of European Federation of Building and Woodworkers already discussed the provisional results with the CLR-researchers in their meeting in Luxemburg on 7th November 2002. EFBWW and Fédération de l'Industrie de la Construction discussed the summaries during the plenary meeting in November 2002 in Brussels.

Next to the publication and distribution of the final report and the final country reports, CLR has already produced a special edition of the CLR-News (2-2002), dedicated to the social partners in the CEE, a part of the first Quick Scans. Finally CLR has reached an agreement with Reed Business Information to publish an edited version of the final report including the country reports in early 2003.

For the dissemination of our results a summary of the final report is translated into eight languages (English, German, French, Polish, Slovakian, Hungarian, Bulgarian and Romanian).

Jan Cremers, 15th February 2003.

This special edition of CLR News is a summary of a comprehensive study on the industrial relations in the construction sector in six selected applicant countries.

The Special edition CLR News 1-2003 is available in 8 languages: English, German, French, Polish, Hungarian, Slovak, Bulgarian and Romanian. The electronic versions can be obtained from the CLR secretariat.

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Introduction

This CLR-project was undertaken as an extension of the ETUC/UNICE project 'Dialogue social et concertation dans les pays candidats à l'EU - bilan et perspectives' in that it adds the sectoral to the general level of the European Social Dialogue. Unlike that project we have put emphasis on industrial relations as preconditions of the general Social Dialogue. The study includes six applicant states: Bulgaria, Estonia, Hungary, Poland, Romania and the Slovak Republic. This diagnosis of social conditions was intended to provide a basis for recommendations to the social partners and the European Commission on how to proceed in promoting the Social Dialogue in accordance with the dynamics of the individual states.

Given the present level of industrial relations in the construction industries in former Comecon states and the limited information about it in Western Europe, this project is the first step to publicise the situation in this sector with a view to improving conditions for the Social Dialogue. The general aim was to explore the conditions and prospective form of industrial relations in the construction sector, in particular to:

- Establish the existing stage of development of the Social Dialogue;
- Promote the Social Dialogue through interviews and the final workshop;
- Develop bilateral relations between the social partners in the EU and the applicant states through: meetings and fieldwork, workshops, a targeted dissemination of the process, CLR-News, publication of the final report;
- Make recommendations for improving industrial relations in the construction sector as a basis for the Social Dialogue.

We are presenting here to the European Commission and the social partners at national and European (EFBWW and FIEC) levels the recommendations and proposals for future steps. In fact we started this process already during our workshop with EU and CEE participation. It was a good opportunity to discuss and interpret the survey results, disseminate the first results and recommendations, consolidate the network of experts and social partners, and it provided the social partners in the applicant countries a means to orient themselves towards the European Social Dialogue.

Industrial Relations in Construction

Industrial Relations the Basis of a Social Dialogue

The ‘Social Dialogue’, defined as part of the *aquis communautaire*, presupposes the existence of functioning industrial relations as a basis upon which a ‘Social Dialogue’ can be grafted. A ‘Social Dialogue’ that is not rooted in working industrial relations is meaningless, as it cannot represent the essentially divergent interests in respective societies in political decision-making or implement the results of the political process by the social partner organisations. The desired effect of both stimulating a political process and consolidating its results, therefore, cannot be achieved by a dialogue that is disconnected from the continuous process of discussion, bargaining, and concluding agreements between collective bodies representing the two sides of the employment relationship characteristic of industrial societies. We argue, therefore, that any attempt of widening or deepening the ‘Social Dialogue’ must take into account the dynamics and particular forms of industrial relations in countries designated for integration in its scope. This report will try to contribute to the understanding of industrial relations in six selected applicant countries and to an extent in former Comecon states generally.

The importance of sectoral relations

Sectoral agreements take into account and adjust to specific working conditions prevailing in the respective sector. Consequently, the social partners will be organised according to these sectoral divisions and thus be able to represent the specific interests relating to the variety of conditions in industries and services. This principle of organisation according to types of working conditions can be implemented via a central single national union, with autonomous sectoral unions, as in many (but not all) EU member states, or with autonomous company unions, as in the EU applicant states since the change-over.

In seeking to achieve a just distribution of the social product the national sectoral agreement combines two objectives, to regulate at the highest possible level and thus to even out incidental societal imbalances on the one hand, and to take into account inequalities of

working and living conditions on the other hand. A transsectoral (or interprofessional) national organisation of employers or employees will lack representativity and the company level organisation will lack the backup of national solidarity and orientation in matters of their specific concerns. That means, that without sectoral organisation between individual membership and national representation these two levels of organisation become alienated from each other and miss their social objective.

The specificity of construction

What is peculiar in construction to justify organisation as a sector in the economy and industrial relations? Generally speaking, the answer can only be historically specific and dependent on the process of industrial development and innovation. Hence we observe different traditions and processes of restructuring in social partner organisations, industrial relations, and different official demarcations reflecting these changes and differences from country to country. Construction may include the finishing trades, services, construction materials industries, woodworking industries, etc., or not. However, notwithstanding these reservations, we observe a number of characteristics that are widely associated with the ‘atypical’ environment of construction.

First of all, the location of production is mobile: with workers constantly moving from one site to another, with cooperation that takes places between and with different partners, with employers and their employees that cannot be located at a fixed workplace. Hence construction labour contracts or collective agreements usually contain provisions to compensate for travelling time and expenses, severance from families and friends, accommodation at distant workplaces etc.

Secondly, the character of construction work is that of a temporary duration. The factory is dispersed and limited in time. Workers are engaged for the duration and the site of a building. Once and a while they may even live there for the period of the job. Very often labour contracts, if any, are of a fixed-term nature related to finishing one project, the building or constructed item. To compensate for this insecurity of employment wages may just be higher than in more

continuous jobs. Another response to this inconvenience is so-called severance pay, which is intended to cover the time for seeking a new job.

Thirdly, the industry is exposed to the vicissitudes of weather conditions and (therefore in many cases) of seasonal cycles and disruption. As a consequence construction labour relations not only have an economically related cyclical character, but also an annual or seasonal cycle. These variations in work and working time not only in the course of the year but also between years of different climatic conditions cause a considerable insecurity for the earning of construction workers with repercussions also for those not directly exposed. Since construction trades are specialised occupations these conditions have been met by various provisions, such as funds, insurances, and benefit schemes to even out the ups and downs in earnings as well as employment conditions bridging seasonal unemployment.

Fourthly, partly because of its temporary and variable working environment, partly because of working at considerable height, moving heavy components etc. construction is one of the most hazardous and unhealthy workplaces. The result is a high incidence of accidents, industrial injury and trade specific occupational diseases. Construction workers typically have a working life below average. As a result they are often insured on particular schemes or with an additional insurance.

Fifthly, like any other industry, construction encompasses a particular set of skills employed at the same place with demands on cooperation under varying circumstances in one-off complex projects. The provision of these skills is a condition for the maintenance and development of this production sector and a concern shared by both employers and employees.

The building process is characterised by a unique production chain, with main contractors, supply industries, specialised subcontractors and all sorts of subcontractors and self-employed workers (often into the 'grey' area). Compliance with agreements, liability in the chain in the social field, coordination of health and safety on site, continuity and competition, quality and craftsmanship are all features in this chain.

Finally the role of the state has to be mentioned here; whether as a client, as legislator or important partner in tripartite negotiations the state sets the frame and conditions for the industry (for the different roles see below).

All these circumstances have lead to an environment for industrial relations where discontinuity, the loss of skilled labour and of craftsmanship, and the general image of the industry are central concerns to be dealt with strategically as well as in day-to-day business and discussions between the social partners.

Construction will therefore remain a sector in its own right for a considerable period.

This does not determine, however, how this peculiarity needs to be organised in term of industrial relations.

At sectoral level the partners do not necessarily have the same demarcation in every country. Employers' organisations and unions can be active industry-wide or only for one branch or subsection. On the employers' side the organisation can be a federation of individual employers or entrepreneurs or an association of employers' federations active in the building industry. The trade union can be active at national level as an umbrella of company unions or of organisations for the different trades. In some cases the union can be organised along the industry lines in other cases more industries are represented (and an internal structure exists with a construction section). There can be direct affiliation from the individual worker or affiliation via company or regional structures. Further conditions need to be taken into account in order to assess the advantages and disadvantages of one or the other mode of the organisation of the social partners in construction.

Some key issues concerning industrial relations

Levels of organization

From the very start of our project¹ we have used an analytical framework with different dimensions for a system of industrial relations. Notwithstanding the specificities in construction as described before, the system of industrial relations in the construction sector can be analysed along these lines.

Framework for systems of industrial relations

Level	Actors	Playingfield	Instrument
National economy	Central organisations of employers and employees	<ul style="list-style-type: none">- Labour legislation- Socio-economic policy- Overall policy for collective bargaining	<ul style="list-style-type: none">- (Tripartite) National advisory committees- Social Dialogue- Framework agreements, social pacts.
Sectoral level or branches	Unions and employers; organisations in the branches	<ul style="list-style-type: none">- Specific labour legislation- Sectoral socio-economic policy- Industry policy- Collective bargaining	<ul style="list-style-type: none">- Ad hoc or permanent advisory bodies- Social Dialogue- Sectoral agreements- Collective agreements
Company level	Management Workers representatives (Local) Unions	<ul style="list-style-type: none">- Company strategy and HRM policy- Working conditions- General policy	<ul style="list-style-type: none">- Co decision, information and consultation- Company agreements- Codes of conduct

What is missing here is the individual level, the individual worker and employer who agree on a labour contract and settle labour and working conditions for the duration of this contract. One might question whether a situation where this individual contract is the dominant form should be called a system of industrial relations. As it cannot be denied that in this case there is a relationship between labour and capital we also have to take on board this very fragmented and individualised 'system'.

