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CLR News

The real economy in crisis

CLR

European Institute for
Construction Labour Research

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Note

from the editor

Jan Cremers,
08-06-2009

Heavy days are here again with the results of the elections for the European Parliament. During the last period the European Parliament was already dominated by a conservative majority, especially when it came to regulation of our financial markets and to the restriction of the work of financial activists like hedge funds and private equity. However, in the cooperation between the socialist group, the greens and an important fraction of the liberals and christian-democrats it was once and a while feasible to come up with fair and reasonable social legislation. In that respect the European Parliament was far more progressive than whatever national parliament.

The landslide of last week has changed this perspective. We face a more conservative European Parliament, with a populist right that is more euro-sceptic and more nationalistic than before. The low participation rate was a huge problem, as voters simply didn't see the relevance of these elections. They did not see the political choices at European level - perhaps not surprising since these elections were mainly fought over national political disputes. I have participated in some 25 debates in the Netherlands and it was almost always about

local and/or national issues or about items outside the competence of the European Parliament. Also striking was the fact that the Dutch anti-Islam party that had such a great victory in the elections never showed up in these debates. They restricted themselves to a giant media exposure full of prejudices in the last week and the media served them well.

The European alternative formulated by progressive politicians was not visible and by most commentators seen as too "complicated". But the populist solution is no solution as it ignores the origins of the actual crisis. We are in the middle of a recession, and the real economy is suffering. Unemployment will increase and if nothing happens we will have 27 million unemployed next year. Wage earners are not to blame, but they may end up paying the price.

Europe needs more and better-coordinated investment in new jobs based on a strong European recovery effort.

Also inside CLR we have started to reflect on a new strategy and fresh ideas.

The agenda for decent work and against the dismantling of our welfare states needs to be strengthened. In this issue of CLR-news you will find some of the thoughts we discussed in a

preliminary way during the seminar linked to our Annual General Meeting in April 2009. That debate was the starting point for a more in-depth conference planned for October 2009.

We are very pleased that the EFBWW secretariat is willing to take the lead in this initiative and we invite our readers to actively participate in the coming debates.

Join us for a strong stand.

Jörn Janssen

Paper for CLR-Seminar
"Construction Labour after the Crisis of Neo-liberalism",
2 April 2009

A New Stage in Wage Relations after the Crisis of Neo-liberalism

Starting with a question: Is the present crisis of neo-liberalism a stage in a cycle or in a process of historical change? The predominant – conservative – response is, it is a co-incidence of crises of cycles, perhaps of all four at the same time:

3 - 5 years' cycle according to Joseph Kitchin,
7 - 11 years' cycle according to Clement Juglar,
15-25 years' cycle according to Simon Kuznets,
45-60 years' cycle according to Nicolai Kondratieff.

No, none of these: It is the crisis of an eighty years' cycle. As it is Wall Street again let us call it the Wall Street Cycle (WSC).

The idea behind all these cycles is, that the economic system has lost its balance and will be readjusted as a result of the crisis – 'set back on track'. This is the view of mainstream economists and national governments. I propose instead to approach the crisis from an historical point of view.

In history developments do not move in cycles in the sense that they repeat themselves periodically. They are irreversible. A historical crisis is rather a clash between new and old or the collapse of an old under the impetus of a new regime. Relating to the present crisis, we must decide whether we want to restore the old or use the opportunity to build a new regime and decide what regime this shall be.

I advocate the historical approach as a means to understand dynamics, change, or transformation in time. There is no way to understand change except in relation to a given space of time. The only pitfall is that we tend to measure change on a stable scale, whilst the scale itself is changing. I shall demonstrate this problem by way of an example which is at the heart of the Institute for Construction Labour Research (CLR).

CLR was founded in two steps, as an informal network in 1993 and as a legal body in 1996. Between these two dates, on the 22nd September 1994, the Directive 96/71 on the 'Posting of Workers' was

adopted by the European Commission. Ten years later an interim report on the “implementation, practical application and operation” in the construction industry by Jan Cremers and Peter Donders was published as CLR-Studies 4 in 2004¹. This report was published half-way between the deadline for implementation of the directive in 1999 and today. It had primarily been looking at to what degree the directive had been enforced in European Union member states. Given large areas of non-compliance, a “Joint Statement” of the social partners concluded that “Efficient control is essential”². Five more years have elapsed since and the situation has been deteriorating. The European Court of Justice has played its part in this process by restrictive interpretations of the directive, as documented most recently in CLR-News 3/2008³.

This example may serve to illustrate the change of scale in history. Initially attention was focussed on the level of implementation and enforcement of the directive and one may observe a decline. By contrast, if we focus on “Shifting Employment, undeclared labour in construction” of 2006, CLR-Studies 5⁴, we observe a rise in employment not covered by standard conditions, which erodes the basis for the enforcement of a standard wage, as intended by the Directive on ‘The Posting of Workers’. These two related developments, measured on separate scales, raise a dilemma. Is there any chance to enforce the ‘Posting of Workers’ Directive’, unless the shift in employment relations can be reversed? Is this shift simply a deterioration or rather a transformation of wage labour relations, which may even be heading towards a better regime? How can we identify the nature of transformation? I suggest taking a wider perspective to assess the present process of change.

Depending on the span of historical time, whether years, decades, centuries, or millenniums, different features of wage labour will come to the fore and determine our perception of the present. Keeping this relativity in mind, I suggest a two-front approach. The wider perspective will span about two centuries, that is from the French Revolution, the shorter perspective will span about six decades, that is from the resurrection after World War II up to date. From both of the two perspectives and their respective social impetus I shall derive aims for the future.

A) The French Revolution proclaimed ‘freedom, equality, and fraternity’ as its essential objectives. For wage labour equality was probably the predominant issue. It triggered the socialist movement and further revolutions in 1848, 1917, and 1918 to abolish political

power based on property of land- and capital. What has been achieved for wage earners over two centuries is equality of legal status, for instance, as social partners in wage determination. More recently also racial and gender equality has become legally enacted virtually world-wide. What has not been achieved, though, is economic equality. On the contrary, in the recent three decades, under the auspices of neo-liberalism, economic inequality has reached astronomic proportions, a climax since the fall of feudalism. This inequality of remuneration and wealth has become a universal phenomenon between levels of employment, jobs and skills, as well as countries and continents. It has reached a point of crisis, taking the form of a financial crisis.

B) The resurrection in capitalist in opposition to socialist Europe after World War II was associated e.g. with the German 'Social Market Economy' or the British 'Welfare State', the latter inspired by the Beveridge reform programme promising social security based on 'full employment'⁵. The deal between capital and labour was the concession of private property rights for capital against participation in the increase of productivity for labour. However, neither in Britain nor in any other country provisions were made to guarantee full employment. The same as sickness and old age, unemployment came to be covered by social benefit or similar arrangements. Despite various provisions to cushion the process, employers remained free to decide whether they employ, offer precarious contracts, or make workers redundant. The permanent threat of social discrimination and exclusion has remained omnipresent for wage earners and, since the collapse of the Socialist State, widely been used by employers to terminate the consensus on wage increases in step with the rise of productivity. Both unemployment and the decline in real wages – whether under collective agreement or not – have contributed to the explosion of wealth based on 'financial products' rather than productive assets.

