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Note from the Editor 1

Subject Articles
Jon Erik Dølvik, Line Eldring: EU enlargement two years after: mobility, effects and challenges to the Nordic labour market regimes 3
Kristin Alsos, Line Eldring: Extension of collective agreements: The Norwegian case 10
Anne Mette Ødegård: Using East European labour - a safety risk on Norwegian construction sites? 22
Fellesforbundet: EU's Services Directive – status and comments 47

Reviews
The Nordic Labour Market two years after the EU enlargement 66

Reports
The Draft Services Directive versus Social Europe - a IER conference 69
Trial in Copenhagen - a CLR Denmark conference 71

CLR-publications
CLR-Studies 5 76

NOTE FROM THE EDITOR

This issue of CLR-News is the result of a fruitful trip to Norway.
Last summer our colleagues and friends from Fafo organised their annual conference under the heading 'Two years after EU enlargement'. The programme included several speakers from state authorities, research institutes, labour market organisations and the social partners.
The Fafo team itself came up with new research on labour migration, the work environment and workings conditions. As one of the key speakers at the conference, I was quite impressed by the quality of the research done. That was a good reason to invite the Fafo staff to deliver us contributions for one of the autumn issues of CLR-News.

The contributions presented here touch upon several important questions and treat problems that are connected with the free movement of labour and the free provision of services.

The main consequence for the construction sector of the introduction of the free movement principles in the EU have been increased labour migration and posting of workers associated with cross-border subcontracting. In recent years the building sector has experienced the side effects of introducing free movement of services without a coherent legislative social framework for the posting of workers. The Posting Directive was meant to provide a sound basis for the free movement of services and workers. In recent years we have evaluated the national implementation of the Directive (see CLR-Studies 4).

In the contribution of Jon Erik Dølvik and Line Eldring the focus is on the effects and challenges of EU enlargement on the Nordic labour market: a growth in the mobility of service providers, distortion of competition in certain market segments and downward pressure on wages and working conditions. On the other hand one can say that labour migration and increased mobility have contributed to economic growth and problem solving related to labour market bottlenecks. The migrant worker has functioned as the 'spare reserve' for the supply of labour. In such a situation the contradictions in the EU market

between the free provision of services and the free movement of labour give full space for irregular practices.

One of the key instruments for the respect of working conditions in the host country is the extended or generally binding collective agreement. The extension by the legislator is, however, not without dispute. In several Nordic countries the unions still give absolute priority to collective bargaining, to industrial action and to the autonomy of the social partners.
In their contribution Kristin Alsos and Line Eldring treat the sensitive question of the extension of the Norwegian collective agreements. The debate is very similar to earlier disputes inside the EFBWW when the Posting Directive was discussed (and later on in Germany as the statutory minimum wage debate took place). Contract compliance of Norwegian and foreign undertakings is especially a problem in small and medium sized companies.

Not only wages but also provisions such as health and safety regulations can come under pressure if cheap and unregulated labour enters. Anne Mette Ødegård comes up with the results of a recent survey undertaken in the spring of 2006. There is an urgent need for training in health and safety issues; language is a serious barrier in this field and the necessary coordination is lacking. The key role taken by safety deputies in Norwegian undertakings is often not guaranteed in undertakings with foreign labour.

A final contribution comes from the colleagues of the Norwegian trade union Fellesforbundet. They provide us with an overview of the activities of their union in the fight against the Services Directive.
The report and the review that we took on board fit extremely well in this issue.
As always: we wait for your comments or contributions.

Jan Cremers, 2006-10-27

EU enlargement two years after: mobility, effects and challenges to the Nordic labour market regimes[1]

Jon Erik Dølvik, Line Eldring, Fafo Institute for Labour and Social Research, Norway

Two years after the enlargement of the EU a certain pattern has emerged in labour migration streams from the new EU member states to the Nordic countries. Individual labour migration has varied strongly among the Nordic countries, but continues to grow. By meeting growing demand for labour, the movement of labour has contributed to increasing production and employment, curbing prices and interest rates, and extending the room for manoeuvre in economic policies. Labour migration growth has been strongest in Norway and Iceland, while Finland and Sweden have seen a certain decline in registered migration. No signs of social tourism have been detected. Labour mobility related to *services* has increased strongly, and seems to clearly exceed regular labour migration in key sectors. This development has given rise to new challenges in terms of regulation, enforcement and control.

Transitional arrangements in the Nordic countries

In the same manner as most of the 'old' EU member states, Denmark, Finland, Iceland and Norway chose to introduce *transitional arrangements* for the movement of labour from the EU-8. Sweden, the United Kingdom and Ireland opened their labour markets from day one. Finland, Iceland, Greece, Portugal and Spain repealed their transitional arrangements from 1 May 2006, and Italy has followed suit. Denmark undertook a relaxation of its regime and made it possible to pre-approve enterprises that have collective wage agreements, and will repeal its arrangement on 1 May 2009 at the latest, as will Norway.

The Nordic experience has highlighted the difficulties involved in having separate regimes for *individual labour migration* on the one hand, and *labour mobility through services* on the other. Differences in the conditions for wage setting, labour conditions, taxation/duties,

1 This article is based on a report made for The Contact Group under the Labour Market Committee of the Nordic Council of Ministers in August 2006

control and enforcement have given a certain rise to *strategic circumventions and distortions*. These have contributed to a reduction of regular labour immigration and to distortions of competition, dumping of wages and creation of disorderly conditions in parts of the labour and service markets.

In the Nordic countries as a whole, the number of permits granted in 2005 accounted for a supplement of 0.4 per cent to the workforce. In 2006, it appears as if the net stock of labour migrants from the EU-8 into the Nordic countries will fluctuate between 20,000 and 50,000, or between 0.2 and 0.4 per cent of the total Nordic workforce. However, in Norway the number of work permits in 2006 will probably pass 2 per cent of the workforce and in Iceland is even higher. Even though this volume is higher than expected, net mobility is still far smaller than the net intra-Nordic mobility and the annual fluctuations in the Nordic labour force. If we assume that the direction and volume of the migratory flows will vary in accordance with the business cycle, as previously seen in the Nordic countries, and assuming that intra-Nordic mobility will decline for demographic reasons, a net labour immigration of this magnitude is unlikely to cause distortions in the labour markets, but represents a desired supplement to the ageing population.

Service mobility

However, registered individual labour migration accounts for only part of the total labour immigration from the EU-8; in addition comes labour mobility related to the free movement of services. The total volume of service mobility is unknown, but there is some evidence to indicate that the volume may be comparable to registered individual migration. In Finland and Iceland the authorities assume that service mobility throughout the initial two years has exceeded the movement of individual workers, while the Danish authorities assume that service mobility is lower, and the situation in Sweden is unclear. The Swedish trade unions still assume that the number of posted workers is higher than the number of ordinary labour migrants. In Norway, several studies show that the volume of postings in the construction and manufacturing industries – these being two of the major users of labour from the EU-8 – is far higher than the number of migrant workers employed in Norwegian companies, while the situation is the opposite in the service industries and in agriculture. Most of the

posted workers are employed in a home country company that has a contract in the host country, or are hired out from a manpower agency based in the home country to a company in the host country. Few companies in Fafo's enterprise survey reported using self-employed persons, but there are indications on increased use. According to the Norwegian tax authorities there has been a considerable increase in registered Polish one-person firms after May 2004. On the basis of assessments by industry spokesmen and Fafo's enterprise study we may assume, as a rough but realistic estimate, that posted workers number between 20,000 and 30,000 within the construction and manufacturing industries. The purpose here is not to present an accurate estimate, but to point out that, in addition to a net volume of 20-50,000 individual labour migrants in the Nordic countries, there is also an approximately equal number of service providers. In Norway and Iceland, the legal labour migrants' proportion of the labour force can probably be nearly doubled, and accounts for more than three per cent in Norway and more than five per cent in Iceland. These proportions are markedly lower in the other Nordic countries and for the Nordic region as a whole (0.5-1.0%). Signs of growing illegal employment of immigrants have also been noticed, for example in the domestic sector. Stories of fake self-employment are also often heard, but there is a lack of quantification or documentation.

Improved flexibility

In addition to functioning as a labour reserve in a period of boom, there are indications that the new supply of labour from the EU-8 has given many enterprises improved flexibility in terms of both working hours and wage costs. This observation emerges clearly from a Fafo study among Norwegian enterprises, not only with regard to posted and contracted labour from the EU-8, but also among a significant proportion of the enterprises that have hired new EU citizens on the conditions stipulated by the transitional arrangement. On the other hand, the majority of the companies reported language problems and very few indicated that EU-8 labour was more qualified than domestic workers (Dølvik et al. 2006). Among economists, it is a commonly held opinion that the increased competition and labour mobility from the EU-8 is one of the main explanations for the fact that wage growth during last year's Norwegian boom has remained the lowest in the last ten years.