What is missing also is the territorial or regional level. Certainly in the past and especially on the trade union side the answer to the constantly changing workplace and contracts shifting from one employer to

¹ The starting point was a CLR-workshop in the spring of 2001 and several publications in CLR-News; CLR-News 2-3/2000 and 1/2001.

another was sought in a regional union structure. Construction workers working all over the country went to a local representative of the union in their hometown or village for the defence of their interests. At the same time this regional level may become a coordination level beyond activities in a single company. And finally the regional level offers possibilities (or an instrument) for centralised organisations of employers and workers to delegate, implement, or dictate relevant parts of national agreements to the lower level.

Mandate, representativity, membership and coverage

Taken into account the characteristics of the construction industry and the different levels of organisation we can work out a few key aspects of the relationship.

a. Mandate.

Partners in industrial relations need to have the competence and the power to negotiate, to settle agreements or arrangements, to talk to the other side on behalf of the membership, the represented companies and workers. A mandate is based on democratic procedures, constitutional or statutory rules, formal decisions. A mandate guarantees (to a certain extent) that arrangements or agreements can be formulated, signed, established and implemented on behalf of the partners involved. A mandate does not necessarily mean that compliance with the outcome of the talks is guaranteed; therefore internal discipline, mandatory rules or sanctions are needed.

b. Representativity.

The representativity of organisations is the subject of case law in many countries. A few years ago the European Commission has listed different dimensions for representative partners. In this study we take into consideration the membership figures, the territorial and sectoral distribution and coverage, the (former) recognition by the partner, the relative strength with regard to competing organisations, the (relative) power and capacity to mobilise. Important in this respect is also the (legal) recognition and status of the organisation, although in most countries the trade unions and employers' organisations can do without a legal status. The constitution, the labour code and labour

legislation very often provide the frame of reference for their existence. An important other legal frame is coming from EU-legislation or ratified ILO-conventions.

c. Membership.

Membership of an organisation in construction can be direct, via representation and/or in a federal or associated way. An individual worker can be a member of a company union that is affiliated to a regional or national trade union in the sector, or can be a direct member of a central organisation. Membership fees are paid via the employer or directly collected by the union.

Individual employers can be direct members of a regional or national employers' organisation in the sector, or be represented by a sub-sectoral organisation affiliated to the national federation or association for the whole industry.

The membership figures normally go back to the total of workers and companies represented but there can be different forms and categories (supporters, pensioners, unemployed). As the membership figure is an important aspect of representativity the organisations can have an interest in keeping them secret.

d. Coverage.

An organisation can be very representative in a small part of the industry or in one profession, or in a certain territory. The impact of the coverage rate is closely linked to representativity and recognition in society.

Agreements can be applicable for the parties (with their affiliates) that sign the agreement. Their coverage can be extended or reduced. Organisations can associate to the outcome without taking part in the negotiations. In some countries in Europe there is a tradition to declare collective agreements at sectoral level generally binding (by law). Their coverage then is in theory 100%. In most countries self-employment is an escape from binding agreements and can therefore distort the official data.

Competing organisations and pluralism

One of the new phenomena for the construction sector (and other industries) in a situation where the state monopoly in socio-economic life came to an end is the emergence of competing organisations and pluralism. With regard to this question we have to consider a few aspects:

- first of all the origins of the organisation, its historical background (reformed or new initiative) and heritage;
- the linking with the structural dimensions of the industry: company or national, all size or SME-oriented, separate professions and trades or industry-wide, blue and/or white collar;
- the allegiance, the (in)dependence from and relationship with political parties and the state, and the autonomy vis-à-vis the counterpart;
- the inspiration or ideological background, coming from political ideas, foreign sponsorship, religious influences and motives;
- the variations of organisational principles (grass-root organisation, degree of centralisation, loose association or top-down).

In general in construction there is a relatively homogenous definition of what belongs to the sector. The production-chain leads to certain problems of demarcation with for instance the chemical industry or with the wood industries, but in general this has not lead to important competition with other industry federations, neither on the employers' side, nor on the side of the unions. The most important reasons for competition and rivalry are the historical background, the structural dimension and the different ideological or religious denominators.

Cooperation and conflict between the social partners

Industrial relations in construction can be characterised by certain mutually shared conditions or concerns that serve as fields for cooperation as well as potential items for conflict.

Among the more peaceful items we can list health and safety, vocational training, the image of the industry, social provisions and social funds that stabilise the industry and contribute to the necessary continuity.

More controversial items are job security, the organisation of work, working time, subcontracting practices, above all wages and other primary labour conditions.

Relatively new on the scene are the introduction and use of new technology, life-long learning, financial participation of workers, environmental issues and the globalisation of the market. With the latter construction has already some experience.

A mature system of industrial relations built on mutual trust of the partners can cope with confrontation on one item and, at the same time, cooperation on another.

Challenges for the social partner organisations in transition

Central institutions vanishing

Industrial relations in the former Comecon states were dominated by central planning authorities and political bodies. With the introduction of the free market principles they lost their legitimacy and identity. The system of unified and centralised union structures, associations of state-owned and state-directed production units, and the interconnections between management, union leaders and national and/or regional authorities disintegrated. There was nothing to deal with any longer at the central planning departments. The outlook and conditions for negotiations and the possibilities to defend the interests of those represented underwent a complete transformation. With the collapse of the central institutions important intermediate structures or distribution mechanisms for social provisions were destroyed.

With the introduction of the market economy the conditions for the functioning of the social partner organisations changed and their monopolistic position under state authority disappeared. Whilst in the past membership of the unions or the associations was compulsory, now these organisations had to adapt to new roles and requirements. The key question became whether it was possible to demonstrate to the potential members, the individual worker or employer, the added value of being organised.

To a certain extent the sectoral organisations, especially in those sectors where workers could identify themselves relatively easily with the 'sector-profile', still had an advantage as compared to the inter-professional organisations. Furthermore the division of the membership of the organisations had been sector based; the inter-professional organisations had always worked with an indirect relationship to the workplace. On the other hand assistance from abroad, political pressure from the EU and priorities of politicians supported the inter-professional level.

Privatisation and fragmentation of production units; economic decline

At the very beginning the economic circumstances were not very favourable for a flourishing partnership. Privatisation in Poland (with a ‘shock-therapy’) and Estonia relatively early, step by step in other countries, almost completed in all the countries integrated in this study, had giant consequences for industrial relations. It changed the landscape and the structure of the construction industry completely. Most of the bigger state-owned and state-directed companies disappeared, some went into foreign ownership, especially in the construction material sector. Construction turned into a very fragmented sector with mainly small companies or self-employed workers. Mass redundancies entailed mass unemployment. Small companies entered into a struggle for survival. Workers came under pressure not to organise themselves. All the economic indicators and the figures we have collected in the different countries show a decline of the construction market and a reduction of the share of construction in GDP, not in the last place as a result of an important decrease of public investment. Only Romania is an exception with the share of construction fluctuating around 6% of GDP. The competitive advantage of relatively low wages combined with good skills and craftsmanship came under threat as the priority of vocational training declined with its institutions; furthermore, there was a loss of technological know-how as a result of a lack of financial capacity and investment.

Restructuring of the state.

The state plays a pivotal role for the construction sector in every country.

The state authority is at the same time the most important and biggest client, the legislator, the partner in tripartite social institutions, sometimes the owner of companies, and in many cases one of the key agents of (un)favourable conditions for the industry (economic and tax policy, liability, labour inspection, training). In the old times the state also had complete control over planning, the financing and management of construction activities.

After 1989 the state slowly but steadily withdrew.

In most cases, not in the last place because trade unions had played their role in the countries' transformation, the state continued in *its role as legislator*. In all the countries, included in this study, economic reform went together with new institutional and legal frameworks for industrial relations and new labour codes, legislation on trade unions and employers' organisations. But legislation took a very general form. Specific legislation for construction is still rather rare. One of the crucial tasks of the state in all the CEE countries is the establishment of minimum wages. These legal wage regulations provide the minima for negotiations at plant level and for agreed wages in the whole economy.

Public investment went down, the state withdrew from *its role as the client*. Already in our interim report the facts and figures of the countries' Quick Scans indicate a serious recession in non-private building and public works from the early nineties on. A slight recovery came up after 1995 in several CEE-states. However the available figures demonstrate only a minor improvement and the picture is divergent with for instance a spectacular recovery in Romania after 1992 followed by a decline in 1995, and a constant decrease in Bulgaria.

The role of the state as a partner in tripartite institutions was not developed consistently. Too much was depending on whether there was a government-friendly atmosphere or, the other way round, a union- or industry-friendly government. The role of the state as an initiator of decent interaction in industrial relations and as a stimulator in the labour process came late and was for a long time restricted to the inter-professional level.

