

No 2/2007

CLR News

Poland's construction industry

CLR

European Institute for
Construction Labour Research

www.clr-news.org

Contents

Note from the Editor	4
Subject articles	9
Polish construction in the wake of EU enlargement - <i>Line Eldring and Paulina Trevena</i>	9
Self-employment in Poland - <i>Jan Czarzasty</i>	25
Self-employed and the free provision of services - <i>Jan Cremers</i>	34
Reports	48
CLR Denmark Conference (25-4-2007)	48
Vocational education seminar London (28-9-2007)	51
First global Cement conference (22/23-6-2007)	54
The collective agreement in Danish construction 2007	56
Reviews	58
Thinknet Yearbook 2006	58
Projects	60
The Supply of Skilled Operatives to the European Construction Industry and the Role of Collective Agreements - <i>Neal Evans</i>	60
Calendar of events	65

Note

from the editor

Jan Cremers,
AIAS-University
of Amsterdam,
2007-10-09.

The Polish plumber has become a symbol for the labour migration that was initiated by the EU-enlargement in 2004. However, the involvement of the trade unions with the rights of workers that are temporarily posted to another Member State dates back to the debate about public procurement principles in the single European market. In the late 1980s, the European building unions pleaded in line with ILO Convention 94 and the Davis Beacon Act in the USA for a social clause in procurement rules for public works to guarantee compliance with working conditions and collective agreements in the country where the work is carried out.

In the 1990s, the European Commission, chaired by Jacques Delors, was a driving force behind the development of the social dimension agenda and in the Community Charter of Fundamental Rights of Workers, a legal instrument to ensure equal treatment and prevent social dumping in the case of temporary cross-border working was announced. The Posting of Workers Directive became the legal European framework for bona fide cross-border provision of services and temporary construction work abroad, jointly concluded in 1996 by the European Parliament and the Council of

Ministers after fierce struggle.

In recent years, things have changed and the Internal Market Unit of the Commission seems to take a different stand. Especially in the Services Directive debate, the protection of workers posted abroad became completely subordinated to the free provision of services. The Commission's proposed country of origin principle in the Services Directive, according to which the Member States could not restrict the activities of service providers from other Member States who comply with the laws regulating access to and exercise of services in their country of establishment, could have destroyed the basic philosophy of the Posting Directive, namely a balance between the protection of workers rights, on the one hand, and market opening on the other.

By restricting the conditions for control and monitoring, the proposal clearly interfered with the application of the Directive. Representatives of the Internal Market Unit of the Commission have often expressed the view that the Directive is an 'anomaly' anyway. Hence, it has become clear that this unit of the Commission represents a severe obstacle to the development of a viable posting regime, and that the political conflict over posting inside the Commission has been sharpened.

As the European construction unions started their policy lobby for a legal frame for posted workers in the early 1990s, Commissioner Bangemann, a German liberal responsible for the internal market, also came up with the supremacy of the free provision of services. But he changed his view during the debates with the European Parliament. In his eyes it made sense 'to lay a floor in the working conditions within a territory especially to avoid distortion of competition', under the condition that the starting point was equal for every undertaking and service provider.

In recent publications, such as the Guidelines for posting launched in 2006 and June 2007, the Commission tends to put a limit onto any generalised measures taken in Member States with regard to (prior) registration or notification of posted activities or requirements to hold and keep social documents in the territory of the host country. Infringement procedures undertaken by the Commission against Germany, Belgium and Luxemburg focus on registration measures and other documented evidence on the workplace. The Commission also tends to consider the requirement to have a legal representative (and a local

address) inappropriate. The main argument used is that such measures can constitute disproportionate obstacles to the freedom to provide services in the Internal Market. The European Commission thus seems only to accept control measures 'taken on a case-by-case basis', which would render development of effective national monitoring and control systems very difficult. In a recent Communication the Commission is arguing against 'Red tape' for the service sector in the context of supervising the posting of workers and calls on Member States to review certain control measures. Further infringement procedures against Member States, if necessary, will be launched.

This stands in sharp contrast with another Directive that was developed as part of the Social Charter (see annex) and is far from the point of departure:

- From the beginning the Posting Directive was presented as an important part of the Community Charter of Basic Rights of Workers. This relationship has disappeared as a reference in the Commission's documents. The main reference repeated all the time is Article 49 of the Treaty (establishing the freedom to provide services).
- A shift in the presentation of

the main purposes can be detected. The Directive has quite an open character; in addition to the hard core of minimum requirements there is room for a broad interpretation of other provisions and labour conditions to be included during the national implementation (Article 3.7 states that the Directive does not prevent the application of terms and conditions of employment more favourable for workers). Latest EC communications, however, exhibit a much more restrictive approach (focussing on requirements that are "disproportionate"), underscored by infringement procedures initiated by the Commission.

- From the outset, the Preamble was very open about the way labour rights can be protected, as Community law "does not preclude Member States from applying their legislation, or collective agreements entered into by employers and labour, to any person who is employed, even temporarily, within their territory, although his/her employer is established in another Member State; whereas Community law does not forbid Member States to guarantee the observance of those rules by the appropriate

means" (Preamble consideration 12). In recent documents the EC is very restrictive and tends to refer to the mandatory rules in force and certain protective rules justified by "overriding reasons based on the general interest", immediately followed by the warning for "unjustified and disproportionate restrictions."

- The ultimate goal of a legal instrument is compliance that requires effective means of enforcement and control. However, the Commission has tried to restrict the possibilities for national control by limiting measures in the field of registration, prior notification and the need for a representative on the territory where the work is executed. Besides calling for strengthened administrative cooperation between host and home countries, the designated instrument for the EC is a case-by-case approach. From a perspective of combating abuses, this approach fragments and individualises the monitoring of compliance and complicates the development of effective prevention.

Monitoring and control of compliance have been weak in many Member States and there are insufficient, revealing gaps

between the general aims and rules of the national regimes and the actual monitoring practices. Yet, if the aim is to prevent the abuse of posted workers and distortion of competition, the response to these gaps can hardly be to force Member States to adjust their rules to the actual inadequate practices by imposing a minimalist interpretation of the Posting Directive.

CLR has often reported about the impact of the free movement for the construction labour market in the 'old' Member States. As we published our book *EU Enlargement: Construction Labour Relations as a pilot* in 2003 we came up with monographs of six of the acceding countries, dedicated to the industrial relations at company and sector levels in construction. Time is ripe to update these country reports. This issue of CLR-News is a first step in that direction, reporting about the situation in the Polish construction industry. In the near future you can expect updates from other countries as well. We bring you two outstanding contributions. One from our FAFO-colleague Line Eldring with Paulina Trevena from the Warsaw University as co-author, the second one is from Jan Czarzasty from the

Warsaw School of Economics. Included is also a draft paper that I presented during an ETUI-REHS seminar in Vilnius on "Self-employment in construction". We will come back to that item in our next issues. Finally we include our reviews and reports.

This issue is late. The reason is simple; we focus more and more on the digital version of our quarterly and decided to modify our layout accordingly. We used the summer break to prepare a new outfit. Thanks to Beryl and Frank we can proudly present it to you. As ever.

ANNEX

Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship

Official Journal L 288 , 18/10/1991 P. 0032 - 0035

Article 4

Expatriate employees

1. Where an employee is required to work in a country or countries other than the Member State whose law and/or practice governs the contract or employment relationship, the document(s) referred to in Article 3 must be in his/her possession before his/her departure and must include at least the following additional information:
 - (a) the duration of the employment abroad;
 - (b) the currency to be used for the payment of remuneration;
 - (c) where appropriate, the benefits in cash or kind attendant on the employment abroad;
 - (d) where appropriate, the conditions governing the employee's repatriation.

Polish construction in the wake of EU enlargement¹

*Line Eldring,
Fafo Institute
for Labour and
Welfare studies,
Oslo
line.eldring@faf.o.no*

Since 1 May 2004 there has been a massive migration from Poland to the West. Polish authorities do not have an overview of the total number, but statistics from the receiving countries document a huge outflow of labour from Poland². According to some sources, at least 250,000 skilled construction workers had migrated in the first two years after EU enlargement³. In 2004 Poland had a considerable surplus of labour in construction. For the construction industries in Western Europe that were experiencing a huge upswing this provided excellent opportunities to recruit labour from Poland – to an extent that few had anticipated before the EU expansion. Less is known about the development in the construction sector in Poland, and the purpose of this article is to provide updated information and insight into the current situation.

*Paulina
Trevena, Centre
of Migration
Research,
Warsaw
University
ptrevena@uw.edu.pl*

From recession to boom

Most EU countries experienced an upturn in construction last year: the average growth in the EU was 4% from 2005 to 2006. Poland is among the countries distinguished by a particularly high growth, and had an increase in construction output of 19.4% from 2005 to 2006⁴. The situation looked very differently when Poland joined the EU in 2004. In the years 2000 to 2003 Polish construction experienced a heavy recession period followed by substantial growth since the end of 2004. In the first three quarters of 2006 production rose by 15% each quarter compared with the year before (PZPB 2006). Construction statistics for 2005 show a clear increase in the completion of buildings. During the first three quarters of 2006, planning permissions were granted for 114,900 dwellings – an increase of 35% compared with the preceding year⁵. Considerable growth is also anticipated in the construction of infrastructure in the near future – particularly due to the provision of EU funds for such projects. In the period 2007-2013, Poland will receive several tens of billions of zlotys for road building⁶. There is also an increasing supply of foreign capital linked to investments in the development of industry and property.

A survey conducted in autumn 2006 among managers in Poland's largest building and construction firms shows that the sector regards both the current situation and future prospects as bright

(PMR 2006). Three-quarters of company managers gave positive assessments of the companies' development potential, order portfolios and financial situation. Compared with a corresponding survey conducted one year previously, the companies' market evaluations made a substantial shift in a positive direction. While 73% of the companies described the situation as good in 2006, this applied to only 38% of the companies in 2005. More than half of the companies in the survey expected further improvement in the future, and only 7% feared a recession (PMR 2006). Almost all persons interviewed in Fafo's study confirmed the picture of a boom in construction and described the market situation as greatly improved compared with 2004. The report from a conference in December 2006 for key players in the construction industry gives the same impression (PZPB 2006). This optimism is further underlined by the fact that 85% of the companies in the PMR survey gave a positive assessment of the number of orders, and more than three-quarters expected that this would increase during the following year.

In early 2007 assessments of the economic situation were still very positive, although with more reservations than a few months earlier. Companies with more than 250 employees were the most optimistic in their estimates⁷. The January report from the Central Statistical Office in Poland⁸ revealed that the growth in the influx of orders was somewhat lower in January than it was in December – particularly in the smaller building and construction firms. General assessment of the companies' financial situation was still positive, but with a hint of slightly less optimistic assessments, particularly among companies with fewer than 250 employees. However, the majority still expected an increase in the number of orders during the next three months compared with the preceding month. However, it should be noted here that over the past year there has been a huge increase in prices of building materials, proving to be highly problematic in terms of companies' finances and recently (September 2007, GUS) cited by as many as 46% of construction companies as a serious barrier to their current development. In comparison, a year earlier a substantially lower number of 27% pointed to this barrier⁹.

In spite of multiple accounts of prosperous times, paradoxically most of the players in the Polish construction industry also express deep concern for the future. This is primarily associated with the labour force situation in the country – which most of our sources describe

as critical. The lack of qualified labour may inhibit the otherwise positive development in the sector. In a survey conducted by the Central Statistical Office in October 2006, half the companies in building and construction said that shortage of labour is the greatest obstacle to their taking on new assignments – compared with a quarter in a similar survey in 2005¹⁰. The PMR-survey indicated that two thirds of the managers in large construction companies regarded lack of manpower as the greatest obstacle to their activities in autumn 2006. Our interviewees from such major companies as Budimex and NCC Polska Roads reported in January 2007 difficulties in finding enough workers, and that there were far fewer applicants for jobs than just a short time back. The sector estimates that there is a need for at least 150,000 skilled construction workers – and far more in the future in the light of the many challenges that are still unresolved¹¹. Some set the need for the years up to 2013 at 675,000 employees if the plans for the building of dwellings and roads are to be realised. According to a new report from the World Bank, skills shortage is Polish companies' top concern in 2007, with the construction sector being most affected (World Bank 2007).

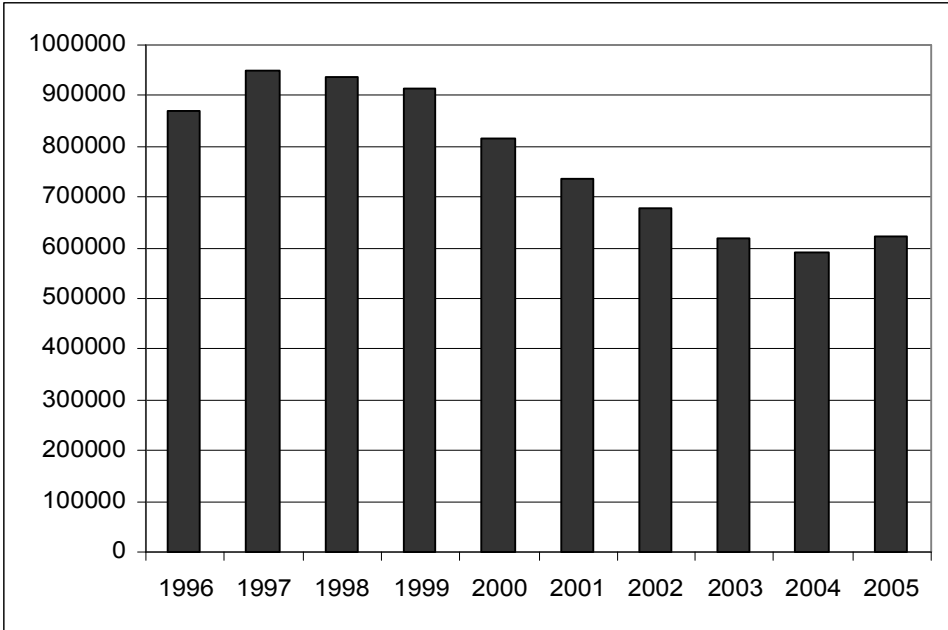
Employment and unemployment

It is difficult to acquire a satisfactory overview of the Polish construction industry since much of the activity appears to take place on the illegal market. The extent of illegal work grew in the recession period, and it is estimated that the number of small companies that operate illegally and without registration increased appreciably from 1998 to 2004. There was a radical fall in the number of registered construction companies between 1998 and 2005. In 1998 there were a total of 221,400 registered companies, while the number in 2005 was only 162,000 (PZPB 2006, GUS 2007). The majority of construction companies are small. In 2005 a total of 98% of the Polish building and construction companies had fewer than 20 employees. Most probably many small companies are not included in official statistics due to their illegal status. Among the 2,000 largest Polish companies (ranked according to turnover), 255 companies belong to the construction industry¹².