Immigration as a problem solver

So far the consequences of the increased labour mobility to the Nordic countries appear to be largely positive. During the recent period of strong upturn in demand in all the Nordic countries, the increased supply of labour has contributed to enhancing the capacity for growth, reducing cost inflation, halting interest rate growth and enhancing the freedom of action for economic policies. By solving problems related to bottlenecks in a situation of increasing scarcity of labour in some markets, migration has contributed to 'greasing the wheels' of the labour market and increasing employment opportunities for national workers as well, while unemployment has been reduced. The high degree of short-term migration and service mobility among migrants from the EU-8 has to a large extent served as a 'spare reserve' of temporary labour and has contributed to increasing the volume flexibility of enterprises' workforces.

Social dumping

In spite of the mainly positive consequences outlined above, the fairly rapid growth in the supply of labour and services from countries that have much lower levels of wages and incomes than the Nordic countries has obviously not taken place without problems. Earlier reports from this project pointed out that service mobility in particular is concentrated in certain regions, industries and professions that are undergoing significant growth. The volume and conditions related to the supply of foreign labour and services in certain markets – e.g. the construction industry – have thus given rise to dishonest practices, undesirable distortion of competition, downward pressure on prices and social dumping. In addition to circumvention of regulations and agreements related to hiring, wages and working conditions, HES regulations, taxes and duties – that are damaging to both common societal interests and *bona fide* enterprises – this has served to exert a pressure on the norms and standards associated with the Nordic labour markets in some areas.

Concentrated in particular industries

So far, most studies indicate that the major part of the labour mobility from the EU-8 has taken place within professions/industries that have relatively limited requirements regarding formal skills; most are

employed in jobs for unskilled and semi-skilled work, and very few are found in more skill-intensive jobs. This is probably a consequence of the relatively compressed wage structure in the Nordic countries, meaning that wages are particularly high in unskilled occupations compared to those in the countries of origin and alternative countries of destination.

One may also envisage the emergence of a new stratum of enterprise that bases its competitive strategies on one-sided recruitment of low-paid labour from the new EU member states. In spite of the transitional arrangement, Fafo's enterprise study revealed a surprising proportion of enterprises that have predominantly (temporary) employees from the EU-8, mainly from Poland. Given the economic disparities between the countries and the benefits to be gained from this kind of migration, the establishment of such enterprises has the potential to serve as a flexible channel for organising migratory networks and as a springboard into the Nordic labour markets that can easily be combined with assignments associated with the domestic sector, sub-contracts and contracting of labour. In the same manner as in the volatile markets for sub-contracts and service mobility, a potential growth of such 'ethnic' small enterprises can be difficult to trace for the trade unions and government authorities that often have to concentrate their efforts on controlling the large and economically important enterprises.

Different regimes and different challenges

The Nordic countries face different challenges with regard to the implementation of the EU's Posting of Workers Directive and ensuring the same conditions for posted workers as for national employees. In Finland and Iceland, which in principle have stringent and comprehensive regimes based on legislation and extension of agreements, the main task is to ensure effective control and enforcement. The challenges are greater in Norway, where the influx is strongest, and where general application of collective agreements presupposes that one of the social partners demands a generalisation, is able to produce evidence that unequal treatment has taken place, and gains support on the Tariff Board. So far, this has been observed only in the construction industry, but posting is becoming widespread also in other sectors, e.g. in manufacturing, often on conditions that must be regarded as social dumping according to national standards.

The autonomous, agreement-based model in Sweden and Denmark seems to have functioned largely according to intention, even if the responsibility for implementation that is placed on the trade unions is highly resource-intensive and face problems of legitimacy. The market for labour in private households might also develop into a growing arena for dishonest operators. The Laval/Vaxholm case represents a certain factor of uncertainty, but is not expected to entail dramatic consequences for the Swedish model. The key issue in the forthcoming Nordic debate will not be to identify the most effective system, but rather how, on the basis of the strengths and vulnerabilities in their respective regimes, the countries can develop a coherent set of instruments for implementation, control, and enforcement that can ensure credibility, accuracy, and legitimacy for those operating in the field.

Much can be learned from each other's experience of posting. Finland is clearly at the forefront in terms of the development of tools for control and enforcement, but the results will depend on the practical aspects of implementation, which places requirements on responsibilities, attitudes, and cooperation between enterprises, the social partners, the users of labour, various governmental bodies and the general public. In this perspective, the development of national regimes is less concerned with the individual tools used for regulation than with the ability to create societal support for a set of unequivocal norms – underpinned by sanctions – as well as attitudes and priorities that can strengthen the capacity and will of the actors in the labour market to keep order in their own ranks. Accordingly, the politicians have a key role to play in raising awareness of the importance of an open, well-organised and inclusive labour market built on equal treatment irrespective of nationality.

The EU's focus on increased mobility, the implementation of the Services Directive and the evaluation of the Posting of Workers Directive also mean that the coming year will represent a window of opportunity for raising Nordic perspectives on these issues at European level, and for influencing the political and legal rules of the game in the growing European labour and service markets.

The transitional arrangements have ensured wages in accordance with prevailing host country standards for many individual migrants. In large sections of the Norwegian labour market, as well as in those parts of the private Danish labour market that are not covered by

collective agreements, the situation will be a different one following the phasing out of the transitional arrangements. Industries where we find a concentration of immigrants, such as in agriculture, cleaning, hotels and catering, often have a low unionisation rate. Without any reference to statutory minimum wages, generalised collective agreements or a generally valid standard pay in the area, the union work required to prevent the emergence of a low-wage segment among labour migrants from the EU-8 may prove to be demanding. In Norway, trade unions' influence over wage formation in certain segments of the labour market with a high share of immigrants and young workers is already significantly weakened. In the context of the phasing out of the transitional arrangements, this accentuates the need for debate on how the social partners and the authorities can jointly develop measures and incentives to enhance the coverage of organisations and collective agreements in the most exposed parts of the labour market. This responsibility mainly rests on the social partners, but historic experience indicates that the challenge is difficult to meet without the support of an active government third party.

Conclusions

Following a phasing out of the transitional arrangements, there has been an expansion in the legal opportunities for employing workers from the EU-8 in enterprises that pay wages below the national rate. Especially in countries/sectors that have limited coverage of collective wage agreements and/or no provisions for extension of wage agreements or statutory minimum wages, this may give rise to different treatment, increased low-wage competition, and strains on the collective bargaining system and on wages and working conditions. Abolition of controls at the border will serve to increase the requirements to be fulfilled by the internal regime for regulation and control in the labour market. The challenge is to develop policies and enforcement that can ensure equal terms for service and labour mobility, equal treatment of foreign workers, and that take account of – and can influence – the conditions for free movement within the open European market.

With their high level of welfare and an ageing population, the Nordic countries are facing a number of dilemmas. The demand for labour is increasing, and is in the long term not likely to be covered from within the Nordic countries. The new EU members will see

stronger tendencies towards ageing, and their wage levels and affluence is increasing. In the coming years we are therefore likely to see a growing competition for labour in Europe and a seller's market for services. The demand for labour from third countries and the pressure along the outer rim of the EU can be expected to increase. These factors will place demands on the development of a more unified and long-term policy for labour and service mobility nationally, in the Nordic countries and at European level.

Extension of collective agreements: The Norwegian case

Kristin Alsos and Line Eldring, Fafo, 30.10.2006

In the wake of EU enlargement, Norway has for the first time invoked its long time sleeping law on general applicability of collective agreements. In contrast to most other European countries with traditions on the extension of collective agreements, the explicit purpose of the Norwegian law is to protect foreign workers, not to ensure widespread diffusion of collective agreements in the labour market (although this might be a consequence). The Norwegian case highlights the challenges and dilemmas facing the national labour market regimes in Europe when it comes to developing efficient instruments to combat low wage competition and social dumping.

Background

When the EEA agreement[2] came into force on 1 January 1994, Norway was included in the EU's internal market. Because of the substantial differences in wage levels between Norway and some of the other EU/EEA member states and the absence of a statutory minimum wage level, there was some concern that the opening of the labour market would attract workers from these countries, and that they would be offered less favourable conditions than those common in Norway. These concerns were associated with social dumping, and with the risk of Norwegian workers being ousted. Against this background, the Act Related to General Application of Wage

[2] The Agreement on the European Economic Area was signed by EU and the EFTA countries, and in practice includes the EFTA countries Norway, Iceland and Liechtenstein in the EU's inner market. Switzerland is a member of EFTA, but has chosen not to join the EEA Agreement. On the occasion of the enlargement of the EU on 1 May 2004 it was agreed to extend the EEA Agreement correspondingly.

Agreements etc. No. 58 of 4 June 1993 was adopted. The Act came into force on the same date as the EEA agreement, and its purpose was mainly to ensure that the wage levels and labour conditions offered to foreign workers were equal to those of Norwegian employees. This is achieved by ensuring that the provisions of a collective agreement are extended to all workers who perform work of the type encompassed by the decision enforcing this extension. Both employees in Norwegian companies and posted workers from foreign firms, and the unionised and non-unionised alike, are encompassed by this decision.