The role as company owner vanished almost completely. In Poland already as early as 1993 more than 85% of the construction industry was privatised. Nowadays this percentage is almost 95%. The privatisation in Hungary and Estonia went in a similar direction. In Slovakia the transformation process was practically completed in 1996. The process of privatisation in Bulgaria and Romania started later and went more slowly. However in all the CEE-countries, studied here, with little variation ownership is overwhelmingly private. In several former state-owned companies state management remained in charge of the privatised company.

The role as the creator of favourable conditions for the construction sector finally was ranking low under the general drive for liberalisation in the countries examined. The priority given to vocational training was substantially reduced; no support was given to a degree of regulation or to avoid distortion of competition. We observed in our interviews, with employers as well as with unions, a general feeling of a lack of construction-friendly economic policy. There are for instance complaints about public procurement procedures, by which the cheapest win the race, often those that do not respect social clauses, nor pay full taxes.

Restructuring of the employers' organisations

In the analyses of the former situation in the construction sector of the CEE countries it became clear that the associations of production units in the planned economy had no function comparable to employers' organisations. They were institutions with delegated governmental functions. As these functions disappeared the *raison d'être* for these organisations disappeared. On the other hand these organisations were not equipped for the new tasks that arose from the market economy. As a consequence it took some time before it was possible to identify the (potential) social partner on the employers' side in the sector.

Along with liberalisation and the ensuing privatisation different types of companies emerged. The two most important types were the transformed and privatised previously state-owned construction companies, and secondly the newly established companies run by private entrepreneurs, often small and medium-sized. Also the phenomenon of self-employed and/or tradesperson appeared. This development had a strong impact on the formation of the organisations on the employers' side. In many countries nowadays we find employers' organisations stemming from former associations of production units, with still important membership in privatised bigger companies, side by side with new associations of entrepreneurs. The overwhelming majority of employers and self-employed is not organised at all. The fragmentation of the organisations obstructs their effectiveness. After 1989 hundreds of so-called employers' organisations have been set up that disappeared soon after. Most organisations have serious problems with the necessary mandate to

act, with a weak profile as a defender of employers' interests and a lack of resources and qualified staff. In a few cases the statutes or policy-plans explicitly exclude collective bargaining on behalf of the affiliated employers. On the other hand several organisations have a strong profile towards the authorities and have developed effective lobby strategies.

The role of foreign capital is varying. In Slovakia, Hungary and Poland, especially in construction material production, and less prominently in other countries, important acquisitions were made at the beginning of the privatisation process. Certainly Poland has been attractive because of its market size and strategic geographical position. For the cement sector the CEE market is by now completely taken over and divided up between the biggest cement producers in Europe. The potential contribution of the management of these foreign-owned companies to industrial relations in the CEE country concerned is however very modest. It looks as if the existing employers' organisations do not have the capacity to attract representatives from these companies. In some companies more 'Western European' types of in-company bipartite concertation are practised. Finally it has to be said that in a few transnational companies both management and labour from CEE countries participate in the meetings and activities of European Work Councils.

Restructuring of the trade unions

The construction trade unions partly shared the problems of legitimacy and credibility with the employers' side. However, given the fact that most unions, including the reformed ones, had a clear industry profile and workplace related policies, their loss of membership was relatively modest at the beginning of the nineties. Also the fact that most of the newly emerging trade unions and parts of the reformed ones were in the forefront of the democratisation movement, certainly contributed to their survival in the beginning. The downward trend in membership and political impact came slowly.

Privatisation put an end to the 'automatic' procedures that had led in the old times to 100% membership rates. From now on the

environment at management level was no longer predictable. Workers' participation from outside via the sectoral trade union was not always appreciated and had to be earned. Workers' participation from inside via the company union had to cope with new tasks and to adapt to the new market circumstances. Neither the reformed nor the newly founded unions had any experience in dealing with management of private companies. Therefore new forms of partnership hardly developed. As a consequence of the privatisation process the ownership of companies changed, the leadership and management-style, the size of the companies and employment. If we examine for instance membership figures it almost looks as an 'iron law'. The struggle of the unions for survival is at stake in the years to come.

The restructuring of the industry after the shift to a free market economy and the start of privatisation had enormous consequences for the conditions of trade union work. The disintegration of the massive companies, the development of a myriad of small firms, the introduction of self-employment and tradesmen, made it necessary to negotiate everywhere. Mass redundancies put a severe pressure on the unions as it did on the workforce. And where to find the responsible partner or the necessary know-how, how to mobilise the workforce and against whom?

As a result of these developments employment figures collapsed. Construction lost more than the whole economy. If we examine the figures we get an idea what kind of problems the trade unions were confronted with in construction. The reduction of the workforce in construction in the last decade:

- In Poland, 25% reduction between 1989 and 1992, a further reduction of 25% between 1992 and 2000.
- In Romania a decrease in construction above the national average; employment reduction in construction of 57% between 1990 and 1999.
- In Slovakia employment reduced by 45% between 1989 and 1999.
- In Hungary employment in construction went down by more than 25% in the last decade, even though there is a relatively flourishing period since 1996.

- In Estonia the population is shrinking, the workforce in construction decreased faster than in other industries.
- Finally Bulgaria: as compared to 1989, employment in construction has decreased by 62% until 2000. Its share in total employment has fallen in the same period to 4.1%.

The complex development, described so far, had a thorough impact on the employment status of workers. The open ended and secure labour contract ceased to be the rule. Small and medium-sized businesses worked with fixed-term, flexible, temporary and seasonal work contracts. The bigger companies no longer offered a life-long career. Mass redundancies and high unemployment put the demand for job security and decent contracts on the defence. Illegal work and non-declared labour appeared. Both the fragmentation of the construction industry and lack of regulation made it difficult to act.

As a result we find that the conditions for the defence of the interests of workers were very tough. The fact that the unions were not really familiar with the market economy and the fact that the potential backbones of trade union work, the company unions, were too fragmented and weakened by the reduction of employment, the way out was often sought in the direction of the state government. The necessary polemic about how to develop a national union strategy in the sector, starting with the coordination of the work of the company unions, was often frustrated because of the financial autonomy at plant level. As we will explain below, we have the feeling that this is determinant for the development of the workers' side of the social partnership.

Crucial items for the social partners.

Perhaps our picture of the social actors has been black and white so far. And of course there have been plenty of negotiations, social partnership, collective bargaining, social deliberations and disputes. Against the background of the socio-economic development (as described above) the conditions for a system of industrial relations in construction and the respective agenda have changed completely.

In the process of privatisation and acquisitions, negotiations about social plans and job-security came on top of the agenda. A relatively

new phenomenon linked to this process is the functioning of the labour market. The mobility of workers, their posting abroad, the re-allocation of the workforce and the necessary provisions for these labour market developments had to be dealt with.

Social protection and welfare provisions had formerly been a shared task of the central organisations and company union branches. In the new situation there was no money, nor fund, nor intermediate structure. The smaller size of the companies diminished the fundament for this type of provisions. The position of (future) pensioners has become a time bomb.

Employment conditions had to be restyled, minimum wages and the whole wage system to be renewed. The fact that, with the exception of the Slovak Republic, Bulgaria and Romania, the national collective agreement for the sector disappeared, made overall coordination of wage policy almost impossible. The question arose how to deal with individual wage setting.

Vocational training and the other provisions for skills and craftsmanship were no longer guaranteed. From the perspective of productivity, continuity and competitiveness investment in training was and remains indispensable. With the withdrawal of the state, both sides of the industry have to take their responsibility in this field.

Reconstruction of sectoral collective bargaining in the six CEE states

Labour law, collective bargaining and its actors

We have seen that both social partner organisations tended to address themselves to the state government. The employers have initiated an often-successful lobby against too strong regulations and in favour of an industry-friendly government policy. The trade unions sought assistance, protection and legal guarantees. Industrial relations are developing in the context of an attitude on both sides to rely on the legal possibilities, instruments and guidance by the legislator.

In general the social partners make use of two collective instruments for the establishment and definitions of working rules and working conditions, first collective agreements, secondly labour legislation. In many European countries we find a balance between these two instruments. In some countries collective bargaining is the dominant instrument and labour legislation only of a flanking nature. In other countries labour legislation is more often used to provide the general framework and collective bargaining especially for the tailor-made conditions and provisions in a sector. Anyway both instruments are present. The actors (national sector unions, employers, and state government) play their role whether it is in bipartite negotiations, whether it is in the often-tripartite process of labour legislation. The government can use the threat of legislation to force both sides of the industry to the negotiating table. Conversely, one of the social partners may ask the government to take action because there is no common ground between the partners. Or both partners may ask the government not to intervene because they see it as their own task to act. In this sophisticated play of chess shifting coalitions are possible. The use of both instruments contributes to a certain balance of power. In our findings we were confronted with the fact that in three of the examined states – Hungary, Poland and Estonia) the instrument of employer-employee collective bargaining is almost completely absent. This means that the playing field for the actors at national sectoral level is reduced, and that important instruments for the structuring of their industrial relations are missing. It has to be noted that it is not automatically the trade union side that suffers from this absence. We only have to remember the origins of collective agreements in several

countries. The initiative came from employers' organisations that wanted to get out of a situation of distorted competition with social dumping and abnormally low pricing. Looking at the situation in the CEE countries examined, it is striking that intermediate structures, that might provide the industry with a better image, with more continuity and guarantees for maintaining productivity are almost completely missing.

