

No 3/2005

EUROPEAN MINIMUM WAGE POLICY

CLR News

Note from the Editor 1

Subject Articles

Theses for a European Minimum Wage Policy. 3

Thorsten Schulten: Political Economy of Statutory Minimum

Wages. 8

Daniel Oesch/Andreas Rieger: The Swiss Confederation of

Trade Unions' Campaign for Minimum Wages 15

Reinhard Bispinck: The Debate on the Minimum Wage 21

Ernst-Ludwig Laux: Statutory Minimum Wage versus

Generally Applicable Collective Minimum Wages 25

Discussion

Marcus Kahmann: The Founding of the European Migrant

Workers' Union – a response to the limits of trade union action 32

Reports

CIB Task Force 59 on Construction Labour, Helsinki – *Jill*

Wells, Stephen Gruneberg, Andrew Dainty 44

AIAS Conference, Amsterdam – *Linda Clarke* 47

IER: EU constitution and charter – *Jörn Janssen*50

Reviews

Simon Deakin/Frank Wilkinson: The law of the Labour

Market: Industrialisation, Employment and Legal Evolution ... 53

Calendar of Events

University of Westminster 06/10/2005: Skills and Training

in the Construction in the EU..... 56

NOTE FROM THE EDITOR

The contributions to CLR-News vary enormously over the years. The editorial team has one central objective: CLR-News is not about research only for research purposes, theory for theory.

But it must be said that this issue really reads like a manifesto.

In the number two issue of this year we already reported about the conference *Minimum Wages in Europe* organised by our Swiss friends from the Thinknet-Zurich. During the conference participants formulated a strong plea to promote a coordinated minimum wage policy in Europe.

Jörn Janssen was there from our editorial team and suggested later to dedicate CLR-News 3-2005 to the contributions and interventions. He subsequently worked as the co-editor of this issue.

This is not the place to stress the importance of the theme in full length.

The growth of so-called atypical employment relationships has led to a concentration of low-wage earners in labour intensive branches and sectors with poor union presence. These workers are often not covered by generally applicable collective agreements. Notwithstanding the overall prosperous economic development in Europe since World War II we have to face the fact that a serious proportion of low-wage earners can be identified as working poor. The result of several studies makes it very clear: the most disadvantaged segments of the labour market population benefit from minimum regulations. The widening of wage differentials between upper wage groups and the lowest stratum of our labour market has already today an enormous impact on regional and local welfare disparities in society. As a consequence regulations and provisions, based on solidarity and settled on collective agreements or statutory social security schemes, have come under pressure.

The call is for tailor-made and individualised, but the outcome is *everyone for himself and God for us all*.

The debate about statutory wages is therefore a core debate for the trade unions. It is about the way forward with the two collective instruments at stake if we want to defend and improve workers' rights, through collective bargaining and labour legislation. It is not a question of weakness to stick to statutory regulations but a question of strategic choice for the best guarantee in the given situation.

In this issue of CLR-News you will also find a discussion contribution from Marcus Kahmann. At the moment working on his thesis in France, Kahmann reflects the limits of trade union action in case of posting of workers. His pilot is the broad history of trade union activity developed by the German construction union IG BAU.

His contribution fits in extremely well in this number of CLR-News as the German Posting debate had been dominated from the start by the lack of generally binding wages. Therefore IG BAU had to reconsider the dominant negative trade union attitude towards statutory minimum wages, as the influx of workers not protected by decent wages regulations rose in the last two decades.

We complete our quarterly with the reports, reviews and an announcement of events.

At the moment we are working on a new CLR-website. In recent years the newsletter was already available on the World Wide Web via the EFBWW-site. And our Danish members started a while ago with their own website, like the Swiss Thinknet. During the last two annual meetings several speakers suggested a broadening up of the communication between users and participants of our network through a general CLR-website.

As it looks now www.CLR-news.org will be in the air, at least *under construction*, by the time you get this issue of CLR-News.

Jan Cremers, 2005-09-11.

SUBJECT ARTICLES

Theses for a European Minimum Wage Policy

Thorsten Schulten, Claus Schäfer, Reinhard Bispinck - Wirtschafts- und Sozialwissenschaftliches Institut (WSI) in Hans-Böckler-Stiftung, Germany

Andreas Rieger, Beat Ringger, Hans Baumann - Thinknet, Switzerland

Michel Husson, Antoine Math - Institut de Recherches Economiques et Sociales (IRES), France

Düsseldorf, Zurich, Paris, 15 April 2005

1. For the great majority of workers, the wage is their main source of income. The level of the wage essentially dictates their standard of living and consequently whether or not they can live a life of dignity. However, increasingly today in business and politics wages are viewed purely as cost factors and variables in the international competition over company locations. This has also pushed into the background the economic function of the wage as a significant component of national economic demand, without which a prosperous economy is not possible.

2. For more than two decades, Europe is faced by a policy of market liberalisation and deregulation of employment and social legislation. As a result, wages have been systematically put under pressure. In many European countries, mass unemployment has also weakened the power of trade unions to protect workers and participate in shaping terms and conditions of employment. An ever-growing number of companies are taking advantage of the fact that the balance of power and negotiating positions shifting in their favour. Workers and their trade union representation are often being blackmailed into choosing either to agree to far-reaching concessions or risk losing their jobs. At the same time, against a background of the free movement of people, cross-border European labour markets are developing in a growing number of sectors which are undermining existing standards of pay and employment. There is a threat that this trend will gather pace in future as a result of the planned European Services Directive.

3. Since the 1980s, the trend in real wage levels has been characterised in most European countries by two fundamental trends. On the one hand, wages have lagged behind productivity growth, so that almost everywhere the wage ratio has followed a downward trend. The result of this trend is not only reflected in a large-scale redistribution of income in favour of capital, but also in a weakening of private consumer demand, in turn contributing to weak economic and employment growth in many European countries.

4. The second fundamental trend is manifested in the majority of European countries by a widening of wage differentials. The gap between wages of individual groups of workers has widened ever more rapidly. This stems both from an above-average uptrend in wages in the upper wage groups (e.g. professional and managerial staff, etc.) and also from a massive expansion of the low-wage sector. The European Commission recently calculated that in 2000 alone in the old EU (EU 15) more than 15% of workers (i.e. over 20 million wage earners) fell into the bracket of low-wage earners.

5. In structural terms, the proportion of low-wage earners among women is double that among men. At the same time, an over-average number of low-wage earners are employed on the basis of insecure employment relationships, and this number has also risen sharply in Europe since the 1990s. Furthermore, in some sectors (agriculture, hotels and catering, commerce and private-sector services) there is a particularly high concentration of low-wage earners. A large proportion of low-wage earners are working poor, whose wages fall below 50% of the average national wage.

6. The proliferation of the low-wage sector, along with mass unemployment, represents one of the central challenges facing European society and is threatening to undermine the social, moral and economic foundations of the European social model. While companies are abandoning their social responsibilities by paying low and poverty-level wages, the cost of the social consequences to the community as a whole is mounting and putting increasing strain on the institutions of the welfare state and public care provision. What is more, the expansion of the low-wage sector is further deepening the social

divide in society and thereby fuelling chauvinistic, right-wing populist and nationalistic forces. To counter these forces, there is an urgent need for a progressive politicisation of the wage issue underpinned by basic principles of fair participation and distributive justice.

7. The existence of low wages which exclude those concerned from normal participation in society stands in glaring contrast to the right to a "decent" or "fair" wage enshrined in many European and international agreements. The Community Charter of Fundamental Social Rights for Workers (abbreviated to the EU Social Charter) adopted by the EU in 1989 contains the principle that every job must be paid a fair remuneration (Title 1 (5)). According to the situation in each country workers should therefore be guaranteed a fair remuneration for work. The concept of fair remuneration for work is understood by the EU Social Charter to mean remuneration for work that is sufficient for a decent standard of living for workers. The 1961 "European Social Charter" of the European Council also contains express provision for "the right to a fair remuneration sufficient for a decent standard of living..." (Article 4). Similar provisions concerning "fair remuneration" are also to be found in the national Constitutions of many European countries, such as Belgium, Italy, Spain, Portugal and the Czech Republic, as well as in the federal constitutions of several German federal states (e.g. in Hesse or North Rhine Westphalia).

8. A fundamental instrument for safeguarding a decent remuneration of work is the setting of minimum wages. As far back as 1928, the International Labour Organisation (ILO) adopted an Agreement on Minimum-wage fixing machinery (ILO Convention No. 26). A subsequent Convention adopted in 1970 again confirmed the importance of minimum wages (ILO Convention No. 131). In the view of the ILO all states should introduce a national system of minimum wages to protect wage earners against inappropriately low wages. Depending on the general social and economic conditions in each country, the level of the minimum wage should be determined "in agreement or after full consultation with the representative organisations of employers and workers concerned."

9. National rules guaranteeing minimum wages are in wide application throughout Europe. In the majority of the European States there exist statutory minimum wages which lay down a specific rate of minimum wage applicable across all sectors. In other countries minimum wages are laid down exclusively by collective agreements, some of which have been officially declared generally binding. In yet other countries a mixed model exists whereby minimum wages are governed in some sectors by collective agreements and in others by law. Regardless of their respective national form, however, safeguards for the minimum wage system – in common with wages policy in general – are under huge pressure.

10. Against a background of a common European internal market and an increasingly integrated European economy, there is an urgent need for a European minimum wage policy. The aim of such a policy would be to halt the spread of poverty-level wages as well as preventing the menace of cross-border wage dumping, a phenomenon to which the low-wage sector is particularly vulnerable. In this way, the policy would make an important contribution to implementing the principle of "equal pay for equal work at the same place". Furthermore, a European minimum wage policy would also send out positive signals for other social objectives, such as narrowing the wage differential between men and women and improving the quality and productivity of work. Finally, regarding its macroeconomic function, a European minimum wage policy would contribute significantly to stabilising private demand and serve as a buffer against deflationary tendencies.

11. In order to implement the right to "decent pay" enshrined in the EU Social Charter, as far back as the early 1990s the European Commission recognised the need for a European minimum wage policy. In a statement dating from 1993, the Commission urged the EU member states to take appropriate measures to ensure that the right to a decent remuneration for work is protected. During the same year, the European Parliament called for the introduction of a fair reference remuneration at national level to serve as the basis for collective bargaining, and appealed for mechanisms to set statutory minimum wages in relation to the average national wage.

12. Accordingly, the proposal for a European minimum wage policy would essentially comprise laying down Europe-wide specific common objectives and criteria on the basis of which national minimum wage policy can be coordinated with one another. In so doing, the purpose cannot be to lay down a uniform level of minimum wage across Europe, given the continuing existence of widely-differing levels of economic development in Europe and the associated huge wage differentials. Instead, the aim must be to lay down a specific minimum norm in each country for the lowest wage groups representing a specific ratio of the national wage system. As a target figure, all European countries should set their sights on a national minimum wage norm of at least 60% of the average national wage. As a short-term interim target, all countries should introduce a minimum norm corresponding to 50% of the average national wage.

13. In similar fashion to the approach employed in other policy areas, a European minimum wage policy could operate according to the "open method of coordination". Accordingly, specific concrete objectives and timetables for implementation would need to be agreed at European level which would then be implemented in individual countries via the existing local institutions and procedures. Depending on national tradition and practice, statutory minimum wages, collective agreements declared generally applicable or combinations of both systems can be applied. Responsibility would then reside at European level for the task of supervising implementation at national level and, by closely monitoring national minimum wage policies, helping to disseminate "good national practices". These practices also include improving the statistical database on European trends in low wages.

14. The European trade unions have a key role in implementing a European minimum wage policy. They first need to develop their own concept for a European minimum wage policy. Such a concept would be linked, on the one hand, to the existing initiatives aiming a European coordination of collective bargaining policy. On the other hand, the concept would serve as a basis for formulating ambitious objectives at European level and driving forward their implementation at national level. Finally, the age-old task of the European trade unions

continues to be to uphold a fundamental principle of the European social model whereby the wage must enable every dependent worker to live their lives in dignity and financial independence.

Political Economy of Statutory Minimum Wages

Thorsten Schulten

1. Social and political meaning of minimum wages

Almost all developed countries have a political regulation on minimum wages. Usually collective agreements define a minimum wage level for certain branches, companies and/or professions below which it is (legally) not allowed to hire any worker. As already described by the classical authors of political economy such as Adam Smith or Karl Marx a collective regulation of minimum wages is a necessary precondition for the functioning of labour markets. Without such a regulation there would be a permanent downward pressure on wages as a result of the structural power asymmetry between capital and labour.