Equally, an essential component of the post-World War II resurrection was the foundation of the European Community for Coal and Steel in 1951, the European Economic Community in 1957, and the European Union in 1993. As a European labour market developed in the member states minimum standards for labour relations were eventually agreed by the European Social Charter of 1989⁶ and confirmed by the Maastricht Treaty on European Union in 1992. This is the framework also for the Posting of Workers Directive.

Whether under the perspective of two centuries or six decenniums, the transformation of labour relations over these periods reveals progress on the one hand and regression on the other. Equality of legal status, social security for wage labour, and the opening of the labour market have improved the living conditions of this social category relatively as well as absolutely. But the dispersion of levels of earning and property associated with social exclusion in the lower levels, and the discrimination of migrant labour are outrageous violations of social justice, which call for an adequate response from those who have lost out in this development. Based on the above historical abstract of the transformation of wage labour I propose three main strategic strands for labour politics after the crisis of neo-liberalism.

1. All remuneration of labour and regular earnings – I would suggest to call them salaries – ought to be included in generally binding scales of minimum rates. These scales ought to be determined and legitimised by democratically elected bodies representing all categories of salaried.
2. From the age of 16 all salary earners would be either in work or in vocational education and paid according to their position in the scales of qualification. This excludes the status of unemployment. Earnings based on property such as interests and dividends ought to be negotiated between representatives of property owners such as shareholders etc. on one side and of salaried employees on the other.
3. Scales of salaries relating to defined regions, countries, economic zones etc. ought to be coordinated and gradually brought into line. The European Union should be targeted as a first step. As long as differentials persist the scales of the place of work are to be applied (Posting of Workers Directive).

It is important to discuss such strategic orientations in order to stop divisive infighting and regressive movements among the victims of the economic crisis.

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1. Jan Cremers and Peter Donders (eds): *The Free Movement of Workers in the European Union*. CLR-Studies 4, Reed Business Information 2004.

2. 'Joint statement as formulated by the European Federation of Building and Woodworkers (EFBWW) and the European Construction Rederation (FIEC), in *ibid.* pp. 138-141.
3. See Charles Woolfson, 'Where next for trade union rights?' (pp. 5-10) and Jan Cremers 'Conflicting interpretations of the Posting of Workers Directive' (pp. 10-16).
4. Jan Cremers and Jörn Janssen: *Shifting Employment: undeclared labour in construction.* International Books 2006.
5. William Beveridge: 'Full Employment in a Free Society'. George Allen & Unwin, London 1944.
6. 'European Union Charter of Fundamental Rights', signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council meeting in Nice on 7 December 2000.

Hans Baumann
22 March 2009

Some reflections for the CLR-Seminar "Construction Labour after the Crisis of Neo-liberalism", 2 April 2009

Crises, Fiscal Policy and Construction Labour

The impact of the economic crisis and the economic recovery programs on the construction sector.

1. The impact of the financial and economic crises on the construction sector differs from country to country. There are two main groups of countries:
 - Countries which experienced a housing bubble and a booming construction sector, growing until 2007 and followed by the collapse of the real estate market and the credit and financial sector (US, UK, Ireland, Spain, Hungary). These were the countries with high trade deficit and a high level of private and public debt. Their construction sector is already in a deep crises, caused by a decline of the housing and credit market.
 - Countries which were hit by this breakdown as a secondary effect, like big parts of continental Europe and Asia. In a first round they experienced an important impact on the financial sector (Switzerland, Germany, Benelux). In a second round the export sector was hit by the crises. In a third round the domestic sector, included the construction sector, declines or will decline.

2. Impact of the financial and economic crises on the construction sector in some countries 2008/2009:

USA	↓
UK	↓
Spain	↓
Ireland	↓
France	↘
Germany	↘
Benelux	↘
Austria	→
Switzerland	→

The longer the economic crisis persists, the deeper the impact on the construction sector will be: The latest forecast of Goldman Sachs estimates the decline in construction activity in Europe by -13% already in 2009. This would imply an important loss of employment in the European construction sector and a continuing and growing pressure on working conditions. In Spain, e.g., the overall unemployment rate will rise up to 16% this year, other forecasts even expecting 20%, a great number of the unemployed being construction workers. After an estimation of IMF, the worldwide number of unemployed will rise from 50 Million in 2007 to 230 Million this year!

3. During the last months governments have tried to stabilize the financial sector and announced economic stimulus and recovery programs. Under the pressure of the economic crises, governments of different political colours seem to abandon quickly the path of neo-liberal deregulation, turning back to Keynesian fiscal policy.

State intervention up to now did not only contain elements of fiscal policy, but included the following five levels of intervention:

- Stabilizing the financial sector (nationalization of banks, mortgage institutions and insurances, creating “bad banks”, states credits, re-regulation of the financial market). On this level enormous amounts of money were spent (US: more than 1000 Billions USD, Switzerland one tenth of the GNP, only for UBS)
- Monetary policy (lowering interest rates, increasing liquidity)
- Public investment programs, deficit spending (infrastructure etc.)
- Lowering taxes, stimulating private consume
- Redistribution of income, programs against poverty, re-regulation of labour market (as far known only in Obamas US program)

4. In the magnitude and the content the stimulus programs differ largely from country to country, being more or less “Keynesian”. Not all of these levels of intervention have the same impact on the construction industry and the construction labour market:

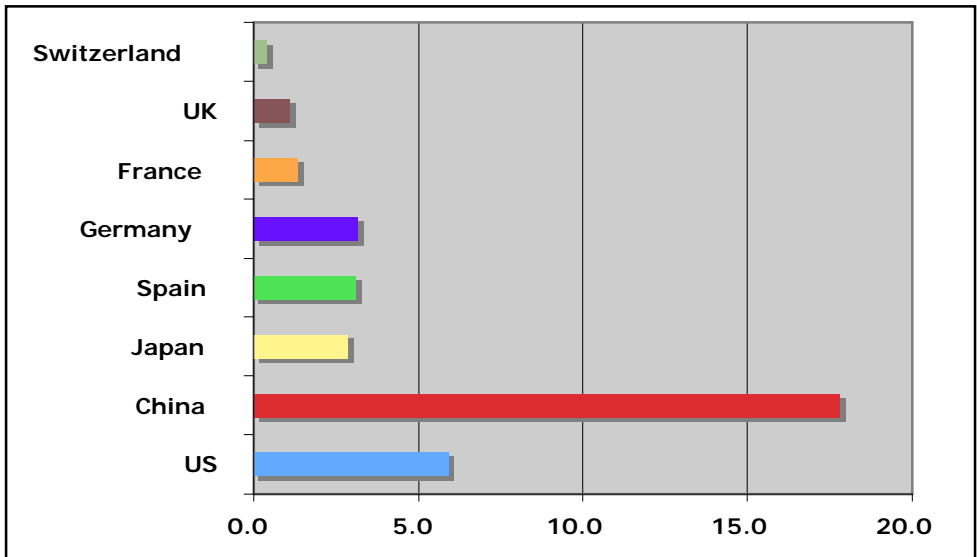
Level of intervention	Impact on construction
1. Stabilizing financial sector	X
2. Monetary policy	XX
3. Public investment programs, infrastructure	XXX
4. Lowering taxes, stimulating private consumption	X
5. Redistribution of income	XX

The deepness of the crises in the construction sector and the loss of working places will highly depend on the magnitude and content of the stimulus and recovery programs, the typical Keynesian instruments of level 2 and 3 having the largest and fastest influence on the construction sector.