What then is the actual situation? Sectoral collective bargaining at national level is absent in Estonia, Poland and Hungary, virtually ineffective in Bulgaria, and effective in a limited way in Romania. There is little common ground for joint or industry wide arrangements. The existing negotiations at plant level between company unions and local management can hardly stand the test of autonomous bargaining. Most often agreements at company level are plain copies of existing labour legislation. The collective agreements in the Slovak Republic, Bulgaria and Romania still stand, but with a difference in coverage and application (see below). In these countries we can see the working conditions in agreements being built up starting from existing legislation.

Levels of negotiation

Relating to the four levels of collective – national trans-sectoral, national sectoral, regional multi-employer, company – and fifth of individual agreements, a number of typical shortcomings can be observed throughout the six countries. The relationship between company and national sector organisations of the social partners is one of dependency. To the extent that company trade unions exist and that companies are members of a sectoral employers' or industrial federation, the former are autonomous as social partners and allow their national sectoral offices only the bare minimum of staffing, let alone any authority to interfere in their company arrangements.

Negotiations on wages and working conditions may be conducted at company as well as national sectoral levels. But the company is the determinant forum of negotiation. Even if a national sector agreement exists, it is rarely generally binding and usually much more unfavourable than the company agreements. An estimated differential of 1 to 1.7 between national sector and company agreements – a case

in Romania - suggests that national agreements will have only a minimal impact on company agreements. It may well be argued that the national sector agreements adjust to, rather than provide the basis, of company agreements. This is a reflection also of the means and power conferred to national social partner organisations by their members.

Going back to the five levels it is possible to classify the six countries.

At one end of this classification there is Estonia with no union, an employers' organisation that has no mandate in the social field, and a few agreements at company level that are simple copies of the existing labour code. Given the fact that there is no collective agreement for the sector and taken into account that less than 10% of the workforce falls under a company agreement we can conclude that probably near to 95% of the construction workers work under labour conditions based on *individual wage setting*.

At the other end of the scale there is Slovakia with relatively well-regulated labour and industrial relations and *a national collective agreement for the construction sector* that covers the working conditions of about 70% of the workforce. This sectoral agreement is further implemented at company level in about 50% of the companies. These company level agreements cannot take away rights agreed at the higher level. Nevertheless the partners at plant level have the opportunity to take advantage of the frame settled by the sector agreement for their purposes. The continuity in trade union organisation as well as the regulation of self-employment and training appear to have contributed in Slovakia to the most coherent negotiating system among the six countries. As a result the differentials between national sector and company agreements as well as between regions are moderate, indicating that the national sector negotiation takes a leading role in the determination of wages and working conditions. Thus, among the six countries of the study, Slovakia is rather an exception in that it operates with a system of negotiations in the construction sector similar to many EU member states.

Based on our findings the other four countries can be situated in between.

Poland's bargaining is characterised by workplace related agreements. Although there is the legal provision to establish agreements beyond that level these do not exist in construction. The system of company unions functioned first and foremost in large companies that had established agreements (and in those companies where the state was still partly the owner). The system of company unions has weakened as privatisation went on; and the lack of overall co-ordination at sectoral level made it impossible to counterbalance this development. So far the employers in construction have no sector organisation that is strong enough to act at sectoral level. Bargaining rights are therefore in the hands of individual employers.

Hungary once had a sectoral collective agreement at national level which ceased to exist in 1994. The dominant negotiations take place at the workplace, but even the company agreements are decreasing. Autonomy of bargaining based at the level of the company union and the individual employer. Workplace union organisations can only be found in those major companies of the industry that are successor organisations of the former state owned companies.

In Bulgaria, though negotiations take place at both levels, these seem to be far apart from each other. Although there is a sectoral agreement at national level we have come to the conclusion that the individual arrangement represents the determinant level of pay and working conditions.

In Romania the national sectoral agreement is generally binding and thus a framework for the negotiation of wages and working conditions. On the other hand labour law requires a minimum membership of 15 for setting up a recognised trade union. As a result wage negotiation is restricted to a small minority of companies.

Analysing the different countries in this classification, we will summarise the specificities at the different levels:

- The confederations of employers and unions do not play a specific role in the sector. In some countries a division of labour exists between the inter-professional and the sectoral organisations. Most of the time lobbying for better labour legislation takes place via inter-professional organisations. In Poland this is explicitly not the case as, for instance, the ZZ Budowlani union sees it as their own

task to be active in the legislative field. In some countries the confederations may be acting without an explicit mandate.

- The sectoral employers' organisations and unions use a wide range of instruments with the specificities mentioned before, but as umbrella organisation they remain dependent on autonomous company unions and their mandate is weak. In Bulgaria, the Slovak Republic, and Romania sectoral collective bargaining is still successful. In some industries Poland has a tradition to establish agreements beyond the company level, but not in construction.
- Company agreements are the dominant form in Hungary and Poland. In the three countries with a sectoral agreement negotiations at company level can be seen as a complement to the national sectoral agreement. However in all our findings we could see that the number of company agreements is shrinking. The general impression is that the agreements at company level stipulate conditions already set by legislation. On the other hand the wage agreements settled at company level tend to be up to 100% above national sector agreements.
- The results of our survey make clear that individual wage setting is more and more becoming the dominant situation. The high level of unemployment and the lack of social safeguards, combined with the fragmentation of the construction market, the ongoing survival of the fittest and the problems with undeclared work, have created a climate in which labour conditions can be dictated by one side. In our findings, however, it becomes clear that also in these individualised and partly 'undeclared' relations certain 'market rules' are applied. As a result individual earnings may again go up above the wage level of the company agreements.

Referring again to our framework of industrial relations, also the 'playing fields' of the levels of negotiation are not only different but also almost dissociated. At national level the predominant issues are a general minimum wage, way below real earnings and labour market rates, and, more importantly, labour legislation, social protection, and economic policy. None of these issues is at stake at company level, where wages and employment conditions are the hard core of negotiation. This may be taken for granted, but the intermediate forum linking these two spheres is virtually non-existent. This picture varies, of course, from country to country.

Collective bargaining that goes beyond the level of the individual relationship between worker and employer is in the defence. The evaluation from both sides of the industry is different. Sectoral employers' organisations have a more positive stance towards joint arrangements than the individual employer who often sees this as a cost factor only. In general the unions are more in favour of negotiated joint agreements and provisions.

Contents of collective bargaining.

Our data on items of collective bargaining at national sector level are very unequal in detailing. Generally the national sector agreements cover the range of issues one would expect in any West-European country.

The *sectoral agreements at national level* in the Slovak Republic, Romania, and Bulgaria include several regulations. The standard content is:

- minimum wages and wage scales for different categories of workers,
- working time,
- holidays, rest periods, paid leave,
- health and safety,
- training issues,
- social provisions and benefits.

Next to these general provisions there are specific items worth mentioning. For instance the Bulgarian agreement contains a regulation for workers posted abroad. In the Slovak agreement the creation and financing of a Social Fund is settled, this fund is used e.g. for the provision of meals on site. Regulations for bad weather are included as well. The Romanian agreement specifies the rights and obligations for the partners in case of privatisation or reorganisation of the company or the association with foreign partners.

Negotiations at company level can be seen as the hard core of collective bargaining in the countries examined, with the exception of the Slovak Republic where the sector agreement is more determinant and Estonia where individual wage setting is the standard. Company agreements tackle a wide and varying range of items, from plain

copies of the labour legislation till very detailed implementation of the sector agreements and the labour law. The different country reports show the wide range of items.

The most detailed analysis of 20 companies from Hungary shows a breakdown of items covered. From case interviews we gather that the extensive coverage of special social arrangements and benefits including housing, sports, childcare, holiday provisions, typical under the communist regimes, has been whittled down gradually. But many of these items do still feature in company agreements and, thus, contribute a more or less important part to the subsistence or living standards of families on top of the wage income. Typically also, as a legacy of the Comecon economy, company agreements will normally contain regulations concerning performance related pay components such as piece rates, bonuses and premiums.

As the central system of training vanished with the planned economy in most of the countries, the provision of skills is now largely dependent on learning at the workplace. So this item, already a standard chapter in company agreements in Comecon states, has assumed a major importance in agreements at this level. Slovakia is again an exception in that the state has maintained its responsibility for vocational training and imposed a training levy. But Romania seems to be trying to adopt the concept of lifelong learning as a remedy for shortcomings in initial training, which will predominantly be located in the workplace.

The relevance of the structuring of company agreements is limited, because they are still in a process of adaptation to market conditions and the coverage by company agreements is small and on the decline.

Coverage rates and forms of remuneration outside legal and collective regulation

It is the very nature of illegal employment not to be recorded. It is equally in the profound interest of the actors in industrial relations to overstate their influence. On top of these reservations, estimations concerning coverage rates of pay regulations have to take into account a huge grey zone of formal coverage and hidden as well as semi-legal open forms of evasion. As a rule of thumb collective agreements and legal provisions on pay and working conditions will be adhered to the

more the social partners are able to control and enforce them. Under present conditions, the process of privatisation and ensuing fragmentation of companies militates against organised social partner organisation, as it is inherited from the planned economy. As this process is still going on in most countries, especially those, which came later in privatising the construction industry, such as Bulgaria, the number of companies with trade union representation keeps shrinking.

In the following summary assessment, which we shall try despite these gross uncertainties, we rely mainly on indicators and individual assessments of insiders.