However, in many countries the determination of minimum wages through collective agreements does not cover all parts of the economy. This holds true, in particular, for the classical low wage branches (e.g. in private services), in which the trade union density is often rather low and therefore the unions are not able to succeed in providing an equitable protection by minimum wages. In such cases the determination of minimum wages through collective agreements is often complemented by statutory regulation. In principle the state has two possibilities to influence minimum wages. On the one hand the state can extend collective agreements to those companies which are not directly covered by the agreements. On the other hand the state can determine a certain minimum wage level through the introduction of a statutory minimum wage.

Most countries in Europe and the OECD have both minimum wages determined by collective agreements and a statutory minimum wage (OECD 1998). With the latter it has been recognised that the protection by minimum wages is not only a responsibility of trade

unions and employers but of the overall society. The determination of a generally binding statutory minimum wage defines a universal norm, which becomes an accepted bottom line below which any remuneration is not only illegal but is outlawed as morally unacceptable.

The determination of minimum wages is always connected with the idea of a 'fair remuneration'. The latter has been defined as a fundamental social right laid down in the Universal Declaration of Human Rights from 1948 as well as in various other international agreements such as the Social Charter of the Council of Europe from 1961 or the European Community Charter of Fundamental Social Rights for Workers from 1989. As expressed in terms like 'decent wage' or 'living wage' a 'fair remuneration' is defined above all as a remuneration which should guarantee employees not only a subsistence level but a certain minimum standard of living in order to have an equitable participation in social life. The concrete definition of an equitable wage as well as the determination of a statutory minimum wage is always part of social disputes and is based on a social compromise between different social and political interests. The statutory minimum wage is therefore not only a matter of the state but favours a politicisation of wages, which give social organisations such as trade unions the opportunity to become a societal actor.

2. Minimum wages in the economic debate

Among economists there is a broad international debate on the economic meaning of minimum wages with rather controversial positions depending on their different theoretical backgrounds. Following the neo-classical labour market theory every political determination of wages – either by collective agreements or statutory minimum wages – is either ineffective or detrimental. If the minimum wage is below the 'market wage' created by the forces of supply and demand on a 'free' labour market, it would have no effect on existing wages. If the minimum wage is above the 'market wage' it would automatically lead to a reduction of demand for work and, therewith, create unemployment. According to neo-classical economists a statutory minimum wage would at a disadvantage in particular those groups of employees at the lower end of the wage scale which should actually benefit from it.

The neo-classic assumption of an inverse relation between the level of a minimum wages and the level of employment has always faced strong criticism from more heterodox economists. In the centre of this criticism is the neo-classic construction of a ‘free labour market’ which claims the labour market to be a market as any other market and to have all the attributes of perfect competition (such as absolute information, unrestricted mobility etc.). Instead, more realistic assumptions see the labour market determined by various frictions which create a situation of a highly imperfect competition. Because of the structural imbalance of market power between capital and labour it is usually the employer who – particularly under conditions of high unemployment – dominates the wage setting process.

More recent economic literature has often described the labour market as a ‘monopsonistic’ market (Card/Krueger 1995, Manning 2003). Since companies tend to behave as a ‘monopson’ for work, they are able to implement wages which are below the ‘market wages’ which would have been created under ‘free market conditions’. Therefore, on ‘monopsonistic’ labour markets there is no obvious relation between the level of minimum wages and the level of employment. As long as minimum wages only have the role to equalise the market power of the employers, there are no negative effects on employment. Moreover, following the various efficiency wage theories, which assume a close relation between wages and productivity, an increase of minimum wages might even have positive effects on employment if it is accompanied by significant improvements in productivity.

Finally, from a more Keynesian perspective there are two major economic functions of statutory minimum wages which might have a positive effect on growth and employment (Prasch 1996): First, statutory minimum wages can help to stabilise consumer demand, since low wage earners spend a relatively large proportion of their income for consumption and only a relatively small proportion for savings. Secondly, statutory minimum wages can create an institutional barrier against deflationary wage cuts which is of particular importance in times of high unemployment and weakened trade unions.

3. International spreading of statutory minimum wages

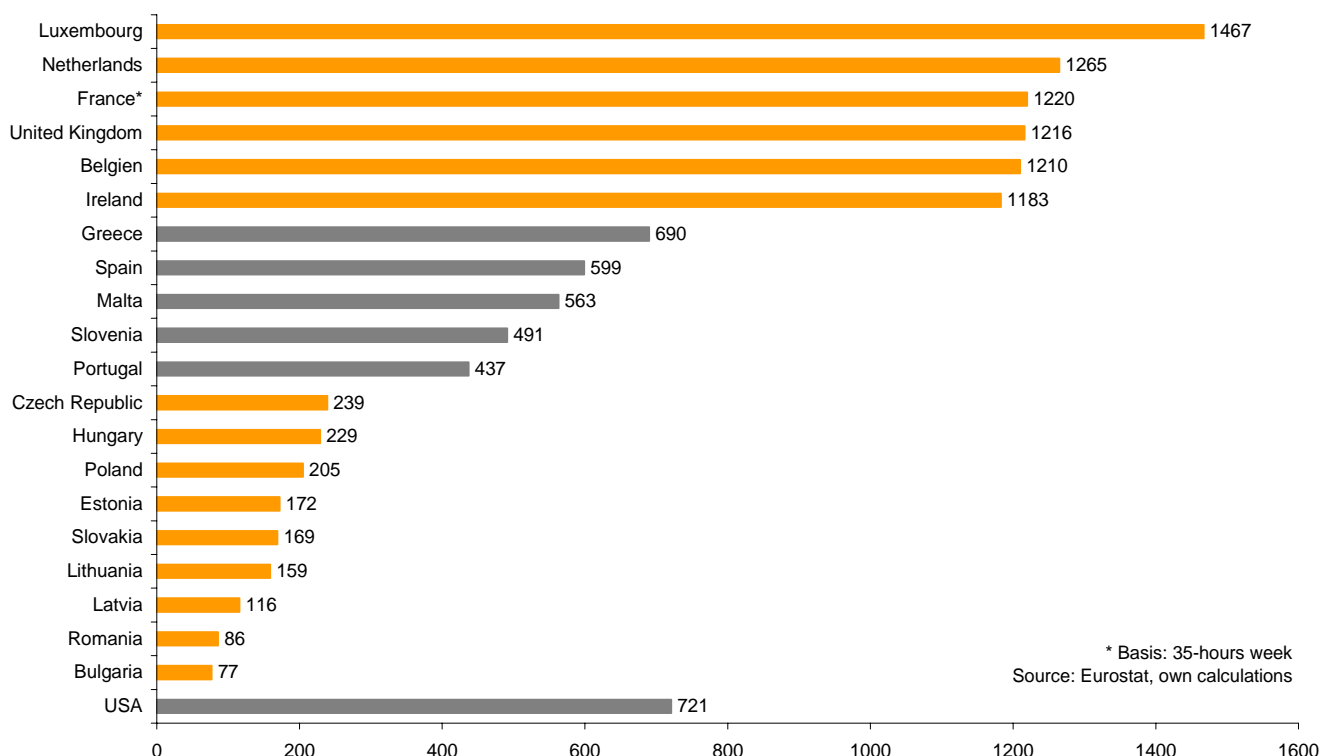
Historically, the first regulations on minimum wages developed in the last decade of the 19th century. Statutory minimum wages were introduced for the first time in New Zealand in 1894. Two years later there a law on minimum wages was enacted in the Australian federal state of Victoria. In Europe it was the UK where the first regulation on minimum wages was introduced in 1908. Finally, in the USA the first statutory minimum wage was adopted in the federal state of Massachusetts in 1912.

Whilst the early statutory regulations on minimum wages were originally limited to certain branches or professions, in the second half of the 20th century more and more countries introduced a general statutory minimum wage which covers the whole economy. A pioneer in that were the USA which introduced a nation-wide statutory minimum wage in 1938. In the meantime, most OECD states – among them most member states of the European Union (EU) as well as the USA, Canada, Australia, New Zealand, Japan and South Korea – have nation-wide statutory minimum wages. Within the EU 18 of 25 member states have adopted a statutory minimum wage (Funk/Lesch 2005; Regnard 2005). While some countries have experiences for several decades, in Ireland and the UK the statutory minimum wage was introduced only at the end of the 1990s. In most Central and Eastern European countries (CEE) new regulations on minimum wages were introduced during the transformation period in the early 1990s.

Regarding the level of the statutory minimum wage one might distinguish three groups of countries within the EU (*Figure 1*): The first group with relatively high minimum wages between 1183 and 1467 Euro per month covers the BeNeLux countries as well as France, the UK and Ireland. A second group with minimum wages between 437 and 690 Euro per month is composed by the South European countries Spain, Portugal, Malta and Greece as well as Slovenia. Finally, a third group with rather low minimum wages between 116 and 239 Euro per month covers only CEE countries. At the bottom are the two EU candidate countries Romania and Bulgaria. In the United States the level of the minimum wage is comparable to those of the

South European countries. However, a number of US federal states have much higher statutory minimum wages comparable with those of the highest European group.

Figure 1: Statutory Minimum Wages per Months in Euro (August 2005)



The development of statutory minimum wages is strongly influenced by its political and institutional arrangement. Concerning the determination and periodical adjustment of the minimum wages one might distinguish four procedures (OECD 1998, Funk/Lesch 2005). First, there is a ‘purely political’ procedure whereby the statutory minimum wage is determined by the national government alone without any participation of other social actors. Such a ‘purely political’ procedure is typical of the United States and responsible for the fact that under a conservative government the minimum wages was not adjusted for many years so that its real value showed a continuous decline.

Secondly, most European countries have special institutions through which employers’ organisations and trade unions are consulted and can give recommendations for the regular adjustment of the minimum wage. A good example for this second procedure is the Low-Pay-Commission in the UK, which is composed of representatives from

employers' and trade unions as well as of independent experts. On the basis of comprehensive studies the Low-Pay-Commission gives regular recommendations for the adjustment of the minimum wage. Thirdly, in some countries like Belgium, Ireland, Greece and some of the CEE countries the national minimum wages are negotiated by the national employers' and trade union umbrella organisations. Fourthly and finally, in the BeNeLux countries and France as well as more recently in Poland there is an indexation of minimum wages whereby the increases of the minimum wages are linked to the development of prices or average wages.

4. The impact of minimum wages on employment and the distribution of income

The scientific debate on the impact of minimum wages on employment and the distribution of income was for a long time dominated by the US literature. Until the 1980s most studies argued that statutory minimum wages have a slightly negative impact on employment, in particular for younger workers. Since then the opinions among economists have changed dramatically. While in 1990 about 63% of US professors for economics took the view, that statutory minimum wages are bad for youth employment, in 2000 this view was shared by only 46%.

One major reason for this swing of opinion in the US were the studies by David Card and Alan B. Krueger, which used new empirical methods and came to the result that there is no systematic relation between minimum wages and the level of employment (Card/Krueger 1995). More recent studies in Europe came to almost the same result (OECD 1998). This holds true in particular for Ireland and the UK. Various studies in these countries made clear that the introduction of statutory minimum wages at the end of the 1990s had no negative effects on employment.

Regarding its impact on the distribution of income, statutory minimum wages per definition have the role to draw a certain line at the bottom of the wage scale. In many European countries the statutory minimum wages have contributed to limit or even to reduce the overall wage dispersion (Rubery 2003). Moreover, statutory minimum wages have proved to be a suitable instrument to fight wage discrimination against

women and ethnic minorities, since these groups of employees are above average represented in the low wage sector (Rubery 2003).

5. Proposals for a European Minimum wage policy

For many workers the right for a ‘fair remuneration’ as laid down in the European Social Charter and other international agreements is still not realised in practice. On the contrary, in recent years most European countries saw a significant extension of the low wage sector. In the ‘old’ EU member states more than 15% of all employees (i.e. more than 20 million workers) are low wage earners (European Commission 2004). Such a development was enforced by a neoliberal economic policy of the EU, which primarily aimed at a liberalisation of markets and a deregulation of labour and social standards.

The currently existing regulation on minimum wages is in many cases insufficient to prevent an increase of the numbers of ‘working poor’. With only a few exceptions most national statutory minimum wages are below 50% of the average national wage and have to be seen therefore as ‘poverty wages’ (Regnard 2005). Against this background a group of researchers of the ‘Wirtschafts- und Sozialwissenschaftliches Institut’ (WSI) within the Hans Böckler Foundation in Germany, the ‘Denknetz’ in Switzerland and the ‘Institut de Recherches Economiques et Sociales’ (IRES) in France have jointly developed ‘theses for a European minimum wage policy’ in which they propose coordinated action at European level (Schulten et. al. 2005). Following the proposals made by the French-German-Swiss group of researchers all European countries should commit themselves to a gradual increase of their minimum wages up to 50% - and in a mid-term perspective up to 60% - of the average national wage.