The number of people employed in building and construction activities has also fallen drastically over the past ten years. It is claimed that the main causes of this reduction are the crisis in the sector during the early years of this century and the technological development and modernisation of the large building contractors.

In 1997 almost 950,000 persons were registered as employed in the industry compared with 623,000 in 2005, i.e. a reduction of well over 300,000 persons.

Chart 1 Employed persons in construction in Poland 1996–2005



Source: GUS Pracujący w gospodarce narodowej w 1996/7/8/9/2000/01/02/03/04/05

However, these statistics encompass only registered employees and self-employed persons. The Labour Force Survey (LFS) provides a better basis for obtaining a picture of the actual employment situation. According to the LFS from the third quarter of 2005, 912,000 persons were employed in building and construction activities. One year later, in 2006, the number had risen to 1,027,000 – an increase of more than 100,000 in the course of a year. In both years approximately one-fifth of these workers were self-employed, amounting in 2006 to 200,000 persons. LFS is intended to be representative of the entire population and thus provides a more accurate picture than the register-based statistics of the number

involved in building and construction activities (GUS 2006/2007).

If the register-based and LFS-figures in 2005 are compared, the result shows a “surplus” of more than 300,000 persons, i.e. those who presumably work in the illegal market. The fact that the black economy constitutes a widespread phenomenon was confirmed both through interviews and in other documentation. There are different estimates of the extent of illegal employment: a report¹³ from the Polish Central Statistical Office estimated that 372,000 persons were working illegally in the construction industry in Poland in 2004 (this number does not include any foreigners who were working illegally). Two-thirds of those who were working illegally had this work as their main occupation, whereas for the remainder it represented a second job. We have not found any documentation to show the extent to which the period of expansion has led to a drop or a rise in illegal work in building and construction, but the general impression and assumption is that a high proportion of employment in the sector is not registered.

Other sources also confirm that many employees are on temporary contracts, and that building and construction work is regarded as seasonal activity. Seasonal variations are often presented as an explanation for the apparently extensive use of temporary and atypical forms of employment. The use of one-man firms is also said to be widespread¹⁴. Using the Labour Force Survey as the point of departure reveals that self-employed persons constitute 20% of the workforce in Polish building and construction activities.

When Poland entered the EU on 1 May 2004 the national rate of unemployment was close to 19%. In December 2006 the rate had dropped to 12% and in May 2007 to 10.5%¹⁵. The variations throughout the country are however large; in some regions the unemployment rate in December 2006 was still more than 20%, while it was below 11% in other parts of the country. According to the Central Statistical Office’s labour force survey, there were 152,000 unemployed construction workers in Poland in autumn 2006. Of these 86,000 had lost their jobs, 11,000 had resigned on their own initiative, while 56,000 were former building and construction workers who were again looking for such work (GUS 2007). The high number of unemployed appears to be contradictory to the many indications of a shortage of labour in the sector, a point that also has been made from the employers' side (PZPB 2006). A relevant question is whether the registered numbers

are correct, and if so, what is the reason for these individuals not getting jobs? And are they potential labour migrants in the time to come? These questions are best answered by looking more closely at what happens in the local labour markets. We conducted interviews with local labour offices (job centres) in Warsaw, Szczecin, Slupsk and Wejherowo, situated in the counties (voivodships) of Mazowieckie, Zachodniopomorskie and Pomorskie, respectively. The two latter counties are ranked in the upper category with regard to unemployment and are also the regions that send most labour to Norway. Almost a quarter of the Poles who are working in the construction industry in the Oslo area come from Zachodniopomorskie, more than 15% come from Pomorskie, while 10% are from Mazowieckie (Friberg and Tyldum 2007).

The labour market situation in Zachodniopomorskie can serve as an example also of more general features of the labour market. Zachodniopomorskie is situated in the northwest part of Poland and borders on Germany in the west and on the Baltic Sea in the north. The county has 1,700,000 inhabitants. Szczecin, the financial centre of the county and a major port, is one of the oldest and biggest Polish towns: the third largest town with regard to area, and the seventh largest with regard to population (412,000 inhabitants in 2004). In spite of the apparently central geographical situation of Zachodniopomorskie, the labour market has been problematic in recent years and the county still has the second highest level of unemployment in the country (21.7% in December 2006). In some municipalities (*poviats*) unemployment is well over 30%; only in Szczecin itself the rate is lower than 15% (12% in December 2006). Unemployment has been falling in recent years, from a total of 183,000 registered unemployed in 2003 to 142,000 in summer 2006. The county experienced serious restructuring problems following the closure of large collective state farms. These farms provided many with employment. It has proved very difficult for these people to find new jobs having little education and not being particularly mobile. Although there is now a positive development through increased investments and thereby more jobs, it is not certain that this will benefit the former farm workers. However, restructuring programmes have been initiated – so far without the building profession being given any special priority. During the past three years unemployment among building and construction workers has fallen from 14,000 to 8,000. At the same time, the number of vacancies registered at the labour offices increased from approximately 3,000 in 2003 to well over 6,000 in 2006. However,

the number of unemployed persons still exceeds the number of job vacancies. At the county labour office in Zachodniopomorskie changes in the market have been observed during the past year. On the one hand increased investments in local building development and projects have led to a greater demand for construction labour, while on the other hand a growing number of building workers have gone abroad to work, particularly to the UK and Ireland. In January 2007 it was said that local employers in building and construction had so far coped with the situation but that there had recently been signs of a shortage of labour.

Representatives from the labour offices in Mazowieckie and Pomorskie observed an increasing lack of construction labour in their regions. Mazowieckie is the largest county in Poland with a population of 5,160,000. The county has large variations in unemployment rates among the municipalities, with the lowest rate being in Warsaw (4.6%). In some parts of Mazowieckie the rate is still as high as between 18 and 36%. Considerable migration to western countries is reported, particularly to the UK and Ireland but also to France, Germany and Scandinavia. In Mazowieckie the public employment service is faced with considerable competition from private recruitment agencies, of which there are 600 in the county compared with only 30 job centres/labour offices. The labour migration has contributed to the labour shortages in some sectors, especially in building and construction. The construction market in Warsaw is in a period of great expansion, and a noticeable labour shortage was reported. In June 2006 there were still almost 16,000 unemployed construction workers in Mazowieckie. We do not have more recent statistics, but most probably the number has dropped last year. In total more than 300,000 were registered as unemployed in the county, but only 15% of these were entitled to unemployment benefit.

Regarding the question as to why there are still unemployed workers in building and construction in spite of the increasing demand for labour, the analysis in Mazowieckie is largely the same as that in the two other counties: many work illegally but are registered as unemployed to ensure them access to health services. Furthermore many are long-term unemployed and have substantial social problems that make them unattractive on the labour market. They often also have poor qualifications, and in addition it is difficult to persuade them to attend courses or take further education. The labour office representatives also

emphasise that low pay in the sector is still a problem: it is not unusual for wages to be so low that after deduction of transport costs the earnings amount to little more than the unemployment benefit.

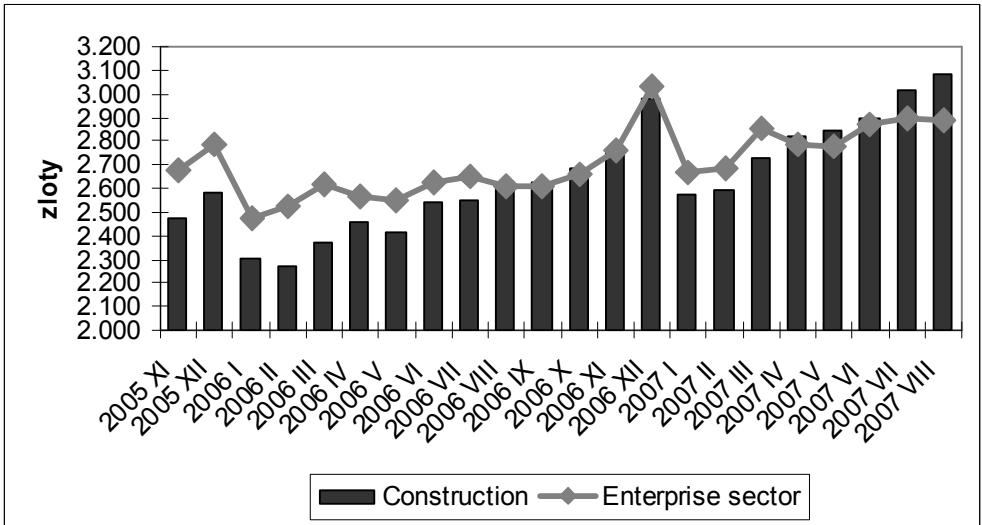
Polish construction industry is increasingly looking beyond the country's borders in its hunt for labour. There is great interest in recruiting labour from countries east of Poland, particularly Ukraine and Belarus. However, certain barriers continue with regard to access to labour from third countries. Employing foreigners is described by employers as an expensive, complicated and time-consuming process – all factors that contribute to such labour mainly being used in the black economy. According to Kus (2006) there is comprehensive recruitment and procurement of illegal foreign labour to building and construction work in Poland. Naturally enough no reliable information is available on the extent of these activities. In the areas we visited (that were not near the eastern border) our local informants indicated that input of foreign labour was modest. The Polish parliament has deliberated a proposal on opening the labour market to construction workers from countries outside the EEA. Although the labour market was opened for certain groups last year with the removal of the work permit requirement, so far this mainly applies to agriculture. The employer association PZPB has also suggested that bilateral agreements should be entered into with Belarus and Ukraine to make it possible for Polish companies to hire subcontractors from these countries. As of today this is difficult since each individual worker for the subcontractor must have a work permit in Poland. Others point out that import of workers from neighbouring countries is a somewhat unsustainable solution and that the potential for migration from these countries is overestimated. It will be just as relevant for Ukrainians to go to Russia to work, and so far there are few indications to show that Bulgarians and Romanians regard Poland as a particularly attractive destination. Some actors claim that labour could equally well be procured from countries as China, Indonesia and India.

Wages in construction

Money is one of the major motivating factors for labour migration. A levelling of the pay differences between countries should therefore in principle have a dampening effect on the movement across country borders. Poland has a statutory national gross minimum wage of 936 zloty¹⁶ (in 2007), but no sector-based minimum pay. There are very few collective wage agreements, and no sector

agreements are made concerning pay. However, the increase in activity and demand for labour should provide for a growth in wages – which in fact has occurred.

Chart 2 Average monthly wages in construction and in the enterprise sector 2005–2007



Source: GUS Statistical Bulletin No 1 and No 8, 2007

Chart 2 shows a considerable increase in the pay level in construction since 2005, but until recently it was not higher than the enterprise sector average. In August 2007 the average monthly pay in construction (in companies with more than 9 employees) was 3,081 zloty compared with 2,616 zloty one year previously. This amounts to an increase of 17.7%. In 2004 the average in construction was 2,223 zloty per month. Wages in smaller companies are much lower: in 2004 the average in “micro-companies” was 1,276 zloty, and in 2005 it was 1,374 zloty. A comparison of the pay level in companies with 50 employees and more shows that the pay in companies that are owned by foreign investors is on average double that in Polish-owned companies. Furthermore, there are extremely large pay differences (on average 50%) between workers and managers in the construction industry (PZPB 2006).

Statistics show an increase in pay in all counties in 2006, with the highest rise in Zachodniopomorskie. According to our informants, the pay level in this area was generally low, but was rising in both construction and shipbuilding. This was ascribed to labour migration from the region resulting in a shortage of skilled workers.

Mazowieckie (Warsaw) is characterised by having the highest pay level in building and construction: almost 40% higher than the national average. The county labour office representative informed us that until recently the wage level for incoming jobs was very low but that they now note somewhat higher pay offers. A completely new phenomenon is that several employers now offer fringe benefits such as free housing and free transport. As of January 2007 they maintained that if monthly pay for construction work is lower than 2,000 zloty a month, nobody is willing to take the job.

The data in chart 2 are from official statistics and there is reason to believe that the levels in the various segments of the industry can be both higher and lower than those presented here. In Budimex, the largest building contractor in Poland, pay has increased by 50-60% during the past year, but they are still struggling to secure enough workers. However, although statistics clearly show that pay is increasing, there is still a long way to go to reach a level that can compete with, for instance, Scandinavian wages.

Vocational crisis

Recruitment and qualification of the labour force are crucial for the development of the construction industry in Poland, as in other countries. In Polish construction the combination of high activity and labour migration makes the issue of the initial education and vocational qualification of new labour for the sector even more relevant. Unfortunately, the outlook is not particularly bright with regard to vocational training for construction.

The vocational training system offers two main routes – through the state school system or via the apprentices' scheme administrated by trade and craft associations and guilds. In the state system, training is given at vocational schools with courses of education of between two and four years for skilled workers or alternatively a four-year technical vocational training. Only training through vocational schools and trade and craft associations is officially approved and provides a trade certificate. In the course of the past decade interest in attending vocationally-oriented education has declined substantially in Poland and the number of students at vocational

schools has been greatly reduced. An important cause is said to be the education reform that was implemented in 1999, one of the goals of which was to limit the number of students in vocational training and to strengthen recruitment to general courses of study and higher education. The reform can be regarded as "successful": in 2002 one-third of all vocational schools were closed and the number of students was reduced by almost 500,000 (Kabaj 2002).