In Estonia, a small country anyway and without national sector agreement, no more than 5% of the workers are estimated to be paid according to company agreements in some larger companies. The vast majority is employed and paid according to individual arrangement.

Slovakia, on the other side of our scale, based on a relative high rate of unionisation (23 - 25%) boasts 70 - 75% coverage by national sector agreement further improved in 50% by company agreement. It is estimated that only less than 10% of the construction workforce are informally employed.

In Poland with its system of company unions, associated in national umbrella organisations, the estimated figure for the presence of company unions is 20%; overall union membership is 8%. All our findings indicate that individual wage setting is increasing, together with a fast growth of self-employment. The only important framework in such a situation is the Labour Code.

In Hungary like in Poland it is relatively easy to establish a company union, but this tends to be an indicator for strength than weakness. The national unions in construction, in fact umbrella organisations of these company unions, represent 10-12% of the workforce. In those companies, where there are unions, the membership is of course higher (up to 30%). The number of companies with workplace level agreements has decreased substantially and the sectoral agreement signed at the beginning of the nineties ceased to exist in 1994. The coverage rate for company agreements in construction was estimated in 1998 to be 12%. Self-employment is rapidly growing (60% of the business units in construction call themselves self-employed, this is 25% of the workforce).

In Bulgaria the coverage rate of the national sector agreement is virtually meaningless for the level of earnings of workers. The percentage of unionised workers was about 20% in 2001 with a tendency of decline. As agreements are binding only for the signatories, at most 20% of the workers would be covered. This assumption coincides with an insider estimation of 80% illegal (i.e. without taxation and social security) employment in construction. If we assume that only half of those under legal employment conditions are actually covered by collective agreements, these may not represent more than 10% of the workforce in construction.

In Romania, formally, the coverage rate of the national sector agreement is 100% for all those legally employed. Also company agreements include all employees in the respective company. But, due to the statutory threshold of 21 employees as a minimum, a small minority of employees of larger companies are legally entitled to enforce wage negotiations and conclude company agreements. Nevertheless the level of trade union membership is considerable, according to figures from trade union officials about 25%, though still with a declining tendency.

Sectoral collective agreements can be made generally binding by law; however this is not even the case in two of the three countries where there is a sector agreement. Given the representativity of the signatures, the coverage of the agreement in the Slovak Republic and Romania is substantial, to a much lesser extent this is the case for Bulgaria. Looking at the coverage of the company agreements, the landscape is already less positive with Estonia (between 5-10%), Hungary (10-12%) and Poland (less than 20%). In at least four countries (Bulgaria, Estonia, Hungary and Poland) the vast majority of the contracts and remuneration is settled by individual and informal negotiations.

Forms of employment, taxation and social security

Under the conditions of a rampant recession in construction after 1990, the privatisation of production units, and the liberalisation of the economy, the contract of employment under legal regulation, i.e. imposing the costs of taxation and social security onto the social

partners, is widely being replaced by the contract of service in a variety of legal and illegal forms. It transfers the obligation to pay taxes and to provide social protection onto the employee in the disguise of an independent artisan selling the product of labour rather than labour power. The construction industry with its scattered short-term workplaces lends itself to use this form of independence in employment. This does not necessarily imply that work is paid as a service by an agreed lump sum, though this remains an option. The more common form is the piece rate, i.e. a price per unit of production such as 1 square meter of plastering, tiling, bricklaying, etc. This form dominates the most casual forms of employment, used for instance by workers offering their labour publicly on the market place. But on both sides of the employment relationship there does exist an interest in permanent employment. For certain building contracts the construction employer depends on a calculable and reliable workforce in order to be able to take commitments on quality and time schedule of work to be carried out, whilst the employee seeks a degree of security through continuity of employment. Under these auspices we find a trade-off between the social partners by which the employee is prepared to earn less on a regulated time basis rather than being exposed to casualty, whilst the employer takes the risk of employing more or less continually under certain terms of notice for dismissal in exchange for a workforce that is known and available. This may take the form of settled, or even collectively agreed, working conditions. But in the grey zone between regulated and casual employment relationships we find a wide variety of arrangements, typically:

- Piece rates, individually agreed with no regulation of working time;
- Piece rates, individually agreed, with informal agreements on working time and a minimum time rate;
- Day rates, individually agreed, with regulated working time and bonus according to performance;
- Monthly rates, individually agreed according to firm specific scales, regulated working time including variably paid holidays, bad weather compensation, travel allowances, sick pay;
- Collectively agreed pay and working conditions including taxation and social security contributions as a minimum topped up by individual arrangements for overtime, performance, etc. paid cash in hand, in kind or other benefits.

This list can be extended and refined by more combinations of arrangements partially or entirely outside legal and collective contract regulation. They have in common to be predominantly based on individual arrangement, even if collective agreements and labour law are in force. This individualised labour market develops its own rules untouched by labour law which the social partners will comply with or adjust to when they conclude agreements at national or company levels. Thus, even though a certain percentage of workers of firms are covered by collective agreements, the conditions of employment may still be determined by individual arrangements.

These conditions create a vicious circle. As long as taxation and social security contributions do not provide sufficient means as a basis for substantial benefits, there is no incentive for employers and employees to work within a regulated system. Rather, on the contrary, the excessive contributions raised on legal employment intended to compensate for the shortfall in the largely predominant semi-legal sector of employment will be a deterrent to engage in collectively regulated legal conditions.

Figures on coverage by collective agreements and compliance with legal conditions have to be assessed against this background of employment conditions. Formal coverage does not necessarily imply that the conditions of the agreements regulate the individual pay and working conditions. From the country reports we can conclude that only in Slovakia collective agreements can be considered as a regulatory force, whereas in all other countries coverage by collective agreement needs to be assessed in the light of its relation to individual arrangements dominating the labour market. For the time being there are no clear signs to be detected that the process of individualisation is going to be reversed, neither by market forces nor by the social partners or government action.

Sectoral Institutions and Arrangements

Introduction

Clear areas for joint discussion and decision-making between employers and trade unions at sectoral level are those related to the specificities of the industry. Training, safe working conditions, insurance and social benefits are, for instance, all items in the Bulgarian collective agreement at sectoral level, just as they are – with the exception of training – in the Slovakian. However, this does not mean that these are matched by joint arrangements. In Hungary, for instance, the current system of decision-making secures input on behalf of national trade unions and employers' associations at inter-professional level concerning vocational training, but not of sectoral level organisations though this refers to skills specific to the sector. There is no room for the social partners at sectoral level to develop bipartite or tripartite initiatives to consolidate sectoral-level negotiation.

The difficulty in developing common funds and activities related to the specific conditions of the sector is compounded by the common legacy of each of the states, that state-owned enterprises took care of the welfare provision of employees. At sectoral level neither the funds nor the practice of running welfare projects has been inherited. Indeed, social partner organisations are not well endowed and do not have the organisational capability necessary to initiate sector-wide projects. Nevertheless, there are distinct possibilities and initiatives for the development of social partner-based institutions in evidence, albeit often rudimentary.

Health and Safety

In all countries there is some legal provision for safeguarding the health and safety of the construction workforce, bringing each into line with EU Directives, though this takes varying forms. In Slovakia, for instance, the Health and Safety at Work Act regulates employment and working conditions in construction, supplemented by special provisions, such as working at heights or underground. Employers also have a duty to cooperate with trade unions to improve working

conditions and reduce risk through trade union health and safety representatives. Similar provisions apply in the other countries, though in Romania the collective agreement for construction also stipulates that “if the improvement of working conditions is not possible, the compensation in money or of other kind will be granted” – laying down the amounts allocated (e.g. hazardous and noxious conditions a minimum 10%, shameful conditions a minimum 25% of the basic gross wage).

In each country, some form of cooperation between trade unions and employers on the issue of health and safety exists, usually just at company level. At sectoral level, Poland is perhaps an exception in having a joint Council for Work Safety in Construction, offering consultation and lobbying. In Hungary the Employers’ Federation has set up an expert committee on health and safety but without the unions. Such committees supplement the powers of company unions to control the compliance of health and safety regulations. At company level, there are also safety representatives in the cases of Poland and Estonia, whilst in Bulgaria, Romania and Slovakia health and safety committees are in place – though these are more of a formality than a reality in Bulgaria. There is though a clear need for such committees to be increasingly active. In Hungary, for instance, the crumbling of working conditions, tight deadlines and pressure of work have had a significant impact on health and safety, with accidents and fatalities increasing so that construction has now by far the worst record of any industry. There is a health and safety inspectorate, but only one construction inspector for the whole country.

Health and safety training is compulsory in some countries, such as Romania, where expenses of training for members of the Labour Security and Health Committees of companies have to be borne by the employer. However, in most countries, this appears not to be the case, though individual companies may put considerable effort into training and into providing occupational health services.

Social Funds

There are in most countries two forms of social protection, one mandatory, covering health care (e.g. 6% of wage in Bulgaria, 7% in Romania), unemployment (e.g. 3% in Bulgaria, 6% in Romania), pensions and social assistance (e.g. 20% in Bulgaria, 35% in Romania), and one through company social funds. There may also be complementary, though optional, pension funds. The former role of company welfare provision persists to varying degrees through the company social funds, for instance in Bulgaria. In Slovakia, company agreements for construction limit contributions to the Social Fund (created by an Act of 1994) to 1.5% of paid wages, that is almost three times the compulsory minimum contribution. One of the commonest areas for using this fund is to subsidise the cost of meals for employees.