A European minimum wage policy could be introduced by using the ‘open method of coordination’, according to which concrete aims and time schedules should be determined at European level, which afterwards have to be implemented at national level through the established procedures and institutions. Depending on the national traditions the protection of a certain minimum wage level could be reached either by statutory minimum wages or by extended collective agreements or even by a mixture of both procedures. The European level would have the task to monitor the implementation at national

levels and to identify ‘good national practices’. Such a European minimum wage policy could make a practical contribution to the development of a ‘social Europe’ which commits itself to the principle that wages “must enable every dependent worker to live their lives in dignity and financial independence”(Schulten et al. 2005).

Literature

- Card, D./Krueger, A. B. (1995): *Myth and Measurement: The New Economics of the Minimum Wage*, Princeton.
- European Commission (2004): *Employment in Europe 2004. Recent Trends and Prospects*, European Communities.
- Funk, L./Lesch. H. (2005): *Minimum Wages in Europe*, EIROnline, [www.eiro.eurofound.eu.int/print/2005/07/study/tn0507101s.html].
- Manning, A. (2003): *Monopsony in Motion, Imperfect Competition in Labour Markets*, Princeton.
- OECD (1998): *Making most of the Minimum: Statutory Minimum Wages, Employment and Poverty*, in: *Employment Outlook 1998*, Paris, S. 31-79.
- Regnard, P. (2005): *Minimum Wages 2005*, *Statistics in focus*, Series: Population and Social Conditions No. 7, Eurostat.
- Prasch, R.E. (1996): *In Defence of the Minimum Wage*, in: *Journal of Economic Issues* 30, S. 91-397.
- Rubery, J. (2003): *Pay Equity, Minimum Wage and Equality at Work*, International Labour Office (ILO) Working Paper Series of the InFocus Programme on Promoting the Declaration on Fundamental Principles and Rights at Work, WP No. 19, Geneva.
- Schulten, T./ Rieger, A./Schäfer, C./Bispinck, R./Ringger, B./Baumann, H./Husson, M./Math, A. (2005): *Theses for a European Minimum Wage Policy*, in: *Transfer* Vol. 11 (2), 256-259.

The Swiss Confederation of Trade Unions’ Campaign for Minimum Wages

Daniel Oesch (SGB) and Andreas Rieger (UNIA)

1. The initial situation and the campaign

In 1998 the Swiss Federation of Trade Unions (SGB) made wage policy, and the problem of low wages in particular, the central issue of its conference held every four years. In the wake of an unusually long period of economic stagnation in Switzerland, the problem of the working poor had impressed itself increasingly on the public consciousness (Liechti and Knöpfel, 1998; Flückiger, 1999). After six years of recession and a high rate of unemployment there was also a danger that those in receipt of low wages would come away empty-handed from the much-heralded upturn in the economy – a danger

which was intensified by the imminent introduction of free movement of individuals between Switzerland and the countries of the European Union. The SGB therefore decided to launch a campaign against wages below 3000 Swiss francs.

A new approach rejecting the existing wage strategy was developed on the basis of an analysis of the areas of low wages. For the first time the problem of the working poor was defined less as a problem of a few isolated industries and much more as the entire society's problem. For that reason a situation of power had to be created to combat low wages by "politicising" them (Rieger, 1999; 2001). To that end a "universal" standard minimum wage was postulated and straightforwardly identified as 3 000 Swiss francs. This figure was not intended to define a "fair" or "living" wage, but rather the threshold beneath which wages should be considered unacceptable and outlawed. On the one hand, the assault on companies which pay wages below 3 000 francs would be conducted in public campaigns, while on the other, concrete union demands would be raised in businesses and industries for the practical implementation of a minimum standard of 3 000 francs.

In the years which followed, this campaign was waged by individual unions in the SGB in many of Switzerland's industries, in particular in tourism, the retail trade, the textiles and clothing industry, cleaning and agriculture. Public campaigning was aimed at a variety of targets: on the one hand, customers were addressed and their social sensibilities mobilised ("Starvation pay in tourism – tourists lose their appetite"). At the same time the attention of the Government and taxpayers was drawn to the fact that they were subsidising companies which pay low wages via welfare payments. Finally, an appeal was made to society's sense of justice: that full-time employment which does not even provide a livelihood is unacceptable.

The ethical and political arguments were complemented by an economic argument: the aim was to interrupt the dominant economic discourse according to which every minimum wage is an obstacle to employment opportunities and thus conducive to higher unemployment. To this end the SGB, in conjunction with acknowledged experts on the economy and specialists in labour law, produced a specialist report on minimum wages (Gaillard and Oesch, 2000). Lastly, the fact that women in particular were affected by low

wages was attacked, with its implicit violation of equal rights, and legal action under equal pay legislation was threatened.

In this way pressure was brought to bear on individual industries and businesses with actual examples and public campaigns (banging saucepans outside luxury hotels, for example). The individual trade unions then attempted to negotiate a real increase in the minimum wages in existing collective agreements or to conclude new agreements – often with some success. The SGB had deliberately employed the device “collective agreement coverage for all” and “agreed minimum wages”, rather than demanding a legal minimum wage, which would have had to be agreed by Parliament – a process which would have taken several years – and would inevitably have been aimed at the economically weakest industry, agriculture.

2. Assessment of the impact of the campaign for a minimum wage

More than six years after the campaign was launched the SGB undertook an analysis of the low-pay sector in a wide variety of industries in conjunction with the Observatoire Universitaire de l'Emploi at the University of Geneva (see Oesch, Gaillard and Graf, 2005). The aim was to evaluate the impact of the SGB's campaign for a minimum wage. The results may be summarised as follows:

- *Collective agreement wages:* In some industries it has been possible to achieve substantial increases in the pay agreement minimum wage. This applies in particular to tourism, the retail trade and the textile industry, where between 1998 and 2004 the pay agreement minimum wage for unskilled workers increased by around 30%. As early as 2002 a study by the University of St. Gallen reached the conclusion that between 1999 and 2001 the average increase in pay agreement minimum wages for unskilled workers was significantly higher than that for skilled workers (Prey, Widmer and Schmid, 2002).
- *Wages between 3 000 and 3 500 Swiss francs:* An evaluation of a survey of pay structures in Switzerland shows that between 1998 and 2002 the proportion of workers earning less than 3 000 Swiss francs was almost halved, from 5.6% to 3%. The decrease was particularly remarkable in the case of women: from 11.3% to 5.7%. A

considerable decrease is also apparent in the traditional low-waged industries: the textile industry, tourism, and the retail trade.

- *Trends in low wages relative to general trends in wages:* Calculations in the low-wage sector using the Swiss median wage (which rose by 6.5% between 1998 and 2002) show that there has also been a slight decrease in low wages relative to general trends in pay structures. In 1998 11.1% of workers in Switzerland earned less than 66% of the median wage for the economy as a whole; in 2002 the figure was 10.7%. In the case of women this proportion fell from 22.8% (in 1998) to 20.5% (in 2002).

- *Wage inequality:* In 1998 there were fears in the SGB that against a background of high unemployment and the practice of individual wage rises, unskilled workers would come away empty-handed from the upturn in the economy as far as their wages were concerned. A development of this kind would have resulted in growing wage inequality. The campaign for a minimum wage was intended to counteract this evolution. Our calculations show that the campaign was partially successful: between 1998 and 2000 there was a slight increase in the disparity between high and low wages, but between 2000 and 2002 this trend was reversed as the disparity showed a slight decrease.

3. Successes of the campaign for a minimum wage

The main achievement of the campaign for a minimum wage was to have slowed down the expansion of the low-pay sector. Thus between 1998 and 2002 it was possible to reduce the number of workers earning less than 3 000 Swiss francs gross a month by about 100 000, and the number of those earning less than 3 500 Swiss francs gross a month by as many as 200 000 (in a period of very low inflation). Most of these were women. The campaign was also successful in three other areas:

- *Public response:* The campaign for a minimum wage has met with a highly positive response from the public, most of whom support the demand that anyone in employment should also be able to live with dignity on his or her wages. The simplicity of the solution “no wage below 3 000 Swiss francs” has made an important contribution to this. No social category in particular should be picked out and protected from poverty by government allowances, but everyone with a job

should be entitled to a decent wage. With its commitment to the weakest in the labour market, the campaign has thus helped improve the public image of the trade unions.

- *No increase in wage differentials:* Thanks to the campaign for a minimum wage, it has been possible to prevent further growth in wage inequality. In industries with a high proportion of low wages, the lowest wages have at least risen in proportion to general trends in wages (in the food industry, the textile industry, printing, building, the retail trade, tourism, health and social services, for example). Less surprisingly, wage differentials are wider in high wage industries such as chemicals/pharma and banking. More surprising, however, was the growth in wage inequality in the transport, telecommunication and mail sectors. This can probably be explained with reference to the liberalisation in businesses which are closely linked to the Government (the Post Office, Swiss Railroad Company SBB) and the partial privatisation of Swisscom.

- *Impact on the economic debate:* The campaign has also reverberated at the level of economic debate. The campaign was able to weaken the consensus that any protection of the workforce was at the expense of economic growth and employment. The Government wage subsidies, preached in place of an increase in minimum wages by Switzerland's then Minister of Economic Affairs Pascal Couchepin, have similarly lost their relevance.

4. Unsolved problems

At least three problems remain unsolved and will have to be addressed as part of an expanded campaign.

- *Nothing happens without union mobilisation in the industries:* public pressure on its own is not enough to eliminate low wages. If workers are not mobilised in their own industries, little will be achieved. This is apparent, for example, in the figures for transport (road transport) or services to business. In both industries the proportion of workers paid less than 3 500 Swiss francs stagnated at 9% between 1998 and 2002. This may be due to the fact that in those industries Swiss unions are weak and have only indirect access to pay settlements, because there are no actual pay negotiations.

- *No influence on wages without collective agreements with pay talks:* pay agreement coverage in the low-wage areas is still

incomplete. Without pay agreement minimum wages, however, there is no possibility of direct influence on increases in low wages. Thus the SGB's "Collective agreements for all!" campaign is necessary in order to make progress in the fight against low wages: the density of pay agreement regulation must be increased, its scope expanded and the number of new pay agreements increased.

- *Minimum wages for all categories; match minimum wages to economic growth:* The minimum wage campaign cannot remain at 3 000 Swiss francs. 3 000 Swiss francs has proved to be a memorable slogan. But this wage is only just enough to support a single individual. For this reason all minimum wages must be linked to economic growth. Moreover, the impression that only the lowest wages need to be fixed by a pay agreement and that wages for skilled jobs can be left to the market must also be avoided. Minimum wages are also necessary for jobs which require specific training or occupational experience.

The trade unions' campaign for a minimum wage must find a solution to these problems in the coming years.

References

Flückiger, Yves (1999), "Tieflohnbezüger/innen und working poor in der Schweiz: Situation und Entwicklung von 1991 bis 1997" (*Workers in receipt of low wages and the working poor in Switzerland: situation and trends between 1991 and 1997*), Observatoire Universitaire de l'Emploi, University of Geneva.

Gaillard, Serge and Daniel Oesch [ed.] (2000), *Expertenbericht Mindestlöhne (Special report on minimum wages)*, SGB Dossier no. 6, Swiss Federation of Trade Unions (SGB), Berne.

Liechti, Anna and Carlo Knöpfel (1998), *Trotz Einkommen kein Auskommen – working poor in der Schweiz (No livelihood despite income – the working poor in Switzerland)*, Caritas Press, Lucerne.

Oesch, Daniel, Graf, Roman and Serge Gaillard (2005), *Die Entwicklung des Tieflohnsektors in der Schweiz. Eine Evaluation der SGB-Mindestlohnkampagne (Trends in the low-wage sector in Switzerland. An evaluation of the SGB campaign for a minimum wage)*, SGB Dossier no. 35, Swiss Federation of Trade Unions (SGB), Berne.

Prey, Hedwig, Widmer, Rolf and Hans Schmid (2002), *Mindestlöhne in der Schweiz. Analyse der Mindestlohn- und Arbeitszeitregelungen in den Gesamtarbeitsverträgen von 1999 – 2001 (Minimum wages in Switzerland. An analysis of rules on minimum wages and working hours in general contracts of employment 1999 – 2001)*, Bundesamt für Statistik (Federal Office of Statistics), Neuchâtel.