5. The economic stimulus programs differ also evidently regarding to the total amount of public spending. The US is on top with about 620 Billion Euro (only level 3 and 4), followed by China

with a giant program of 440 Billion, then Japan and Germany with 95 respectively 80 Billion. However, when talking about the impact on the economy as a whole or on the construction industry, not the absolute but the relative amount of public spending is relevant:

Stimulus and recovery programs in % of GDP



Sources: UBS Economic Outlook

In this respect, China is with a proportion of 18% of GDP top, followed by the US with 6%, Germany, Spain and Japan with around 3%, the other countries being far back.

- Directly relevant for the stabilization of employment in the construction industry will be the amount of spending in infrastructure, public buildings, energy saving and environmental projects. US and Chinese stimulation programs show the highest rate of these investments with between 40 and 50% of the program. In Germany public investment projects reach only between one fifth and a quarter of the program.

Taking the G-8 countries and Spain together, the fiscal programs are reaching an amount of 1100 Billion USD, containing the following areas:

Stimulus and recovery programs in G-8 countries (+ Spain)

	In Billion USD
Lowering taxes, stimulating private consume	460
Infrastructure	180
Transfers to local authorities etc.	130
Stimulating private enterprises (car industry etc.)	120
Energy saving and environmental projects	65
Public buildings and private housing	50
R&D, health sector	60

Outgoing from these figures, one can estimate that in these countries between 300 and 400 billion USD will go to projects, which are directly relevant for the construction industry.

7. There is no doubt that fiscal policy and “Keynesian” deficit spending will help to stabilize the construction sector, depending on how high the proportion of this part in the stimulus program in the different countries is. In most countries the construction industry will be the economic sector which profits more and quicker from these programs than other sectors. Only in a second round, the other sectors will profit from the economic multiplier effects.

But are these interventions sufficient to stabilize the employment in construction and to avoid lowering the standard of wages and working conditions as a whole? Some critical points are:

- The significance and deepness of the crises: Is the magnitude and the scope of the states interventions sufficient?
- The global character of the crises: Are national programs adequate or is there a need for a new global financial and economic system (“new bretton woods”)

- One important reason behind the crises was the unequal distribution of income and wealth. An economic policy has to take this into account and correct the mislead development of the three last decades, e.g. by minimum wages (maximal wages?), tax policy, labour market policy.

Productive investment versus short term cashing.

The erosion of the real economy

In the analysis of the actual financial and economic crisis, speculative banking and play with uncovered loans are often seen as the starting point of the economic meltdown.

However, the erosion of our economic system is probably much more related to the rising income gap and the increasingly unequal distribution of our wealth, combined with a strong deregulation agenda that served the super rich. In that respect the neo-liberal agenda has made it very clear that there are winners and losers. Deregulation nourished a game of fantasy that money can create money. This is one of the reasons why the economic crisis cannot be seen as an unavoidable law of nature with only American origins.

The introduction of free movement principles in the European Union created an attractive open market for businesses. Along with the removal of the internal borders in Europe, the Member States and the European Commission started to work out an unrivalled deregulation agenda. At the start there was at least lip service to a corporate governance model with a well-balanced division of power between the different stakeholders. Capital owners, management and labour cooperated in a productive environment and kept the real economy going. But this engagement and involvement of the different stakeholders within a company has completely shifted in the last two decades. Globalisation of an important part of the business environment has brought spectacular takeovers, fusions, mergers and splitting ups, and financial market liberalisation has created a global field for profit. A key question in this development is nowadays where and in whose hands the power centre lies in a company as the connection between the ownership relations and the management structure has been unloosened. Activities of financial investors have further

Jan Cremers

Introduction for
the CLR-
Seminar
"Construction
Labour after
the Crisis of
Neo-liberalism",
2 April 2009

separated ownership from the risks taken. Modern management that is job-hopping to the places with the best bonuses related to the short term stock exchange rate has replaced the classical entrepreneur on top of the firm. The board of directors, the supervisory board or council of commissioners, site and country management, works councils, trade unions and shareholders are part of a power struggle of corporate control that leads them even into the courtroom.

The use of performance related stock options for company leaders has definitely brought them in the camp of the activist shareholder. It is the day's rate that counts, not the long term performance and sustainability of the company. The trade unions have been confronted with this shift in the power balance that has contributed to an excessive risk and debt culture. We in fact went through a period of short term cashing that is completely at odds with the long term interest of our economy. In the actual context of anonymous capital investors, there is no longer commitment to the product or brand, the social climate in the company, employment issues or even the existence and survival in the long run of the company. As a consequence, some target companies of the 'new' investors had to meet unreasonably high standards of profitability. The trend to move away from productive investment towards the 'alternative investment industry'-based, value-seeking investment has had a serious impact on industrial and labour relations, for employment and labour market developments, and for the employee representation needed.

How to turn the tide?

Trade unions and social-democrats were among the strongest defenders of the introduction of the internal market. This was against the background of a strong plea to create a climate for long term and sustainable productive investment. However, over the past few years their voice has been outvoted by a conservative political majority that simply wants to stick to the neo-liberal agenda. For instance, proposals to control the activities of private equity and hedge funds could not be finalised in the European Parliament because of strong opposition from the conservative groups in parliament. It took till the end of 2008 to finalise a watered down parliamentary position and the European Commission still refuses to take any substantial action.

For trade unions at least three tracks have to be combined as part of an offensive strategy:

- First, a clear employment and decent work agenda,
- Secondly, the restoration of the stakeholders' model,

- Thirdly, the fight against the excessive and speculative risks through regulation.

Otherwise the recovery of our economy will not lead to structural change in a system that is nowadays based on an agenda that divides between winners and losers.

For the CLR-network the challenge is to come up with an analysis that can contribute to the way forward. The key question is whether it is possible to formulate new elements of a strategy that serves the workers in our industries. During the seminar in Brussels I outlined already several initiatives that have to be envisaged:

- we need to work out a policy that can put an end to speculative share transactions like short selling and that eliminates the incentives for short term cashing,
- there has to be a ban on performance-related bonuses as stock-options, in order to break the alliance between management and activist shareholders,
- the regulation of financial transactions and debt-related take-overs has to be restored,
- workers' voice has to be strengthened and we will have to examine new ways of promoting the stakeholder model,
- strengthening of the Rhineland philosophy based on labour legislation, collective bargaining and a fair distribution of the wealth created by productive investment and the labour process.

In practical terms there is much more to do (supervision of the financial institutions, tax havens, rating agencies, remuneration practices).

Let's get moving!

Discussion

Hans Baumann,
Economist,
Switzerland

Worker protection or freedom to provide services?

The European Court of Justice and the European Commission are jeopardising social protection in Europe

Obviously, the EU Commission would like to reintroduce through the backdoor the Services Directive ("Bolkestein Directive"), successfully opposed by the Left and the trade unions in 2006, by undermining the principle of the Posting of Workers Directive and the principle of "equal work for equal pay at the same place" in tandem with the Luxembourg EU judges. In combination with other deregulation projects, such as the planned watering down of the European Working Time Directive, of all things in a phase of recession, this would give enormous impetus to wage and social dumping and would also have corresponding effects on the system of collective protection in the individual countries.

European integration between market liberalisation and social dimension

Since its establishment in 1958, the European Community was first and foremost an economic integration project. The social and employment policy played a subordinate role until the 1970s. The first post-war crisis and the increase in social conflict then changed the situation and under the influence of social-democratic governments, a social policy action programme was adopted for the first time in 1974, but petered out again in the course of the rising neoliberalism of the 1980s. Nevertheless, important achievements originated from this phase, such as the EU Directives on equal treatment of men and women as regards working conditions and the right of co-decision of employees in the case of collective redundancies and business takeovers.