The expected influx of foreign workers failed to materialise, however, and the application of the new Act therefore did not become relevant before the EEA area was enlarged by ten new member states on 1 May 2004. The new member states generally had a far lower level of wages and costs than Norway: The wage level in Poland and the Baltic states was 15 to 25% the Norwegian level. In addition, mobility among workers from these countries was far higher than from those in the 'old' EEA countries. Against this background, the Norwegian Confederation of Trade Unions (LO) made its first demand for an extension of collective agreements in December 2003.

The Norwegian Act on general application of collective agreements

The purpose of the Act is to ensure that the wage levels and labour conditions offered to foreign workers are equal to those of Norwegian employees, cf. section 1-1.[3]

The decision to enforce an extension is made by a Tariff Board, which is appointed by the Government, and comprises one representative from the employers' organisations and one from the trade unions. In addition, the board comprises three non-partisan members, meaning that neither the employers' organisations, nor the trade unions can veto a decision. The precondition for making a decision to enforce an extension is that the Tariff Board has established as probable that foreign workers perform work under conditions that are generally inferior to the norms stipulated by

[3] According to the preparatory documentation of the Act, its purpose is also to prevent distortion of competition to the detriment of Norwegian enterprises and workers, cf. Recommendation no. 98 (1992-1993) to the Odelsting, p. 7. This purpose has later been less emphasised. In the evaluation of the Act by the Ministry of Labour and Social Affairs (Act on General Application of Collective Agreements – Evaluation of 22 September 2005) it says on page 33: "In its assessments, the National Wages Board should show caution not to overly emphasise concerns for competition as a particular reason for a decision to extend a collective agreement".

nationwide collective agreements for the relevant occupation or industry, or to the general conditions prevailing in the relevant location or trade. The extension can be enforced for an entire industry, or it can be restricted to parts of an industry, a certain geographical location or a certain group of workers. However, its scope should not be so restricted as to constitute discrimination against individual enterprises.

The decision commonly presupposes that a request has been put forward by an employers' organisation or a trade union, but the Tariff Board can also pass a decision on extension at its own initiative if this is in the public interest.

The extension refers only to individual wage levels and labour conditions. The letter of the Act does not provide for extension of collective arrangements such as the rights of trade unions or collective pension schemes. Neither does the board need to extend all individual rights, but should address the provisions to be encompassed by a decision on a case-by-case basis. In particular cases, the board can also determine other wage levels and labour conditions than those stipulated by the collective agreement. The conditions determined by a decision are minimum requirements, and can be exceeded in favour of the individual worker. The minimum requirements will also apply to posted workers, meaning that these are guaranteed wage levels in accordance with the minimum rates in the collective agreements.

A decision for extension is valid until the Tariff Board makes a new decision, but no longer than one month after the replacement of the extended collective agreement by a new collective agreement. Norwegian collective agreements normally have a two year validity, meaning that a request for extension must be made every other year, otherwise the decision will cease to have effect.

The Labour Inspection Authority and the Petroleum Safety Authority are charged with the responsibility for monitoring of compliance, and violations can be sanctioned with coercive fines. The supervisory authorities have no competence to impose fines, and sanctions normally presuppose that the offence is reported to the police. [4] Private prosecution of offences is also possible. According to section 5 of the Act, the parties to the collective agreement may also

[4] Motions have been tabled to make enforcement more effective, by authorising the supervisory authorities to impose instructions on the employer, as well as impose coercive fines or suspend operations fully or partly, see below.

initiate boycotts with the purpose of forcing employers to fulfil their obligations following a decision for extension of the agreement.

Similarities and differences in comparison to other European schemes

Connected to the evaluation of the Act Related to General Application of Collective Agreements, a comparison was undertaken of the practice of this instrument in Norway and the 15 states that were members of the EU prior to the enlargement on 1 May 2004.[5] In the following, we will provide an overview of some of the similarities and dissimilarities to emerge in this comparison.

There are varying *criteria* to be fulfilled before a collective agreement can be extended. The criteria concern both the parties entitled to request or apply for extension, as well as the requirements of the collective agreement and the justification for an extension to be fulfilled. Some countries set limitations on the parties entitled to apply (Germany, Norway and Spain). Other countries set additional or alternative requirements to the coverage of the collective agreement concerned, for example that at least 50% of the workers in the industry/tariff area must be covered by an agreement (Austria, Finland, Germany, Greece, the Netherlands). The Norwegian requirement stating that the extension should ensure that foreign workers are offered equal conditions to national employees is not found in any other country. The Netherlands and Germany lay down the requirement that the extension should be in the public interest, but this condition has been given varying interpretations and content.

As a rule, the *authority to make a decision* is entrusted to a governmental agency. The industrial organisations have varying opportunities to influence the decision. In some countries, the parties may voice their opinions during a consultative round, while in other countries the parties have representatives in a consultative body that issues a statement on the case. These statements may have a decisive influence. In France, it is politically complicated to overrule such statements, while the parties on the German tariff board (Tarifausschuß) in practice have the right to veto.[6] In Ireland and

[5] T. Stokke: Lov om allmenngjøring av tariffavtaler – Evaluering, Arbeids- og sosialdepartementet 22. september 2005, kap. 3.

[6] In 1996, Germany adopted an amendment to the act on extension of collective agreements to posted workers aimed at the construction industry. The Minister of Labour may decide to extend the provisions of collective agreements on minimum wage without consent by the Tarifauschuß. In 2005, a proposal was made to

Luxemburg agreement between the parties is required to implement the process. It does not seem to be common practice in other countries to have representatives of the industrial organisations in the decision-making body, as is the case in Norway.

The extent to which the opportunity to enforce an extension is used varies between the different countries. The majority extend all or most collective agreements that fulfil the criteria. In Belgium, Finland, Greece, Portugal and Spain, (certain) collective agreements are generally applied when they are being signed by the parties, and the subsequent process only serves to confirm and publicise this fact.

In countries where only a minority of the workers are covered by extended collective agreements, the situation varies even more. In Ireland and Luxemburg few agreements are extended, but no motions to amend the criteria for extension have been put forward. Austria has a high coverage of collective agreements in the private sector (98%), and extension is therefore less relevant. In Germany, disagreement has arisen between the employers' organisations and the trade unions, leading to a sharp decrease in the number of extended collective agreements.[7] In Norway, the scope of the extensions has so far been limited. Only three collective agreements have been made subject to extension, and only in geographically restricted areas.

None of the countries have resorted to an extension of the provisions that regulate the relationship between the parties to the collective agreement. On the other hand, the normative provisions that regulate individual labour conditions are extended. One distinction exists between whether only the normative provisions relating to individuals are extended, i.e. provisions regarding wages, working hours, holidays, etc., or whether the extension is also applied to the normative provisions relating to collective issues. The latter category could comprise provisions on negotiations and co-determination at the enterprise level, old age and disability pension schemes, holiday funds, various social funds, etc.

In Norway, Austria and Finland only the individually oriented provisions are extended, while the remaining countries in principle see no obstacle to an extension of the collective arrangements either.

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introduce this rule also in other industries. In this manner vetoing of the extension by the BDA, the main employers' organisation, could be avoided. The proposal has so far not been adopted.

[7] The construction industry constitutes an exception, see above.

It is common practice to extend the entire collective agreements or the overwhelming majority of their provisions. Norway is an exception to this rule, because only certain provisions are made generally applicable.

Methods for *enforcement of compliance* with a decision to apply an extension are also variable. The establishment of comprehensive systems for sanctions and monitoring is not common. The focus is placed instead on information and guidance. However, exceptions can be found. In Belgium, France and Norway, non-compliance can be sanctioned. The German construction industry has introduced a number of reporting obligations, and violations can be sanctioned by coercive fines. In addition, the individual workers may bring their case to court in order to establish their claim.

Effects and experiences

Extension of collective agreements has been regarded as a controversial instrument in Norwegian industrial life, among trade unions and employers' organisations alike. The tradition dictates that wages are negotiated, and not determined by legislative acts.

During the period 2004-2006, three decisions to enforce an extension have been made. The first decision came into force on 1 December 2004, and applied to seven on-shore petroleum installations (the national agreements for electrical workers, for the metalworking industry and the construction industry). The second decision applied to the collective agreement for the construction industry and the electrical workers in the counties of Oslo, Akershus, Østfold, Buskerud and Vestfold (from 1 September 2005), while the third decision involved the construction industry in the county of Hordaland (from 1 January 2006).

Those decisions that expired in the spring of 2006 along with the agreements that they referred to, were renewed for a further period, i.e. until the spring of 2008. In addition, a motion to extend the collective agreement for the construction industries to the entire country has been tabled. A possible decision on this matter is likely to be made before the end of the year 2006.