Rieger, Andreas (1999), "Löhne zum Politikum machen" (*Making a political issue of wages*), MOMA 5/1999

Rieger, Andreas (2001), "Offensive Gewerkschaftspolitik" (*Trade union policy on the offensive*), WIDERSPRUCH 40.

The Debate on the Minimum Wage

Extract from the 2004 WSI collective bargaining report

Reinhard Bispinck

The empirical basis is largely undisputed: the category of low-wage earners is growing (Bispinck/Schäfer 2005). About 12% of full-time workers in the Federal Republic earn an income which is 50% below the average. During the course of the year, the income distribution pattern has polarised, with the middle income bracket shrinking at the expense of the lower and upper categories. Collective agreements also do not afford any effective protection against low incomes. An analysis of the BMWA collective bargaining register revealed 130 bargaining areas with negotiated rates of pay in the lower groups below 6 euros (Bundestagsdrucksache 15/2932 of 19. 4. 2004). Even when it is assumed, rightly, that in many cases these groups represent very few people or at any rate only temporary stopping-off points, the fact still remains that low incomes are widely found in the tables of negotiated wages and salaries: an analysis by the WSI collective bargaining archive of the bargaining situation in North Rhine Westphalia showed that in 35 sectors, basic rates of under €1250 in the lowest bargaining group and under € 1500 in the middle bargaining group have been agreed. Particularly concerned are low-wage sectors such as the security guard business, hairdressing, hotel and catering, private transport industry and the clothing industry.

The rather restrained debate conducted in recent years on better securing a minimum living income has therefore livened up again. In particular, the question as to whether, given the changing political and legal conditions, a statutory minimum wage would be helpful, has been the subject of intense discussions. A central plank of the labour market reforms is more stringent conditions imposed on the unemployed. They are expected to carry out any type of work permitted by law. This means that the rates of pay negotiated or normally prevailing locally when unemployed workers are found jobs by employment agencies are no longer regarded as a precondition. In extreme cases this has a consequence that, according to current case law, long-term unemployed workers are forced to accept rates of pay up to 30% less than the normal rates if they do not want to lose their entitlement to unemployment benefit (*Arbeitslosengeld II*). The trade

unions have made some efforts - in vain - to block this measure and now fear a creeping erosion of negotiated wage and salary levels.

In the face of pressure from massive public protests against Hartz IV, the SPD president Franz Müntefering put forward a proposal that any social hardships should be cushioned by a statutory minimum wage. However, the precondition would be that the unions would have to share responsibility for this proposal. The SPD union council decided on 26 April 2004 to initiate a joint round of talks to cover the situation of the lower wage and income groups in general, including the minimum wage question. The aim would be to clarify the scope for shaping income levels in collective agreements and legislation.

Within the trade unions, there were some controversial views on the offer made by the SPD president. Whereas some suspected this proposal as being a tactical move, others viewed it as an opportunity to stabilise collective agreements at the lower end of the pay scale. The internal union discussions produced three different proposals:

Extension of the German Posting of Workers Act

The proposal by the IG Bauen-Agrar-Umwelt (IG BAU 2004) is an endeavour to broaden the union's positive experiences with minimum wages in the construction industry following the German Posting of Workers Act (*Arbeitnehmerentsendegesetz - AEntG*) to be applied generally. A central tenet of the proposal is the sectoral approach whereby minimum standards negotiated in collective agreements are declared generally applicable to all undertakings. To this end, they called for the Act to be opened up to other sectors, which is also possible under Article 3 (10) of the EU posting directive (Directive 96/71/EC). In order to avoid gaps in provisions for sectors not covered by collective agreements, minimum provisions would need to be established by the legal route. Possible instruments to be mentioned are the 1952 Minimum Wage Act and the Home-Working Act. However, this second phase would only take place at a clear interval so as not to jeopardise efforts to secure the highest possible minimum standard of negotiated provisions.

Lowest negotiated wages as statutory minimum wages

The proposals by IG Metall (Engineering Trade Workers' Union) are also based on a minimum wage approach differentiating between the

sectors. Accordingly, the Establishment of Minimum Conditions of Work Act (dating from 1952), in need of ‘extensive’ modification, would need to stipulate that the lowest negotiated wage in a sector should also be the statutory minimum wage in the sector. In this way, the bargaining autonomy for setting the lowest pay level would be retained and at the same time the general level of remuneration guaranteed by law. Alternatively, the instrument of a special declaration of general application, along similar lines to the Posting Act could be deployed. In those areas in which a ‘live’ collective agreement no longer exists (and where this agreement is, for example, only present in the form of its aftermath), the provisions of the existing collective agreement on temporary agency employment should be applied as this does after all to some extent lay down a cross-sector minimum standard. In those cases where there is no collective agreement to all, the agreements of ‘comparable’ areas should be used (Welzmüller 2004).

Statutory minimum wage

The Food and Catering Workers Trade Union, NGG (*Gewerkschaft Nahrung-Genuss-Gaststätten*) and also the United Services Union, ver.di (*Vereinte Dienstleistungsgewerkschaft*) have come out clearly in favour of a single statutory minimum wage covering all sectors. The NGG has voiced this demand for some years already, but until now was unable to find any allies in the internal trade union debate (Peter, Wiedemuth 2003). Its key argument in favour of a single minimum wage is that this would create a protection mechanism for the entire labour market. A clear and unambiguous guideline figure would be an important factor in successful implementation and thereby also contribute to achieving legal certainty (NGG 2004). Whereas the NGG is advocating a statutory minimum wage of €1500, ver.di has thrown a figure of €7.50 per hour into the talks, which depending on the weekly working hours corresponds to a monthly wage of €1200 - 1300. This figure ties in with the statutory minimum wage levels in other comparable European countries (see table).

Statutory minimum wages in selected European countries in €

	Hourly	Monthly
Luxembourg	8.31	1,403
Netherlands	7.89	1,265
France	7.61	1,197
Germany	7.50	1,234
Belgium	7.19	1,186
Ireland	7.00	1,183
UK	6.98	1,146

Source: Eurostat, own calculations - situation: September 2004

The differences of opinion which surface in these approaches relate to the strategic aims and also to the technical aspects of implementation: the sectoral approach is chiefly aimed at safeguarding negotiated rates already achieved in individual sectors and bargaining areas and, consequently, is very closely aligned with the existing bargaining structures. In this way, the aim is for the fear of intervention in bargaining autonomy in establishing minimum standards of pay to be minimised as far as possible. At the same time it is hoped to keep in check the drag-down effect, which could jeopardise higher negotiated wages as a result of a relatively low uniform minimum wage. The advocates of a single minimum wage see its function as being rather to set a general level of income from work in society which cannot be undercut anywhere. Given the multiple attempts to expand the low-wage sector, a political response is needed which must also be put across in simple and clear terms.

The model of a single statutory minimum wage is seen by its champions as having the additional advantage of applying equally to those sectors and areas covered by collective agreements and those which are not. Consequently it would also improve low negotiated rates which in some sectors are certainly a major problem. On the other hand, the sectoral models raise at least a number of procedural questions. Can the collective agreement in the temporary agency work/temporary employment sector really take over the function of a general low-income level for sectors without 'live' collective agreements? Given the competing collective agreements, how is it possible to establish 'comparable' agreements for areas without collective agreements? How can inadequate income levels in sectors

covered by collective agreement be raised? Within the trade unions it has been agreed that a proposed solution be formulated based on the IG Metall proposal. The working party of the SPD union council was unable to arrive at a final statement after a number of meetings and an experts hearing (see SPD Working Party, interim report, 29 November 2004). The union council has therefore decided to continue the work of the round of talks on "Shaping income levels in the low-wage brackets" based on the interim report to the union council at the end of November. The unions went on to emphasise that this did not mean that the minimum wage question has been taken permanently off the agenda.

References:

- Bispinck, Reinhard/Schäfer, Claus (2005): Niedriglöhne? Mindestlöhne Verbreitung von Niedriglöhnen und Möglichkeiten ihrer Bekämpfung (*Low wages? Minimum wages, spread of low wages and ways of preventing this from happening*), in: Sozialer Fortschritt, Volume 1. Bundestagsdrucksache 15/2932 of 19. 4. 2004
- Food and catering workers union (NGG) (2004): Mindestlohn - Stellungnahme der Gewerkschaft Nahrung-Genuss-Gaststätten (*Minimum wage - position of the food and catering workers union*), October 2004.
- IG BAU (2004): Eckpunkte der IG Bauen-Agrar-Umwelt zur Diskussion über Mindestlöhne/-Mindeststandards (*Key points by the construction, agricultural and environmental workers union in the discussion on minimum wages/minimum standards*), September 2004.
- Peter, Gabriele/Wiedemuth, Jörg (2003): Tarifliche und gesetzliche Mindeststandards für Erwerbseinkommen - Ansätze der gewerkschaftlichen Diskussion (*Minimum standard for income from work laid down by collective agreement and law - Aspects of the trade union discussion*), in: WSI-Mitteilungen Volume 7
- Welzmüller, Rudolf (2004): Niedrige Arbeitseinkommen - ein wachsendes Problem. Sind Mindestlöhne die Lösung? (*Low pay - a growing problem. Are minimum wages the solution?*), in: SPW, Volume 139.

Statutory Minimum Wage versus Generally Applicable Collective Minimum Wages: the Debate in Germany against Wage Dumping Below the Subsistence Minimum

Ernst-Ludwig Laux

The problematic issue of statutory minimum wages was discussed at a conference organised by Thinknet and WSI in Zurich 21-22 April 2005 (CLR-News 2-2005, pp. 55-57). The contributions of trade union experts on collective bargaining and researchers of institutes with links

to trade unions showed the diversity of the regulations of minimum wages, of historical experiences and of the present debate. Through EU enlargement to the east on 1 Mai 2004 a new dynamic to the debate about minimum wages for all employees in the same country or in the same sector has been produced, because cross-border employment of labour has caused wage and social dumping. This is observable particularly in the services sector and above all the construction industry. In Germany there is no experience with statutory or collective minimum wages except with minimum wages in the construction industry concluded on the basis of the German Posting of Workers Act ('Arbeitnehmerentsendegesetz') of 1996 and 1998 and the EU Posting Directive of 1996 (Directive 96/71/EC).

From my point of view two major orientations exist in Europe:

1) In some countries in Western and Eastern Europe, partly already for many years, minimum wages are in force and have become a habitual and firm part of social relations. They represent a general cross-sector safety net which must not be undercut and which secures the subsistence minimum. This system implies that through sectoral collective bargaining between the industrial partners, in some countries with the support of the government in others without its involvement, wage agreements are concluded which are based on the minimum wage either by percentage or by absolute figures.

2) Another bloc is represented by those countries in which free collective bargaining is an essential basis of industrial relations. Under this system collective agreements are concluded between employers and employees of the individual sectors. These agreements become applicable to **all** employees and enterprises through an 'erga-omnes' procedure, as it is called in European lingo, or through a 'Allgemeinverbindlichkeitserklärung' ('generally applicable' declaration), as it is called in Germany.

Now and then during the last 60 years after the Second World War in Germany this procedure of 'Allgemeinverbindlichkeitserklärung' has been more or less in the political debate. It is notable also that the trade unions of the German Trade Union Confederation, ('Deutscher

Gewerkschaftsbund', DGB), have developed very different views on this subject.

Whilst from early on my union, IG BAU (Industrial Union of Construction, Agriculture and the Environment), took the route of 'Allgemeinverbindlichkeit' for certain collective agreements other unions rejected this instrument, some of them very clearly and sharply. That is why in some sectors generally applicable collective agreements have not been concluded.

In Germany free collective bargaining is based on the Fundamental Law ('Grundgesetz') and is highly valued. The Law on Collective Bargaining contains juridical clauses concerning how collective bargaining has to be put into practice and how it is intended to work. Over the past decades trade unions have regarded free collective bargaining as highly valuable and fiercely fought against infringements. In the debate of the last two years, prompted by the situation of the economic crisis and a high level of unemployment, free collective bargaining has been exposed to continuous assaults by conservative and liberal forces. The decision on political orientation through the general election of 18th September 2005 is likely to become an important determinant for the future, in particular concerning these issues.

Based on collective agreements 'Allgemeinverbindlichkeit' was already established in the construction sector in the 1960s. the Social Funds thus also emerged in several branches, representing 'political brackets' for the whole construction industry serving to bind together the scattered structure of small enterprises.

Through the introduction of the 'Freedom of Movement of Workers' in the European Union from 1993, but also through the previous opening of the eastern borders since 1989, wage and social dumping was witnessed directly on building sites in particular in the craft segment of the construction industry. That is why the construction union in Germany, IG BAU, has supported attempts at European level in the mid-1990s to achieve a Posting Directive for the European Union. This was intended to establish the principle of 'equal wage for equal work at the same place'.