Reduction in recruitment to vocational schools is also connected with the demographical development: as in many other European countries, the number of children and young people is falling. Another contributory factor is that the long period of high unemployment has particularly hit those with the lowest education, and in consequence vocational training is being regarded as an insecure choice for young people. The situation is not improved by the fact that during recent years vocational training has constantly been subject to negative publicity in the press and mass media. Young people are advised to choose other forms of education, and it is not "trendy" to attend vocational training. Many of our sources maintained that this was a major explanation for a falling interest in vocationally oriented training. Training for building and construction occupations has been particularly hit by this development and is said to be among the least popular of the vocationally-oriented courses. The combination of frequent hard physical work, a widespread use of temporary jobs, unstable employment conditions and low pay means that a future in building and construction is regarded as relatively unattractive by the youth.

In the academic year 2005/2006 there were almost 80,000 students on building and construction courses countrywide¹⁷. Eleven of the sixteen counties had more applicants than the previous year, while in five of the counties the number of students taking these subjects had fallen. In total there was a rise of 8%. The figures for the most recent enrolment for the 2007/8 school year are also a little higher than the previous years. Although a certain increase can now be observed in the number of students in the building and construction study areas, there has been a substantial shift in the relationship between theoretical and practical studies: there is a clear and growing trend for students to choose secondary vocational training which is more theoretical based¹⁸. In 2005/2006 the most popular occupation in secondary vocational training was that of building technician, while among students on basic

vocational courses the professions of carpenter, bricklayer, plumber, painter and tiler were those chosen most.

The total number of apprentices almost halved in the period 2001 to 2005 (from 157,000 to 89,000). In addition, interest in becoming an apprentice in building and construction declined considerably in recent years: in 2005 the number of apprentices was approximately 16,000. As a rule apprentices take the theoretical subjects at school but are otherwise trained in the company in which they have their apprentice contract. If the employer belongs to a craft chamber, examination for the trade certificate is taken under the auspices of the guild and not of the school (ZRP 2007).

The number of companies that accept apprentices has also declined considerably: at the beginning of the 1990s some 60,000 companies took on apprentices (all occupations), whereas in 2005 the number had dropped to 26,000. The problem of lack of practical training has gradually increased, as the association ZRP has pointed out repeatedly to the authorities. Both employers and school management express concern over the fact that students at vocational schools receive too little practice. Construction companies are said to be somewhat unwilling to take in practice students and apprentices, and in cases where students are allowed onto building sites they do not usually take part in the regular work but are placed in special "training stations" that have been set up for school students. As a consequence the vocational schools are now being criticised for not being able to prepare their students for work in "the real world". Employers hesitate to employ newly trained construction workers, and often are of the opinion that these are not properly qualified. Notwithstanding this, the construction industry has to no particular extent managed to cooperate on measures to increase students' access to "reality". The main impression is that most of those involved are deeply worried about the status in the vocational training system with regard to both quantity and quality. Their concern is not diminished by the fact that the authorities have hardly addressed the problems so far. At a conference in December 2006, with many of the key parties in the industry participating, strengthening of vocational training was emphasised as one of the most important initiatives to meet the challenges the construction sector has to face. However, the political situation is relatively chaotic at the moment, and there seems to be little hope of the authorities managing to implement the necessary measures.

Summary and conclusions

Since 2004, the construction sector has not only experienced economic expansion and progress, it is also marked by the fact that hundreds of thousands of Polish construction workers have gone abroad to seek their fortunes. The question is what consequences this will have for the future – in the first place for Poland and secondly for those countries that are benefiting from mobility of Polish workers.

After some years of recession it is now full speed ahead in Polish construction and the companies involved express great optimism with regard to the influx of future orders. The majority are of the opinion that there will be further growth in the time to come. Employment in construction was substantially reduced from 2000 to 2004, but the rate is now rising. However, the industry is characterised by a large amount of work that is performed in the black economy and by one-man firms and temporary employment – factors that make it difficult to acquire a satisfactory overview of the employment situation. Considerable labour shortages are currently reported as constituting the largest concern for the companies involved. The future need for labour is estimated to be far greater than the workforce available today. In spite of labour shortages, the rate of unemployment is still high with 152,000 unemployed construction workers being registered in autumn 2006. Large local variations in unemployment exist, but the internal labour mobility is low. However, information from the local labour offices suggests that many of these unemployed people work illegally, have poor qualifications or have social problems that make it difficult for them to get regular work. There is some labour migration from countries outside the EU, particularly from Ukraine and Belarus. Since much of this work occurs illegally, its extent is difficult to estimate. Employers in the sector want to liberalise immigration procedures to ensure access to labour, but there is great uncertainty as to the migration potential from the countries to the east.

Wage levels in construction are increasing: the average pay growth during the past year was 17.7% but with great geographical variations. In general wages are still too low to compete with the wage levels in Western Europe. Although there are frequent reports on poor working conditions for Polish migrants, most are probably offered better conditions than in the construction industry in Poland where extremely vague contracts are usual, along with poor health and safety conditions, and a working life in general characterised by

strong hierarchical structures and large discrepancies between various groups of employees. A major obstacle for future recruitment into the sector is also that vocational training in construction is rather unpopular among young people. Considerable concern is expressed about the decline in recruitment to both vocational schools and the apprentices' scheme. The quality of training is described by most parties as poorer than previously, particularly since students at vocational schools have too little and unsatisfactory practice. Most of the students also choose more theoretically oriented technical courses. The word "crisis" was frequently used to describe the situation in technical and vocational training for building and construction occupations.

As in most other sectors in Poland, construction is characterised by weak social partnership. The two major trade unions in the sector, NSZZ Solidarnosc and ZZ Budowlani, claim to have 18,000 and 20,000 members within construction, respectively. This amounts to a union density far below 10 %. There are several active employers' and trade associations in the sector, and some of them give information on a fairly high membership, although this is not necessarily reflected in their office facilities or activity levels. The lack of collective bargaining at sector level means that the parties have little contact apart from that provided by various tripartite forums. Both employers and employees seem discouraged by the authorities' inadequate handling of the labour market problems. Nonetheless, so far they have failed to address the problems together in a vigorous manner. It has been claimed that countries such as Poland need a "double modernisation process" – not only a modernisation of the market but also of industrial relations (Kohl et al. 2000). There are many indications that the construction sector is suffering from the slow rate of this double modernisation process. This represents an obvious obstacle to resolving the many challenges of the future. The problems facing the industry cannot be solved by each individual company but need to be settled at sector or national level.

The trends described present considerable challenges for the construction industry, the workers in the sector and the rest of Polish society. Nonetheless the picture does have a brighter side: some of the aspects taken up are of great current interest precisely because of the growth and progress in Poland. Polish labour has become an important resource for Western European building and construction companies, and everything suggests that the need for labour will continue to be substantial in the time ahead. The question is to what

extent the development in Poland will restrict or promote labour migration in the next few years. The recession in the Polish construction industry in the early 2000s led to the development of a large labour reserve at the time of the EU enlargement in 2004. This has undoubtedly contributed to the massive emigration of construction workers. In 2007 the situation is quite different: many have left, and the rate of unemployment has dropped radically in Poland. The future migration potential is therefore presumably lower than it has been. In addition we have seen that vocational training is going through a crisis, which means that the supply of new competences is lower than it has been in previous years, although the figures for the most recent enrolment look a bit more optimistic. So far there are no indications of much return-migration, although latest UK statistics show a slight decline in the number of new migrants from Poland (Home Office 2007). In the case of Norway that has received more than 100,000 Polish migrants so far, the inflow is still increasing every month¹⁹. In a study conducted among Poles in the Oslo area in 2006 it also emerged that the majority had no specific plans to go back home (Friberg and Tyldum 2007). Surprisingly, many of them had a long-term perspective to their stay in Norway – and this applied to both individual migrant workers and employees posted to Norway. In fact, only a quarter planned to return home within a year, and one out of five said that they most likely or definitely would never move back to Poland. (Friberg and Tyldum 2007). A key issue for the Polish construction sector is whether the positive development in the industry will persuade the workers who have migrated to return home. As yet there are in fact no clear signs that this is the case.

References

- Dølvik, J.E. & L. Eldring (2006), *The Nordic Labour Market two years after the EU enlargement. Mobility, effects and challenges*. TemaNord 2006:557. Copenhagen: Nordic Council of Ministers
- Eldring, L. & P. Trevena (2007), *Polsk byggenæring i bevægelse*. (Polish construction on the move). Oslo: Fafo report 2007:05
- Friberg, J.H. & G. Tyldum (ed.) (2007), *Polonia i Oslo. En studie av arbeids- og levekår blant polakker i hovedstadsområdet*. (Working and living conditions among Polish migrants in Oslo). Oslo: Fafo report 2007:27
- GUS (2006), Labour Force Survey in Poland, III quarter 2005. Warsaw: GUS
- GUS (2007), Labour Force Survey in Poland, III quarter 2006. Warsaw: GUS
- Home office (2007), Accession and monitoring report A 8 countries, May- June 2007. UK: Department for Work and Pensions. <http://www.ind.homeoffice.gov.uk/6353/aboutus/accessionmonitoringmay04jun1.pdf>
- Kabaj, M. (2002), Optymalizacja struktur kształcenia zawodowego i popytu na prace. (Optimising the Structures of Vocational Training and Labour Demand). In: Jeruszka, U., ed., *Optimising Vocational Training in View of the Needs of the Labour Market*

(Optymalizacja kształcenia zawodowego z punktu widzenia potrzeb rynku pracy).
Warsaw: Instytut Pracy i Spraw Socjalnych

Kohl, H., W. Lecher and H-W. Platzer (2000), "Transformation, EU Membership and Labour Relations in Central Eastern Europe: Poland – Czech Republic – Hungary – Slovenia". In: Transfer. European Review of Labour and Research 2/2000. Brussels: ETUI

Kus, J. (2006), "Poland". In: Cremers, J. and J. Janssen, eds., Shifting Employment: undeclared work in construction. CLR Studies 5. Brussels: CLR/International Books

PMR (2006), The future has never been as bright for Polish construction companies.
Krakow: <http://www.pmrporate.com>

PZPB (2006), Aktualna sytuacja w zakresie zatrudnienia w budownictwie (The Current Situation of Employment within Construction). Report from the conference in Warsaw, 4th December 2006

Związek Rzemiosła Polskiego (ZRP) (Association of Polish Crafts) (2007), Internal report, February 2007

World Bank (2007), World Bank EU8+2. Regular Economic Report. Part II: Special Topic, September 2007. http://siteresources.worldbank.org/INTECA/Resources/RER_ST_FINAL_26-09-2007.pdf

Other sources are indicated in footnotes and notes to the tables and charts throughout the article.

1. The article is written with support from Fafo's research programme on Mobility of Labour and Services in the Enlarged Europe, funded by the Research Council of Norway. The article relies heavily on data that was compiled in connection with a study commissioned to Fafo by the Federation of Norwegian Construction Industries, see Eldring & Trevena (2007). The fieldwork in this study was conducted in January 2007, and included interviews with representatives from the Polish authorities, labour offices, researchers, trade unions and employer/trade associations as well as some companies. Information was also gathered from other relevant sources. With regard to statistics, we have largely used data from the Polish Central Statistical Office, Główny Urząd Statystyczny (GUS). In addition, statistics have been gathered directly from the local labour offices, and education statistics have been acquired from the appropriate authorities.

2. See for instance Home Office (2007) and Dølvik & Eldring (2006).

3. Gazeta.pl Gospodarka, 20 November 2006.

4. Eurostat (2007), EURO-Indicators, News Release, 20 February 2007.

5. GUS, Report No. 3/2006.

6. Onet.pl News 25 September 2006.

7. GUS, Koniunktura Gospodarcza, Budownictwo, 11/2006, 1/2007. The indicators from the Polish Central Statistical Office are based on company managers' assessments of the current situation and expectations for the following three months.

8. GUS, Koniunktura Gospodarcza, Budownictwo, 1/2007.

9. GUS, Koniunktura Gospodarcza, Budownictwo, 09/2007.

10. GUS data quoted in PZPB (2006).

11. Szwarz in the PZPB (2006).

12. Polskie Składy Budowlane (2006).

13. GUS (2005), Praca Nierejestrowana w Polsce w 2004R (Unregistered Labour in Poland 2004).

14. See also Kus (2006).

15. Eurostat Euro-indicators News release 85/2005, 93/2007

16. 1 zloty=0.27 EUR (October 2007)

17. Source: GUS, 30 September 2006, Construction professions and Ministry of National Education and Sport 2007.

18. "Uczą się budować domy" w Dwumiesięcznik Polskich Składow Budowlanych – no. 3 (33)/2006. According to this article just as many students chose vocational studies as technical/theoretical courses in 2002/2003, while in 2005/2006 two-thirds chose technical/theoretical rather than vocational studies.

19. Based on statistics on registered migrants and posted workers from Norwegian Directorate of Immigration and the Norwegian Central Office for Foreign Tax Affairs in the periode May 2004-August 2007. The real numbers are probably higher, due to lack of registration (especially posted workers) and illegal work. The Norwegian Confederation of Trade Unions estimated in October 2007 that there is at least 100000 labour migrants from the new EU-states *currently* working in Norway (most of them being from Poland).

Self-employment in Poland: recent trends and prospects

Self-employment is a relatively widespread phenomenon in Poland. According to official national statistics, in late 2006 some 2.9 million economically active persons were considered to be self-employed (i.e. persons owning and operating their own businesses), the vast part of whom (2.3 million) consisted of "own-account workers". However, the actual scale of self-employment might be lesser than the abovementioned figures would suggest: the employer's organizations assess the extent of self-employment in the range of 1-1.65 million.

There is no explicit definition of self-employment in the national legal framework; this form of economic activity falls under the general heading of 'business activity', as defined by the Freedom of Business Activity Act (ustawa o swobodzie dzialnoŝci gospodarczej) of 2004. Article 2 of the Act stipulates that '*business activity consists of for-profit production, construction, commercial and service activity, in prospecting for, exploring and extracting useful minerals, and in professional activity pursued on an organised and continuous basis*'.