The decisions that have been made comprise only parts of the agreements mentioned above. In its arguments, the Tariff Board has emphasised the fact that the regulations were to be dealt with by foreign employers, as well as by Norwegian employers with little

experience in the field of collective agreements. Efforts were therefore undertaken to make the regulations as simple and straightforward as possible. The regulations comprise provisions on minimum wage rates, working hours, payment for overtime and shift work, as well as provisions regulating travel, board and lodging, and some other issues.

From a trade union point of view, an extension of a collective agreement has two unfortunate and contrasting aspects. Even though non-unionised workers are in any case covered by a valid collective agreement, the opportunity to be party to a collective agreement is still seen as a major incentive to join a union.[8] An extension of key provisions in the agreement (making these statutory) can therefore be seen as weakening the recruitment basis for the trade unions and as enhancing the "freeloader" problem. Secondly, there have been concerns that the extension of the minimum wage rates in the collective agreements will not be sufficient to prevent the emergence of different classes of wage earners (or low-wage competition), because the minimum wage rates in many cases are far below the standard hourly rates. Some scepticism should also be attributed to the fact that extension of collective agreements was a new mechanism in the Norwegian labour market, and there was a lot of uncertainty related to its functionality and effects both in the short and long term. Over the last couple of years there has been a clear change in the union's attitudes, especially within the construction sector. The discussions within construction no longer focus on whether extension should be used or not, but more on how it should be used and possible ways of improving the mechanism.

Among the employers' organisations, opinions have also differed strongly with regard to the extension of collective agreements. The Federation of Norwegian Trade and Industry has doubts about this instrument, and has criticised the application of the law, claiming that it contravenes the requirement for equal treatment, predictability and proportionality defined in EU legislation.[9] In the building industry, the employers have expressed more positive attitudes. Increasing low-wage competition from Eastern European

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[8] According to Norwegian law, enterprises that are members of an employers' organisation are not automatically bound by a collective agreement. The workers must demand that an agreement be established, and for organised enterprises a requirement is usually made for a certain proportion of the workers (commonly ten per cent) to be unionised. No such requirement is placed on unorganised enterprises, and if the employer does not recognise the demand, it must be enforced by a strike.

[9] Hjelmeng, E. og O. Kolstad (2005), Allmenngjøringsloven og innsynsrett –EØS-rettslige problemstillinger **http://odin.dep.no/filarkiv/269459/NHO_-_vedlegg.pdf**

firms represents a problem for many Norwegian enterprises that are bound by collective agreements, and an extension of the agreements could serve to redress this imbalance and establish more equal competitive terms between Norwegian enterprises and foreign competitors.[10]

The debate on the issue has so far mainly revolved around whether an extension of collective agreements is desirable, whether the legislation is appropriate, the requirements for documentation, the content of the decisions made, etc. Because the decisions have been made only recently, there has been little time to gather experience of the effects of the Act.

In a survey undertaken by Fafo among enterprises in the construction industry in the spring of 2006, enterprise leaders were questioned about their assessments and experience of extension of collective agreements.[11] More than half of the enterprises in the sample had undertaken work in areas covered by the decisions to extend the collective agreements (following their coming into force). Although only certain regions of the country have been made subject to the provisions of extension of agreements, the scope of the decisions has obviously been extensive.

A total of 21% of construction enterprises in the sample had used Eastern European labour in some form during the preceding twelve months; two thirds of these had hired this labour mainly in the form of services, while one third mainly hired individual labour migrants directly on a temporary or permanent basis.

A key issue revolves around whether the extension of collective agreements has entailed increased costs for the enterprises and/or changes in their use of Eastern European labour. The extension is first and foremost intended for posted workers (who arrive with their foreign employer on service assignments), and who can legally receive pay under home country conditions. However, the minimum wage provisions in the regulations of extension of agreements are also

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[10] In 2004, 58% of the workers in the Norwegian construction sector were covered by a collective agreement (Nergaard, K. og T.Aa. Stokke (2006), Organisasjonsgrader og tariffavtaledekning i norsk arbeidsliv 2004/2005. Fafo-report 518. Oslo: Fafo)

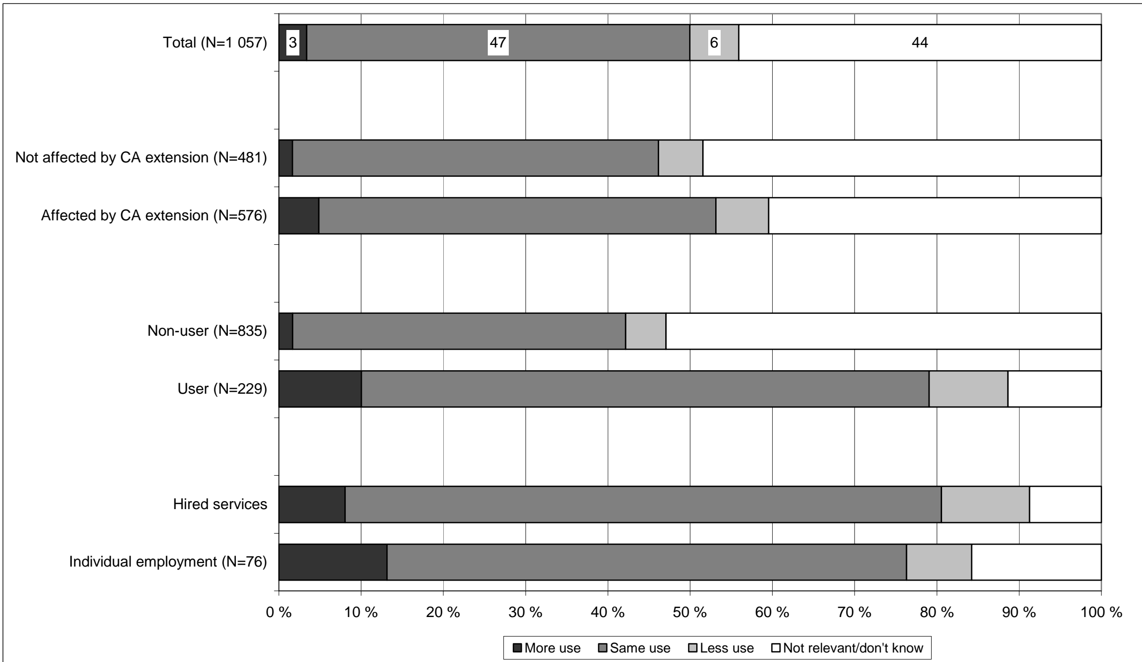
[11] The survey was commissioned by the Board of the Fund for the Regional Safety Deputies. A number of other organisations and public authorities have provided financial support for the project: The Labour Inspection Authority, The Federation of Norwegian Construction Industries, the Norwegian United Federation of Trade Unions, The Norwegian Union of General Workers and the Norwegian Directorate of Customs and Excise. The findings are described in more detail in a separate article in this issue of CLR-News.

valid for all other workers who are active within the relevant occupation or geographical area, and could thereby entail increased wage costs for Norwegian labour. The main impression is that the extension has not entailed any major changes in labour costs for the majority of the enterprises. A possible (but not very likely) explanation could be that the companies have made sure from the outset that East European labour working for their enterprise receives 'Norwegian wages'. The results could also indicate that the regulations are not complied with, and the enterprise leaders partly confirm this – only four out of ten believe that enterprises in the industry follow the provisions to some or to a major extent. Another possible explanation is that enterprises' costs related to purchase of services have remained unchanged, but that the profitability has decreased in the intermediate links in the supply chain.

As regards non-compliance, lack of enforcement will reduce the preventive effect of sanctioning provisions. Only 13 percent of companies undertaking work within the area of generally applicable collective agreements have been subject to an inspection by the Labour Inspection Authority. This indicates that violations are scarcely revealed and, even if they are, have to be reported to the police who, due to insufficient capacity, seldom prosecute these cases. Recognising this problem, the government has proposed that the Labour Inspectorate should be given the authority to impose coercive fines or suspend operations fully or partly when non-compliance is revealed. Trade unions have also made a demand for a right to access information regarding the level of wages paid in companies covered by a generally applicable collective agreement, to facilitate enforcement by initiating boycotts. So far, the employers' organisations have strongly opposed this demand.

An argument *against* general application of collective agreements is that it creates competitive barriers both for enterprises and workers from the East, and is making it more difficult for them to establish themselves in the Norwegian market for labour and services. An indicator of this development is whether the enterprises have changed their use of Eastern European labour following the introduction of extension, and enterprise leaders were therefore questioned on this issue.