After ten years of fighting at European level, a Posting Directive was enacted in 1996. In the same year in Germany a Posting of Workers Act was passed which implements the European provisions. Ever

since then the German construction union has also had to busy itself with generally applicable wage agreements, as up to 1996 only the framework and social fund agreements had been declared generally applicable. The decision in favour of a generally applicable minimum wage in construction was taken in order to be able to fight against dirty competition from low wage countries. In bargaining with the employers' associations we had demanded that the whole scale of wages be made generally applicable. This, however, we were not able to get accepted.

I remember the discussions in the mid 1990s which had to be fought by IG BAU alone as all other sectors and unions in Germany were still firmly relying on collective agreements concluded in the framework of free collective bargaining. This was at a time when other sectors were also affected by wage dumping. However, this did not lead to political discussions among the trade unions and bargaining policy remained unchanged. In hindsight from today I would formulate this question: How different might the development during the last ten years in Germany have been, if at that time all trade unions had combined forces to push for collectively agreed minimum wages and, in particular, the erga-omnes declaration ('Allgemeinverbindlichkeits-erklärung') or the implementation of the Posting Directive had come more into the focus of trade union policy. But time has gone on.

Things were different on the employers' side. Though we could conclude collective agreements with employers' federations of the individual construction branches, 1996 for the main trades, 1998 for the roofers, 2003 for painters and decorators, 2004 for demolition workers, the BDA, Bundesvereinigung der Deutschen Arbeitgeberverbände (National Confederation of German Employers' Federations) mobilised massive pressure against generally applicable minimum wages in the construction industry. Then still under the liberal-conservative Kohl-Blüm-Government, the agreed collective minimum wages had to be lowered in top negotiations with the participation of the Government, the BDA and IG BAU in order to obtain the agreement of the BDA. At this stage the support of the other unions was poor and we observed only a degree of support in the Committee for Collective Agreements (Tarifpolitischer Ausschuss) of the DGB (German Trade Union Confederation).

In the course of the preparation of a political renewal in 1998 and especially during the election campaign, in particular afterwards through sustained lobbying of the SPD-Green Government, we were able in 1998 to achieve an amendment of the German Posting of Workers Act ('Entsendegesetz') which reduced the influence of the BDA in the process of the erga-omnes declaration. Henceforth it was no more the Committee for Collective Agreements, where the BDA had pursued its blockade policy, but in cases of so-called posting wages (Entsendelöhne) the Federal Cabinet was to make the final decision, in particular if the BDA caused a stalemate in the Committee for Collective Agreements.

Not only the framework conditions for generally applicable collective minimum wages in construction are regulated in the Posting of Workers Act, but in so-called 'cases of posting' ('Entsendefall') also the generally applicable agreements on holiday and, in particular, the procedure for holiday funds through SOKA-BAU are prescribed in the law. The active lobbying by IG BAU of the Kohl-Blüm but then also of the Schröder-Rieser Governments has been rewarded, because it is a very great success that a sectoral procedure for social funding is prescribed in law. Without this important step we would have undermined the minimum wage conditions. The control of compliance with collective agreements, which is carried out by SOKA-BAU in cooperation with the customs office, would have become an even weaker instrument. A European department has been set up in SOKA-BAU which processes the holiday fund procedure for foreign enterprises and is known as a central office for the control of legal employment conditions.

In 2002 the European Commission in common with the European Parliament has commissioned an evaluation of the implementation of the Posting Directive. Equally, a common project of the European Construction Industry Federation and the European Federation of Building and Woodworkers for an evaluation has been passed on to the European Institute for Construction Labour Research, which was to check the conditions seven years after the enactment of the Posting Directive. The final report by Jan Cremers and Peter Donders was published in 2004 in English, French, and German under the title 'The free movement of workers in the European Union'.

Through intensive lobbying, the German construction union managed to achieve a seven year transition period after EU Enlargement for the free movement of workers from the new member states for the construction industry. It is worth noting that in this process of lobbying IG BAU stood in the front line of general and trade union policy.

Since EU Enlargement from 1st May 2004, all at once developments were observed on a large scale in other sectors similar to those witnessed in the construction industry in 1989/90 in Germany and later on in 1993 in Europe. Employees, particularly in the services sectors, had been migrating across the borders from low wage to high wage countries and offered their labour force in various branches not only construction, but also agriculture, butchery, catering and industry services such as facility management, cleaning, or occupations concerned with old people's care and in hospitals.

As in other sectors wages and salaries are not declared generally applicable a debate has arisen in Germany on the issue of minimum wages. The first initiatives in the form of resolutions came up at the DGB Congress 2002 in Berlin, though at that time the delegates of most unions spoke against a €1.500 statutory minimum wage. In 2004 and 2005, however, demands for generally applicable minimum wages have been put forward in public campaigns in particular by Food and Catering Workers Union ('IG Nahrung-Genuss-Gaststätten') but also by ver.di ('Vereinte Dienstleistungen') and by the Engineering Workers Union ('IG Metall'). From this time, that is since about a year and a half, there are different positions as to whether a minimum wage should be decreed by the Federal Government or whether, as in the construction industry, the industrial partners should conclude collective agreements about minimum working conditions and have these declared generally applicable according to the Posting of Workers Act.

This argument has been going on in several debates in the DGB Executive, but also in the Committee for Collective Agreements of the DGB, and in my view it is still not yet settled. Again and again different comments and proposals are put forward which show divergent strategies of the individual trade unions of the DGB. We may however record the fact that the Committee for Collective Agreements of the DGB came to an agreement on 4th April 2005 that

the extension of the Posting of Workers Act shall be sought for all sectors, and accordingly the demand of a cross-sector minimum wage for those branches which are not covered by collective agreements, remains on the agenda; for the time being priority shall be given to implementing the extension of the Posting of Workers Act.

As a result the Federal Government decided on 27th April 2005 and finally 11th May 2005 to extend the Posting of Workers Act to all sectors and also intends to pass this law possibly during the present legislature before the general elections.

Generally we must acknowledge that the problem of minimum wages consists in effective control and that neither the Posting of Workers Act nor the statutory minimum wage can help against criminal activities. Therefore in the near future effective instruments for control have to be developed, such as for instance the 'Bau-card' (construction card) allowing for electronic checking on site, as proposed by IG BAU.

At this time of a very polarised discussion in Germany about free collective bargaining, regional collective agreements, or minimum wages it may be a severe mistake to demand statutory minimum wages and hand this over to a most conservative-liberal government. From my point of view a conservative-liberal government can implement its own aims through a statutory minimum wage, because if a very low minimum wage at just above subsistence level is decided on the trade unions will be at pains to achieve significant improvements. As the minimum wage also needs to be controlled, the state will have to be involved in this control and, therefore, under the present perspective the statutory minimum wage is perhaps the entry to put an end to free collective bargaining in Germany.

DISCUSSION

The Founding of the European Migrant Workers Union – A response to the limits of trade union action?

Marcus Kahmann

The Situation

Over the last decade IG BAU (*Industriegewerkschaft Bauen-Agrar-Umwelt*)¹, the German construction union, has presumably been the construction industry trade union that has probably been the most confronted with the transnationalisation of the labour market in the European Union. Under the German post-war labour migration regime valid until the halt to recruitment in the early 1970s, workers were – as employees of German enterprises – integrated in the social German social security system and employed according to the applicable collective bargaining provisions. In contrast, more recent labour migration in construction has predominantly taken the form of the posting of workers by companies registered outside Germany. The importation of foreign direct and indirect wage provisions as a result of the application of the country of origin principle entailed a veritable transnationalisation of labour market regulation.

Two legal provisions are decisive in the German posting of workers context. The European Council regulation 1408/71 stipulates already that in the case of posting the social security legislation of the member state in which the worker carries out work habitually remains applicable. Germany became a favourite target of posting firms from Spain and Portugal, along with self-employed from Britain and Ireland, as contrary to other EU countries, neither a legal minimum wage nor a generally binding collective agreement on wages existed in the construction industry. In the late 1980s, therefore, the German government began to conclude bilateral ‘agreements on the posting of workers on the basis of contracts for services’ with a number of countries from Central and eastern Europe (CEE) and Turkey. The

¹ In 1996 the construction workers union IG BSE (*Industriegewerkschaft Bau-Steine-Erden*) merged with the agriculture and forestry union GGLF (*Gewerkschaft Gartenbau, Land- und Forstwirtschaft*) to form IG BAU. As the GGLF was a comparatively small union, IG BAU essentially retained its character as a construction union. To simplify matters, the acronym ‘IG BAU’ will also be used in circumstances where historically ‘IG BSE’ would be the appropriate term.

migrants' stay was limited to two or three years and their number was subject to quotas. They were to be paid a net wage (including travel allowances and holiday pay) as provided for under German collective agreements for comparable activities. The second provision is based on the freedom to provide services within the European Union (EU), which allows companies based in EU member states temporarily and for a short time to provide a service in another member state without having a branch there. Thus, before the adoption of the Posting of Workers Act in 1996, EU firms from low-wage countries could offer their services even cheaper than those from CEE and Turkey as they could remunerate their workers entirely according to the country of origin-principle.

The lower costs of posted labour and the subsequent widespread contracting of posting firms by German construction enterprises spurred a debate on social dumping amongst workers, unionists and those employers who felt threatened by this development. Tensions rose between German and posted workers, prompting the union to develop a sustained campaign against racism in its ranks. At the height of labour migration to the construction industry in 1996, 188,000 posted workers were employed on German sites. This corresponded to a 17 percent share in employment (Worthmann 2003: 234). Autochthon workers were partly substituted by these migrants when the initial construction boom following re-unification gave way to an economic depression, with turnover and employment levels declining continually since 1995. The spread of foreign subcontractors gave equally rise to concerns about a negative impact on the production model in construction, characterised by a high qualification-high productivity-high wages nexus (Syben 1997; Hochstadt 2003).

This contribution traces the principal responses by IG BAU to the transnationalisation of the labour market and outlines their principal effects, both in matters of migration and in wider industrial terms. To this end, I will concentrate on the union's interaction with the state and its 'autonomous' action taken in the field. It is acknowledged from the outset that trade union responses to labour migration can be situated on a continuum of exclusion and inclusion, expressing a tension inherent in unionism on the question of labour migration. Favouring exclusionist policies, there is the economic rationale according to which labour scarcity reduces the likelihood of outsider competition

and thus enhances organised workers' bargaining position. Historically, attempts to control labour supply have regularly been combined with selection according to the criterion of 'like' in order to make solidarity easier to work. Favouring more inclusive policies are the notion of (internationalist) class unity, the European idea and human rights considerations.

Response by IG BAU

Ever since the arrival of considerable numbers of posted migrant workers at the end of the 1980s, IG BAU has vigorously promoted the adoption of legal norms in order to lessen their impact in its domain. With regard to the state, IG BAU pursued three specific strategies: the reduction of the number of posted workers; the levelling of employment conditions; and the enforcement in legal and conventional provisions.

In 1990, IG BAU tried to pressure the government to give up its plans to lift the halt to recruitment of Eastern European contract labour. However, as the construction boom in the aftermath of German reunification had increased labour demand and thus brought the union into a favourable bargaining position, the union's efforts to convince the government failed. Foreign policy considerations also played a role in the government's refusal. After the lifting of the recruitment stop in December 1990, IG BAU concentrated on political lobbying to reduce the posted workers contingents from CEE and Turkey. The argument initially put forward was that the supposedly low level of training of migrant labour from these countries would threaten the elevated standards of German construction production. From 1992 onwards, the union's argument associated the posting of workers from CEE with the spread of irregular employment (Treichler 1998: 211-2). After the revelation of considerable substitution effects on autochthon labour in the middle of the 1990s, the then Christian-Democrat and Liberal government reacted mainly for electoral reasons and reduced the contingents for workers from CEE and Turkey.

In the context of the negotiations over EU accession of the future CEE member states, IG BAU together with the organised construction employers again sought to limit the influx of workers by urging the German government to use its right to postpone the freedom of movement of workers and to provide services for these countries.

Fears of a new wave of cheap and docile migrant workers formed the background to this policy. IG BAU managed to team up with government negotiators and obtained a suspension of the freedom of movement for workers initially valid until 2006 and which may be prolonged until 2011. More importantly, it achieved a prolonged transition period for the freedom to provide services in construction, building cleaning and interior works. The initial suspension for two years may be extended for another seven years. Accordingly, within the transitional period postings from the accession countries will be prohibited, except within the framework of agreements on contracts for services.