Under fiscal regulations, from 1 January 2004 on - according to the amended Corporate Income Tax Act (ustawa o podatku dochodowym od osóŝ prawnych) and other regulations, self-employed business operations are entitled to a flat-rate tax of 19% on their aggregate income. This option is available to **self-employed individuals** under the amended Personal Income Tax Act (ustawa o podatku dochodowym od osóŝ fizycznych) and other

Jan Czarzasty,
Szkoła Główna
Handlowa
(Warsaw School
of Economics,
SGH) and
Instytut Spraw
Publicznych
(Institute of
Public Affairs,
ISP)

regulations as well. With progressive personal income tax scale, consisting of three piers (19%, 30%, and 40%), an opportunity to save a certain part of one's income from the fiscal authorities is an obvious incentive to become self-employed. The practice of newly established sole traders performing the same work for the same employer is lawful as long as the sole trader has **one customer/client during the fiscal year other than the 'former' employer**.

Thus the term „self-employment“ refers to all economically active people not working on an employment-contract basis but instead owning and operating their own businesses. It is crucial to note that – within the methodological approach employed by the national statistics – both **employers with employees** and **„own-account workers“** are included in the same category. The latter fall into three types (as distinguished by the authors of the study commissioned by the Polish Agency for Enterprise Development) (Polska Agencja Rozwoju Przedsiębiorczości, PARP) in 2004:

- prospective employers (newcomers with a view of developing the business);
- traditional self-employed (free-lancers, craftsmen etc.);
- *de facto* employees.

While the first two types could be described as genuine self-employed, the third requires particular attention, since it represents, in fact, bogus self-employment. In recent years the phenomenon has become quite widespread, which could be attributed to the “unemployment push” factor. The high level of social insecurity is, however, not the sole reason behind the expansion of bogus self-employment. The other reason – frequently brought up in the public debate by employers in order to defend themselves against accusations of forcing employees into self-employment – is the tax-wedge. The term refers to all mandatory contributions (to social security, health-care and unemployment benefits) applying to gross remuneration to be paid by employers. Thus transforming the employment contract into a commercial contract has been seen as an efficient way to reduce labour costs.

With the picture of self-employment based on LFS (Labour Force Survey) data, one can see an interesting pattern: as Poland's economy entered a slowdown phase in 2001, total employment decreased, while self-employment increased in both real numbers and as a share of total employment. The unemployment rate in 2003 reached 18%. The number of self-employed fluctuated; however, it remained

relatively stable within a range of 18-19% (Table 1). On the contrary, as the national economy began to recover in 2003, the share of self-employed in the employment structure declined (even though the impact of the economic revival on the labour market was not immediate, as unemployment continued to grow reaching its peak in April, 2004 at 20% rate). In particular, the share of “own-account workers” shrank considerably: from 19.2% in 2001 to 15.6% in 2006.

Table 1. Self-employment: general statistics

	2000	2001	2002	2003	2004	2005	2006
Total employment	14540	14043	13772	13718	14058	14390	14911
of which, in individual farming	2533	2500	2383	2373	2377	2306	2101
Number of self-employed	3254	3231	3083	2990	2956	2972	2911
of which, „own-account workers“	2669	2703	2565	2459	2400	2411	2327
Self-employed as the share of total employment	22.4%	23%	22.4%	21.1%	21%	20.7%	19.5%
of which, „own-account workers“	18.3%	19.2%	18.6%	17.9%	17.1%	16.8%	15.6%
Note: real numbers in thousands.							
Source: CSO, LFS (Labour Force Survey) data series (2000-2006), as of the 4th quarter of a year.							

When approaching the issue from a sectoral perspective (Table 2), significant disparities between particular sections of the economy become apparent. With agriculture excluded – due to specific patterns of employment traditionally observed in the sector, in which individual farming has always been the dominant form of economic activity – the sectors where the self-employed constitute sizeable shares of employment are the following: **trade and repairs** (22% are self-employed, and 14% – “own-account workers”), **construction** (19% are self-employed, and 10% –

“own-account workers”), and **transport, storage and communication** (14% are self-employed, and 10% – “own-account workers”).

Aside from public statistics, self-employment has also been the topic of academic research, where outcomes are somewhat differ from the data provided by the CSO. In producing a multi-angled assessment of the phenomenon, these results are also worth mentioning. For example, two consecutive editions of the *Working Poles* (Pracujący Polacy) research project, carried out in 2005 and 2007, suggest that the incidence of self-employment is actually smaller than the official data demonstrates - and decreasing. Whereas in 2006 9% of those interviewed (including farmers) declared themselves to be self-employed, in 2007 the figure had dropped slightly to 8.4%. As for the issue of occurrence of self-employment at workplace level (the question which could serve as an indicator of the extent of “bogus self-employment” in labour relations), in 2005 nearly 70% of those sampled claimed no such practices took place in their workplaces, while slightly less than 4% admitted that at least half of the personnel was self-employed (however, more than a quarter declared insufficient knowledge regarding the issue). The 2007 survey produced similar (preliminary) results, as 72% of the interviewed stated no self-employment occurred in their workplaces, while little more than 4% acknowledged self-employment as applying to at least half the staff.

From an individual perspective, there are a number of advantages to becoming self-employed. Among the main reasons prompting those economically active to do so are the following:

- The self-employed are entitled to CIT (flat rate of 19%) instead of PIT (progressive scale of 19%, 30%, and 40%);
- The self-employed are capable of „tax-optimizing”, that is classifying certain expenditures in the books as costs of business activities;
- The self-employed are entitled to reduced mandatory retirement contributions to social security (at the minimum level – calculated on 60% of average pay);
- Access to special offers tailored for corporate customers in various markets, usually more attractive than those addressed to individual customers, and, especially opportunities to lease various goods (i.e. cars, office equipment etc.)

Table 2. Self-employment statistics: breakdown by sectors

Year	2000	2001	2002	2003	2004	2005	2006
Agriculture, hunting and forestry	2742	2673	2542	2525	2540	2469	2268
	1874	1858	1746	1655	1623	1618	1522
	1804	1817	1708	1619	1584	1575	1472
Manufacturing	2920	2734	2527	2587	2736	2813	3037
	207	180	171	184	185	193	203
	100	97	83	76	84	95	97
Construction	990	950	880	847	862	924	994
	165	195	175	172	157	175	189
	112	121	107	104	89	101	101
Trade and repairs	2060	2005	1958	1971	2051	2046	2105
	559	546	523	493	496	475	468
	347	357	333	312	307	293	289
Transport, storage and communication	878	837	807	819	843	912	1029
	151	148	127	125	119	139	141
	127	117	102	91	88	102	103
Education	1020	949	996	1110	1055	1131	1152
	17	11	11	12	14	16	17
	11	-	6	5	7	9	11
Health care and social work	924	888	984	844	837	844	886
	43	55	56	60	51	60	62
	31	43	47	48	36	40	47

Note: real numbers in thousands; the first figure represents total employment in the sector, the second – total number of self-employed, and the third – number of „own-account workers“.

Source: CSO, LFS (Labour Force Survey) data series (2000-2006), as of the 4th quarter of a year.

Based on the results of the aforementioned *Working Poles* survey of 2006, the key advantages of self-employment are the following (**note:** at the moment of completion of the paper the 2007 data are still being processed, and are hence unsuitable for publishing):

- freedom to determine one's working time (59%),
- opportunity to balance professional and family life (54%),

Subject articles

- opportunity to work multiple jobs (36%);
- ability to balance professional and school duties (30%);
- yet, 9% stated that self-employment had no advantages whatsoever

As disadvantages of self-employment, the following seem to be the major:

- Lack of elementary employee-rights, stemming from the Labour Code, the problem especially acute for the “ostensibly self-employed”;
- Instability of employment;
- High probability of future problems with retirement benefits, clearly the consequence of reduced social security contributions to the system;
- Bureaucratic barriers (e.g. according to the latest issue of “Doing Business” report by the World Bank, registration of business in Poland still takes 31 days.)

According to the *Working Poles 2006* results, the key disadvantages of self-employment are the following:

- Instability of employment (38%);
- Low pay (27%);
- Insufficient contact with an employer (20%);
- Low prestige of such a form of employment (18%);
- yet, 4% stated that self-employment had no disadvantages at all

The issue of self-employment has been recurrently present on the agenda of the social partners from both sides of labour relations. Throughout 2000s two chief factors have heated up the debate: first, the Labour Code reform of 2002 and second, the aforementioned fiscal liberalization of 2004.

Not surprisingly, it is the employee representation side which takes a more critical stand towards self-employment and is seriously concerned with “bogus self-employment”. In general, **trade unions** oppose the tendencies to „abuse of the status” and remain supportive of government’s initiatives to tackle the issue, which is highlighted below. In particular, the issue has been repeatedly mentioned in the unions’ official documents, mainly in the context of pathologies related to the issue. Prior to amending the Labour Code in 2002, a wave of postulates on curbing “bogus self-employment”

arose. As an indirect result of the pressure, new regulations prohibiting the replacement of employment contracts with civil law contracts were eventually incorporated in the legislation. In the long run, however, the scale of self-employment was apparently not affected by changes in the legal environment. After the 2004 modification of fiscal regulations, resulting in the introduction of a 19% CIT flat rate, criticism was directed mainly at the ambiguity of legal regulations, allowing ostensible self-employment to flourish. As for the most recent developments, in February 2007 "Solidarity" (NSZZ "Solidarność) focused on the problem in its resolution, voicing the need to formulate a "new definition of self-employment (in order to prevent the abuse of the status). In March, 2007 the subject was discussed by the Tripartite Commission (Komisja Trójstronna, KT), and the unions once again addressed the issue, outwardly speaking of the need to implement stricter measures against the misuse of self-employment.

As for **employers' organizations**, while not denying the occurrence of „abuse of the status“, they tend to point to structural reasons for the pervasiveness of self-employment, naming the tax-wedge as its main cause and remaining critical of recent actions by the government aiming to strengthen the regulation in that area of labour market. Among recent voices from this side of labour relations, the position of the Confederation of Polish Employers (Konfederacja Pracodawców Polskich, KPP) seems noteworthy. In the "Green Paper: The State Supportive of Employers", the organization describes self-employment as "the major form of economic activity, which should receive support from the state, and not be perceived as pathology" (p. 26). For that reason, KPP argues, there is an urgent need for legislative development, which would aid the self-employed in terms of information and fiscal benefits, essential at the stage of launching a business. Unfortunately, as KPP concludes, current legislative development is going in the opposite direction.

In April, 2007 the Polish Confederation of Private Employers (Polska Konfederacja Pracodawców Prywatnych, PKPP) "Lewiatan", in response to the wave of criticism of self-employment expressed by the unions and the government, issued a statement, in which it objected to the one-sided view of self-employment presented by trade unions and the government and reminded the advantages of this form of economic activity. Moreover, in early 2007 the paper entitled "Social Pact. Economy-

Work-Family-Dialogue” was presented. Among other recommendations for the social partners to negotiate on, the document also contained a proposal to reduce the load of social security contributions on wages and the sick-leave contribution in the part covered by employers. Furthermore, the draft document emphasized the need for the social partners to determine the bottom line on the extent of flexibility in the labour market. However, in the autumn of 2007, the prospects for any social pact to be adopted appear quite meager, considering the clinch in the tripartite social dialogue at national level.

As already stated, the government has remained critical of self-employment in its current form and voiced the need to curb the trend through modification of the legal environment. Recently, these views have been materializing in new regulations such as:

1. Amendments to the National Labour Inspectorate Act (ustawa of Państwowej Inspekcji Pracy) adopted in April, 2006, and in force since July, 1 2007 broadening the control prerogatives of the body concerning the legality of employment;
2. Amendments to the Personal Income Tax Act (ustawa o podatku dochodowym od osób fizycznych), in force since January, 1 2007, by virtue of which the definition of „non-farming business activity” has changed. **If the three following conditions are jointly met, then economic activity cannot be regarded as self-employment:**

- Legal responsibility for the result and execution of an order is born by the user,
- Work is carried out under supervision, and in a time and place determined by the user,
- The performer does not bear the economic risk of the activity

Forecasting the prospects for self-employment in Poland seems a rather hazardous task. However, one hypothesis could be formulated, namely that the extent of self-employment (which is supported by statistical data, as referred to above) and the incidence of “bogus self-employment” are likely to decrease, due to the presence of at least two major factors:

1. Recent initiatives by the government, aimed at curbing the phenomenon;
2. Sustained economic growth and widening gaps in the labour market, which have already strengthened the employee-side position, leading to the disappearance of the „unemployment push” factor (which was arguably a major driver for expansion of self-employment

in the years of economic slowdown).

References:

- Czarzasty, Jan, *Amended Labour Code adopted*, (<http://www.eurofound.europa.eu/eiro/2002/09/feature/pl0209107f.html>), European Industrial Relations Observatory (EIRO).
- Czarzasty, Jan, *Mixed reactions to draft Labour Inspectorate bill*, (<http://www.eurofound.europa.eu/eiro/2006/09/articles/pl0609039i.html>), European Industrial Relations Observatory (EIRO).
- Doing Business 2008*, World Bank Group, Washington D.C., 2007.
- Green Paper. The State Supportive of Employers*, (Zielona księga. Państwo przyjazne pracodawcom) Confederation of Polish Employers (Konfederacja Pracodawców Polskich, KPP), Warsaw, 2006.
- Labour Force Survey* (Badanie Aktywności Ekonomicznej Ludności, BAEL), Central Statistical Office (Główny Urząd Statystyczny, GUS), Warsaw, 2000-2006.
- National Committee Resolution no. 1/07 on the Agenda of the National Committee for the 2006-2010 term* (Uchwała Komisji Krajowej nr 1/07 ws. harmonogramu zadań Komisji Krajowej NSZZ „Solidarność” na kadencję 2006-2010), Feb. 20-21, 2007, NSZZ “Solidarity”.
- Self-employment* (Samozatrudnienie), Polish Agency for Enterprise Development (Polska Agencja Rozwoju Przedsiębiorczości, PARP), Warsaw, 2004.
- Social Pact. Economy-Work-Family-Dialogue* (Umowa społeczna. Gospodarka-praca-rodzina-dialog), expertise paper, Institute of Labour and Social Issues (Instytut Pracy i Spraw Socjalnych, IPiSS), Warsaw, 2006.
- Statement on Self-employment* (Samozatrudnienie – stanowisko Lewiatana), Feb. 21, 2007, (Polish Confederation of Private Employers (Polska Konfederacja Pracodawców Prywatnych, PKPP) “Lewiatan”.
- Sula, Piotr, *Self-employment trends in Poland*, (<http://www.eurofound.europa.eu/eiro/2006/08/articles/pl0608019i.html>), European Industrial Relations Observatory (EIRO)
- Working Poles 2007* (Pracujący Polacy 2007), research paper, Polish Confederation of Private Employers (Polska Konfederacja Pracodawców Prywatnych, PKPP) „Lewiatan”.