The internal market programme with the laissez-faire concept of the "four freedoms" brought Europe-wide deregulation and a strengthening of competition. The EC enlargement to the south led to an increase in the internal location competition and with the strengthening of the economic area of South-East Asia and the liberalisation of world trade, increased pressure on the social standards. The trend in wages started to limp behind the productivity increase and the European social model was called into question.

Towards the end of the 1980s, there was once again a certain reaction. In response to pressure from the trade unions, the European Parliament and the Economic and Social Committee, in 1988 the Commission presented a Community Charter of the Fundamental Social Rights of Workers and an action programme for its implementation. Under Commission President Delors, some points of this action programme were then implemented in the Maastricht Treaty of 1993. In this way, the more intensive wage competition in the internal market and the planned economic and monetary union were to be offset by minimum social policy standards.

The Posting of Workers Directive as an achievement against social dumping

The insertion of this social chapter in the Maastricht Treaty allowed, inter alia, the Directive on European Works Councils and the "Posting of Workers Directive", adopted by the Council in 1996 after long discussions: if workers are posted to another EU country to provide a service, the occupational health and safety provisions and the most important collective working arrangements of the host country must be complied with. The Posting of Workers Directive was an important landmark against the increasing social dumping in services and works contracts and included the principle of equal work for equal pay at the same place. The Swiss Posting of Workers Act and the accompanying measures so important for the free movement of persons with the EU are also based in law on the Posting of Workers Directive and on the case-law derived from it in the EU.

The spirit of the Directive was upheld by the European Court of Justice (ECJ) in several judgments. For instance, the ECJ, for example in the *Rush Portuguesa* judgment, allowed Member States to "extend their *legislation, or collective labour agreements entered into by both sides of industry, to any person who is employed, even temporarily, within their territory, no matter in which country the employer is established*". In addition, in the same judgment, the ECJ confirmed the right of Member States of "enforcing those rules by appropriate means".¹ This shows that in these years, the European Commission and the Court of Justice, in the case of conflicts between freedom to provide services and worker protection, valued the principles of worker protection and non-discrimination more highly than the principle of free market access.

This was to change rapidly in this millennium.

The “Bolkestein Directive” as climax of neoliberal market logic

In the second half of the 1990s, the trade unions in Europe missed out on opposing the strict convergence criteria concerning inflation and indebtedness, which were to make the countries fit for monetary union, with real “hard law” provisions in relation to employment policy or minimum social standards. In this way, the wage competition became keener in spite of the Posting of Workers Directive, unemployment rose and the neoliberal deregulation took its course: in 2000, the so-called Lisbon strategy was drafted, which was to make the EU into the most competitive economic area in the world. Everything else was subordinated to this objective, even the often invoked “European social model”.

It is therefore hardly surprising that in 2004 the European Commission presented a proposal for a new Directive on Services in the Internal Market, which is also known as the “Bolkestein Directive” after its author, the now retired EU Commissioner Frits Bolkestein. Embedded in the Lisbon strategy, the European internal market for services was to be freed of all remaining barriers by the year 2010. The core of the Directive was the so-called home country principle, according to which a service provider in principle is still subject only to the conditions and laws of the country in which his head office is located.

This would in fact have opened wide the doors to de facto abolition of the principles of the Posting of Workers Directive and to wage and social dumping. Formally, the Posting of Workers Directive would have continued to exist. The control possibilities of the State for the enforcement of minimum standards of employment and collective agreements would however have been greatly restricted or transferred to the country of origin(!). This would have made control and enforcement of the locally valid conditions of employment far more difficult, if not even impossible.

Good lobbying by the European unions was still sufficient in 1994 to enforce a usable Posting of Workers Directive. This time, the European Trade Union Confederation had to really mobilise for the first time and organise protest rallies throughout Europe to be heard. In addition, there was the rejection of the new EU Constitution by France and the Netherlands, which reflected great scepticism on the part of the population and finally prompted the Commission, European Parliament and Council to ease the Services Directive decisively.

Bolkestein through the backdoor? The new ECJ judgments

However, soon after this, the Commission announced that it would implement its new, ultraliberal interpretation of the Posting of Workers Directive if necessary also by means of action before the European Court of Justice. Since, with some delay, this idea had also obviously become established in the mindset of the EU judges, it is not surprising that the latter recently delivered four judgments which subordinated the principles of non-discrimination and occupational health and safety to absolute freedom to provide services and strongly relativised the earlier decisions.

The first two judgments were pronounced in December 2007 and related ostensibly to the Scandinavian model of the social partnership in particular.² In the Viking case, the Finnish unions had come out on strike at a shipping company which wished to bypass the Finnish collective agreement by flagging out a vessel to Estonia. In the Laval case, the Latvian construction company Laval had received a contract in Sweden. It was not prepared to negotiate with the Swedish construction workers' union on the conditions of employment in Sweden. Thereupon, the Swedish union organised a strike at the building site to prevent appointments below the level of the Swedish collective agreement. In both cases, the firms took action for compensation. In both judgments, the ECJ did recognise in principle the right to strike for the implementation of better working conditions, but judged the strikes to be "disproportionate" and therefore "discriminatory" for the firms concerned. The momentous significance of the two judgments Laval and Viking, not only for the Scandinavian, but also for the European legal system, was described in detail by Woolfson, Sommers and Thörnqvist.³

In the Rüffert case,⁴ a Polish firm took action against the Land of Lower Saxony, which wished to impose a fine on the firm for non-compliance with the regional collective agreement for the building sector. According to the regional Public Procurement Act, contracts are awarded only to firms which undertake to comply with the respective sectoral agreements. The ECJ was of the opinion that such a provision went beyond the Posting of Workers Act, since the wages in the regional collective agreement for the construction sector are above the generally binding German "posting wage". The ECJ saw this to be a discrimination or a restriction of the freedom to provide services respectively, which is particularly absurd since such public procurement provisions apply

to all firms, i.e. including all domestic suppliers. Rather, such a judgment represents discrimination against domestic suppliers who as in the past do have to comply with the regional collective agreement. However, the ECJ did not go into this at all.

The latest judgment resulted from proceedings brought by the Commission against the Grand Duchy of Luxembourg for infringement of the Treaty.⁵ In this, the ECJ confirms the Commission's opinion that control provisions and terms of the Luxembourg Posting of Workers Act are too strict and go beyond the minimum established by the minimum standards listed in the Posting of Workers Directive. On the basis of the Luxembourg judgment and its restrictive interpretation of the Posting of Workers Directive, it is to be feared that even terms declared generally binding can no longer be applied automatically to foreign suppliers, even though they are binding for all domestic suppliers.⁶

The Commission argued on similar lines in the case of Switzerland, which it is true is not directly subject to EU case-law, but has concluded a bilateral agreement with the EU since 2002 on freedom of movement for persons and its Posting of Workers Act must also correspond to the provisions of the EU Posting of Workers Directive. In this respect, criticism focused mainly on wage controls and the 8-day notification period which firms must comply with for workers posted to Switzerland. However, these are provisions which the Swiss unions absolutely wish to retain so that wage dumping in the construction industry can be prevented.