Figure 4.10: *Assessments by enterprises of whether the extension of collective agreements has influenced their use of labour from the new EU member states, according to whether the enterprise has performed work within an area subject to such extension, whether they have used Eastern European labour during the preceding twelve months and the type of labour used. Percentages.*



Source: Fafo's BA-HES survey 2006

The responses show that the decision to make the agreements generally valid has not exerted a major influence on enterprises' decisions to continue using labour from the new EU member states. Among the users, 10% reported that their use of such labour had increased, while another 10% reported using such labour less than previously. Around 70% reported that their use of such labour had remained unchanged. This could substantiate the enterprises' claim that the prevailing scarcity of labour is the main reason for using foreign labour, and not the prospects for cost savings, but could also indicate non-compliance with the minimum wage rules. A further interesting issue in this context revolves around whether the extension of collective agreements has caused the enterprises to hire a larger number of one-person firms from the new EU member states. One-person firms can undertake assignments based on free pricing, and need not adhere to regulations of extension. We therefore asked the enterprise leaders to assess the situation in the industry with regard to the use of one-person firms. The majority of the enterprises reported not having observed any increase in the use of one-person firms as a consequence of the extension of collective agreements, while one third

believed that such use had increased to some or to a large extent. The enterprises that had performed work within the areas comprised by the extension more often reported that the occurrence of one-person firms had increased. In other words, it would appear that there may be some foundation to the assertion that certain builders are hiring one-person firms, rather than leasing manpower or using sub-contractors, in order to circumvent the regulations for extension, as reported by many of the respondents in the industry.

On the whole, the enterprise leaders were massively in favour of the use of the extension instrument. As many as seven out of ten enterprises had a positive view, irrespective of whether they had any experience with extension or not. Only 7% took a negative view. In the light of these results, it is reasonable to assume that a possible nationwide extension of collective agreements in the construction industry will be welcomed by a majority of the enterprises.

To sum up: The enterprises in the construction industry are mainly in favour of using extension of collective agreements as an instrument. Dramatic consequences following from the decision cannot be ascertained, neither in terms of costs, nor in terms of the use of Eastern European labour. A key issue on which we have no available data, concerns the experience of the workers themselves. There are indications of major problems with regard to monitoring and enforcement of the decisions for extension of the agreements, both from the companies themselves and the authorities. Another recent study showed that only half of the companies in the construction sector regularly check wage conditions in their subcontracting companies.[12] Only 25% of the enterprises in the construction enterprise survey believed that the authorities enforce the regulations to some or to a large extent, and only 13% of those enterprises that had performed work in the areas concerned had been visited by the Labour Inspection Authority. If the labour inspectors uncover violations of the regulations, they must report the matter to the police. However, the police mainly drop the cases because of resource constraints. In other words, the probability of being caught is very minor, and the probability of facing subsequent sanctions is even smaller. However, the authorities have signalled forthcoming

[12] Dølvik, J.E., L. Eldring, J.H. Friberg, T. Kvinge, S. Aslesen og A.M. Ødegård (2006), EU-utvidelsen: Endringer i norske bedrifters arbeidskraftsstrategier? Fafo-notat 2006:14. Oslo: Fafo

amendments to the legislation, and aim to authorise the Labour Inspection Authority to impose direct sanctions on enterprises that violate the regulations.

The future of extension of collective agreements in Norway

Extension of collective agreements is still a new phenomenon in Norway, and some uncertainty surrounds both the functionality and the effects of the Act. Because of the increasing service mobility, ideas have been brought forward to introduce a statutory national minimum wage, and/or industry-level agreements (like Germany's Arbeitnehmer-Entsendegesetz) in addition to the practice of extension of collective agreements. So far, no requests for extensions have been put forward in other sectors than those described in this article. In manufacturing, where a significant portion of the labour is hired in the form of service providers, the question of extension may be put on the agenda. This idea has met with fierce opposition from the employers, while the trade unions are divided on the issue. The central level of the trade union movement regards with concern the acceptance by some local trade unions that foreign labour is hired at rates far below the tariff. Union officials in these enterprises, on the other hand, claim that this is a precondition for the survival of local industries (which otherwise might be relocated to Eastern Europe), and that this does not constitute social dumping because the workers are paid significantly more than in their home countries. Parts of the service industries, having low rates of unionisation and low coverage of collective agreements, constitute a further area that could become exposed to increasing low-wage competition in the coming years. Individual labour immigrants from the EU-8 have so far been protected by the provisions in the transitional arrangement which require 'Norwegian wages', but these workers may become vulnerable when the arrangement is phased out before 2009. So far, the parties within the service industries have shown little interest in using extension of collective agreements. The cleaning industry is one exception, where the employers have expressed a wish to make use of this opportunity, but the trade unions have not yet picked up this gauntlet.

Extension of collective agreements has two key aspects. On the one hand, it protects workers against social dumping, and on the other hand it protects Norwegian enterprises against foreign competitors with low-wage labour. In the construction industry, the parties

therefore have a shared interest in extending collective agreements, as construction firms based in Norway are forced to compete to a greater degree against firms arriving from Eastern Europe with their own employees. Norwegian manufacturing enterprises are also exposed to competition, but are not likely to encounter this competition on their own turf, as is the case in the construction industry. This also means that the joint interest in establishing national regulations on the wage level in the construction industry is less likely in the manufacturing industries. As a consequence, the positive attitudes of the construction enterprises cannot immediately be expected to rub off on this part of the labour market. However, positive attitudes are not enough. In Norway, as in rest of Europe, weak enforcement and increasing use of one-person firms may undermine the effects of regulatory mechanisms introduced to combat low wage competition and social dumping.

Using East European labour - a safety risk on Norwegian construction sites?

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Since the enlargement of the EU and EEA on 1 May 2004, a relatively large number of Eastern European workers have arrived in Norway, compared to the other Nordic countries.[13] The most important explanation is the high demand for labour, particularly in the construction industry. Fafo's recently accomplished survey[14] among leaders in
1 244 construction enterprises shows that around 20 per cent of the enterprises are now using labour from the new EU member states, or have done so during the past year (called user-undertaking in this article). The majority of these – around 60 per cent – used East

[13] On the scope and effects of labour migration, see the article «EU enlargement two years after: Mobility, effects and challenges to the Nordic labour market regimes» (Dølvik and Eldring) in this issue of CLR-News.

[14] The survey represents a more in-depth study of the results of an enterprise survey undertaken by Fafo in January-April 2006, in which a total of 5,104 enterprises from four Norwegian industries (construction, manufacturing, hotel/catering and cleaning) were questioned about their use of East European labour (Dølvik et al. 2006), commissioned by the Norwegian Research Council. The survey in the construction sector was commissioned by the Board of the Fund for the Regional Safety Deputies. A number of other organisations and public authorities have provided financial support for the project: The Labour Inspection Authority, The Federation of Norwegian Construction Industries, the Norwegian United Federation of Trade Unions, The Norwegian Union of General Workers and the Norwegian Directorate of Customs and Excise.

European labour hired from manpower suppliers or employed by sub-contracting firms.

In this article we investigate the health, environment, and safety (HES)[15] situation within the Norwegian construction industry following the influx of labour from Eastern Europe. The industry has faced major challenges over the years with regard to HES, irrespective of labour migration. In spite of all the rules and regulations, many workers in the construction industry observe that, even though the formal HES requirements are usually in place, practices may leave something to be desired. The risk of injuries and accidents is high, and the safety efforts are complicated, due to the prevailing focus on project progress and completion. In general, the main challenges seem to be related to improvement in communication and coordination routines (Frøyland et al. 2004).

The survey shows that increased labour and service mobility from the new member states has given rise to new problems in terms of safeguarding HES. Deficient training, language barriers and cultural differences with regard to safety and other working methods are recurring issues in the study. Different forms of labour and service migration are also subject to varying and sometimes highly complex regulations, leading to grey areas with regard to labour conditions, more or less deliberate circumvention of the regulations and deficient worker registration.

This article will summarise the main findings from our HES survey of the construction industry. The survey also comprised in-depth interviews with all regional safety deputies in the Norwegian United Federation of Trade Unions and the Norwegian Union of General Workers, key personnel in the Labour Inspection Authority, the Petroleum Safety Authority, the police, and employers' associations, as well as a number of industry associations. Taken as a whole, these informants represent the key actors in the field. The article will address the following issues:

- What are the key HES challenges for enterprises regarding the use of Eastern European labour, and how is the situation addressed?
- What is the current situation with regard to HES for labour migrants?
- What new tasks, requirements and challenges are the inspection authorities encountering as a consequence of the changing HES framework in the workplace?

[15] This is the Norwegian term for the better-known OSH (Occupational Safety and Health).

- What might be the possible long term effects of the increased use of imported labour from the new EU member states on the HES situation in Norway, for both domestic and foreign labour, and what kinds of measures may be relevant?

HES regulations

The Norwegian Working Environment Act obliges the employer to ensure a fully satisfactory working environment, including safe and secure working conditions. All Norwegian enterprises have a statutory obligation to address health, environment, and safety (HES) issues in a systematic manner. In 1992, a regulation was introduced with the purpose of ensuring that enterprises established internal control systems for documentation of these efforts.

For workplaces involving more than one employer, a written agreement must be drawn up, specifying the responsibility for coordination of working environment and safety issues. The Regulation of Safety, Health and Working Environment on Construction sites (Construction Client Regulation), which was adopted in 1995, implementing EU directive 92/57/EC stipulates that clients[16] are responsible to make a HES-plan on their own construction sites and for appointing one ore more coordinators for HES issues. The objective is to ensure that HES issues are attended to during construction design and that they are followed up systematically during the construction phase. According to the regulation, the client or their project managers, and employers are responsible for maintaining a safe working environment on construction sites.