Presentation
Jan Cremers,
AIAS-University
of Amsterdam
Vilnius, 7 June
2007

Self-employed and the free provision of services

1. Description of the problem.

Self-employment has developed in recent years in two directions.

- a. It is used by a flexible pool of qualified workers with high professional standards, most often active in sectors requiring a high level of expertise and craftsmanship. This type of self-employed person acts as an individual entrepreneur, works on his/her own account and is well paid. In financial and economic terms, these self-employed depend on customers and clients but they act autonomously to organise work and settle the commercial contract for the services performed.
- b. The second type of self-employment has appeared as a means to evade statutory labour provisions and obligations (and workers' rights as laid down in collective agreements). It is a method to reduce costs in traditional, labour intensive industries (as is subcontracting and outsourcing). The workers concerned remain economically dependent; their work is often unskilled, repetitive and casualised. This bogus type of self-employment leads to circumvention of social protection and exclusion from basic workers' rights normally guaranteed by labour law. For the workers involved, it is an earnings' survival strategy.

There is evidence that the creation of an open market, offering free provision of services and functioning in a situation with Member States having different and divergent regulatory frames for an employment contract and for a contract for (the provision of) services, has made it possible for dubious agencies to promote and abuse the self-employed status by supplying employees as so-called service providers.

2. Introduction.

The issue of who is or is not in an employment relationship – and what rights/protections flow from that status – has become problematic in recent decades as a result of major changes in work organisation and the adequacy of legal regulation in adapting to these changes. Worldwide, there is increasing difficulty in establishing whether or not an employment relationship exists in situations where (1) the respective rights and obligations of the parties concerned are not clear, or where (2) there has been an

attempt to disguise the employment relationship, or where (3) inadequacies or gaps exist in the legal framework, or in its interpretation or application. Some of the new contractual arrangements used can have the effect of depriving workers of the protections they are due (ILO 2007).

From the legal perspective, several criteria are formulated in the EU Member States with regard to the definition of a labour relation.

- Subordination to a user undertaking.
- Submission to orders and instructions in the performance of work.
- Integration in a (collective) scheme of planning, execution and control designed by others.
- Economically and socially the worker is dependent on the work done for and by an undertaking that belongs to someone else.
- Financial dependency on a (single) employer.

The ILO ICSE-classification (International Classification of Status in Employment) defines self-employment jobs as those jobs where the remuneration is directly depending upon the profits derived from the goods and services produced.

In its General Conference of June 2006 the International Labour Organization has formulated a new Recommendation concerning the employment relationship (Recommendation 198, ILO 2006).

The basic aim of the recommendation is an improvement in the national policy of protection of workers in an employment relationship (Article 1.4). :

4. National policy should at least include measures to:

(a) provide guidance for the parties concerned, in particular employers and workers, on effectively establishing the existence of an employment relationship and on the distinction between employed and self-employed workers;

(b) combat disguised employment relationships in the context of, for example, other relationships that may include the use of other forms of contractual arrangements that hide the true legal status, noting that a disguised employment relationship occurs when the employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee, and that situations can arise where contractual arrangements have the effect of depriving workers of the protection they are due;

- (c) ensure standards applicable to all forms of contractual arrangements, including those involving multiple parties, so that employed workers have the protection they are due;*
- (d) ensure that standards applicable to all forms of contractual arrangements establish who is responsible for the protection contained therein;*
- (e) provide effective access of those concerned, in particular employers and workers, to appropriate, speedy, inexpensive, fair and efficient procedures and mechanisms for settling disputes regarding the existence and terms of an employment relationship;*
- (f) ensure compliance with, and effective application of, laws and regulations concerning the employment relationship; and*
- (g) provide for appropriate and adequate training in relevant international labour standards, comparative and case law for the judiciary, arbitrators, mediators, labour inspectors, and other persons responsible for dealing with the resolution of disputes and enforcement of national employment laws and standards.*

Along with this Recommendation, the ILO has produced several documents that are interesting to analyse. The overview of national regulatory systems in these documents makes it especially clear that there is a growing need for clarification of the differentiation between fraudulent practices meant to evade employment status and genuine self-employment.

3. Legal situation in the EU.

The loopholes in the national and European legislative frame with regard to a clear definition of self-employed are evident. There is no unified transnational distinction between on the one hand own-account workers and employers and, on the other, employees (or between self-employment and subordinate work). Every authority defines according to different legislative rules (labour market, trade licensing and registration, tax regulations, social security, health insurance et cetera).

However, Member States always use two different legal categories: subordinate work (or dependent work) and self-employment. Labour law governs subordinate work whereas self-employment is mainly governed by commercial law and general contract law. Labour law provides protection to workers considered as the weaker party to a contract; the self-employed and their clients are considered as equal contractual partners. The self-employed provide their gainful employment activity for profit, in the form of 'own account' responsibility.

The definitions of subordinate work and/or self-employment are based on labour legislation or on case law, whereby the European

countries often identify self-employment through 'inverse' categorisation, that is, by ascertaining that certain work does not have the characteristics of subordinate work. As a consequence, self-employment is subject to multiple and fragmented judicial regimes.

A further tendency is to treat self-employment and entrepreneurial activities as separate concepts. Owing to the similar situation of economic and legal dependency in the cases of both a micro-undertaking (i.e. where a subject, a physical person, carries out very small-scale activities through the legal structure of an undertaking) and self-employment, it seems however logical to consider the activities of a micro-undertaking and genuine self-employment as identical (Perulli 2003).

The ILO International Classification of Status in Employment comprises several kinds of status: employers (employing other people too), own-account workers (without employee), contributing family workers and members of producer's cooperatives.

Historically 3 main groups of self-employment could be defined: small businesses, agricultural production and free-lance activities (like private doctors, auditors, tax consultants, solicitors, authors, salesmen).

Only few countries have legislation in the field of self-employment as such. Germany introduced a law on self-employment in 1999. The aim was to define genuine own-account workers as distinct from fake self-employment and to create a legal instrument against bogus practices. Included in the law is a scheme of five key criteria of an inverse order; at the moment where at least three of these criteria are fulfilled a person is seen as a bogus self-employed. These criteria are: the person involved does not engage another employee, the work is executed for only one user-undertaking, the client engages workers regularly, the work has no characteristics of own businesses and, finally, the work executed is very similar to earlier work executed for the same contractor.

4. Some facts and figures.

Over the years it has been quite problematic to come up with reliable figures; self-employed were not always included in national labour market surveys. The share of self-employment has traditionally been very high in Italy, Spain, Portugal and Greece.

Also Poland always had a high share of self-employment. Unfortunately most figures are not distinguished according to sector. Evidence from studies is therefore mixed. One development is almost identically present in all countries. Self-employment in agriculture has decreased since the 1960s, except for the UK where it was already low.

In general terms the rates for self-employment in services are higher than for the industry sector, with construction being the exception to this rule.

In overall figures, self-employment increased in the 1980s and the rates have been falling in the 1990s. In recent years there is a divergent trend going on. In some countries self-employment has again increased, in others it has stabilised or decreased (OECD Employment Outlook 2005 and OECD Factbook 2006).

Table. Share of self-employed in total number of persons employed (selected countries, 2003-2004, own calculation based on Eurostat 2007 and National Labour Force Surveys).

Country	% of total workforce	% of construction workforce
EU-25	16%	25%
Belgium	13.2%	22.6%
Czech Republic	15.4%	33.4%
Denmark	8%	17.3%
Finland	12.3%	19.3%
France	9.8%	17.1%
Germany	9.9%	13.3%
Italy	26.4%	37.5%
The Netherlands	10.8%	15.1%
Poland	20%	20%
Spain	18.1%	19.1%
Sweden	10.6%	20.7%
UK	11.3%	32.2%

With the exception of the UK, the development of self-employment in construction has until recently been rather evolutionary.

Without construction, the growth rates in the UK in the 1980s were not notably higher than in other OECD-countries. In construction the increase, however, was remarkable from around 18% in 1977 to 45% in 1994. Some experts in industrial relations come up with even higher percentages.

The marked increase in the UK in the number of self-employed in the 1980s and the decline in the self-employment rates from 1995 to 2000 are generally linked to a shift of large numbers of workers from employment to self-employment (and the other way around) within the construction sector.

While overall employment in construction remained steady between 1995 and 2000, the proportion of self-employed in construction fell from 46% to 33%. This decrease reflects the policy by the Inland Revenue to stop undertakings treating employees as self-employed. However, with the general self-employment rate at around 13%, the proportion in construction stayed beyond the average. And recent figures show again an increase. Between the first and the last quarter of 2004, the number of self-employed persons in construction in the UK increased from 625,000 to 692,000, while total manpower increased from 1,659,000 to 1,754,000 over the same period. A large and increasing proportion of skilled workers in construction is self-employed; going up to 60% according to trade union estimates (CLR, Clarke & Gribbling 2006).

In other countries, construction is often identified as a key sector with the proportion of self-employed consistently being twice the national average. Periods of strong market development tended to reverse this trend in the past as most of the growth in construction employment took place in direct employment and the corresponding decline in self-employment was concentrated among own-account workers. This confirmed that own-account workers were less committed to self-employment and that the self-employment status functioned for a period of transition and of semi-independent work between two employment relationships (for instance in case of redundancies, restructuring or temporary unemployment).

Certain findings of the CLR-study on undeclared labour indicate a change in this pattern.

During the last period of growth in the Dutch construction sector there appears to be an increase in the number of self-employed, posted workers and temporary workers from abroad. This could

explain the fact that both in 2004 and in 2005 an increase in production was accompanied by a slowdown in employment. In general, the development of employment follows the development of production (albeit at a slower speed). In 2004, production in the sector increased by 1.2%, while employment decreased by 5.2%. In 2005, production increased by 2.5%, while employment for workers decreased by 3% and employment for self-employed persons increased by 1% (CLR, Bosse & Houwerzijl 2006).

Traditionally the entry to self-employment in Germany was for the highly qualified, those with full secondary and even tertiary education (Lohmann et al 1999). In the early 1990s the share of self-employed stayed well below 10%. During recent years of recession, this figure has increased, to almost 12% in 2004. In these figures a qualitative change took place with regard to the sectors most concerned. The number of agricultural self-employed substantially decreased whereas non-agricultural self-employment showed a continuous and straight growth starting at the end of the 1980s. In 1995 this rate had gone up in construction to 12.3%, not much different from the overall figures. Although reliable figures are not available, there is some evidence that the rise in self-employment in Germany in recent years was due to a period of mass unemployment and lack of opportunities in direct labour relations. This thesis of the "unemployment push" has been analysed for several industrialised countries and seems to explain the development in Germany. Another explanation, however, was recently illustrated in our CLR-study. In the German country report an overview is given of the different direct measures to simplify the entrance of small businesses, trade licensing and start-ups and to lower the educational impediments in the crafts (CLR, Richter 2006). This happened in the UK in the 1980s; it took place in Germany in recent years. These changes have resulted in a higher degree of fluctuation (in and out of self-employment).

France has shown so far almost no increase in overall self-employment, while agricultural self-employment decreased. Promotion of self-employment began at the end of the 1970s. That is perhaps the reason why the rate of self-employment was already in the 1980s substantially higher compared to, for instance, Germany. Between 1984 and 1994 the self-employment rate in construction slowly increased from 20.8% to 21.2% (almost twice the percentage of the overall rate).

In the CLR-study on undeclared labour in construction self-employed labour (in the form of concealed labour – travail dissimulé) was ranked in France amongst the most important forms of undeclared labour, next to illegal employment of foreigners and the supply of labour-only. According to information of the governmental delegation for the struggle against illegal work (DILTI), construction companies and agencies - officially and predominantly based in Eastern Europe - offer their services on special Internet pages, whereby prices quoted imply the circumvention of social minimum provisions applicable. This increased transnational service activity was confirmed by the Ministry of Labour and Employment. As the most common legal violations, the Ministry names the illicit supply of temporary workers, violations against the right of settlement, the false declaration of employees (false trainees, bogus self-employed, false honorary offices) as well as failure to register for social insurance in the countries of origin (CLR, Kahmann 2006).

In the past own-account workers tended to be older than wageworkers. It takes time to accumulate the skills needed and resources to start a business. One has to invest in a social network of support and to find a clientele and stable group of customers. All these aspects combined with education have always limited the opportunities for young newcomers.

In general the service sector was a sector with a relatively easy access where these conditions did not count. After the decrease in agricultural self-employment in the 1970s and 1980s, self-employment increased especially in the services sector in the 1990s as a consequence of outsourcing of non-core businesses. Nowadays it looks as if the same mechanism applies in the construction sector for certain segments with a rather low protection of dependent labour. The result is a downgrading of the self-employed as these construction entrants may not be educated.

5. Abuse of the status.

According to the OECD (2000), 'in some countries... taxation systems, and perhaps labour market policies as well, might have encouraged the development of "false" self-employment – people whose conditions of employment are similar to those of employees, who have no employees themselves, and who declare themselves (or are declared) as self-employed simply to reduce tax liabilities, or employers' responsibilities.'

False or bogus self-employed are thus workers who are treated as self-employed, but who, from the legal perspective, clearly fall within the category of subordinate employment.