What is alarming about the new judgments is that, contrary to past practice, the ECJ thereby places the logic of the free internal market above the principles of occupational health and safety and non-discrimination. It cuts decisively into the systems of the national labour and public procurement law and undermines national collective agreements, which may mean a permanent weakening of the overall contract of employment agreements.

Precisely during the crisis: maintain the level of social protection

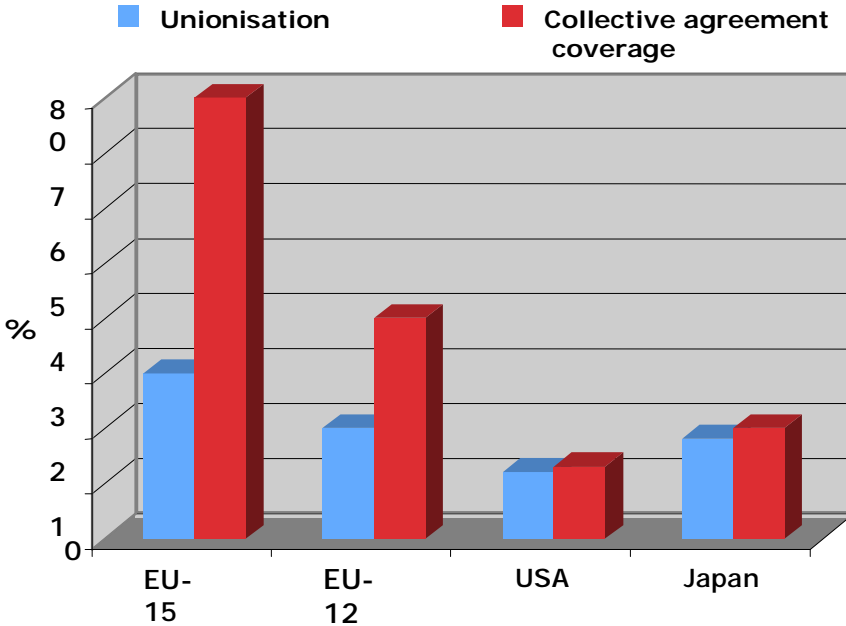
Various trade unions, including the German and Swiss trade union confederations, have contacted the European Trade Union Confederation and proposed a campaign under the motto "equal work for equal pay at the same place" and a corresponding intervention to the European Council of Ministers. The aim is for the

issue of the fight against wage and social dumping and against a levelling-down of social protection in Europe again to be given a high rating and be made a subject of discussion at all levels, which is all the more topical with the crisis developments. After the strikes which took place at the building site of the Lindsey Refinery in Lincolnshire, where at the beginning of this year, Italian and Portuguese workers were employed at dumping conditions, the three European trade union federations EFBWW, EMB and EMCEF adopted a resolution in which, inter alia, employers and EU authorities are called upon to revise the EU Posting of Workers Directive and to formulate it in such a way that it again fulfils its original purpose of granting equal work for equal pay, guaranteeing a high level of protection and excluding discrimination.⁷

At present, at a time when the economic crisis is fully embracing the whole of Europe and has also encroached on large parts of industry, company closures are coming thick and fast and unemployment is rising apace. The EU bodies must now really ask whether their strategy of market liberalisation without frontiers and the watering down of minimum standards is still appropriate. Already, a package of EUR 170 billion has been proposed to the Member States to prop up the real economy and for economic stimulus packages, which is supported by the trade unions.

Neoliberalism seems to have run its course. Keynesian economic stimulus packages have triggered the belief in the self-healing power of the markets. As in 1972 in the first major crisis of the post-war years, this can also now mean another change in trend with regard to the social dimension in Europe. And Europe still has something to lose as at least the basic framework of the "European social model" still exists. Important features of this model, in addition to a relatively high level of social security and welfare, are the highly developed social dialogue, well organised social partners and therefore also a high degree of coverage by collective agreements. Considering the latest figures on this subject, Europe is still not doing so badly:

Figure I: Unionisation and collective agreement coverage



Source: OECD, ETUI-RHES

The degree of unionisation has admittedly declined in most European countries and the differences between the individual countries are considerable. However, on average for the old 15 EU countries, unionisation at 30% is still more than double the level in the USA. The comparison of the level of coverage by collective or overall employment agreements is even more eloquent: this amounts to 80% in the old EU Member States. This means that a vast majority of all employees enjoy collective protection through collective agreements. In the USA and Japan, this coverage is barely higher than the level of unionisation and amounts to only 13% and 20% respectively. An important reason for the high level of protection in Western Europe is that in many countries the possibility exists for the government to declare collective agreements generally applicable, i.e. they then

protect an entire sector and not only the organised employers and employees.

There is a conspicuous difference between the EU-15 and the EU-12 countries, but even the EU-12 countries have distinctly stronger industrial relations and social protection than the USA and Japan.

The level of social protection in Europe is still relatively high compared to that of the other major world economic centres. As a result, Europe should also be better equipped for the economic crisis than other regions.

Undermining this relatively high level of protection of all things now in the name of the absolute freedom to provide services cannot be in the interests of European integration. The trade union movement and the Left must therefore endeavour for a change in trend and show how these important achievements can be maintained. In this respect, it is not a matter of lapsing into protectionism again, striving for renationalisation of industrial relations or restricting freedom of movement for persons. The defence of the social achievements is to the fore, such as above all the Posting of Workers Directive, which if necessary must also be extended accordingly and formulated more clearly. Alongside joint employment policy measures, it is also a matter of urgency to extend the minimum social standards in Europe, especially via collective agreements and accords, which ultimately must be cross-border, and through a pan-European minimum wage system, which benefits above all the low-wage countries and the low-wage sectors and prevents mutual competition based on wage costs.

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1. Case C-113/89, Rush Portuguesa, judgment of 27.3.1990.
 2. Case C-438/05, Viking, judgment of 11.12.2007 and Case C-341/05, Laval, of 18.12.2007.
 3. Ch. Woolfson, J. Sommers, Ch. Törnqvist: Where next for European trade union rights? In: CLR-News 3/2008.
 4. Case C-346/06, Dirk Rüffert, judgment of 3.4.2008.
 5. Case C-319/06, Commission v Luxembourg, judgment of 19.6.2008.
 6. J. Cremers: Conflicting interpretations of the Posting of Workers Directive. In: CLR-News 3/2008.
 7. see Annex, including also an extended declaration signed by six important European industry federations and the ETUC.

The Commission bears a political responsibility for the Lindsey strikes

The recent social unrest and wildcat strikes at the Lindsey Oil Refinery reveal the fragility of the European social model in the wake of the recent European Court of Justice (ECJ) case-law in the Viking, Laval, Ruffert and Luxembourg cases. Indeed, the Court has clearly suggested substituting the fundamental principle of EU law of equal pay for equal work with an anti-social principle of minimum level of pay for equal work, curbing the right to strike, and exposing trade unions to legal challenges and damages when defending the interests of their members.

We have rarely witnessed a more tone-deaf political response to this development, fuelling a social crisis in addition to the current financial and economic crisis in Europe.

Indeed, the Czech Presidency has reacted by convening an EU summit dedicated to protectionism. Mikolaj Dowgielewicz, Poland's Minister for Europe, recently poured gasoline on the fire, claiming that the forthcoming European Council meeting should be about opening up labour markets and that we should not now "weaken EU rules when it comes to the posting of workers". Lord Mandelson, for his part, suggested that striking workers at Lindsey were displaying the "politics of xenophobia". According to Vladimir Spidla, the European Commissioner for Employment and Social Affairs, the judgments of the ECJ do not call into question workers' rights and EU law recognises the variety of industrial relations in the Member States.