HES issues should include definition of targets for efforts, assessment of risks, planning of HES measures and follow-up of discrepancies and undesirable incidents. The employer is responsible for providing the appropriate training, and for familiarising workers with the HES plans for the site. All workers have to have at least a two hour course to familiarise themselves with the project and how HES work is planned and conducted. According to the Construction Client Regulation, information must be comprehensible to the workers concerned (implementation of the EU directive 92/57/EC).

When it comes to the coordinators, they are supposed to have proper competence, both in theory and practice, i.e. intimate

[16] Client: Any natural or legal person for whom a construction project is carried out.

knowledge of the regulations, be able to make a judgement of the risk-factors and also have the authority to follow up all parts of the HES-plan in practice.

In order to facilitate the work for the Labour Inspectorate Authority, all building activities lasting more than 30 days are subject to mandatory reporting. To improve coordination and follow-up of HES issues, a proposal to introduce staff lists and ID cards was tabled in 2004. The provision making staff lists mandatory was implemented on 1 January 2006, whereas the provision of mandatory ID cards will in all likelihood be implemented from 1 January 2007.

Enterprises are under a statutory obligation to appoint a safety deputy, but enterprises with less than ten employees may enter into a written agreement not to have a safety deputy. The safety deputy is the workers' representative in HES matters, and should attend to the workers' interests in matters pertaining to the working environment. If a direct threat to life or health occurs, the safety deputy is authorised to suspend operations. It should be borne in mind, however, that even though the safety deputy is charged with responsibility for inspection and monitoring, this does not reduce the employer's liability with regard to working environment and safety. The individual employer is obliged to provide safety deputies with the required training. The minimum here is a 40 hour course in HES matters.

The regional safety deputy scheme was established in 1981, due to the particular conditions prevailing in the construction industry. For building (including rehabilitation and maintenance), the regional safety deputies are appointed by the Norwegian United Federation of Trade Unions, for other construction projects they are appointed by the Norwegian Union of General Workers. [17] The regional safety deputies should attend to workplaces where there is no elected safety deputy or no working environment commission in accordance with the provisions of the Working Environment Act. They have the same authority as the local safety deputies, and are entitled to have access to the same information from the enterprises as the ordinarily elected safety deputies. This scheme is authorised through a separate regulation pursuant to the Working Environment Act, and is financed through a fee paid by employers to the Regional Safety Deputy

[17] This includes civil engineering (roads, railways, bridges, tunnels), excavation, blasting, earthwork and other work carried out in connection with construction sites.

Fund.[18] During 2005, the regional safety deputies performed a total of 6,500 visits to workplaces, making them a valuable source of information on current developments in construction.

Similarities and differences in the construction industry

The construction industry is mobile in character, and assignments and workplaces vary from one project to the next. All new projects and workplaces present particular problems and unforeseen hazards (Bosch and Philips 2003). Cost issues, in combination with time constraints, often result in deficient planning and poor coordination. At the same time, communication during the project implementation phase acquires greater importance when enterprises are pressed for time.

Because a number of specialised functions are required, the organisation of production usually involves a number of sub-contractors. Coordination and cooperation between a large number of people from different technical backgrounds set stringent demands on communication and planning, while this type of production system may easily lead to dissolution of responsibility for HES issues (Frøyland et al. 2004).

In our context, it is important to distinguish between two different sectors in the construction industry, each having their own characteristics. In the building sector (including non-residential building, rehabilitation and maintenance), the use of East European labour is more common than in other work connected to construction sites (excavation, earthwork and so on) and civil engineering. This latter sector is in Norway dominated by four large enterprises that have a joint market share of 50 per cent. [19] A recent survey carried out by the Federation of Norwegian Construction Industries also shows that this part of the construction industry has spare capacity (BNL 2006).

In other words, there is not the same scarcity of labour to be observed within the building sector. The other main difference is that the building sector is characterised by many small enterprises. In Norway, two thirds are sole proprietorships, and 90 per cent of these have fewer than ten employees. The proportion of one-person and

[18] For enterprises with employees, the fee constitutes 0,075 per cent of the basis of calculation. For one-person enterprises the fee is NOK 250. (Regionale verneombud i bygge- og anleggsbransjen. Årsoversikt fra Fondsstyret 2004).

[19] These are Skanska, Veidekke, NCC and Mesta

two-person enterprises grew during the period from 2000 to 2004 (SSB 2006), and a comprehensive restructuring took place in the construction industry during the 1980s and 1990s, including a number of mergers and acquisitions. The resulting centralisation and concentration led to the emergence of a small number of construction enterprises and a host of sub-contractors (Andersen 2004). The modern organisation of construction projects hence involves widespread sub-contracting and leasing of manpower, and this combination of centralisation and splitting of functions has a bearing on HES issues. Increased use of sub-contractors and leasing of manpower also contribute to weakening collective agreements, which in turn entails consequences for training, distribution of responsibilities and industrial relations in general (Klemsdal 2003).

Experience indicates that while the large enterprises make commendable efforts, the small ones have less appropriate routines for follow-up of HES issues, and they rarely have a separate safety deputy. Some of the problems encountered by small enterprises are related to the formal requirements for HES work, such as commercial/administrative paperwork and administrative forms associated with monitoring routines. Many are less skilled in this aspect of the work, it takes a lot of time, and errors can easily be made. This part of the work is difficult to reconcile with the demand to balance the books (Frøyland et al. 2004).

Labour and service migration to the construction industry

The Norwegian building sector has a long tradition of using foreign labour during periods of boom. Workers from the other Nordic countries have had a strong presence in the Norwegian workplace for many years. Increasing internationalisation can provide increased skills and new ideas, cultural exchange and a more varied working environment. On the other hand, it can also entail poorer communication and hazardous situations, as well as negative reactions from Norwegian employees.

As described above, jobs are in good supply in Norway, in particular in the building sector, which offers prospects for favourable wages and labour conditions. The wage level in Poland and the Baltic countries is about 20 per cent the Norwegian level (Dølvik and Eldring 2005) which is therefore far ahead of prevailing rates in the countries of origin, even though many workers are paid much less

than Norwegian employees.[20] A total of 20 per cent of enterprises in the construction industry are currently using labour from the new EU member states, or have done so during the past year. Poland and the Baltic countries are the major countries of origin. The largest enterprises (with more than ten employees) are the most frequent users. When questioned about the most common form of attachment, manpower leasing was most prevalent (44 per cent of the enterprises), whereas 27 per cent hired this labour directly, and 17 per cent used labour employed by sub-contractors. Only 2 per cent of enterprises hired sole proprietor/one-person firms from the new EU member states, but reports of increasing numbers have been received from various quarters.

Public statistics do not distinguish between the different sectors in the construction industry.[21] In order to further investigate any differences in the use of Eastern European labour, we requested enterprises to select one of three main fields of activity: 1) building, 2) other activities such as excavation, blasting, earthwork and civil engineering 3) main activity equally distributed between the two other sectors. Nearly half of enterprises (48 per cent) reported that their main activity is related to building (group 1). Among these, a total of 25 per cent are currently using labour from Eastern Europe, or have done so during the past year. Corresponding figures for group 2 were 15 per cent (these enterprises accounted for 14 per cent of the units in the sample). Enterprises with activities equally distributed between group 1 and 2 accounted for 38 per cent of the sample and, of these, a total of 17 per cent were currently using East European labour, or had done so during the past year. The findings underline the differences between the branches in construction with regard to the use of East European labour.

The majority of the enterprises that used East European labour in our sample reported having used this either as leased manpower or through sub-contractors, i.e. as service providers. This serves to exacerbate the prevailing trend towards functional specialisation within the industry, involving more prevalent use of leased manpower and sub-contracts, which in turn affects the ability to carry out

[20] The Norwegian regulations on wage levels for Eastern European workers – including the use of generally applied collective agreements within the industry – is described in more detail by Alsos and Eldring in this issue of CLR-News.

[21] In the structural statistics, the industries are grouped according to the standard for industrial grouping, the NACE (SSB 2006).

systematic HES work. The upshot is that coordination of such work becomes increasingly complicated, and that responsibility for HES training is distributed among a number of employers.