Research carried out in the UK by the Small Business Council in 2005 concludes that a vast majority of informal work is carried out on a self-employed basis, with three kinds identifiable:

- micro-entrepreneurs who use the informal economy as a short-term risk-minimising strategy to test-out their enterprise and/or establish themselves;
- the informal work of more established small businesses and self-employed people who use this sphere in an ongoing and serial manner as a strategy for 'getting by';
- and the informal work of 'favour providers' who conduct mostly casual one-off small tasks as 'paid favours' for friends, family and acquaintances.

In the ILO Recommendation 198, a paragraph is dedicated to circumvention related to cross border work with bogus practices: "where workers are recruited in one country for work in another, the Members concerned may consider concluding bilateral agreements to prevent abuses and fraudulent practices which have as their purpose the evasion of the existing arrangements for the protection of workers in the context of an employment relationship" (ILO 2006).

We have formulated before that an employment contract is basically defined by the bond of subordination it establishes or proves between a worker and another party (or an undertaking that belongs to someone else). The worker delivers his/her work/service in the form of labour to the other party. The other party was traditionally conceived as the owner of an undertaking or business unit that engaged a group of workers in the production of goods or the delivery of services.

In this situation it was and is relatively easy to define the employment relationship and to distinguish between a contract of service (the labour relationship) and a contract for (the provision of) services. To a certain extent all countries have had serious problems in the past in defining at national level a regulatory scheme for the demarcation between these two phenomena. But in principle most states had found a form of 'peaceful coexistence' through case law and national regulation with regard to the division on the labour market between

on the one hand employers, genuine self-employed and small entrepreneurs, and employees on the other hand.

In recent decades the basic employment pattern has started to erode. Several authors have come up with factors influencing the development of other patterns of work relationships:

- the rising level of employee skills and qualifications,
- the increasing pressure of competition on more open markets,
- the ever-speedier evolution on technical progress,
- the entry of (married) women on the labour market (Supiot, 2001).

However, the main socio-economic factor that can explain the spread of economically dependent work is the increasingly frequent use of the practices of outsourcing or contracting out based on the presumption of labour cost reduction. Numerous activities that used to be carried out in a firm by workers with subordinate status (employees) are now entrusted to self-employed workers under arrangements that tend to lead to the emergence of economic dependence (Perulli 2003).

6. Equal treatment versus service provision.

The strong growth of the low paid services sectors on our markets combined with labour shortages has had a great impact. Next to a strong decrease in the agricultural sector, traditional industries with large business units, plants and factories have lost their dominant position in the economy. The traditional model of undertakings with skilled and unskilled workers contributing their labour under the supervision and disciplinary control of an employer is no longer the standard model. The possibility to outsource parts of the process and the intensification of sub-contracting, driven by a strategy to reduce costs and/or by the aim to avoid direct employment of workers, have created a new playground for all kind of contracts that do not fit in the classical model.

The most remarkable change has taken place in the characteristics of the work and position of the population of self-employed. Basically self-employment was, besides the farmers, limited to salesmen and independent professionals. In some industries like construction, skilled and qualified craftsmen used it as a possibility to establish their own business unit or to work as a freelance and

independent entrepreneur with more clients. And at the end of the day these self-employed in principle were seen as individual undertakings, well paid and autonomous in their work. The percentage self-employed therefore stayed quite stable in the period after the second world war until the late eighties.

With an increasing pressure of competition and under the influence of the liberalisation of the market (prominently starting with the Thatcher reform in the UK) self-employment was reintroduced as a strategy to evade labour regulations and other statutory obligations in labour intensive sectors. Deregulation made it possible to become a self-employed from one day to another. At the beginning this was still seen as an "English disease", a mistake or an error taking place on construction sites (up to 60% of the workers on site). The feeling was that workers involved were first and foremost all employees who were engaged as self-employed for tax and social security reasons. At the moment this status of self-employed is frequently used to circumvent statutory obligations. In several countries an important part of the sole operators in building and construction is considered to be false self-employed by both trade unions and employers.

The free movement of workers has accelerated this process and has introduced the use of self-employment in the most vulnerable parts of our labour market. Foreign workers are nowadays hired in (through all kind of agencies) not as workers but as 'service providers'. The free provision of services, combined with easy access to the status of self-employed, stimulated by most governments because it opens the door to other national markets, is abused. The person engaged is not contracted because he or she delivers with his or her independent work a special service for his/her own account. With an invoice cheap labour can be provided without compliance to the national labour standards. This is confirmed by several international organisations. In the ILO Recommendation 198, Member States and social partners emphasise that a globalised economy increases the need of workers for protection and against circumvention of national laws by contractual and/or other legal arrangements. In the framework of the transnational provision of services, it is therefore important to establish who is considered a worker in an employment relationship, what rights the worker has, and who the employer is.

Recently a senior UK judge ruled that a group of Polish nationals could be classed as "employees" of the agency that had sent them to work in the food-processing industry. An employment tribunal came

down in their favour as the judge said it was a case where "the nature of the relationship justified a finding that there was a contract of employment between the agency and the workers". The workers complained that they had been dismissed after they tried to join a British union. They said they were denied notice pay, in breach of contract, and alleged there had been unlawful deductions from their wages. In order to pursue their claims, the migrants needed to be qualified legally as "employees", rather than fall into the looser category of "workers". The difference between the two categories is the amount of control that an employer has over a labourer.

The case is important in establishing that migrant workers may be treated by courts as employees of an agency, even where day-to-day control of their work is exercised by the agency's clients and even when the agencies' contracts with workers try to disguise this employee relationship.

The migrant workers had arranged with an agency that it would find them work while in Poland. They then travelled to the UK and were put up by the agency in a hostel with other Polish workers. They signed contracts with the agency and started work. Money was deducted for accommodation and cleaning charges, amounting to about £56 a week. Lawyers for the agency claimed the Poles were given a separate document headed "Being Self-Employed - what it means" at the same time as their contracts. But the tribunal said that the document was provided after contracts had been signed and that it could not be treated as amending the contracts themselves (Tait 2007).

7. The need for a unified definition.

We found evidence in our study on undeclared labour that workers are offered as services providers with the clear aim to by-pass labour provisions, employer contributions and social insurance costs (Cremers & Janssen 2006). Against the background of the differences between existing national regulatory frames, better expressed as between countries that have a clear regulation and countries that have nothing to comply with, free provision of services is an open invitation to circumvent established social standards and labour conditions in sectors dominated by unskilled and casualised workers and in branches with serious labour shortages. In the short run, this contributes to the economy. In the long run it creates divergences on the labour market instead of solving problems and bottlenecks. The lower echelon of these self-employed 'service providers' competes with the vulnerable groups already present on the labour market. In

that respect precarious labour has intensified and the position of those that have to compete for low-skilled work has weakened. In certain regions unemployment among young people remains high, especially among second or third generation immigrants, as it is easier to hire willing foreign self-employed. With no investment in vocational training, the impact of this type of labour migration will work out as negative.

The risk migrants face is related to their lack of awareness about their rights, combined with their vulnerability due to irregular contracts and a more 'patron-client' relationship, rather than an employer-employee relationship. The workers involved are deprived and excluded from the protection afforded by labour law and collective agreements. The effect is a destabilisation of the labour market and distortion of competition.

We are than far from the ideology of self-employment as a type of entrepreneurship that creates a flexible and innovative pool of qualified independent professionals, with high vocational standards working in sectors that require a high level of expertise and craftsmanship.

8. Conclusion.

The creation of the Single market that offers free provision of services, functioning in a situation with Member States having different and divergent regulatory frames for an employment contract and for a contract for (the provision of) services, has made it possible for dubious agencies to promote and abuse the self-employed status by supplying employees as so-called service providers. The mobility of workers asks for instruments to protect these employees at least against circumvention of basic rights in the countries where the work is executed.

It is therefore necessary to establish in the framework of the transnational provision of services a clear definition of an employment relationship.

Self-employment is nowadays present on our markets in different forms:

- in the form of the genuine entrepreneur working individual on own account, a special feature of this form is the worker who is part-time active as self-employed entrepreneur;
- in the form of the semi-dependent worker during periods of transition between two employment relationships;

- in the form of economically dependent work;
- in the form of a labour-only supply of workers.

After a first examination of the development of self-employment we have come up with a few conclusions and recommendations:

- given the fact that the promotion of free transnational provision of services is a key element in the EU Single market policy, it is of the utmost importance to address the difference between fraudulent practices and true civil and commercial business relationships;
- where there has been an attempt to disguise the employment relationship as a result of cross border provision of services, there is a particular danger that workers will be deprived of the protections due to them, as national policy is unable to cope with the problem;
- for the purposes of an adequate policy of protection for workers in an employment relationship, the determination of the existence of such a relationship is no longer a exclusive national concern;
- it is therefore necessary at EU level to work out a basic legal frame, in close cooperation with the social partners, with the aim to effectively establish a clear distinction between employed and self-employed workers.

Main references:

- CLR (2006), *Country reports on undeclared labour* by Bosse & Houwerzijl, Clarke & Gribling, Kahmann, Richter and others, Construction Labour Research, Brussels, www.clr-news.org
- Cremers, J. and J. Janssen (2006) *Shifting Employment. Undeclared labour in construction*, CLR Studies 5, CLR/I-books.
- Délégation interministérielle contre le travail illégal (DILTI) (2002) *L'intervention en France des entreprises étrangères prestataires de services*, Inquiry report, Paris.
- ILO (2006) *Employment Relationship Recommendation R 198*, Geneva.
- ILO (2007) *The employment relationship: an annotated guide to ILO Recommendation No. 198*, Geneva
- Lohmann, H., S. Luber and W. Müller (1999) *Who is self-employed in France, the United Kingdom and West Germany?* Working paper Nr. 11, Mannheimer Zentrum für Europäische Sozialforschung.
- Organisation for Economic Cooperation and Development (2000-2005) *Employment Outlook and Factbook 2006*
- Perulli (2003), *Economically dependent / quasi-subordinate parasubordinate) employment: legal, social and economic aspects*, EC, Brussels.
- Supiot, A. (2001) *Beyond Employment. Changes in Work and the Future of Labour Law in Europe*, Oxford University Press.
- Tait, N. (2007) Migrant workers win right to be treated as employees, *Financial Times*, May 19 2007.

Reports

CLRdenmark-
conference
25th April 2007

Bo Sandberg,
economist,
CLRdenmark

Migrant Labour: A result of the construction boom? Or a situation that will remain?

CLRdenmark is very happy about today's satisfactory turnout and the good debate. Right now, the level of activity in the Danish construction sector is as high as ever – so high that all the different organizers of construction fairs etc. complain about very low attendances due to the work pressure in the sector. We don't seem to have that problem, and we feel humbly satisfied with keeping up this tradition with - once a year - to view the challenge of the construction labour from an international level.

Today's debate was wide angled - and I have tried to sum it up through the below stated 13 focal points:

1. The direct pressure from migrant labour implies, that **some latent, inherent problems** in the construction sector and the labour market suddenly **become visible**.
2. It is important to analyze the economic situation of the home countries of the migrants. For instance, the business cycle of Poland has turned dramatically in positive direction since the EU-enlargement in 2004. This point was stated by the Norwegian researcher **Mrs. Line Eldring** (FAFO Østforum). Moreover, the debate pointed, that it will still mainly be the neighbour region, the Baltic Area, the recruitment of labour to the Nordic countries will occur from. In the longer run maybe in a smaller scale from countries like Hungary, Check Rep., Romania and Bulgaria.
3. The migrant labour is certainly not homogenous – there are vast differences in the attachment to the labour market between gender and branches, which was documented statistically by **Mrs. Line Eldring**.
4. It is of instrumental significance to remember the background scenery. I.e. the environment in which the migration takes place. There's of course a tremendous difference whether the country – like in the case of Norway – already have 120-130.000 Polish migrant workers or "only" 10-15.000 as in Denmark. Likewise it's of massive importance, whether you ex ante have a percentage of organization at maximum 40% like in Norway or 80-90% like in Denmark. Other labour market conditions, like the extent of a low paid underclass consisting of "working poor" with a risk of

- further marginalization, is indeed also worth addressing, as **Mrs. Linda Clarke** (University of Westminster/CLR-GB) pointed out.
5. There is an almost **total confusion between different wage definitions**, like gross, net, cost for the employer, real wage, after tax wage, "clean money" and so on. Thus one has to be very careful with comparisons between countries.
 6. Now, the **EU-enlargement is sufficiently matured**. As a result, myths have been replaced by realities. And rumours replaced by statistics.
 7. It was an eye-opener to meet the German construction worker **Mr. Stefan Balzarek**, thereby getting a true face on the migrant labour. Stefan told, that he used to earn 8€/h in Germany, but now had doubled this salary in Denmark. He had experienced a good reception by his colleagues. The education on the Danish construction sites consists almost only of learning from the one standing next to you. Balzarek was impressed by the big responsibility given to the single worker compared to the situation in Germany. At the same time, he had also – in terms of a calm work pace - seen some nostalgic glimpses of the former GDR labour market!
 8. **Mr. Dennis Egerup** from the recruitment bureau Adecco gave a state-of-the-art example of "best practice" within temporary recruitment. Especially the selection process and the aid in terms of housing and taxation matters seemed convincing.
 9. As pointed by Mr. **Gunde Odgaard** head of the BAT-secretariat (The Federation of Building, Construction and Wood Workers' Unions), it's neither the strongest nor the wisest, that most easily survives evolution – it's the most adaptable. In a trade union context, that's the reason why BAT now has employed 5 Polish-speaking consultants. Meanwhile Mr. Odgaard stated that the local trade unions should try to be considered as the new Polish or Baltic "village hall" in Denmark.
 10. To be adaptive, you need a serious education plan for the construction sector – and here's reason for real concern in Britain, according to **Mrs. Linda Clarke**.
 11. Researcher, **Mr. Jens Arnholz Hansen** from FAOS (Employment Relations Research Centre at the University of Copenhagen) gave a draft report from his/FAOS' research on migrant labour in Denmark. Some of the conclusions were:
 - The extent of bogus self-employment in Denmark seems not as big as the countries, we normally compare with.