We do not intend to respond to these politics of fear, where legitimate social claims of equality of treatment and of equal pay for equal work are consistently being smeared and branded as xenophobic and protectionist. Instead, we would invite our political leadership to go back to basics and study some of the founding principles of European integration and welfare creation. Someone has to step forward and take the political responsibility for the growing social unrest in the Member States of the European Union. In our view, the European Commission can no longer hide from its political responsibility or from the fact that it, to a large extent, has

contributed to and supported the employers' union-busting litigation before the European Courts.

Indeed, the ECJ largely followed the Commission's submissions in the Laval Case, i.e. that any industrial action taken by trade unions to ensure equal pay for equal work would be disproportionate, in so far as it goes beyond minimum levels of pay and the hard core of the Posting of Workers' Directive. Moreover, in *Commission v. Luxembourg* on social public policy provisions, the reasoning of the Court is a rather embarrassing blueprint of the Commission's 2004 report on posting of workers.

Finally, the Commission recently slammed the door on the European Parliament's suggestion in its Resolution of 22 October 2008 on challenges to collective agreements in the EU – adopted by a crushing majority of 474 to 106, and 93 abstentions – that the Commission should not exclude a partial review of the Posting of Workers Directive when examining the impact of the internal market on labour rights and collective bargaining.

As representatives of European Trade Union movements, we intend to hold the Commission and our elected politicians, both at national and the European level, accountable on this issue in the forthcoming elections. We believe that a strong European executive must have the political support of the Peoples of Europe. We believe in the very foundational cornerstones on which the social dimension of the European Union is built – the Spaak and the Ohlin reports from 1956 – namely that structural competition on wages should be excluded, either by national legislation, or by industrial action taken by trade unions. We believe that government and judicial interference with the freedom of collective bargaining, if it is necessary at all, should be kept to a minimum. We believe that in Europe, we compete with our skills, not with lower wages!

What the European Commission and the Heads of State of the European Union obviously fail to realise and acknowledge, is that the fragile equilibrium of the European social contract has been shattered by case-law of the ECJ.

Therefore, we are pressing all Commissioners, the President of the Commission and candidates to the European Parliament to favour the principles of equal pay for equal work and the autonomy of

trade unions and of collective bargaining – including the fundamental right to strike – as the cornerstones of a Social Europe. We want candidates to elected office at the European Parliament or to the Commission to favour the reversal of the case-law of the ECJ through the revision of the Posting of Workers Directive and the inclusion of a Social Progress Protocol as an annex to the EU Treaties.

The time has come to introduce the principles of Parliamentarianism and of Representative Democracy in the European Union, when appointing the next Commission. The time has come to stand up for the principles of Social Europe. The time has come for a change in the direction of European policy, putting principles of equal treatment, as well as employment and welfare creation, in the forefront when fighting the effects of the financial, economic and social crisis.

John Monks, General Secretary of the European Trade Union Confederation

Sam Hägglund, General Secretary of the European Federation of Building and Woodworkers

Peter Scherrer, General Secretary of the European Metalworkers' Federation

Reinhard Reibsch, General Secretary of the European Mine, Chemical and Energy Workers' Federation

Eduardo Chagas, General Secretary of the European Transport Workers' Federation

Patrick Itschert, General Secretary of the European Trade Union Federation: Textiles, Clothing and Leather

Harald Wiedenhofer, General Secretary of the European Federation of Food, Agriculture and Tourism Trade Unions

Reports

Jan Cremers

Short summary of the CLR Annual General Meeting 2009.

The meeting was preceded in the morning by a European conference on the risks of the use of Nanotechnology at the workplace. For a report see www.nanocap.eu

The afternoon started with a presentation from Stefan Hochstadt and Thomas Hackenfort on their work on Culture in Construction, comparing Turkey and Germany, for which they are developing a critique of the work of Hofstede. This was followed by a CLR-seminar on the impact of the economic crisis on construction. The seminar contributions are published in this issue of CLR-News (see subject articles).

Participants: Hans Baumann/CH, Paul Chan/GB, Linda Clarke/GB, Jan Cremers/NL (chair), George Fuller/GB, Rolf Gehring/B, Thomas Hackenfort/D, Stephen Gruneberg/GB, Stefan Hochstadt/D, Jörn Janssen/GB, Ernst-Ludwig Laux/D, Sven Ljung/S, Karin van den Brand/NL.

1. Opening.

Jan Cremers welcomed the participants in the venues of the European Parliament.

2. Annual report 2008 on activities and finances.

In a brief overview the main activities were summarised. In the spring CLR was asked to work out a questionnaire in the frame of a study on the working conditions in the Swiss cement company Holcim. After his nomination as a MEP Jan Cremers handed over the responsibility for this project to Stefan Hochstadt (CLR-Dortmund). However, decisions on the way forward are still pending at management level in the company. Joern Janssen and Jan Cremers published a synthesis of the work on undeclared labour in Transfer (ETUI). Mijke Houwerzijl produced a study on liability in the chain, commissioned by the Dublin Foundation, with CLR involvement. A summary was presented in CLR-News. Jan Cremers participated in an ILO-ETUI project on the impact of outsourcing and subcontracting on collective bargaining. A summary of that project is forthcoming. The Westminster Business School organised several meetings with CLR involvement. It has also started the coordination of the bricklayers project in close cooperation with the European social partners in construction. We will probably report on that later on in CLR-News.

As in the years before 4 numbers of the quarterly CLR-News were published. Research on the use of our website has shown that visits have

substantially increased. Most visitors use the site to download documents.

The finances have stabilised. No serious costs, but also no real income. A reservation is still available for a new book in the series CLR-Studies. However, as Marc van der Meer has left the University of Amsterdam one of the potential publications can no longer be envisaged. The AGM-participants briefly spoke about possible means of income.

3. Regional offices report.

CLR-UK has produced their newsletter; with Paul Chan taken over as the editor. Furthermore, activities were developed in conjunction with Westminster University on migration, labour contract issues and vocational education.

CLR-Dortmund has planned more activities in the future (see announcement). The cooperation with Elu Laux has to be considered. He is working on a European comparison of (the results of) collective bargaining in construction, commissioned by EFBWW.

CLR-Denmark has lost one of the leading contributor. Normally they would have announced the traditional spring meeting. Jan Cremers will check how the perspectives are.

Swiss Thinknet has dedicated several activities to the crisis.

CLR-cooperation in the Netherlands has to be considered (Anneke and Mijke).

4. Work programme 2009.

- Current projects and research priorities
 - i. The University of Westminster (UoW) is running a comparative study on concepts and structures of vocational training systems in the Netherlands, France, Germany and the UK.
 - ii. Also UoW has initiated research on migration in construction
 - iii. In the Framework of the European social dialogue for the construction sector and in collaboration with a Dutch institute (IVAM) a project on the impact of Nanotechnologies in construction was initiated in December 2008
 - iv. It is planned to scrutinize funding sources for research activities on the subject of internationalization in construction and its effects on industrial relations and working conditions (Stephen G.)
 - v. An in-depth study on wages in the European construction sector is currently worked out by Elu L. This project will be finalized mid of 2009.