There are, however, problems in establishing such funds at sectoral level, because of the way in which funding flows. The Slovakian construction union, OZ Stavba, has three funds – a reserve fund, a social fund for individual social help, and a strike fund – but seeks to change the flow of membership fees, so that they first come to the national sectoral level and are then distributed at company level. It is because of difficulties of funding at sectoral level that few examples exist of sectoral social funds. One has been set up by the Bulgarian trade union CIWSF Podcrepa to support strike activities and protests and the union also has a project to create a ‘bad weather fund’. The most effective of such funds is, however, to be found in Romania in the form of the social protection fund set up by the Social House of Construction Workers (SHCW). It is formed by companies joining the SHCW, a non-profit organisation with over 500 members covering 150.000 employees, of whom nearly half (covering 110.000 employees) contribute to the funds. The funds are principally to provide social protection of up to 75% of the average gross wage in winter and for interruptions in work caused by bad weather.

Training

In all the countries the tradition has been for vocational training to be provided by the state and this continues to be the case. In Hungary, however, this is supplemented by a levy on companies of 1.5%, set up through the 1993 Vocational Training Act as a result of a crisis in the system that went together with companies disbanding their own vocational training schools, and a shrinkage in the vocational training part of the national Labour Market Fund. Since this time, the situation in Hungary has improved, though vocational training schools complain of a lack of students, companies complain of a lack of skilled workers or that vocational school trainees lack technical skills, and apprentices have problems finding companies. Companies can withhold the levy to cover their own employees and may also have workshops to provide practical training for vocational trainees, qualifying for a levy reduction of up to 75%. The Hungarian system has perhaps changed more than that in the other countries, though even here the decision-making structure remains problematic, being nationally rather than sectorally based; the National Training Council and the Steering Committee for the Labour Market Fund are both tripartite but not sector-based institutions.

The least reformed system is to be found in Slovakia, though here the problems are that existing skills are underused, with the unemployment rate being high even for skilled workers, and that there has been a recent decline in students. The system remains state-based rather than tripartite, though the trade union has a certain influence over trainers and through the agreements covering the vocational training schools. Vocational training is provided by regional vocational or apprentice schools, through courses of 3-4 years combining theory and practice in companies. The 1.5% social fund contribution can also fund the further training and development of employees. A similar system is to be found in Bulgaria, though here the recently established supervisory board of the National Agency for Professional Education and Training, charged with accrediting training centres, including for construction, does have social partner representation. Some trade union federations, for instance CIWSF Popkrepa, also provide training and the employers' federation, the BBCC, organises the training of construction specialists and workers.

In Poland and Romania, too, there is very limited involvement of employers in vocational training and the industry continues to rely on the vocational schools, though reforms are being introduced. Poland does offer tax reductions for employers to help cover the cost of training and for employees participating in training. Training is an increasingly important issue in Romania, including recognition of the necessity of further training for all, paid for by the company, and the means to assess skill standards. A wider educational profile – as introduced in Hungary – is also proposed based on a modular system and employers' involvement in setting standards. Romania is symptomatic of the problems produced through the transition, exhibiting dramatic declines in the numbers of vocational training students over the past five years since 1997 – at professional, operative and technical levels – at the same time as skill shortages. About 80% of construction employees are skilled, and of entrants to the industry 40% have undertaken vocational training or an apprenticeship, 13% have higher education, 5% a technical training and 23% higher secondary education. But the cleavage between the education system and the labour market is ever more severe, with companies not cooperating with secondary or tertiary institutions and those training not finding appropriate jobs and having often a high level of theoretical knowledge but not practical experience. One problem is the curricula, not compatible with the knowledge required in the labour market. Another is the different emphasis on training by companies, though there is a requirement that every employee do some training every five years. Most large companies provide some form of training and some even have their own training centres, but few of the smaller firms train. There are also now more recognised non-public training institutions (e.g. Chambers of Commerce) and, as with most of the other countries too, there is now also some provision for adult vocational training, with 15 centres of the National Employment Agency covering most construction trades.

Tripartite/bipartite institutions and activities

Institutional social partner or tripartite support at sectoral level is therefore, in general, limited or even non-existent. There are, however, signs that such support can be or is being developed to replace traditional company-based schemes, whether in relation to health and safety, training and further training or in the form of social funds covering, for instance, winter or bad weather and non-standard employment. There are also other forms of cooperation between the social partners in existence, such as the tripartite industry council in Bulgaria, with priorities in the areas of safe working conditions and training/retraining.

A final area of cooperation, though still at company level, is through the works councils, also a recent development in almost all the countries, including Hungary and Slovakia. In Hungary these are mandatory for companies of more than 50 employees, whilst in firms employing 15-50 employees a single, elected employee representative can exercise the rights of a works council. They are, however, present in only about 4% of construction companies. These councils have information and consultation but not negotiation rights. According to most recent legislation in Slovakia works councils have to be recognised by employers if no trade union representation exists in the company.

Industrial relations in construction in the six CEE-states

Bulgaria

In Bulgaria the privatisation process started later than in the other five applicant states of our study. We must assume, therefore, that the disintegration of the large companies and the ensuing decline of trade union organisation as a basis of industrial relations have not yet come to an end. Nevertheless, the level of illegal employment – or the percentage of workers working at piece or day rates cash in hand - may already be higher than in any other of the six countries except Estonia. In none of these the construction industry has dropped to such a low level as evident from the 4.1% of overall employment. The disintegration of the construction industry obstructs any possibility of an effective labour inspection. At the same time the government does not show any intention to intervene in labour relations and the labour market with higher minimum wages, erga-omnes clauses for collective agreements - despite positive signs from the social partners -, effective control of social security contribution and tax deduction, compliance with health and safety regulations etc.

In the years to come, under the impact of the ongoing fragmentation of the recently privatised publicly owned construction companies, remaining collective agreements and corresponding industrial relations are likely to decline under private ownership while those in still publicly owned companies may not survive privatisation. In this situation at national level the trade unions will be confronted with further loss of membership and the employers' organisation is at risk to lose its mandate for negotiating meaningful collective agreements.

Estonia

'It takes two to tango' was inspired by the present situation in Estonia. Despite strong trade union rights, the construction trade union has ceased to exist and the Estonian Association of Construction Entrepreneurs has no incentive to seek negotiations for joint agreements. The only instrument for labour regulations is the law and the only addressee for any actor to express their interest or grievances is the government. It may be true that the severe collapse of

construction activity after the exodus of the Soviet Military is responsible for the fate of the trade union, but the economic conditions were not much better in many other countries. The most pessimistic lesson from the Estonian experience would be that other countries, such as e.g. Poland, Hungary and Bulgaria, are only delayed as compared to Estonia. If anywhere, in this country the most elementary requirement for industrial relations is missing, the readiness to settle issues of common concern at the negotiating table. The only way out is to define items that lead to less distortion of competition in the social field. Such issues are similar everywhere: health and safety are faced with very specific hazards in construction, vocational training and qualification is fundamental for the well being of the industry, and the vicissitudes of weather and seasons affect this sector in a special way and require funds in order to bridge times of temporary unemployment. By starting with these less controversial items there might be a chance to develop the necessary mutual trust needed for the development of a real social policy. It is in the wake of negotiations on these common concerns that social partnership can develop as much as through the settlement of disputes.

Estonia may teach a lesson on how to build up industrial relations as a precondition of the Social Dialogue from scratch. Industrial relations in other ex-Comecon states may have more in common with Estonia than is apparent at first sight.

Hungary

Hungary defies the hope in other applicant countries that effective industrial relations in construction will be restored quasi automatically with the recovery of the construction market. Since 1996, in contrast to the other countries during this period, output and employment have been growing steadily and at a high rate whilst the organisations of the social partners have continued disintegrating. The percentage of employees covered by collective agreements is low, so is trade union density. The employers' organisations are for the moment without a mandate to negotiate collective agreements. Despite the building boom, only one third of the construction workforce is registered and the majority, including many immigrants from Romania and Ukraine, are illegally or semi-legally employed. The statutory provision for

double representation, which is unique among the six countries of our study, does not seem to have any significant impact on consolidating labour relations. Government, though successful in attracting foreign investment and foreign construction capital, has till now been exceptionally restrained in intervening in labour or industrial relations, though this is likely to change with the new government. Weak social partner organisations at national sectoral level, however, may hold back collective bargaining and agreements and a substantial Social Dialogue, even if extensions clauses are introduced.

Poland

Poland became known as the exemplary case of ‘shock’ therapy which meant both fast privatisation – though the evidence for construction does not show a difference with Romania – and a liberalist economic policy. This liberalisation has indeed taken concrete shape in the construction sector through a number of outstanding features: the absence of collective agreements above company level (shared only by Estonia), the wide use of ‘wage rules’ instead of negotiated company agreements, the extremely low level of trade union density (8%), the complete lack of representative social partners at national sector level on the employers’ side, the predominance of independent workers and self-employed, and the degree of seasonal and temporary employment.

Another perhaps related aspect of Polish industrial relations is that more than in other countries trade unions are directly involved in party politics with representation in parliament. As a result autonomous negotiation and collective agreements between the social partners are replaced by using political power to influence legislation. In their involvement in party politics the trade unions are often fighting each other instead of defending the interests of employees against the employers. Solidarnosc is not even organised along sectoral structures and, therefore, ill equipped to negotiate for construction employees above company level.