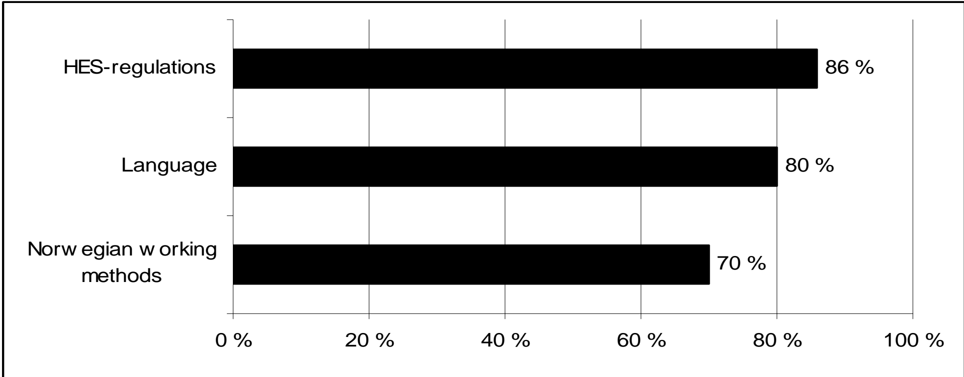
As already mentioned, enterprises tend to use East European labour in the form of leased manpower. A key issue in our context is that Norwegian regulations do not set down requirements as to who may operate a manpower supply firm or an employment agency. Few conclusions can thereby be drawn on the quality assurance routines these firms follow with respect to their employees, for example in terms of training.

Need for training in HES, language and Norwegian working methods

Enterprise leaders were asked to assess a number of questions related to the use of East European labour and the HES situation in the workplace.

A full 86 per cent of the user-undertakings agree with the assertion that sub-contractors and workers from the new EU member states have a need for training in HES regulations when they arrive in Norway. Furthermore a total of 80 per cent of the leaders in these enterprises believed that language training is required for Eastern European workers and firms, and 70 per cent held that training in Norwegian working methods was required. In other words, a comprehensive need for training of labour from the new EU member states was reported.

Figure 1. The enterprise leaders report on needs for training in HES, language and Norwegian working methods for workers from Eastern Europe (N=257).



Increasing safety risks

The character of the work itself has a major bearing on HES efforts in the construction industry. On a building site, many operations take place simultaneously, often in hazardous locations, such as high above ground. Understanding how a task should be performed and how one's colleagues intend to solve it can be decisive, also in terms of safety. Time pressure leading to accidents is often associated with problems of coordination between the various skill groups on the building site. Planning is often deficient; this leads to waiting periods and subsequent time pressure. Recent research shows that attempt to make up for lost time result in a high risk of injuries (Gravseth 2006). When other working methods and different types of protective equipment are introduced into the mix, the risk of injuries may rise even further. Time constraints, poor access and clutter increase the risk of accidents, and require good communication between workers. In addition, the construction industry often makes use of heavy machinery that requires appropriate communication while in operation.

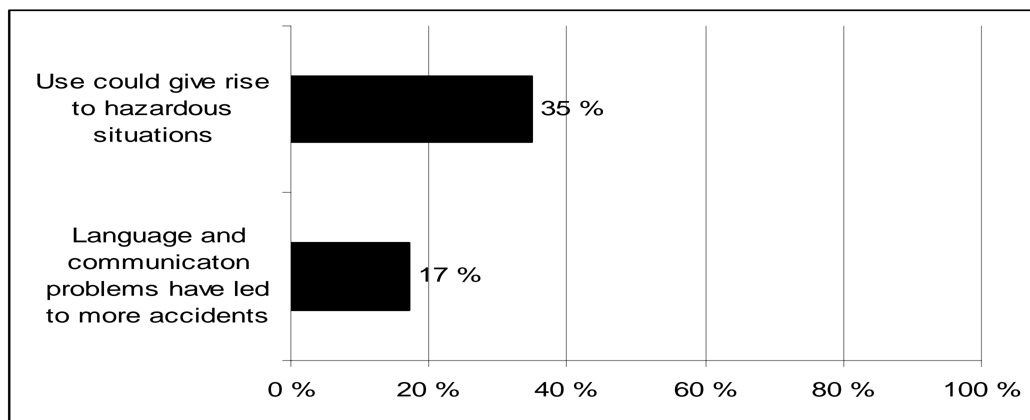
In the survey, enterprise leaders were asked whether the use of East European labour could give rise to hazardous situations. A total of 35 per cent of the user undertakings agreed with this assertion. The respondents were further asked whether language and communication problems have in fact led to more frequent accidents, and 17 per cent answered in the affirmative. In other words, one in three believes that the use of East European labour may create hazardous situations, and almost one in five reports that this has in fact occurred; this must be described as a substantial finding. The type of affiliation of this labour (hired by the enterprise, leased or employed by a sub-contractor) appears to have little importance for how enterprise leaders assess the risk.

The regional safety deputies and the labour inspection authorities confirm this impression, and suspect that a number of accidents go unreported and that some injured workers are being sent out of the country without receiving medical attention. However, these findings are difficult to corroborate through public statistics. The official statistics from the Labour Inspection Authority show a decline in the number of fatalities from 2003 to 2004, and an increase from 2004 to 2005. The construction industry has reported a decline in the number of other types of injuries and accidents from 2001 to 2005, in spite of

increasing levels of activity. A general uncertainty surrounds the figures on accidents, and there are indications of underreporting. A report from Oslo Casualty Ward, involving an investigation of 50 workplace accidents in construction, shows that 37 of these 50 accidents should have been reported immediately to the Labour Inspection Authority. Only 12 of the cases were in fact reported (Gravseth 2006).

The question therefore arises whether the increased publicity around these issues has spurred enterprise leaders to «believe that this is so, without quite knowing». On the whole, enterprises that do not use or have not used Eastern European labour take a more negative view of the HES challenges than enterprises that have direct experience. This scepticism may easily infect the entire industry, in particular because of the many media reports on hazardous situations caused by foreign workers.

Figure 2. The enterprise leaders opinions on use of Eastern European labour as a safety risk in Norwegian construction sites



Training and other measures enacted by the enterprises

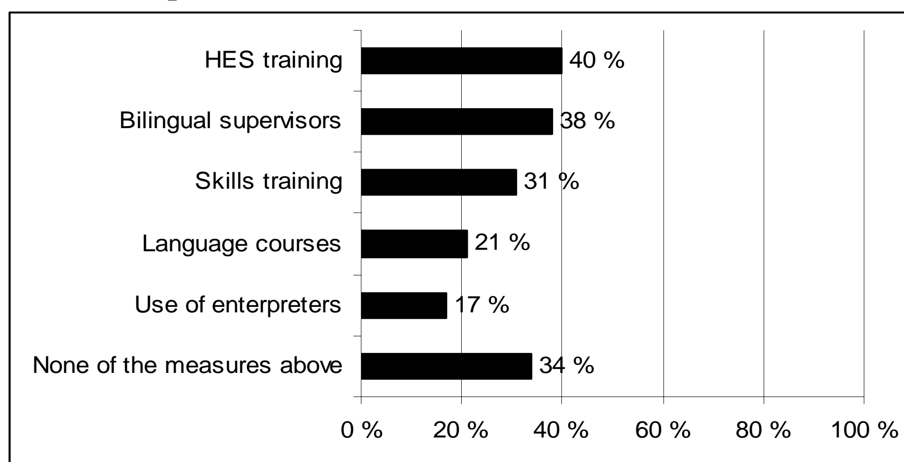
As we have seen, enterprise leaders who use East European labour report that the need for training is comprehensive and that the safety risk increases when such labour is used, irrespective of its form of affiliation. It would therefore be reasonable to assume that enterprises provide training in order to prevent deterioration in workplace standards, even if a single employer is formally responsible for this.

But despite the needs of enterprises, the survey shows that 23 per cent of the leaders rely on East European workers and firms familiarising themselves with Norwegian HES regulations. A total of 16 per cent of enterprises reported that training takes place at home –

i.e. before the workers arrive at the Norwegian workplace. A full 15 per cent of enterprise leaders reported that they have no knowledge of how East Europeans receive information on Norwegian regulations. Consequently, many Norwegian enterprises have no control over whether workers have been trained or the kind of training they have received.

Among enterprises that do offer training or other measures, the most common forms are HES training (40 per cent) or bilingual supervisors (38 per cent). Furthermore, a total of 31 per cent of enterprises provide skills training, 21 per cent offer language courses and 17 per cent have made use of interpreters. The difference in offers for workers who are directly employed and workers who are leased or employed by sub-contractors is seen throughout the material. With regard to training there are also significant differences between small and large enterprises. Nearly half of the smallest enterprises, having from one to nine employees, have enacted none of the measures described above. On the other hand, some of the enterprises have enacted several measures in parallel, and some of these have certainly provided training without being the responsible employer. But in light of the pronounced need for training reported, we have to say that enterprises are not very well prepared to take on foreign labour in a proper manner – irrespective of whether they are responsible for training or not. As mentioned above, the regulations state that all concerned workers are entitled to information that is comprehensible. As far as we can see from the research, there are only few examples of information material, such as safety rules and plans, being translated into relevant languages. The main rule is that workplaces do not offer such material.

Figure 3. Percentage of enterprises providing different forms of training/other measures to Eastern European workers



Difficulties in coordination of HES efforts

On a construction site with more than 10 employees, the main contractor is responsible for coordination of HES efforts between all the parties present at the site. An HES plan must also be available for purposes of such coordination, in order to prevent various firms on the site placing each other in harm's way. As a rule, a large enterprise with its own safety deputy will act as main contractor and hold the responsibility for coordination. Large enterprises are in better possession of the routines and organisation to deal with HES challenges. The large construction enterprises routinely summon all workers to an HES briefing before work starts on a new site. Some enterprises have also drawn up instructions and employment contracts in several languages.