- CLR-News 2009

The themes for the next issues are:

- CLR-News 2-2009 - Construction and the crisis.
- CLR-News 3-2009 - Cultural aspects of building.
- CLR-News 4-2009 - Collective bargaining in construction.
- CLR-News 1-2010 - Results of the bricklaying project.

It was also proposed to consider changes in research agendas across Europe.

- CLR-Studies
 - So far no new books are planned.
- Seminars
 - i. Colleagues from Sweden are planning a series of workshops on the issue of the current crisis and its impact in the construction sector
 - ii. A CLR seminar on the different effects of the financial and economic crisis will be prepared for the second half of 2009. This will include reports on what is happening in each country and aim to reconsider strategic issues across Europe, concerning the impact of the crisis on the labour market and employment in the construction industry. After the seminar the participants will edit their contributions in the light of the discussion and an editorial team will summarise the results for publication in CLR-Studies. Rolf Gehring agreed to coordinate the project. Joern J. was asked to draft a letter presenting the project to partners in about a dozen countries (Belgium, Britain, Bulgaria, Denmark, Germany, Hungary, Italy, Netherlands, Poland, Spain, Sweden, Switzerland)

5. *Any other business.*

The meeting was closed at 17.45 o'clock.

10 Years of the National Minimum Wage

The Institute for Employment Rights (IER), "A think tank for the labour movement", has just celebrated its 20th birthday. The National Minimum Wage (NMW)¹ will celebrate its 10th birthday in April. The Institute held a seminar on the NMW on 4th March 2009 which one might have expected to be a glorious event. But it did not attract more than perhaps twenty participants. Whilst the British statutory minimum wage commands great acclaim across continental Europe, it is hardly regarded as such an outstanding achievement in its home country.

Institute for
Employment
Rights,
Birkbeck
College
London, 4th
May 2009

Following the introduction by Carolyn Jones, director of the IER, the 10 years were reviewed by an historian, a lawyer, and a trade union officer, all women.

From the point of view of the labour historian, Sheila Blackburn, the NMW has been a step forward from the former wage councils, though it has its flaws which ought to be amended. In particular it needs upgrading, more efficient enforcement, and the reduced rates for children and juniors should be abolished.

Ellie Reeves of Thompson's Solicitors demonstrated with numerous court cases the many ways in which employers have more or less successfully got away with pay even below the minimum wage and what is or is not included in the wage. The good news is that the means for enforcing compliance have been tightened.

Deborah Littman of UNISON, with 1.3m membership the largest public sector union, focussed on the scandalous exclusion of apprentices from minimum wage legislation. Whilst she acknowledged that the NMW has reduced the worst abuses in low-pay employment, she pinpointed the typical loopholes amongst which, in the absence of statutory curricula, apprentices are often compelled to work for nothing hoping to find entry into the labour market.

The seminar took a very pragmatic approach. Given the British conditions of a low coverage rate by collective agreements, the wide variations in wage levels, many workers casually or self-employed deprived of any employment regulation, the wide-spread use of illegal labour through dubious agencies, one might have expected an assessment of whether the NMW has helped to raise the whole scale of wages and conditions of employment generally. Such an assessment would probably have required trans-national comparisons. In a wider context one might also have expected a position with regard to minimum wage coordination in the European Union as a means to underpin national regulations. Though the seminar did not address an international audience, the domestic participants might have benefited from a more distanced review of ten years' experience with the NMW.

But let us not forget, 20 years of support for the British labour movement is a great achievement.

1. At present: £/h 5.73 for adult workers, £/h 4.71 for workers aged 18-21, and £/h 3.53 for workers aged 16-17

Reviews

Hans Baumann

Future of employee representation in Europe: Works councils in Germany and in the Netherlands

The publication of the German Institute for Economic and Social Research (WSI-Schwerpunktheft) on the activities of works councils in the Netherlands and in Germany¹ starts from a similar tradition in both countries as far as the activities of works councils are concerned. Both States have had Works Council Acts since the early 1950s, which guarantee not only information and consultation rights of workers at company level, but also codetermination rights. In addition, the division of responsibilities between the formally independent works councils and the activities of the trade unions, which are competent for the actual bargaining policy, is comparable.

As in the other European countries, in addition to the difficulties which have existed hitherto for the activities of works councils, such as paternalistic company structures or repression, new challenges have arisen: the decentralisation of company decisions even extends as far as personnel management and bargaining policy (relativisation of the industry-wide collective agreement) and jeopardises the division of responsibilities existing so far between works council and trade unions. On the other hand, in larger enterprises, there is a tendency towards globalisation of strategic company decisions. More and more decisions are taken at supranational level, which reduces the possibilities for participation by local or national employee representations.

57% with works council

Two articles deal with the phenomenon of enterprises without a works council in Germany. The authors Hauser-Ditz, Hertwig and Pries show² that of the enterprises with more than 10 employees, 57% have no employee representation at all and only 20% have a works council in accordance with the Work Constitution Act. About 20% have other representative bodies. However, since works councils are established mainly in the larger enterprises, if one takes the number of employees as a basis, the situation is put into perspective: the 20% of enterprises with a works council in fact cover about 57% of employees.

There are also enormous differences according to sectors, which also

reflect the enterprise size structure. Whereas in the capital goods industry 52% of enterprises and only 18% of employees are without a works council, the corresponding figures in the construction industry are 74% and 58% respectively and in hotels and catering 66% and 57% respectively. This means that a clear majority of employees in these sectors do not benefit from employee representation in accordance with the Act. The situation is also bad in the IT sector and in research and consultancy, in which 45% and 52% respectively of employees have to manage without a works council.

Similar Studies on the implementation of the works council Act in the Netherlands show that over all sectors, 60% of the private enterprises with more than 50 employees have works councils according to the act³. This does not however mean that a majority of these works councils also function satisfactorily. According to a survey by the GBIO (Stichting Gemeenschappelijk Begeleidingsinstituut Ondernemingsraden – foundation for works council guidance in the Netherlands), a majority of works councils questioned were of the opinion that they had “not very much” influence on business policy. Only just under a quarter believed they had “considerable influence”. It is worth mentioning that this value correlates with size of enterprise, i.e. the influence increases with the size of enterprise: the larger the enterprise, the greater the possibilities for influence. According to Cremers, this is also very closely connected to the availability of specialised knowledge and know-how in the works councils, where significant learning potential is located.

Works council wildernesses: construction, hotels and catering, new economy and retail

Light is shed on the figures concerning enterprises without works councils by the attempt by Lücking⁴ to divide these enterprises into four types: the knowledge-based enterprises of the new economy, where the employees are integrated into a “modern” working world and therefore believe they can forgo a formal representation. The highly specialised industrial SMEs, where the management supports flexible, informal forms of bargaining and tries in this way also to procure advantages for employees. Then the family-owned firm, where the conflicts in interests between employer and employees are deliberately glossed over and subordinated to the common interest of the firm. Most of the enterprises without works councils in the construction industry would have to be placed in that category. Finally, the sector of precarious services work, where the dependence on less qualified employees is exploited and the attempt is deliberately made using repression to keep works councils well away from the enterprise. Well-known examples here are retail chains Lidl and Schlecker.

A question often raised in social science concerns the influence of the work council activities on the efficiency and the success of the enterprise. The replies to this have so far been very mixed, depending on the authors and the questions. One article⁵ evaluates a corresponding survey among Dutch company managements. The authors in principle confirm a positive correlation between work council activities and success of the enterprise, but only if certain conditions are met. It boils down in particular to the readiness of both sides to cooperate in the entire codetermination system. A positive attitude by the management to the works council and inclusion at an early stage in decisions constitute an important factor. This is particularly true too in critical phases of restructuring.