IG BAU's efforts to level the employment conditions of migrant workers concentrated on posted workers from EU member states. This reflected not only the less pronounced nominal wage inequality between autochthon and CEE workers, but also the shift in the composition of posted labour in favour of workers from EU countries.² The trade union initially tried to modify the national (and later European) principles on the public procurement of works by introducing a social clause so that local wages were respected. When these efforts failed, the German construction union together with the European Federation of Building and Woodworkers (EFBWW) became the driving force in the search for a European solution that targeted the terms and conditions of posted workers' employment. When the negotiations of the European ministers of social affairs over a European posting directive came to a standstill in late 1994, IG BAU had to recur to the national level and engage in negotiations with organised employers and government. The outcome of these deliberations was the adoption of the Posting of Workers Act (*Arbeitnehmer-Entsendegesetz*) in 1996. The regulation held that the social partners negotiate a minimum pay rate which was to be declared generally binding throughout the construction industry. Thus, a floor for wages was established below the level that should be applied in federated firms. Equally, it prescribed the length of leave, holiday pay

² According to estimates given in Bosch and Zühlke-Robinet (2000: 238), in 1992 posted workers from CEE and Turkey represented 9.2 per cent of the construction workforce. The share of workers from EC-countries was at 1.2 per cent. By 1998 this figure had spurred up to 15.3 per cent, with the share of the posted CEE and Turkish workforce going down as far as 1.9 per cent.

and the additional holiday allowance. Undertakings established outside Germany were also obliged to pay holiday fund contributions.³ IG BAU equally sought to enforce voluntary and statutory regulation by demanding more resources for the labour inspectorates and more severe punishments of employers' illegal employment practices in the posting context. Together with the employers, the union achieved a number of successes. The amendments to the Posting of Workers Act in 1998 and 1999, made by the more union-friendly Social-Democratic and Green government elected in late 1998, extended the requirements for information to be provided by the foreign employer on the terms and conditions of employment. They also envisaged a closer cooperation of the different institutions which compose the labour inspection and considerably augmented contraventions. The new government also amended the procedure for the declaration of general application so that within the National Collective Bargaining Committee (*Tarifausschuss*) a disapproving vote by the interprofessional Confederation of German Employers' Federations (*Bundesvereinigung der Deutschen Arbeitgeberverbände*) could be circumvented by a regulation of the Federal Ministry of Labour. Another union initiative was less successful: In 2002, a national law that aimed at including the obligation to respect collective bargaining provisions in public tendering (*Tariftreuegesetz*) did not pass, when the conservative majority in the Chamber of Federal States (*Bundesrat*) blocked the project supported by the government. This failure highlighted the dependence of this type of union action on successful political alliance-building and more generally favourable (social-democratic) governing majorities.

A policy mix of exclusive and more inclusive approaches is also visible at the level of autonomous union action. To address the problem of the disregard of legal and conventional norms, the union has continuously cooperated with labour inspectorates to uncover illicit employment practices. These take the form of 'raids' on building sites. Over the years, IG BAU has extended these activities. In the context of a recent national campaign entitled 'No way without rules' (*Ohne Regeln geht es nicht*), for example, it has set up a telephone and

³ Since 1999, this procedure also applies to employers posting labour within the framework of bilateral labour contingent agreements.

email hotline in which the union gathers tip-offs on irregular employment practices in order to pass them to the labour inspection services. Even if the union emphasises that employers remain the target of these raids, evidence collected from migrant support groups suggests that the detection of unlawful employment practices by labour inspectorates regularly results in the waiving of the work permit and the subsequent expulsion or deportation of undocumented migrant workers (Cyrus 2004). Such incidents occur as the controls on sites also include checks on the workers' residency status. As offences against alien law are much easier to uncover, the application of the very restrictive provisions on stay often remains the only result of such raids. The assessment of irregular employment in the case of contract for services labour may result in a ban for the employer and thus the waiving of the work and residence permits for the entire posted workforce. As a consequence, German authorities lose potential witnesses against illegal employers and obstruct possible pay claims against their employers (Cyrus 1997). Thus, a tacit (hierarchical) consent between employers and posted workers evolves that covers the extent and backgrounds of irregular employment. To what extent the campaign harms the union's standing amongst migrant workers is a point in question.

Apart from its considerable efforts to 'combat illegal employment', IG BAU has also cautiously taken steps to include posted workers in its policy. From 1988 until the breakdown of Portuguese posting employment in the middle of the nineties, IG BAU established cooperation with construction unions from Portugal. This resulted in joint activities and the employment of Portuguese speaking representatives on German sites. Since 1993, the construction union has equally sought contact with trade unions from CEE and, because of its large share of migrants in German construction, Poland in particular. In a first stage, the union established bilateral contacts with the construction branch of *Solidarnosc*. It estimated that unionised construction workers could help denounce illegal employment practices in posting firms. Yet, apart from a general declaration on the necessity for equal treatment of Polish and German workers in terms of wages, labour law and social rights, these contacts never transformed into a fully-fledged union cooperation. Divergent views as well as *Solidarnosc*'s fragmented and decentralised structure were

behind this failure (Treichler 1998: 237-8). Cooperation at a later stage with post-communist *Budowlani* equally proved inefficient as the union has only a few representatives on construction sites. As a result of these experiences, IG BAU established its own office in Warsaw that aimed at informing posted Polish workers about their rights in Germany.

As the union felt that the impact of these measures was not satisfactory, in September 2004 it turned towards the foundation of the autonomous European Migrant Workers Union (*Europäischer Verband der Wanderarbeiter*)⁴ that aims at organising migrant workers irrespective of their nationality who work for a limited period of time in one or several member states of the EU. IG BAU has covered the costs for the start-up and consolidation phase by providing a loan of EUR 1.5 million (EIRO 2004). The union's aim is to set up offices in all countries of origin of migrant workers and to extend beyond the limits of the construction industry. For the moment, a first office has been opened in Poland and two officers have been employed who are supported in their organising efforts by IG BAU area officers. The union will provide its members with information on their rights in their native tongue, provide assistance in work-related conflicts, offer legal protection, and provide target group-specific services. In the future, the conclusion of collective bargaining agreements – in cooperation with IG BAU – is equally envisaged.

Outcomes and perspectives

The portrait of IG BAU's initiatives has revealed that the dominant mode of action has been collaboration with the state and employer organisations. While this has corresponded with the union's established practice of industry corporatism aiming at the 'maintenance of industrial order' (*Ordnungsfunktion*) in a general sense, there have also been more specific reasons behind the preference, notably the absence of generally applicable direct wage

⁴ The organisational separation had several reasons. First and foremost, a survey among posted workers commissioned by IG BAU revealed that a considerable number of interviewees could imagine joining a union, but preferred an independent organisation to IG BAU. The alternative proposal of a relatively autonomous unit for migrant workers within IG BAU was hence dismissed. To what extent this preference is due to an identification of the union with German state authorities or simple ignorance is difficult to judge. Secondly, the independence of the union was seen as a precondition for the envisaged participation of other German and foreign unions in the project. As the project has not received unanimous support from European and national unions, its activities have so far however been restricted to the German construction industry.

provisions in the German regulatory framework as well as the weakness and divergent interests of CEE unions. Both factors rendered solidarity-gearred union action more difficult. The portrait has equally disclosed a number of successes in the union's attempt to produce legal norms. The most important was certainly the adoption of the Posting of Workers Act and the subsequent conclusion of the agreement on the industry minimum wage. The failure, for example, of the German meat-processing industry, characterised by low union density and weak employer associations, to develop similar initiatives to limit wage dumping by posting firms, underlines the significance of this success (Czommer and Worthmann 2005). In the meantime, however, a number of inherent limits to these policies have become apparent which I will address in this final section.

The first set of limits concerns the union's rather exclusionist labour market admission policy outlook. Three points are important in this context. As we have seen, IG BAU's efforts, jointly with the employers, have been geared towards the numerical control and reduction of foreign labour supply. While the annual contingents for workers from CEE and Turkey went down from 55,000 in 1994 to between 20,000 and 30,000⁵ after 1997 (Blankenburg 2004: 85), since 1996 the overall posted workers (official) share in construction employment has remained relatively stable at around 16 per cent (Worthmann 2003: 76). In other words, employers and IG BAU jointly could not prevent the use of foreign subcontractors from becoming a well-established practice amongst German construction enterprises. Second, the agreed limitations on the free movement of workers from the new EU-member states have been criticised as counterproductive even by unionists as they run the risk of contributing to the spread of irregular employment (Cremers 2004). This touches indeed a very fundamental debate which has led, for example, Spanish unions to call for a 'realistic' immigration policy, favouring the entry of more immigrants than envisaged by the quota system in place, and to campaign regularly for the regularisation of undocumented migrant workers to combat the effects of the 'shadow economy' (Kahmann 2002; Cachón and Valles 2004). Finally, unless we see major changes in EU policies on the basic freedoms, the

⁵ According to data from the Federal Labour Office, after 1997 the number of posted workers from CEE and Turkey oscillated around 15,000. This means that the contingents were never fully exploited.

integration of the CEE countries and the ultimate abolition of the quota system will, as a matter of fact, put an end to the efforts to restrict labour market access for workers from these countries.

Another set of limits relates to the union's deliberations to include posted workers into social rights with the minimum wage. The outcomes of these efforts were rather ambiguous. Since the employment opportunities of posted workers are to a considerable extent dependent on the degree of their exclusion from German social standards, the establishment of an industry minimum pay rate rendered their employment less attractive. There is evidence that the nominal rise of EU-posted workers' wages did not result in the levelling of their actual employment conditions, but rather in the spread of illicit employment practices and their substitution by workers from CEE (Bosch et Zühlke Robinet 2000; Worthmann 2003). The institutionalised precariousness of the posted worker allowed for this. In a wider industrial sense, the minimum wage has put the regular collective bargaining agreement on pay under considerable pressure. In order to stop the negative wage drift, IG BAU and organised employers have reacted by introducing a second minimum wage for trained posted workers. There is evidence, however, that this has not prevented employers from defecting from the regular agreement. As a result, IG BAU has increasingly had to concentrate its efforts in pay bargaining on the minimum wage at the expense of the regular bargaining agreement.

This links, finally, to the problem of the disregard of applicable minimum legal and conventional provisions, in particular the provisions of the Posting of Workers Act. The impact of labour inspectorates has clearly proven limited. This is not only due to the peculiarities of the construction labour process itself, notably the high degree of mobility and dispersion of small workgroups, but also to the specific methods employed by illegal employers to over-exploit their labour force. Documents are often manipulated so that offences such as withholding pay, pay below pay rate, exclusion of over-time from pay, and non-compensation for expenditure incurred through being employed abroad are difficult to uncover. Consequently, real profits made from illegal employment are difficult to trace. Employer convictions therefore remain not only rare but also modest. Equally, fines imposed are hardly recovered. In 2002, for example, the Federal

Employment Office recuperated only EUR 30.4 of 122 million. Fines apparently do not work as an effective disincentive for illegal employers (Worthmann 2003: 243-8). The introduction of the main contractor's liability has not significantly contributed to enforcing applicable standards. Against this background, the tightening of penal law and the extension of maximum sentences resemble rather a 'symbolic act' (Cyrus 2004: 26). Taking into account the amount of public spending attributed to uncovering illegal employment, not only the effectiveness but also the efficiency of these institutions must be judged critically.⁶

If the control and enforcement of applicable norms for posted workers have been very difficult so far, the situation of posted workers has largely contributed to this. At a fundamental level, posted workers are in search of decent wages, either because they do not find an adequate job in their home country or because they have a project they can realise only if they earn considerably higher wages abroad. This constellation – rooted in the international division of labour with its inequalities and dependencies – has built in a reliance of the posted worker on employment abroad that is susceptible to reducing the willingness to act in his or her own cause. The short-term employment contract is susceptible to raising the worker's readiness to temporarily bear indecent and unlawful working conditions. From the factors which impinge on the 'willingness to act' we have to distinguish those which affect more fundamentally the 'capacity to act'. The latter is not only limited by the language barrier, but more importantly by institutional factors. One of them relates to the widespread lack of information amongst posted workers on their rights. While this failure primarily concerns state institutions such as the Federal Employment Office, allegedly even IG BAU started distributing its first multi-language information flyers on the minimum wage only in August 2003. Furthermore, the potential consequences for employment and stay evoked above make recourse to legal (and collective) action improbable. Evidently, this institutionalised precariousness ties the migrant worker even more strongly to the illegal employer.