- The Danish collective agreements hold seeds for a further labour market polarisation. This is due to the combination of a fixed bottom (minimum wage) and a widespread flexibility upwards (annual local wage negotiations + individual additions and bonuses) in the Danish wage formation.
- There's a permanent challenge in terms of framework conditions to the migrant labour - such as housing and taxation matters.
- It's indeed most probable, that it's the migrant workers, who have to adapt to the Danish collective agreements, rather than vice versa.
- The wage forming is still mainly determined by the law of supply and demand. But there might be noticed a slightly dampening effect on the wage rise in construction through the addition of labour supply from Germany, Poland et. al. Migrant labour thus act like a valve to lead off some of the overpressure.

12. Chief economist, **Mr. Henrik Stig Sørensen** from the Danish Construction Association illustrated the present Danish background scenery. Briefly, it consists of a construction boom of historical dimensions – and of a fact, that the influx of migrant labour is demand driven.
13. The unanimous conclusion from both speakers and floor is a loud and clear **"Yes"** to the stated question, whether the situation of migrant labour will remain.

further
information/
conference
documents,
contact:
[bo.sandberg@b
atkartellet.dk](mailto:bo.sandberg@b
atkartellet.dk)

VET Joint Workshop: Comprehensive vocational education for a sustainable construction industry: challenging a fragmented and narrow skills structure

University of
Westminster,
28th
September
2007

Michaela
Brockmann,
University of
Westminster

The seminar brought together a broad range of stakeholders to address the current situation in construction VET. Representatives of trade unions, employers, further and higher education, and the sector skills council, had been invited and asked in particular to address current shortcomings, such as the lack of employer engagement in VET provision and the fragmentation and narrowness of skills.

The **quality of apprenticeship** was a particular area of concern. The view put by trade unions, employers and educationalists was that there had been a narrowing down of skills and knowledge over the last few decades. There were strong suggestions to revisit some of the aspects of the traditional apprenticeship system, such as the broad scope of activities, the extended duration, and the 'socialisation' of trainees into the trade. In this context, a highly trained workforce was seen as vital for providing high-quality VET. A particular issue was the low level of VET, which is partly a result of the high drop-out rates between levels 2 and 3.

The strong **divide between academic and vocational education** was generally seen as contributing to the low level of attainment in construction apprenticeships, as students with good grades are encouraged to stay on at school. The educationalist perspective is that the dichotomy is a false one, and that VET must include a humanities framework to build an attractive alternative to academic education.

There were a number of areas of conflict. One concerned **the level of VET**. Thus, while the trade unions, as particularly stressed by Tom Hardacre, National Construction Officer with Unite, promote VET at level 3, the view of the employers' association put by the Director of Training, Joe Johnson, was that skilled workers should

be trained to level 2. However, employers bemoaned the fact that apprenticeship is now only the first step towards skilled employment; there is a lack of clear progression routes within the industry and, in particular, a shortage of technician courses.

The view of the Sector Skills Council, Construction Skills, as expressed by Policy Analyst Pat Bowen, appeared to depart from many other stakeholders present. As the key player in developing qualifications and VET, it sees its role as adapting the VET model to the **needs of the industry** rather than catering for the education needs of trainees. The role of Construction Skills was seen by some as reacting to short-term employer demands at the expense of a broader educational framework. The Skills Academies, which will provide short-term training to meet the immediate skills needs on specific construction projects, constitute one example of this approach.

Overall, the **system of governance** and the fragmented nature of qualification building and VET provision in England were seen by many as the greatest obstacles to comprehensive VET. Many aspects were seen as contributing to the widespread lack of employer engagement, including the extensive bureaucracy associated with funding and inspection and the complex and constantly changing qualifications landscape. The status and value of many qualifications is often not clear to employers who then fail to support them, so that they lack currency in the labour market.

The employers present agreed with trade unionists and educationalists that the current **institutional framework is inadequate**, leading to apprenticeship frameworks which many employers view as insufficient in terms of breadth and depth. As the development of qualifications relies largely on lobbying by individual employers focusing on immediate skills needs, some activities are not covered at all.

On behalf of the concrete employers' group, Construct, Neil Mitchell of Mitchellson's presented the group's own proposed apprenticeship scheme (for formwork, groundwork and steel fixing), developed in the absence of appropriate provision.

There was a general view expressed that the current tax system, which encourages the **contracting of workers with self-employed status through agencies**, discourages employers from providing their own VET; permanent work status would encourage employers to provide training. The lack of employer engagement and the low level

of much VET provision were generally seen as the key factors responsible for the current skills shortage. The widespread practice of **filling gaps with rising numbers of migrant labour** (largely from the new EU countries of Eastern Europe) was regarded as not sustainable. As these countries' own economies start picking up, the flow of migrants will dry up, and existing migrants will return home.

Tom Hardacre and other trade union representatives present pointed out that **a strong role for all social partners** is a necessary condition for developing high-quality VET. The strongly employer-led nature of the English construction VET system is in stark contrast to the Dutch model of social partnership, which was introduced by Anneke Westerhuis from CINOP. In the Netherlands, the broad education as well as the preparation for an occupation of trainees is the responsibility of all stakeholders. VET is part of a comprehensive national system, fully funded by the government.

A panel discussion aimed at identifying a **long-term strategy** was usurped by a blaming strategy with different stakeholders criticising each other. The lack of a constructive debate must be systematic of the shortcomings currently inflicting the industry. A case in point are major construction projects scheduled in London, notably the Olympics in 2012, which – as pointed out by John Biggs of the Greater London Assembly - should provide enormous opportunities for employment and training of the local force. However, many present regarded these as a missed training opportunity unless the system changes. It is now more than likely that labour shortages will be met through a) skilled migrant labour, and b) 'up-skilling' of the adult workforce through the setting up of skills academies.

It was apparent in the seminar that the construction industry in England, notwithstanding pockets of good practice, can learn from initiatives abroad, where schemes have been developed to address similar challenges. Jos Gijbels from the Belgian Construction VET organisation FVBFFC explained how, in order to meet the growing labour market needs in Antwerp, they had facilitated - in conjunction with the social partners and the city of Antwerp - the creation of a centre, providing comprehensive VET. An invitation was extended to visit this scheme. As had been suggested by several speakers, partnership and negotiation rather than competition must provide the way forward.

Portugal,
22-23 June 2007

Hans Baumann
and BWI

First World Cement Conference

Introduction

The four largest global cement producers, Holcim, Lafarge, Cemex and HeidelbergCement have in recent years again expanded their activity. Jointly they control one third of the world market, in many countries their market share is between 50 and 90 percent. In the meantime these global actors also control the vertical chain of production (from the raw material till the supply of concrete) and the markets in the Schwellenländern. Holcim, actually the world's biggest producer, has become one of the biggest Swiss transnational companies, with some 90'000 employees, after Nestlé and ABB and together with Novartis third in the Swiss ranking.

Both Holcim and French Lafarge take great effort to elaborate a positive image with regard to social responsibility and sustainability issues, not only for the great public but also for their stakeholders. As a matter of fact the industrial relations in these companies function with a good relationship towards the unions and the workers representation in Europe.

During the BWI-conference (see general part of the report below) trade union representatives from Southeast Asia and Latin America reported about anti trade union attitudes. Reports came in as well about the substitution of direct labour, normally unionised, by non-unionised labour through subcontracting. The result is a decrease of the union rate and lower pay and longer working hours.

During a separate meeting of Holcim-representatives the decision was made to strengthen the global trade union network and to improve the exchange of information. This is functioning within Europe through the cooperation and the existing links between European Works Councils but has to be expanded to other continents. The representatives of the Holcim-plants also pleaded for the start of deliberations leading to an international framework agreement with the whole Holcim-group. Talks have started but failed to come to a conclusion yet.

The general part of the conference.

BWI in cooperation with the EFBWW and ICEM carried out this first World Cement Conference from 22 to 23 June 2007 in Portugal. Around 60 participants from European Works Councils and international trade union representatives from Lafarge, Holcim,

Cemex, Heidelberg, Italcementi, Buzzi from 16 countries from all continents attended the meeting. Jan Voets from ACV Belgium stated on behalf of all participants that "exchanging information and setting up trade union networks in the cement sector are key as follow up to the meeting".

Hans Baumann, chief economist of the Swiss union UNIA identified trends and developments in the world cement industry. China doubled its cement production (1,100,000 To.) within 2001-2006. Today, China is the biggest cement producer worldwide followed by India (155,000), USA (101,000), Japan (68,000), Russia (54,000), Korea (52,000) and Spain (50,000). The four biggest groups, Holcim (Switzerland), Lafarge (France), CEMEX (Mexico) and HeidelbergCement (Germany) produce more than 1/5 of the world cement (with China) and 1/3 of the world cement (without Chia). Baumann sees challenges for workers and their unions in the continued merging and restructuring process in the cement sector. Globalization to emerging markets and low cost regions is often driven by reducing costs for environmental requirements and labour standards.

Participants reported about exploitative situations in their companies. In Latin America, a 70-80 hours week is very common and the salary is not enough to have a decent life. In Asia, management-labour relations are commonly seen as conflicting and far away from social dialogue as this is the case in many European countries. Particularly in developing countries, frequent cases of violations of workers and trade union rights exist. Sub-contracting and outsourcing are observed in all regions leading to a division of the labour force; outsourced workers earn less money and work more hours for the same work they carried out before.

For Rolf Gehring, health and safety expert of the EFBWW, all companies must formulate an occupational health and safety policy (ohs) and an ohs management system, defining responsibilities, planning, training and measuring performance in which workers have a say through health and safety committees at all levels of the companies and include contractors and subcontractors. Albert Tien (Holcim) Tim Walter (Lafarge) and Mario Mora (Italcementi) placed a high priority on ohs, confirmed that their companies live up to these requested standards and developed a systematic approach for its implementation. However, it was noted that practical implementation in cement plants might

be sometimes difficult especially regarding sub-contractors.

Marion F. Hellmann, BWI responsible for International Framework Agreements (IFA) noted that Storebrand's (leading Scandinavian Investment Company) environmental and social performance analysis qualified Lafarge, Holcim and Italcementi as "best in class". "However, these companies also have to guarantee workers' rights and social dialogue at their subsidiaries and with their contractors especially in developing countries." For Christian Herrault, chief of human resources at Lafarge "We have to be pro-active if we want to be competitive as company in the long term". Lafarge signed an International Framework Agreement two years ago with BWI and ICEM. Mario Mora from Italcementi announced that his company is also planning to sign an IFA with the BWI.

Bo Sandberg,
economist,
CLRdenmark

The collective agreement in Danish construction 2007

The scene: This spring, the private sector in Denmark has gone through all its collective bargaining for about 600.000 employees. The "environment" for the negotiations has been a booming economy, difficulties in providing sufficient labour - and some exorbitant wage rises to some of the most prolific directors of the banks and other big companies. As a consequence - of course - expectations have been very high amongst the trade unions.

The negotiating setup: As always, the metalworkers and their industrial counterpart were allowed to finish their collective agreement before the other branches. Their agreement was reached at the 25th of February. Shortly after, almost all the other branches in the "minimum wage area" (characterized by having both central and local wage negotiations) reached agreements, including construction: 3F (constructors, bricklayers, unskilled workers) on the 28th of February, TIB (carpenters and joiners) on the 28th of February, Electricians on the 2nd of March, Blik & Rør (plumbers) on the 4th of March. And the painters on the 8th of March. After that followed a long stalemate in the "normal wage area" (only central wage negotiations), primarily the transport sector. But an agreement was reached through help from the conciliation officer at the 25th of March. All agreements have a duration

of 3 years, commencing at the 1st of March 2007, terminating on the 1st of March 2010.

Some of the main results for the construction sector: A rise in labour market pension from 10,8% to 12,0% of the wage (the employers pay 2/3 and the employee pay 1/3). The coverage of labour market pensions is widened, so that every worker of 20+ years of age and any sort of labour market experience for at least 6 months – including experience in other countries – is now covered (hence about 98% of the construction workers will be covered). A rise in weekdays/holidays payment from 5,75% to 6,90%. A significant rise in training and further education paid by the employer. Rise in sick pay from 120 to 130 kr. (= 17,5 €) the first 4 weeks. Widening of parental leave with a further 3 weeks earmarked for the father (payment rise from 120 kr. to 130 kr. = 17,5 €). Senior policies: Possibility of a 30 hours working week instead of 37 hours for 60+ aged workers with a partly compensation in wages. Wage rise for pieceworkers of 3 x 3% during the term. Wage rise for apprentices of 3 x 3,5%. And finally a rise in the minimum wage of 8 kr. / hour during the agreement period (about 1,08 €). Furthermore there are some specific agreements from trade union to trade union, e.g. the plumbers have got an employer-paid insurance covering health and physio treatments etc.

The bottom line: The centrally agreed collective bargaining results guarantees a total wage rise of 3,7 to 4,0 % per year as a minimum. But through the local wage negotiations, this result surely will be lifted to a level closer to 5,0% per year. With an inflation in the range between 1,8 and 2,0 %, the estimate is a rise in real earnings (at least in 2007 and 2008) of about 3,0% per year, which in historic context is pretty high after Danish standards.

The ballot: All the collective agreements in the private sector was balloted in one joint pool by around 600.000 trade union members. The result was published at the 30th of April – and it was by no means an easy ride, considering the high expectations. The total participation in the vote was a mediocre 37,1% - of which 55,4% voted yes. Most unions had very clear yes majority in the range between 65 and 80%. But the biggest of them all, 3F (The Union for Unskilled Workers) voted no with a vast majority of 63%, which of course leaves the whole trade union movement with a serious issue to address in the years to come, before the next private sector collective bargaining in 2010.

Reviews

Wolfgang
Richter,
Fachhochschule
Dortmund

Gute Arbeit für alle: Illusion oder Programm?

(Good Work for All: Delusion or Programme?)

Denknetz Jahrbuch 2006, Zürich 2006, 17 Euro.