Under these conditions the Polish social partners are weak and dispersed above the level of the workplace, and this weakness rebounds upon the workplace representation itself. So the minimum requirement for the Social Dialogue in Poland is the establishment of

industrial relations above company level around issues of common concern.

Romania

Unlike the general picture in the applicant states Romania shows a recovery of the construction market during the three years (1992-1995), when most of the industry was privatised. Atypically also, trade union representation is stronger in the private than in the public sector. Like in Slovakia and unlike in all other countries, wages and working conditions in the construction sector are regulated by a generally binding national collective agreement. This peculiarity corresponds with an undisputed single employers' federation enjoying a clear mandate for collective bargaining. The government's efforts to encourage stable industrial relations and to enforce social protection – as in Slovakia – are outstanding as compared to Bulgaria, Hungary and Poland. Nevertheless trade union membership is still on the decline though both national federations are trying to stem this trend through establishing regional offices. Under these conditions the black economy seems to be relatively limited.

A truly unique institution is the Social House of Building Workers, a social fund set up on a statutory basis under the direction of its members, individual employers and trade unions. Though this fund covers only a small but fast growing segment of the industry, it seems to be indicative of a policy shared by the social partners and government seeking to develop a market economy with strict social and labour regulations.

Slovakia

Slovakia stands out as a country presenting all the conditions for a Social Dialogue between the social partners and the implementation of the results of such a dialogue. Despite a depressed industry the social partners in construction are able to negotiate and conclude collective agreements at both national sectoral and company levels. Interestingly, Slovakia is the only among the six countries of the study in which no west-sponsored trade union federation has been set up,

though on the employers' side such a competing federation was founded with American assistance. With a negligible level of illegal employment, self-employment officially controlled, trade union density the highest in our sample (though alarmingly falling), conditions in Slovakia could serve as an example for many EU member states. It is only self-evident that sectoral organisations for training and health & safety seem to be well established under bipartite and tripartite supervision. From this solid basis Slovakia has just introduced Workers' Council representation for those companies that are not covered by trade union presence.

Recommendations

Introduction

Before we formulate our recommendations we will relate our findings to the ETUC/UNICE project, a study that does not focus explicitly on the sector level.

One of the conclusions of that project is that the political climate is favourable towards collective bargaining in the different branches as well as in the companies. But in practice collective agreements in the sector are almost non-existent, with a few exceptions (for instance in the building trades). Industrial relations at branch level are rudimentary.

For a number of reasons sectoral organisations are often repeating what is already done at central level:

- *autonomy is weak, no power base in the companies,*
- *difficulties in defining the sectors, employers and companies have no feeling of belonging to the same sector, there is no joint frame or homogeneity,*
- *national labour law provisions are so detailed that further negotiation makes no sense.*

Perhaps similarly important are the more 'internal' problems between the partners at branch level:

- *unions are absent in the private sector, there is dispersion of trade unionism,*
- *employers often prefer bargaining at plant level or even on an individual basis,*
- *employer organisations seldom have a mandate from members (companies),*
- *both partners lack representativeness and their experience with regard to industrial disputes and to collective bargaining and negotiations is underdeveloped.*

The findings of our study confirm this picture with few exceptions. Reading through all the country reports and taking into account the comparisons made, we can complete it with the following substantial additions. We admit that we generalise in these assessments; in the

earlier chapters we have given a more differentiated and detailed report.

- Autonomy of the social partners is not only weak, it is completely at stake. Even in situations where there is a national collective agreement, the role of the state is predominant. The impact and coverage of labour contracts falling under agreed labour conditions is decreasing. In fact only in Slovakia, and to a certain extent in Romania the picture is different.
- We have not found a serious political backing of more partnership in the sectors. In contradiction with the conclusion of the ETUC/UNICE study ('a political climate favourable towards collective bargaining in the different sectors') we have chiefly found lip service; and for the rest ignorance and unconcern. One could have expected an action programme for the implementation of the Social Dialogue in the sectors or, as we have called it, 'an invitation to dance'. But with a few exceptions there is mainly inertia. The strong emphasis of the EU on inter-professional dialogue is rather counterproductive in this respect.
- Industrial relations in construction are fragmented to the lowest levels. Even at company level the role of collective instruments, company agreements, is declining. It is difficult for employers to see the added value of joint agreements above the level of the individual company; the high level of unemployment provides opportunities to 'negotiate' with every individual worker.
- National sector unions and employers' organisations do not have the mandate to enter into plant level negotiations. The autonomous position of company unions undermines the possible mandate for negotiations above plant level. But what is more, the organisations also lack expertise and know-how to coordinate above that level. In such a situation it is almost impossible for national unions and employers' organisations to demonstrate the advantage of sectoral arrangements. It will be difficult to restore credibility.
- As a consequence the position of sectoral organisations with regard to issues such as vocational training, health and safety or labour market, although required, is usually non-existent. Important sectoral social and economic 'know-how' and input

have been destroyed and intermediate structures have virtually disappeared.

- The socio-economic field is under the law of the jungle. Competition is highly distorted with abnormally low pricing on the one hand, a lack of transparency coupled with corruption on the other hand. As a result of rapid privatisation the bigger entities have disappeared. What is left can be characterised as low capital-intensive, basic and small production units with weak investment and technology capacity. With few exceptions such as Romania, GDP and public purchasing power have hardly improved in the last decade.
- The duplication of trade unions, sometimes also employers' organisations, by a Western sponsored opposition to the communist successor federations, as in Bulgaria, Hungary, Poland, and Romania, has not contributed to a more effective representation of the social partners. Their political preoccupations tend to divert energies away from the economic representation of membership.

Systematic assistance from employers' organisations and trade unions, bilaterally as well as at EU level, is at best at an incipient stage. Although not a key item of our research, we found plain membership of the European bodies and sponsoring (financial assistance, round tables and conferences, some training facilities). Next to this, there is rudimentary bilateral cooperation with regard to cross border activities and participation in EU-Works Councils.

To the European Commission

Before we come to our recommendations we will summarise some important elements of the *acquis communautaire* for the construction sector. The negotiations about employment and social policy include what the Commission euphemistically calls "substantial secondary legal *acquis* at EU level". For the sectoral level of industrial relations this legislation is not so secondary. It is all about health and safety, labour law, equal treatment, social protection, employment and Social Dialogue. In the EU these fields are seen as secondary because there are no or only few legal obligations to implement precise policy

measures. **But in practice they could contribute to an improvement of the national sectoral policy in the EU-countries and some of these items could serve as the common ground for concrete talks and negotiations in the sector.**

In the field of *labour law* several directives were issued at EU level with regard to collective redundancies, safeguarding of employment rights in case of transfer of undertakings, the employment contract, cases of insolvency, organisation of working time and finally the posting of workers. In many areas the workers' rights on information and consultation were formulated, in trans-national companies culminating in the right to establish European Works Councils.

As it became possible to draft European legislation in the field of *health and safety at the workplace* with qualified majority, a package of directives with minimum standards for working conditions, including for temporary and mobile sites (construction), was developed and embedded in European legislation. Remarkably, Latvia, Malta, Slovenia and Poland have asked for transitional periods in the field of health and safety.

The candidate countries are invited to come up with *employment reviews*. Four issues are at stake: a. improvement of the functioning of the labour market, b. policy reforms and labour market transformations to permit full participation in the Single Market, c. measures to prepare the unskilled or inappropriately skilled for a market economy, d. to create the structures and systems necessary for the implementation of the 'Employment Strategy'.

The principles of *free movement of persons* contain four issues that have a direct impact on peoples' and workers' lives in Europe. European legislation covers four areas: the mutual recognition of professional qualifications, citizens' rights, the free movement of workers, and co-ordination of social security schemes.

Through a system of *mutual recognition* the EU seeks to eliminate obstacles for those persons that want to take up a regulated professions in another country. In construction, wood and forestry a co-ordination of the training scheme is only regulated for architects. In the beginning of the nineties the European Commission has worked

out for construction and wood (via the European Centre for the Development of Vocational Training, CEDEFOP) a list of professions and their vocational training; so far this has not lead to real mutual recognition of these professions.

Citizens' rights is all about voting rights during a permanent residence in another EU-state and the possibility to participate actively in the political life of the Union. So far these rights are limited to elections for the European Parliament and municipal elections (still with derogations). Furthermore the right of residence is guaranteed and discrimination not tolerated.

Co-ordination of social security schemes is settled by regulations that have to be applied directly upon accession. It has been one of the battlefields in the construction sector, where even the European Court was involved. The issue remains a very complicated minefield with risks of social dumping and abuse. In principle, the question is relatively easy to solve if all parties concerned agree on transparent bilateral agreements. The problems start with third parties or agencies coming from other countries than the country of origin or the country where work is carried out. Another possibility to avoid the obligations to pay normal social security levies and benefits is to open (or acquire) subsidiaries in countries with low social security standards. During the last decade we have seen all this in construction.

Finally the *free movement of workers*. During the negotiations between the EU and the CEE countries the free movement of workers has become the key issue. The debates have lead to transitional measures. The main reasons for this transitional period are the forecasted labour movements following accession and the resulting labour market effects in certain regions. Although the impact of the free movement is expected to be limited there will be a concentration based on geographical proximity, income differentials, unemployment, and propensity to migrate. The EU was afraid of public opinion and resistance against enlargement. For all the CEE countries (except for Malta and Cyprus!) a transition arrangement has been put forward with provisos:

- A two year period during which national provisions in this area can still be applied. In certain countries this can lead immediately to full labour market access.
- During these two years reviews will be held with regard to the full application of the *acquis*.