There are signs that IG BAU in the meantime has reacted to these limits by strengthening its inclusive policies, most notably by the

⁶ In 2001, the German labour inspection employed 5,300 people (2,500 at the Central Customs Offices (*Hauptzollämter*); 2,800 at the Federal Employment Office (BMGS 2001)). The majority of inspectors were charged with uncovering illegal employment in the construction industry.

foundation of the European Migrant Workers Union. While the inclusive, supportive strand has always existed in union policy, the foundation of the association represents a new quality not only in the sense that it is equipped with considerable resources destined to organise these workers, but also that it retains a degree of autonomy from IG BAU to potentially articulate the specific interests of labour migrants. Its foundation may be interpreted as a step towards the development of what Durkheim (2004) called 'organic solidarity' between autochthon and migrant workers, based on the acknowledgement of the mutual dependence of both sides despite their differences. Strengthening the inclusive side of union policy involves a 'trade-unionist' change in the definition of the *problematique* surrounding the migration issue, from the problem of illegal employment to the exploitation of labour and from the dominant perspective on migrant workers as 'wage dumpers' towards the recognition of migrant workers as 'equals'. Taking into account the growing disregard of conventional (and legal) standards that characterises the industry as a whole (Artus 1999), the reaffirmation of workers' rights seems a natural terrain for joint action.

If the shift towards more inclusive union policies might appear obvious in the light of the limits indicated above, it will nonetheless create new tensions and contradictions within the union, both at the level of 'coherent' policy formulation and internal union politics. Its success is not guaranteed either. Two minimum conditions seem to apply: First, the strengthening of the migrant workers' capacity to act is an essential condition for the development of future collective (and legal) action. The European Migrant Workers Union's declared intention to avoid action in which the stay of its respective members might be endangered is an important step in this direction. Second, the respect of the 'autonomy' of migrant workers' interests is a condition for the credibility of IG BAU's attempt to develop a broader notion of solidarity. It is also instrumental to the birth of an authentic social movement of migrant workers, a necessary precursor of any viable and successful trade union organisation as the history of the labour movement has illustrated (Offe and Wiesenthal 1980). It is in the confrontation of all the existing positions and interests of labour in the field that new, more inclusive transnational policies will develop.

References:

- Artus, I. (1999), 'A l'Est, un paysage contractuel fragile' in *Chronique de l'IREs*, no. 57, March 1999, 13-19.
- Blankenburg, G. (2004), 'Werden Arbeitsplätze am Bau durch die EU-Erweiterung gefährdet?' in *WSI Mitteilungen*, no. 2/2004, 84-9.
- BMGS (2001), *Sozialbericht 2001*, Berlin: Bundesministerium für Gesundheit und Soziale Sicherung.
- Bosch, G. and Zühlke-Robinet, K. (2000), *Der Bauarbeitsmarkt: Soziologie und Ökonomie einer Branche*, Frankfurt: Campus.
- Cachón, L. and Lorenzo, M. S. (2004), 'Trade unionism and immigration: reinterpreting old and new dilemmas', in *Transfer*, vol. 9, no. 3, 469-82.
- Cremers, J. (2004), 'Notes from the editor', in *CLR News*, no. 4/2004, 1-2.
- Cyrus, N. (1997), *Der unterstützende Ansatz – Ein Konzept für die Durchsetzung tariflicher Standards auf den deutschen Arbeitsmärkten unter Beachtung sozialer und grundrechtlicher Standards*, <http://www.expertbase.net/forum/reader/cyrus.html>.
- Cyrus, N. (2004), 'Towards a dual approach to asserting working standards for the irregular employment of migrant workers' in *CLR News*, no. 4/2004, 22-33.
- Czommer, L. and Worthmann, G. (2005), *Von der Baustelle auf den Schlachthof. Zur Übertragbarkeit des Arbeitnehmer-Entsendegesetzes auf die deutsche Fleischbranche*, Gelsenkirchen: IAT-Report.
- Durkheim, E. (2004), *De la division du travail social*, 1st edition 1893, Paris: PUF.
- EIRO (2004), *European Migrant Workers Union Founded*, <http://www.eiro.eurofound.eu.int/2004/09/feature/de0409206f.html>
- Hochstadt, S. (2003), 'Die Bedeutung der neuen Arbeitsmigration für die Institutionen und die Arbeitskräftepolitik in der Bauwirtschaft' in Hunger, U. and Santel, B. (eds.) *Migration im Wettbewerbsstaat*, Opladen: Leske und Budrich, 119-152.
- Kahmann, M. (2002), *Trade unions and Migrant Workers: Examples from the United States, South Africa and Spain*, Brussels: ETUI Discussion and Working Paper.
- Offe, C. and Wiesenthal, H. (1980), 'Two logics of collective action: theoretical notes on social class and organizational form' in *Political Power and Social Theory*, vol. 1, 67-115.
- Syben, G. (1997), 'Arbeitskräftepolitik im Strukturwandel der Bauindustrie' in *WSI Mitteilungen*, No. 7/1997, 493-500.
- Worthmann, G. (2003), *Nationale Autonomie trotz Europäisierung: Probleme der Arbeitsmarktregulierung und Veränderungen der industriellen Beziehungen in der deutschen Bauwirtschaft*, Munich and Mering: Rainer Hampp Verlag.

REPORTS

International Council for Building: Task Group 59

Meeting in Helsinki, 13th June 2005

A new international forum has been set up to discuss construction industry labour issues. Under the auspices of the CIB, Task Group 59 (TG 59) held a first meeting in Helsinki (Finland) on Monday 13th June 2005. Participants came from Australia, Brazil, the Netherlands, Singapore, Tanzania, Trinidad, the UK, and the USA. The International Labour Office (ILO) was also represented. The co-ordinator of the TG 59 is Jill Wells. This report is largely based on the TG 59 co-ordinator's report of the meeting.

The purpose of the Task Group is to put 'people' at the forefront of construction research. It was first suggested at a meeting between Wim Bakens of CIB and various officials in the International Labour Office (ILO) in Geneva in 2004. It was agreed that labour issues had not received the attention they deserved in CIB and that the organisation would benefit from a greater focus on people in its programmes and a greater involvement of social and behavioural scientists in its activities. A joint initiative between CIB and ILO was proposed.

TG59 was subsequently established and Jill Wells (previously construction specialist at ILO) was appointed as its first co-ordinator. The Task Group aims to bring together two kinds of researchers: (i) those whose primary objective is to improve the performance of the industry and see the focus on people as a way of achieving this, and (ii) those whose primary interest is in the lives of the people who work in the industry. The intention is to create a platform for dialogue between these two groups of researchers, from both developed and developing countries, and to foster collaboration amongst them. Clearly, there will be both overlaps and synergies between the work TG59 and other CIB working commissions and task groups (notably those involved in improving the performance of the industry and its culture and in improving health and safety within the sector).

Nevertheless, the creation of a dedicated forum for placing the development of people at the heart of the construction research agenda is arguably long overdue.

Edmundo Werna, who specialises in construction labour issues at the ILO outlined the tripartite nature of the ILO based on workers, employers and governments. The construction industry is seen as a major source of employment but with many problems, including a mismatch between the supply and demand for labour, and poor health and safety levels. He sees six ways in which ILO could contribute to the work of TG59:

- by providing information on ILO activities, which could help to develop a research agenda,
- through provision of technical advice on the research agenda,
- by participating in the monitoring of activities and achievement,
- in mobilisation of resources, for example through the development of joint proposals,
- in the dissemination of results through the website, papers and books,
- through institutional endorsement, for conferences and other activities.

Participants agreed on the need for a greater focus on the workforce and on labour issues in construction research. A variety of reasons were suggested.

- There is an obvious need to understand the behaviour and thinking of the workers in studies designed to raise productivity or improve management systems.
- Shortages of skilled and even of unskilled labour in some countries have also drawn attention to the workforce and revealed a huge gap in our understanding of the reality of work on construction sites.
- In many countries the image of the industry is very poor, which has led to the local population shunning work in construction and reliance on migrant labour.
- The widespread use of subcontracting (including labour subcontracting) has created a gulf between the main contractors and the workers. The exclusion of workers from the dominant discourse on the promotion of partnering and other forms of collaborative

working (a specific instance of ‘disconnected agendas’) is one manifestation.

There was also support among participants for an agenda which goes beyond research aimed at improving the performance of the industry, to research in support of action to bring about change for the benefit of the workers. The view was expressed that despite the centrality of ‘free market’ philosophy, construction markets and construction labour markets are far from free: there is much interference with the market in the interests of the powerful. Better conditions for the workforce may come from tripartite action or from state intervention. The ILO has an agenda for change and it was suggested that TG 59 should promote research to support this.

At the macro level a number of broad themes may be included in the research agenda, including:

- the labour market and its dynamics,
- equality of opportunity for those working within particular industry contexts,
- migration, both national and international, particularly in the context of a free labour market (e.g. the EU or Caribbean).

At the micro level, there is room for research into:

- the reality of work on construction sites and views of the workers,
- the linkages between skills and performance/productivity, as well as the distribution of the gains from increased productivity,
- future skill requirements, including professional and managerial skills and how such skills are recognised,
- the meaning of ‘Human Resource Management’ in the current context.

Participants felt that comparative studies across socio-economic contexts have great value, hence collaboration between researchers in developed and developing countries should be encouraged. There could be lessons for poor countries from the richer countries. But also the rich countries have much to learn from developing countries, where more research appears to have been done on workforce issues and appropriate methods developed.

Andy Dainty and Stephen Gruneberg agreed to act as ‘regional coordinators’ for TG 59 in Europe. Although the responsibilities of regional coordinators were not discussed at the meeting it is assumed that at this stage the main task is to gather support for the work of the TG, especially among research students. This could include organising events in partnership with other research and industry bodies in order to share knowledge and develop a better understanding of the issues discussed above.

There will be a second meeting of the Task Group during a symposium in Santiago, Chile in January 2006. There is also a possibility of running a meeting in the Bahamas in May 2006 at the ASCE/CIB Leadership and Management in Construction Conference. A ‘stand alone’ first conference of the group could take place in 2007, possibly in conjunction with a CIB congress in South Africa (date yet to be fixed).

Jill Wells, Stephen Gruneberg and Andrew Dainty

Shifting Responsibilities

Amsterdam Institute for Advanced Labour Studies,
Conference 16th June 2005:

With Bernard Friot’s propositions about subordinated and unsubordinated labour ringing in my ears following two seminars in London, I marched off to the Amsterdam Institute for Advanced Labour Studies annual conference on ‘Shifting Responsibilities. I hoped to learn more about the shifting nature of employer, employee and state responsibilities for training, social welfare, etc. I learnt more about ‘etc.’ which turned out to be family and parental leave schemes, in particular the new Dutch life course saving scheme – surely if anything representing a shift to individual responsibility? Indeed the main thrust of the discussion turned out to be about who takes responsibility for ‘care’ in society with women’s increasing participation in the labour market. Now that we have moved away from the male as breadwinner model to the double earner family or

single parents, are individual companies, the social partners, the state, the individual or a mixture responsible for care, leisure and the development of skills? What is the optimal division of responsibility?

The new Dutch life course arrangement - described by Janneke Plantenga from the University of Utrecht - in which employees have a statutory right to participate and which is intended to pander to individual preferences seemed to epitomise a move away from collective responsibility through the social partners and collective bargaining. Through it a maximum of 12% of annual income may be saved and 'new risks' may therefore partly be covered by the individual with public support. After the conference a Dutch friend exclaimed to me: "Oh, you mean the new insurance!" though the word 'insurance' was not mentioned all day! There we were back to Bernard's subordination through funded individualised schemes based on the belief in a future 'pot in the deep freeze', transferred now to childcare and not just pensions! And now I realise that all the talk of 'moral hazard' and 'new risks', for instance of having a child (!), were very much insurance-speak!

The problem at the moment is that women tend to postpone fertility decisions till later when infant mortality rates are higher and that they tend to use savings for care, whether of children or the elderly, whilst men use them for their further education. But care does not further a woman's position in the labour market, whilst education does. A solution to this proposed by Alain Supiot to the EU but rejected was for the extension of protection to those providing care and receiving training. In the Netherlands parental leave may from 2006 be covered, but looking after older people will not be. Nor, as the compère of the conference put it, is 'Give me some air' leave!

From the debate in the Netherlands we turned to the UK situation. Jill Rubery from the University of Manchester contrasted the 'work-life balance' debate which is not about changing responsibilities but more about the 'business case' for flexible working. Now in Britain it is possible to request flexible working if a child is under six years old and it is intended to extend this to all employees. Maternity leave has also been extended with six months paid and a further 6 months

unpaid. There is also now extended school care. But all this has had little impact yet on employers who continue to argue for long working hours so that many women have to choose part time work. As a result they suffer too on retirement as pensions rest on defined contributions. So the life cycle model in Britain does not work and employers simply shift responsibility on to employees. Whilst the move to a dual earning family is common to all countries, that is really where the difference tends to end.