Thinknet (Denknetz), founded in 2004, is a group of Swiss left-wingers in academia, trade union and political movements determined to criticise dominant conditions in the interests of practical change and to put forward ideas concerning the orientation of political practice. No doubt, these are ideas from the left, because there is no other way of developing a democratic perspective. The group uses all forms of discourse, including yearbooks in which it attempts to perceive and describe relevant social and economic, that is present social trends of the year. A number of authors - Hans Baumann, Beat Ringger, Ruth Gurny - discuss the subject 'Equality' again in the second (2006) yearbook, in order to maintain continuity and to link with the new subject, 'Work – good and for all!'

The new yearbook raises the question: "Good Work for All: Delusion or Programme?" The debate on this question constitutes the main part of the book, drawing on a conference of the group on this subject held in May 2006 in Bern and continuing that discussion further. As an introduction Ingrid Kurz-Scherf provides material from European debates – "decent work for all" (ILO) and "more and better jobs" (EU) – and from actual projects in Germany - e.g. "Initiative New Quality of Work" (INQA) – and finally sets "Cornerstones of Feminist Inspired Labour Politics", which she terms "sociable labour in a cooperative democracy" (p. 45 pp.).

A group of authors from the core of Thinknet provides an answer to its own question in 15 "Theses Good Work for All: a Realistic and necessary Aim" (p. 64 ff.) The answer does not abandon the traditional dispute of the trade union left. It "does not intend to outline ideal constructs in a empty space, but to relate to a society of sharply contrasting interests" and it insists on the need for a shift of power in favour of public potential for manoeuvring and democratisation of economic structures and processes in capitalism. These theses provide a basis for quick critical comments (Mag Wompel, labournet, p. 70 ff.) as well as for a generally wide and thorough debate in terms of subjects and politics (Heidi Stutz, Holger Schatz, Walter Schöni, Bernhard Schmid, in the section

"Work", p. 75 ff., but also Christine Groll, Andres Frick, Serge Gaillard, and Rebecca Schreier in the section "Public Service", p. 111 ff., and finally also Heiner Flassbeck and Friderike Spieker/Beat Ringger in the section "Political Economy", p. 147 ff.).

For the sake of completeness two essays, framing the subject and not without intrinsic meaning, need to be mentioned. At the beginning Josef Lang notes the deficits of the Swiss left with regard to "the long global war" (p. 5 ff.) and at the end Urs Marti asks in a philosophically mischievous way: "What do the neo-liberals know?" (p. 216 ff.)

It is a particular merit of the yearbook to confront leading 'general' but in no way abstract theses with 'specific' elaborations of the subject. In a simple and at the same time cunning way this allows contradictions between both levels to be discovered and reflected upon, lifting both the general and the specific to a higher level of common understanding. Marx is rarely quoted, but his way of thinking is applied. This is a useful procedure allowing us to join with those of the Swiss (and European) left aiming at practical change and to interact with them. The book is to be recommended to those who seek to do this.

Projects

Neal Evans,
AMICUS

The Supply of Skilled Operatives to the European Construction Industry and the Role of Collective Agreements

Introduction

Few politicians or academics would contest the fact that the global market in the movement of capital and production is becoming an increasing factor in economic development, so, how are such developments translated into the construction of the built environment of a nation state?

What makes the construction industry unique in posing such a question is the simple fact that (aside from a relatively small scale market in pre-fabrication) the built environment infrastructure cannot be simply imported on a container ship from China or elsewhere and the construction industry is one of the most transient and labour intensive. For the protagonists of the free market the solution is simple, if the work cannot be moved then move the workers.

Whilst anecdotes of 'Polish builders' are almost part of contemporary UK folklore, this is unlikely to be a long term phenomenon, leaving a serious gap in the supply of skilled labour needed by the UK. Especially when we consider that in the first four months of 2007 the output of Polish construction companies employing more than nine people rose by an average of 50.4%¹ whilst the economy is seeing growth in Gross Domestic Product (GDP) of 7.4%²

Collective Agreements in Construction

Trade Unions and enlightened employers believe that collective agreements can provide the framework for developing the relationships between workers and employers that will facilitate ongoing improvements in productivity to the benefit of all stakeholders. This position has been supported by independent and objective research such as the Baker Mallett report³.

The experience of the UK construction industry is a prime example of this. In terms of a flexible and transient workforce, it is unlike any other aspect of the UK economy. The continuity of terms &

conditions of employment covering all signatory employers to the collective agreements provide for a flexible and transient workforce, whilst ensuring that workers have the required level of relative 'job security'. In addition the collective agreements also include a number of benefits (provided by industry regulated independent bodies) which ensure that workers remain within the industry.

The Posted Worker

When making the case that UK employers should not allow themselves to develop a long term reliance on migrant labour to fill the skills shortages in the industry, we need to be clear on the source of such labour. Any perception that each and every migrant worker employed in the UK construction industry has arrived under their own steam on a discount charter flight from Eastern Europe is a severe misapprehension and belies the scale of the issue.

It also undermines the scale and significance of the industry to the European economy. According to the latest figures from the European Construction Industry Federation some 26 million workers⁴ in the EU depend either directly or indirectly on the construction industry. Across Europe a vast number of workers are being 'posted' in effect by their employers who have won contracts in an ever expanding 'free market'. The issue for Trade Unions is clear; such developments should not undermine the terms & conditions of employment in the country where the work is being carried out.

The UK Construction Industry

The industry over the past 7 years has had the most sustained period of growth in decades. This development shows little sign of abating, with industry commentators observing, "UK construction boom to continue"⁵. Research predicts that an annual average requirement of some 87,590⁶ additional skilled workers is essential to meet this demand into the medium term.

The stereotypical image of construction as an industry and the perception of (at best) tenuous employment does nothing to recruit or retain operatives into the industry. Seasoned workers appreciate the cyclical and transient nature of the demand for their skills, but the increasing lack of opportunities for direct employment is a real threat to the long term growth and stability

of the industry.

This raises concerns about the growing influence of the employment agency. For example 77% of the mechanical & electrical operatives working on the Emirates Stadium in 2006 were agency staff⁷. These organisations are devoid of a long term commitment to the industry, and only serve to drain away funds that would be better invested in initiatives to tackle the growing skills shortage. Twenty years ago the electrical contracting industry alone recruited 5000 apprentices a year, this figure is now closer to 2800 and we are informed that, “many major M&E firms have abandoned apprenticeships in favour of agency labour”⁸.

International Comparators Finland

Comparisons with the Finnish construction industry are useful on two counts. Firstly the fact that migration of workers into the Finnish economy is a relatively new phenomenon. In 2005 only about 113,000⁹ non Finnish citizens actually lived in the country with by far the largest groups being Estonians and Russians. Secondly, we should consider the relative strength of Rakennusliitto, the Finnish construction trade union. Estimates suggest that trade union density in the Finnish construction industry (consisting of some 80,000 workers at 6% of total the workforce) is currently in the region of 80%. Despite this apparent position of strength Rakennusliitto is far from complacent about the application of and adherence to national collective agreements.

In 2005 Rakennusliitto agreed with the employers’ organisation RT (The Confederation of Finnish Construction Industries) the term of a new collective agreement to cover the period from the 21st March 2005 to 29th February 2008. Within the new agreement was a special point on the use of foreign labour, which included the introduction of identity and permit checks along with the application of collective agreements. The strict adherence to collective agreements, enforced through both Government inspections and direct Union action provides the framework for a stable supply of skilled operatives into the industry and maintains a high level of retention of such workers. This stability allows Finnish construction companies to look forward to durable growth, not undermined by large scale skilled labour shortages.

Poland

In the same way that the prospect of staging the Olympics & Paralympics of London 2012 has sought to focus the mind of politicians, Unions and employers alike on the current state of the UK construction industry, so the recent announcement that Poland (along with Ukraine) will host the 2012 European football championships has led many to become seriously concerned about the impact of the mass migration of workers out of Poland since its accession to full EU status.

Analysis of the Polish construction industry provides a clear picture of future developments. Last year salaries in the Polish construction industry grew by 9%; this is expected to be at least matched again in 2007 and 2008. Working solely on the economic model of supply and demand and considering the potential growth in the Polish construction industry, these developments if only into the medium term will have two significant effects (as the margins of financial reward get closer) First, to reduce the flow of skilled construction operatives leaving Poland and secondly, to increase the retention of workers in the Polish construction industry. There may well be a less obvious long term effect, that workers are sucked in from other European construction industries as their domestic supply of contractors fails to meet the increasing demand, increasing the predicted shortages of skilled operatives.

The Polish authorities seem reluctant to let the forces of supply and demand alone dictate such developments. That said, their solutions are unsustainable. In 2007 Poland's Labour Minister, Anna Kalta, signed a memorandum of understanding with the Indian government to entice workers to the country. Addressing a meeting of workers in Delhi she freely admitted, "The need for labour is particularly acute in the construction sector in the run-up to Euro 2012, and we need you"¹⁰. Despite some workers claiming to view this as an opportunity to 'see the world' such developments are merely a case of supply and demand economics. Indian workers are being enticed, ironically, by the soaring wages that could eventually result in the domestic workforce returning from its current exile in the construction industries of Western Europe. This initiative appears even more ill conceived when we contemplate the fact that in 2005 the unemployment rate in Poland was 17.7%¹¹ whilst the demand for construction workers in India is estimated to have doubled in the last ten years¹².

Conclusion

With the expansion of the European Union and the increasing influence of the global market, infrastructure developments will ensure increasing output for the European construction industry at least into the medium term. Due to its labour intensive nature this industry will require increasing levels of skilled construction operatives.

Meeting this demand will be an uphill struggle for an industry that is characterised by transient employment. Reliance on free market forces or a belief that any increased demand will be met by a layer of third party agencies is unsustainable.

Only adherence to 'fit for purpose' collective agreements that have the equal participation of all industry stakeholders can meet this challenge. Not only do such agreements provide a stable employment framework that will retain skilled operatives in the industry, they also provide the required structures for the increasing levels of apprenticeships and adult training programmes, which are the only sustainable solution to address the projected skills shortages.

-
1. Polish Construction Review – PMT Publications June 2007
 2. Polish Construction Review – PMT Publications June 2007
 3. A Study of the Implementation of the Major Projects Agreement on the BAA Terminal 5 Project – 2005
 4. www.fiec.org
 5. Contract Journal – 27th June 2007
 6. Construction Skills Network Report 2007
 7. Building Magazine – 14th July 2006
 8. Electrical & Mechanical Contractor – May 2006
 9. Finnish Ministry of Labour 2005
 10. The Guardian – 25th June 2007
 11. www.worldbank.org.pl
 12. Contract Labour in the Construction Industry in India – Vaid 1999

Calendar of events

Invitation:



CLRdenmark will organise a debate on 20th November.

Two topical subjects will to be discussed at the meeting: the East European workers' contributions to the Danish economy and the workers' present living conditions in Denmark. Both subjects are based on new research results.

The meeting is in Danish.

Programme:

13.00 - Opening by **CLRdenmark**

13.10 - **East European workers' contribution to the Danish Economy.** By Martin Windelin who will present the study, see also: <http://www.aeraadet.dk/media/filebank/org/kap5-ot-2007-mw.pdf>

13.30 - **CEE workers and consequences for collective bargaining.** By Søren Kaj Andersen, director of FAOS Copenhagen University See the background paper: <http://faos.sociology.ku.dk/dokum/fnotat83.pdf>

14.00 - Coffee break

14.30 - Debate

15.45 - Closing by **CLRdenmark**

20. November 2007 from 13.00 to 16.00.

Venue:

Dansk Byggeri, Byggeriets Hus, Kejsergade 2, st., 1155 Copenhagen.

Participation is for free via Karin Viuf, kav@danskbyggeri.dk

Please register before the 16th of November.

www.clrdenmark.dk

LABOUR IN 'NEVERNEVERLAND'?: Regulating the situation for migrants in the British construction industry

**Friday December 7th, 10.30am - 4.00pm, Room M323
followed by: CLR GB AGM 4.30pm – 6.30pm**

JOINT WORKSHOP: University of Westminster (Westminster Business School & School of the Built Environment) and Northumbria University (School of the Built Environment) in association with the European Institute of Construction Labour Research (CLR)

University of Westminster, 35 Marylebone Road, London NW1 5LS (just opposite Madame Tussauds and nearly opposite Baker Street tube station)

10.30 Registration and coffee

10.40 Welcome

Professor Linda Clarke **University of Westminster**

10.45 What is happening?

- **Migrants or foreigners?** *Joern Janssen - CLR*
- **The trade union view** *Bob Blackman - Unite (TGWU) Construction*
- **The employers' view** *Gerry Lean - Construction confederation*

11.45 What research is going on?

- **Migrants in East London** *Phil Cohen - University East London*
- **Migrants in the NE** *Bernard McCauley - University of Northumbria*
- **the agency role???** *tbc*

12.45 Lunch

1.45 What is being done?

- **Health & safety** *Senior Partner - Urwin Mitchell Solicitors*
- **Wage Transparency** *Bernard McCauley - AMICUS*
- **organizing/recruiting** *tbc*
- **RIFT** *Jan Post - RIFT*

3.00 Discussion: What can be done? Led by: tbc - MP

- **across Europe** Jan Cremers - CLR

- **between Poland & UK** tbc

4.00 TealCoffee

4.30- 6.30 CLR GB AGM

If you would like to attend, please contact:

Linda Clarke: 0207 911 5000 x 3158 or clarkel@wmin.ac.uk

Or Ian Fitzgerald: 0191 227 4362 or ian.fitzgerald@unn.ac.uk

Editor

Jan Cremers
Phone: +31/20/525 72 16
Or +31/6/53 43 86 79
clr@mjcprou.nl

Review Editor

Jörn Janssen
Phone: +44/20/77 00 78 21
Joern.janssen@btinternet.com

Layout and Production

Frank Leus
Phone: +32/2/227 10 41
fleus@efbh.be

Contact and Orders

CLR-News
c/o Frank Leus
EFBWW
Rue Royale 45
B - 1000 Brussels
Phone: +32/2/227 10 40
Fax: +32/2/219 82 28

CLR News 2/2007 ISSN 1997-1745