- The transition period has to come to an end at least five years after accession, except in those countries where serious disturbances of the labour market are still manifest - especially Germany and Austria have the right to apply additional flanking national measures.
- Up to the end of the seventh year Member States may apply safeguards.

Part of the transition arrangement is a standstill clause. Member States must not develop a more restricted policy after the signature of the Accession Treaty. Finally workers from candidate countries must be given preference over non-EU labour. It is obvious that the construction sector was targeted in this debate. Although it belongs to another chapter of the acquis, the use of social clauses in public procurement procedures is strongly related to the question of free movement. Compliance with national legislation and collective agreements in the country where the work is done have been the joint demand of the European Social Partners with regard to the free movement of workers; social clauses could be the contribution to that principle in the field of public works.

Invitation to dance

The European Commission is in favour of a more prominent role for the social partners in the making of Europe. Since the Amsterdam Treaty the Social Dialogue has come to the fore in European Union decision-making procedures. Amsterdam encourages the social partners (first and foremost at central level) to come up with proposals for social policy. Via negotiations, invited by the Commission, the partners have practiced the drafting of Community legislation. The central philosophy is, next to the development of tripartite structures, that the social partners build up their own, autonomous bipartite Social Dialogue. For the candidate countries this implies that the importance of social partnership must be respected and consolidated and that the organisations of the social partners are sufficiently established to take on their role at national as well as at European level. What is more, they have to be consulted already at this very moment on legislative drafts related to the social policy acquis and employment policy.

The role of the state in a mature system of industrial relations is to invite the partners to the table for:

- Negotiations under the auspices of the law;
- Implementation of important parts of the Labour Code;
- Tailor-made social and industrial policy for the sector;
- Joint provisions and arrangements, supplementary measures.
- Promotion of autonomous collective bargaining.

Based on our findings we have come to the conclusion that, with few exceptions - notably Slovakia -, the organisations at sectoral level in construction do not have the capacity, nor the know-how to take initiative in this process and play their role. But what is more alarming, **they are not even invited**. The traditional relationship in a sector between the company level and the sector organisations and the subsidiarity principle to act with joint instruments, a principle that is often even implicitly applied between the two levels, is missing. And the notion that there is an added value in the co-ordination of social arrangements and labour conditions above the level of the individual plant is hard to find.

Conclusions and Recommendations

We would contradict ourselves by concluding with a plea towards the European Commission to act and to prescribe to the social partners what they have to do.

But there are important developments in the European Union that have not been used so far. And here we see opportunities for the European Commission to promote a real sectoral Social Dialogue in construction. In the European laboratory we had the experience of management and labour joint at different levels, e.g. with the introduction of the European Works Councils, health and safety legislation, and the need for an industry-wide vocational training. The problem in most CEE countries is that the link between the different levels is missing.

What is needed is a clear invitation to the sectoral organisations in the CEE countries to start their own deliberations at all levels. The EU contribution to this process can be a programme of flanking activities explicitly for the sectors:

- At company level the dialogue has to be developed on the basis of the further implementation of the information and consultation principles of the *acquis*. Sectoral organisations have to be invited to monitor and assist this process. European Works Councils and the management of the trans-national companies that have positive experiences in the field can build the bridges that are needed. The EU should provide important funds to assist this process.
- In construction information and consultation at the workplace very often take a different shape. A construction site is a meeting place of several companies with their workers. The experiment with temporary forms of dialogue between site management and representatives of the workers on site, as developed by the European construction unions,² has to be attempted, tested, and financed with EU assistance.
- In the field of health and safety there is a lot of common ground provided by the social *acquis*, a paritarian approach based on prevention and safety coordination, the installation of safety representatives and joint committees, and finally pilot projects to implement the directive for temporary and mobile work sites together with the sectoral organisations.
- Vocational training has always been in the forefront of the sectoral dialogue. However the conditions to create the necessary structures are missing in most CEE countries after privatisation has led to a deep fragmentation of the industry. So far the European Commission has failed to do anything substantial in this field after the work of CEDEFOP was finalised in the beginning of the nineties. A proposal from a group of Western European paritarian organisations of vocational training in construction with CEE involvement that could have led to a broader dissemination of the information in this area (via a database on the internet), twice rejected by the European Commission, ought to be resumed in the context of accession.
- Typical issues of the construction industry such as compensation for bad weather and seasonal unemployment, accident insurance etc. need special funds and would best be administered jointly by the social partners. The initiative of the Social House of

² See CLR-News 3/2001, 'Employee Representation on Large European Sites'

Construction Workers in Romania ought to be framed by extended collective agreement to cover the whole sector, promoted by the EC as an example for all applicant states.

- In the field of cross border activities construction has been the seedbed of a Europe without borders. Unfortunately, the European Commission and the member states have not learnt much. The solution of transitional periods for the implementation of the free movement of workers only saddles the future with the legacy of lacking safeguards against social dumping practices. Social partners have to be invited to deal with the problem and to find solutions via bilateral agreements between the countries involved. A system of mutual recognition of the agreements that exist in the countries where the work is done has to be installed and assisted by supplementary measures or social funds that are created or have to be created. The Commission has to make a clear statement for once and for all that these measures have nothing to do with protectionism and that they are needed in (and not in contradiction with) a market economy to avoid detrimental distortion of competition.

The actors that have to implement these recommendations are not restricted to one of the levels that we have treated in this study, nor do the playing fields or the instruments needed. And what is more, there is not one exclusive partner that we are pointing to. The activities suggested to be promoted by the EU could however contribute to a stronger and more coherent development of national sectoral relations between management and labour in construction.

To the European Social Partners and their affiliates

If the autonomy of the social partners is at stake this will directly affect the development of the Social Dialogue in construction at EU level. This dialogue has to be based on effective national organisations that have the mandate and capacity to talk to and negotiate with each other at supranational level. Moreover, the lack of autonomous social partnership in the candidate countries will frustrate also the bilateral and trans-national cooperation that has been built up in recent years. And finally, a Social Dialogue without fundamentals in industrial relations at company and sectoral level is built on quick sand.

Combined with the tendencies of centralisation inside the institutions (at European and national level in the form of inter-professional agreements) and strong decentralisation at company level the strain on the sectoral approach will grow. In such a situation it is up to the social partners to demonstrate the added value of their activity. Based on our findings it is possible to outline the necessary way to go.

- In our study we have found not only this very pessimistic outlook, but also a few promising perspectives. EU unions and employers' organisations have to take responsibility for these promising activities.
- At EU level as well as in the CEE countries the importance of the sectoral Social Dialogue is largely ignored resulting in a lack of coherent promotion. The social partners at EU level could work out an action programme and present it to the European Commission with concrete pilots and activities (as outlined above).
- Bilateral cooperation has to be intensified, especially in those fields that ask for both sides of the industry to participate. Partnership starts with the definition of joint interests such as continuity, quality, a stable and qualified workforce and technological know-how.
- The European social partners and their affiliates have to assist the CEE partners in establishing adequate structures. A permanent and coherent transfer of best practices must be installed. The workers' representation at company level needs assistance and coordination; the experiences at trans-national construction sites and in trans-national companies have to be disseminated and discussed.

The Project team

Management Team:

Linda Clarke, CLR/University of Westminster, London/Great Britain

Jan Cremers, European Institute for Construction Labour Research,
Brussels/Belgium

Jörn Janssen, CLR/University of Westminster, London/Great Britain

Country experts:

Ludovít Czírja, Research Institute of Labour, Social Affairs and
Family, Bratislava/Slovak Republic

Vassil Kirov, Institute of Sociology of the Academy of Sciences,
Sofia/Bulgaria

László Neumann, Research Institute of Labour, Budapest/Hungary

András Tóth, Institute for Political Science of the Hungarian Academy
of Sciences, Budapest/Hungary

Rafal Towalski, Institute of Sociology, Warsaw/Poland

Valentina Vasile, Institute of National Economy of the Romanian
Academy of Sciences, Bucharest/Romania

External experts:

Hans Baumann, Gewerkschaft Bau und Industrie, Zürich/Switzerland

Grigor Gradev, European Trade Union Institute, Brussels/Belgium

Sam Hægglund, Nordic Federation of Building and Woodworkers,
Stockholm/Sweden

Assistant of the project team:

Aurora Trif, University of South Bank, London/Great Britain

Dear Reader,

Reed Business Information has agreed to publish an edited version of the final report of the CLR study on the industrial relations in the construction sector.

This book will be published under the title **EU-ENLARGEMENT - Construction Labour Relations as a Pilot** - and will contain the complete study of the industrial relations in construction, including extensive country reports on Poland, Estonia, Romania, Hungary, the Slovak Republic and Bulgaria.

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Editor:

Jan Cremers

phone: +31 30 2318032

e-mail: jan@gbio.nl

Layout and Production:

Frank Leus

phone: +32 2 2271041

e-mail: info@efbh.be

Contact and Orders:

CLR-News

c/o Frank Leus

EFBWW

Rue Royale 45

B – 1000 Bruxelles

Phone: +32 2 2271040

Fax: +32 2 2198228

e-mail: info@efbh.be