Ever more supranational decisions

There is also a European dimension to the investigation of eight multinationals operating in four sectors in the Netherlands⁶. These include large Dutch multinationals, such as Unilever and Philips, but also other transnational enterprises, such as Siemens or H&M. In their article, the authors try to sift out typical business strategies of transnational enterprises and to show the consequences for the options for action by works councils and trade unions. The renunciation of the classical Fordist production model and the existence of a large variety of less hierarchical and less centralised organisational forms and relations are typical here. In addition, transnational organisational forms and networks are increasingly replacing the national. Five of the eight enterprises examined had established cross-border business units. Strategic decisions are increasingly taken at international level, whereas social policy matters continue to be dealt with within the national frameworks. In addition, there are clear trends to be discerned in personnel management towards individual contracts of employment, more flexible conditions of employment and performance-related remuneration systems. The latter in particular make the union bargaining position more difficult and call into question the traditional division of responsibilities between trade unions and works councils. The works councils are affected especially by the internationalisation and cross-border strategy decisions, since they are bound by national law and only have regional networks. Here, the European works councils come into play, which so far have been able to exercise their coordination function more or less well depending on the enterprise.

Which scenarios are possible in such conformations for the activities of works councils, but also for the trade unions, is also the subject of the article by Smit and van het Kaar⁷. They establish a phenomenon for the Netherlands that we can also observe in most other European countries:

the degree of unionisation is receding (in the Netherlands still 22%), whereas the level of coverage by collective agreements, at 82%, can still be kept high. The authors fear that these differences between unionisation and collective protection will in time have a detrimental effect and collective agreements could be undermined or even abolished. Together with the decentralisation and the simultaneous internationalisation of corporate decisions already mentioned, this may bring about a significant change in industrial relations. The future scenarios presented range from the limitation of the works council to consultation in local personnel management and in the development of the organisation, to the creation of company unions, to the development of new, supranational network structures with the help of the European trade union structures (including European works councils or SE councils) and a certain democratisation of the decision-making processes.

Increasing influence of the works councils?

How successfully such processes of change take place from the point of view of the trade unions and works councils naturally largely depends on the extent to which a contribution can be made to shaping the changes. This is shown by Behrens⁸ in his article on the impact of the decentralisation process on the work of the company. He starts from the experience that the decentralisation of decision-making processes in the form of relativisation of the industry-wide collective agreement can be “wild” or controlled. The result is that the success of the works council activities without decentralisation and after controlled decentralisation is almost equally good. However, the scenario with “wild” decentralisation is conspicuously far worse. Behrens does not however wish to interpret this as fundamental approval of “controlled” relativisation of the industry-wide collective agreement, since this analysis is based only on a snapshot and the longer-term effects on union clout are disregarded.

As a conclusion from the investigations carried out in Germany and in the Netherlands, it is found that – whether it is welcomed or not – the activities of works councils will become more important and the traditional division of responsibilities between trade unions and works councils will increasingly be called into question. This argument is supported on the one hand by the tendency towards relativisation of the industry-wide collective agreement and on the other hand also the internationalisation of decisions in transnational enterprises and hence, in connection with this, the pressure to involve works councils and union representatives at enterprise level. For the trade unions, this means that they present themselves to an even greater extent than hitherto as partners of the works councils and support them with training, information, strategy

advice and international networks, without however relinquishing the collective bargaining function in the important key issues, which in any case the works councils would have no desire to undertake.

Whether the present, long-lasting world economic crisis confirms or breaks this trend is still an open question. On the one hand, in the coming months, we shall still have enormous tasks in the field of restructuring of enterprises (financial sector, automotive industry). Here extreme demands are made on the works council activities, even if they are supranationally coordinated. On the other hand, a certain “renationalisation” of the economic and social policy is to be discerned, with the State once again assuming an important role, nationalising key sectors such as major financial institutions and striving for Keynesian demand-side management. Even large, globalised major corporations, formerly allegedly entirely independent of the State, are suddenly and not entirely voluntarily proceeding to become dependent on the Nation State once more. Such a policy in turn calls more for national coordination with the social partners and for new control possibilities at regional and sector levels, which is almost impossible without a strong role for the unions and collective agreements.

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1. WSI-Mitteilungen Nr. 2/2009: Schwerpunktheft Betriebsratsarbeit in Deutschland und den Niederlanden, coordinated by Martin Behrens and Jan Cremers. Düsseldorf.
 2. Hauser-Ditz/Hertwig/Pries: Andere Vertretungsorgane als Herausforderung für Betriebsräte? In: WSI-Mitteilungen Nr. 2/2009. Düsseldorf.
 3. Jan Cremers: Der lernende Betriebsrat. *ibid.*
 4. Stefan Lücking: Zwischen Neopaternalismus und Repression. *ibid.*
 5. Van den Berg/Grift/Van Witteloostuijn: Ökonomische Auswirkungen des Zusammenspiels von Managern und Betriebsräten. *ibid.*
 6. Van der Meer/De Boer: Handlungsoptionen von Gewerkschaften und Betriebsräten in multinationalen Unternehmen. *ibid.*
 7. Smit/Van het Kaar: Die Zukunft der Mitbestimmung in den Niederlanden – Vier Szenarios. *ibid.*
 8. Martin Behrens: Formen der Dezentralisierung: Auswirkungen tarifpolitischer Entwicklungen auf die Effektivität der Betriebsarbeit. *ibid.*

Calendar of events

EFBH Seminar 25/26 June in Berlin:

Understanding and comparing wages in the construction industry

At this seminar policy experts and those in charge of bargaining collective agreements in the construction industry in individual EU countries will discuss collective rates and wages actually paid on construction sites. This discussion is based on a report of the project "Wages in the Construction Industry" in 9 European countries, as well as on the results of a survey of the countries from Autumn 2008.

This seminar will provide the basis for open discussions about the way forward to agreeing and coordinating wage policy in the European construction industry.

We shall report on the results in the next issue of CLR-News.

Workshop planned for October in Brussels to discuss

Strategies for Labour Policy in Response to the Financial Crisis

At the CLR-Seminar 2nd April 2009 in Brussels 'Construction Labour after the Crisis of Neoliberalism' a discussion took place based on three papers by Hans Baumann, Jan Cremers, and Jörn Janssen – see subject articles and report in this issue. It was concluded that this could only be the beginning of a debate about strategies for labour policy within the CLR network. In order to respect the diversity as well as to extend the debate as many countries as possible should be involved.

On the basis of papers relating to individual countries the workshop will be organised at the EFBWW head office in Brussels to discuss new strategies to achieve equality in society and stop the obscene and economically disastrous excesses of financial capital.

Based on the workshop discussion papers will be edited for publication in CLR-Studies.

At present colleagues in the following countries have been asked to participate: Austria, Belgium, Britain, Bulgaria, Czech Republic, Denmark, Finland, Germany, Hungary, Italy, Netherlands, Norway, Poland, Spain, Sweden, Switzerland. Everybody is invited to join in.

The organisation of this debate is supported by Sam Hågglund, General Secretary of the EFBWW, and Rolf Gehring will act as the secretary of the project with the support of a committee appointed by the CLR Annual Meeting: Paul Chan, Thomas Hackenfort/Stefan Hochstadt, Jörn Janssen.

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