Lieve DeLathouwer from Antwerp University then gave another view, with her examination of care, skill and leisure risks, each with their costs, whether in terms of investing in future generations, in skills or in a productive society. She outlined the arguments for supporting different pillars of social protection, explaining that the first pillar is the only one that can redistribute wealth, providing equal opportunities for all and serving the common good – an argument again echoing Bernard Friot. The second pillar, supplementary schemes, does though help to involve the individual and encourage personal responsibility. The time arrangements in Belgium, the result of collective bargaining between the social partners, include paid leave and holidays, a subsidiary working time reduction scheme and a career break scheme. The career scheme is in terms of time credits of three months to one year (excluding small firms and only for those with the same employer for at least a year) and thematic leaves, organised with the trade unions and involving a flat rate benefit depending on age. This is a favourite scheme for older workers but is under threat, partly because it does not necessarily have a fair redistributive effect as it largely attracts those on higher incomes, those in certain regions and women and has turned into an exit route for older workers.

The challenge is to create schemes with increases for labour supply and a mix of responsibility. It was argued in the ensuing discussion that the Dutch life course saving scheme is likely to increase gender differences because women are inherent carers and men will retire early. Care leave – as opposed to training – is always a negative aspect in the careers of women. Jill Rubery pointed out too that if pay were equal then leave would not automatically fall on women. Indeed the concept of life course might be regarded as a little daft in treating very

different aspects as the same. More than this, its individual approach reinforces the idea that childcare is for women. On this note the conference ended and I was left contemplating again Bernard's distinctions between value and wealth in society, his criticism of the narrow scope of valorised labour, and emphasis on the need to extend the socialized wage and to maintain at the same time fairness between men and women and between generations.

Linda Clarke, University of Westminster

EU constitution and charter, progress or problems for unions and workers

A conference of the Institute of Employment Rights, London, 23 May 2005.

This conference organised by the Institute of Employment Rights (before the referendums in France and the Netherlands) was an attempt to convince British trade unionists that the adoption of the EU Constitution would improve employment conditions in Britain. For the sake of fairness as well as impartiality both supporters and opponents of the constitution were invited to speak.

Keith Ewing, president of the Institute, raised the central question of the conference: what will be different in the EU with the introduction of the constitution? How will it affect democracy and the European social model?

The first answer was from Brian Bercusson with regard to Great Britain. He emphasised that it would introduce new workers' rights and protect those already in existence against being taken away by future governments. He pointed out the legal enforceability through the constitution of fundamental social rights such as equal pay for equal work, paid annual holidays etc.

On a more sceptical note John Hendy also advocated the constitution in its general effect of bringing Britain in line with continental European labour rights and thus removing restrictions for British workers, such as being in breach of contract with strike action. But he warned at the same time, that equally the employers' prerogatives would be enforced by the EU Constitution.

Jane Carolan from Unison represented the trade union opposition against the EU constitution with those well known arguments – which were to determine the French referendum – that all the liberal provisions for free enterprise and international competition would undermine working conditions and take away workers protection at national levels, e.g. by encouraging the privatisation of health services. Peter Coldrick from the TUC tried to assess the constitution in its positive as well as negative aspects. Quite correctly he drew attention to the fact that the constitution had watered down rights as agreed in the ‘Social Charter’. However, in comparison with the Treaty of Rome the constitution strengthens workers rights. He concluded his detailed assessment of the constitution with the warning that a no vote in France would leave Britain on the margins of Europe and thus represent a setback for solidarity.

Combative Bob Crow, general secretary of the RMT, exhibited traditional trade union militancy in telling the audience how the EU constitution would only undermine ‘world-wide solidarity’, confirm non-democratic government by the Brussels bureaucracy, encourage further privatisation of public services, etc. “The European Union is a construct to stop socialism, since Schumann”, was his ultimate verdict and has to be rejected.

Diplomatically representing the ETUC, Klaus Lörcher defended the constitution as a means to promote democracy, social progress, solidarity, and peace, all underpinned by carefully selected quotes. So at the European level, trade unions support the constitution.

Another similar naïve advocacy from a Member of the European Parliament, Richard Corbett deserves quoting verbally: “... the new constitution has won support from the overwhelming majority of Socialist parties across Europe and from the ETUC [see above] and is so strongly opposed by the far right.”

The last speaker, Ian Davidson Member of Parliament, finally added a nationalistic note to the conference: “The EU Constitution would be bad for Britain’s role in the world.” And of course it “would also be bad for democracy”. His message was unmistakable: vote no!

The final panel discussion gave the speakers another possibility to confirm their positions. Somebody intervened from the floor: “We cannot act only at national level. We must act at European and global levels. For 25 countries we need a constitution”. Other contributions

from the floor showed how divided the positions are, often rather scared by the perspective of being part of Europe.

I was wondering at the end of the conference, how the French and Dutch might vote and whether it would really make a difference how they vote and when a constitution will be ratified. During my lifetime the European community has grown and become a reality which is not really much disputed. Whether this process would be accelerated by the adoption of the EU constitution at this moment is difficult to tell. There are so many other socio-economic factors contributing to this process which might well become disrupted by premature legalisation. An inexplicable anxiety exists on the island.

Jörn Janssen, CLR-GB

REVIEWS

Simon Deakin and Frank Wilkinson:

The Law of the Labour Market:

Industrialisation, Employment and Legal Evolution

Oxford University Press, 2005, 380 pp., £60.-, ISBN 0-19-815281-7.

This book is about the peculiar employment conditions in Britain. That makes it interesting for a native of Continental Europe. It traces its trajectory from the origin of labour law in England, the ‘Ordinance of Labour’ in 1349, and in more detail from the ‘Statute of Artificers’ 1562/3. But, as the title indicates, the focus is on the transition in what is perceived as ‘industrialisation’ from the late 18th century up to date. The authors conceptualise this transition in legal terms as that from the master and servant relation to the contract of employment. Three aspects are regarded as constitutive for the conditions of employment: the legal framework regulating employment, social security regulations and collective employer-employee relationships. These aspects form the central three chapters of the book. The first chapter lays out the conceptual basis and the last fifth chapter concludes with an outline of a future under the auspices of the European Union Charter of Fundamental Rights of Workers enshrined in a European constitution - the book was launched just before the referendums in France and The Netherlands.

Simon Deakin and Frank Wilkinson convincingly show the lasting impact of the Master and Servant Act from 1823 on employment conditions in Britain up to date. At the same time they trace the evolution of the ‘contract of employment’, based on employer-employee mutuality, as a concomitant of industrialisation in a technical and economic sense (pp. 18-25). Under this assumption it is staggering that in the country, which pioneered ‘industrialisation’, the contract of employment “emerged ... only after 1945” (p. 87) and “many elements of the earlier tradition of ‘service’ remain within the modern law.” (p. 108) Could it not have been through the impact of the social – rather than industrial - revolutions that the ‘contract of employment’ was established and underpinned by law much earlier on the continent, while royal privileges survived in Britain?

Social security eventually replaced poor law and the workhouse in a protracted process from its beginnings with the Unemployed Workman Act from 1905 and culminating with the National Insurance Act in 1946 following the Beveridge Report 1944 on “Full Employment in a Free Society”. Deakin and Wilkinson show how Beveridge’s concept of social security based on the bread-winner principle became increasingly obsolete with female employment rising to almost the same as the male participation rate. But instead of adjusting to this great achievement in equality, social security provisions rather deteriorated in the last decades: “Current policy faithfully replicates previous experience in the long history of the English poor law: it is precisely in those periods when a belief in the ‘natural’ properties of the market is at its strongest, that the administration of social welfare is at its most repressive.” (p. 199)

The development of trade unions and collective bargaining for wages and conditions are presented in relation to the alternative option of legal determination: “The features which defined the British ‘compromise’ of collective laissez-faire by comparison with systems of labour law in continental Europe during this formative period (of the middle years of the twentieth century) were the partial and uneven quality of regulation through collective bargaining and the absence of a comprehensive floor of rights to terms and conditions of employment.” (p. 272) Thus the Trade Board Act 1918, typically after the Great War, following the recommendations of the Whitley Committee to set up Joint Industrial Councils as a form of worker participation, fell far short of the codetermination through Works Councils in Germany. These Joint Industrial Councils were not compulsory, covered only a tiny minority of workers and died out in the 1930s.(pp. 236-8) Collective bargaining on the whole remained widely decentralised, fragmented and without legal underpinning. After a period of relative prosperity from 1945 to 1979 it almost vanished in the last two decades of the 20th century.

The last chapter reads more like a manifesto than “what an effective rationale might be for the present state of labour market regulation, and for its future development.”(p. 275). It is based on the capability-based approach championed by the famous ‘Supiot Report’ to the European Commission 1999.(p. 348) According to Deakin and Wilkinson “Social rights should be understood as *institutionalised*

forms of capabilities which provide individuals with the means to realize the potential of their resource endowments and thereby achieve a higher level of economic functioning.”(p 347) In short, “social rights are crucial for both economic efficiency and social justice.”(p. 248) This is a well-meaning assertion, which stands in sharp contrast to prevailing attempts of multinationals and governments across Europe to boost ‘economic efficiency’ by dismantling existing labour rights and social protection following the example of the British labour market. It seems to me that the concepts of ‘economic efficiency’ as well as ‘market economy’ need to be specified. I still believe that we need to distinguish between a socialist and a capitalist economy as well as between a social market economy and the dominant shape of the present ‘global’ economy. Maybe also the history of labour law would be interpreted differently in the light of capitalist rather than ‘industrial’ development and of wage labour rather than the labour market. Accordingly ‘efficiency’ cannot be the same irrespective of the kind of ‘economy’.

Irrespective of these reservations, whether one agrees with its approach or not, the book is packed with information on the development of labour in Britain, especially on recent turns of Conservative and Labour Governments to escape and undermine European social legislation. For a continental reader this book is also a lesson in British common law in a state without a code and courts of labour.

Jörn Janssen, CLR-GB.

CALENDAR OF EVENTS

ESRC/CLR SEMINAR SERIES: PEOPLE IN CONSTRUCTION SESSION 6: Thursday 6th October 2005

University of Westminster
309 Regent Street
London W1B 2UW
(Nearest tube Oxford Circus – Victoria, Central & Bakerloo Lines)
Board Room

SKILLS AND TRAINING

IN CONSTRUCTION IN THE EUROPEAN UNION

PROGRAMME

- 10.00 **Registration and coffee**
10.15 **Welcome:** Linda Clarke (University of Westminster)
- 10.30 **Session 1: The regulation of training**
Chair: Linda Clarke
Jos Gijbels (FVB/FFC) *The Belgian Industry-wide Approach*
Howard Gospel (Kings College London) *Large employers and apprenticeship training*
Stephen Gruneberg (University of Reading) *The Requirement and Expectations of Site Management Training Courses in Britain: do courses meet the requirements?*
Stefan Hochstadt (Fachhochschule Dortmund) *A contrast with Germany: the Polier Discussion*
- 12.30 **Lunch**
- 1.30 **Session 1: New initiatives**
Chair: Howard Gospel
Pat Bowen (CITB ConstructionSkills) *New Innovations in Training in Britain*
Allan Dam & Elsebet Frydendal Pederson (Technical University of Denmark) *the BygSol project in Denmark*
Philippe Méhaut (University of Aix-en-Provence) *Collective Bargaining on Lifelong Learning in the French Construction Industry*
Discussion:
- 3.00 **Tea break**
- 3.15 **Session 3: The European Dimension**
Chair: Jan Cremers
Anneke Westerhuis (CINOP, NL) *The new European Qualifications Framework: its significance for the construction industry*
George Brumwell (CSCS) *The British CSCS scheme: a skills passport?*
MNC representative - *Construction Training Europe-wide*
Panel Discussion
- 4.45 **Concluding remarks**
5.00 **Finish – Drinks + nibbles**

Editor:

Jan Cremers

phone: +31 30 2318032

e-mail: jan@gbio.nl

Co-editor and Review Editor:

Jörn Janssen

phone: +44 20 77007821

e-mail: joern.janssen@gmx.co.uk

Layout and Production:

Frank Leus

phone: +32 2 2271041

e-mail: info@efbh.be

Contact and Orders:

CLR-News

c/o Frank Leus

EFBWW

Rue Royale 45

B – 1000 Bruxelles

Phone: +32 2 2271040

Fax: +32 2 2198228

e-mail: info@efbh.be