We asked enterprise leaders whether the use of East European labour and subcontractors had any effect on this coordination. Almost half (45 per cent) of the user undertakings reported that coordination is more complicated when using this type of labour. This applied to large as well as small enterprises. These difficulties of coordination are in all likelihood associated with the circumstances mentioned above, such as communication problems, scant knowledge of HES regulations and other working methods and cultures. Another possible reason for coordination problems is probably that the majority of Eastern European workers are on service assignments, i.e. they either arrive with their foreign employer on an assignment in Norway, or are hired by a foreign manpower supply firm.

In order to remedy some of the coordination problems, a requirement to maintain staff lists was introduced from 1 January 2006, and starting from 2007 all workers on construction sites will have to be supplied with an ID card. In our survey, enterprises were asked about how they maintain staff lists.[22] It turned out that 25 per cent of enterprises rarely (7 per cent) or never (18 per cent) have an updated list of the staff present on site at any one time. Among the small enterprises (1-9 employees), a total of 31 per cent responded that staff lists are never drawn up, while the corresponding figure for large enterprises was 11 per cent.

[22] At the time the survey was implemented, these regulations had only recently been introduced, and this may have had a bearing on the number of enterprises that had introduced staff lists.

For our purposes, it is most relevant to take a closer look at enterprises that are in fact using East European labour and firms. Among these, a total of 74 per cent responded that they always or as a rule keep staff lists of workers who are present. In other words: the enterprises that actually use East European labour in fact have a better overview. This observation may be related to differences in enterprise size, because the larger enterprises are the most prevalent users of this type of labour.

Many enterprises attempt to handle problems of communication and coordination by letting the different nationalities work in separate teams. As a result, for example, a Polish and a Norwegian work team at the same workplace may in fact not have much contact on a daily basis. The survey shows that provision of bilingual supervisors is quite common. In practice, this means that one or more workers in the team will possess a working knowledge of English, and gradually also Norwegian, and will pass on messages to and from the other workers.

Regional safety deputies unequivocally pointed to poor integration of East European firms and labour as becoming one of the main HES challenges in the construction industry. This issue is reported along with more traditional problems, such as poor skills and awareness, deficient safety precautions for work high above ground, poor coordination and increasing time constraints. The enterprise leaders corroborated this impression, with a total of 55 per cent claiming that the use of East European labour complicates the systematic implementation of HES efforts (Dølvik et al. 2006).

But it is here important to emphasise that HES challenges are not 'made up' by East European firms and labour. The building sector has for many years tried to improve the poor situation, but there are still huge problems concerning good HES-systems and attitudes. East European firms and labour force are therefore often included in systems that are fragile and risky from the start. This is not the situation for the industry as a whole, but is a widespread problem especially in the smaller firms.

The HES situation for labour immigrants

«Many Poles have set their sights on the gold. They want to earn as much money as possible and then go home. They are not interested in learning safety rules, and they are willing to endure a lot because of the money waiting at the other end».

This quotation from a regional safety deputy illustrates how many of our informants assess East European firms and workers.

Foreign workers who are employed by Norwegian enterprises are subject to the same regulations as Norwegian employees. Posted workers are also subject to the Norwegian Working Environment Act through Norway's implementation of the EU Posting of Workers Directive (96/71/EC). The Act states clearly that HES rules also apply to posted workers. In addition, provisions in the Act pertaining to working hours, the right to take leave, work contract requirements, annual holidays and gender equality also apply.

During the last year, an increasing, but still modest number of East Europeans have chosen to settle in Norway and have brought their families with them. These are in all likelihood employed by Norwegian firms. The most common form of mobility – and particularly in the construction industry, where the majority arrive as service providers – is to stay for relatively short periods. Most likely, the objective is to earn the highest possible amount of money during the period spent working in the country.[23] This could mean that many of the workers have little interest in reporting possible violations of legislation and regulations or unsatisfactory housing conditions, as this at worst may entail being sent home.

Our informants claim that, as a result of poor knowledge of HES or fear of losing their job, Eastern European workers are more often set to perform hazardous work, for example the removal of asbestos, without any protest. The inspectors of the Labour Inspection Authority report seeing this as a dilemma: their job is to uncover and point out violations, but they also know that the most likely result will be that the worker in question is sent out of the country and replaced by another. In practice, the only one who will have to pay for the violation is the individual worker, and not the enterprise or responsible builder. The regional safety deputies share this experience, as illustrated by the following story:

«I discovered a Lithuanian at the bottom of a ditch which was four metres deep, 70 centimetres wide and unsecured, two metres from the

[23] 62 per cent of permits had a validity of 3-12 months, while the proportion of permits with a validity of more than 12 months was 8 per cent in Spring 2006. (UDI, 28.06.06: EØS-utvidelsen – tillatelse med formål arbeid).

main road where traffic was thundering by. I am fairly certain that I would never have found a Norwegian in that ditch».

Deficient safety precautions and poor communication constitute hazards, not only for the workers who are negligent, but also for other people on the construction site. Reports indicate that East European workers are often highly skilled professionals, but still have a different attitude to safety than their Nordic counterparts. This applies to taking precautions when working high above ground and to using protective equipment, such as proper scaffolding, and wearing a helmet.

Working methods are also to an extent different because of the use of some other types of tools. Workplace cultures, including relationships to superiors, are also different. The typical situation is that the foreign worker will not dare to admit that he has failed to understand a message and that he never dares to question the appropriateness of performing a particular task assigned to him. If a superior has given an order, you just go and do as you are told. This is not like the situation for most Norwegian workers.

The «status» granted to a worker is also a decisive factor for the type of regulations that will apply.A distinction is mainly made between workers employed in Norwegian enterprises, posted workers arriving along with their foreign employer, workers leased from Norwegian or foreign manpower supply firms, and one-person enterprises. The regulations are not easily accessible, and many are unaware of the rights that apply to them. Uncertainty with regard to the regulations may also contribute to non-reporting of accidents and to fear of seeking medical attention in Norway on the part of accident victims.

The different sets of rules for workers depending on their type of employment relationship have created grey areas and loopholes that can be used to avoid registration for the purposes of taxation and social security. Deficient registration and documentation of the employment relationship could mean that workers are left with no entitlement to medical treatment or compensation if they fall victim to an accident. The enterprise survey shows that 30 per cent of the smallest enterprises have no control over whether their East European workers are legally registered in Norway. In the largest enterprises (those with more than ten employees) the corresponding figure was «only» 9 per cent.

Irregular working hours and long working days represent a common problem in the construction industry. Because of the mobile character of the industry, it is fairly common for workers to work away from home, and many wish to accumulate days off in order to spend longer periods of time at home. The motivation to work extra hours is probably even greater when working in another country, because the cost level makes it unattractive to taking days off, and workers wish to earn as much as possible in the shortest possible time. Enterprises may have strong incentives to stretch the working day when assignments are in good supply and time is of the essence. We therefore requested enterprise leaders to assess the following statement:
«The use of foreign sub-contractors and workers from the new EU member states provides opportunities for circumvention of Norwegian regulations on working hours». A total of 22 per cent of the user-undertakings agreed with this assertion. A full 30 per cent were uncertain. This may mean that they were reluctant to give an honest answer, or that they were actually unaware of the fact that the regulations apply equally to both Norwegian and Eastern European workers.

But it does give us a clear indication that a considerable proportion of enterprises violate regulations on working hours with regard to their East European workers. In a survey conducted in four Norwegian industries (Dølvik et al. 2006), enterprises were asked to evaluate the assertion: «Workers from the new EU member states are more eager to work than Norwegian workers». In the construction industry more than 60 per cent responded that this is to a large extent true. This finding can be given varying interpretations, depending on the point of view. One interpretation could be that this reflects a better work ethic, better work discipline and a higher motivation for work, for example due to the financial incentives. An alternative interpretation could be that many of the workers from the new EU member states are unaware of their rights, and can therefore more easily be exploited, for example in the form of unpaid overtime.

Whether a person comes to work rested and capable of doing a good and safe job is also dependent on his housing conditions, which vary greatly. Some are offered accommodation in the same workmen's barracks as their Norwegian colleagues. Many other variants have been noted, from separate flats and bedsits to accommodation in abandoned houses, or workers living on the

concrete floor of the building site, in tents, in their cars or in discarded caravans. The supervisory authorities do not check these matters, unless they discover that workers are living illegally on the building site. In the enterprise survey, a total of 42 per cent of respondents reported that the East European workers make their own accommodation arrangements. To date, we have little information on the housing conditions of these workers, but a forthcoming study of Polish workers in Norway will shed more light on this matter.

A widespread notion among enterprise leaders is that workers from the new EU member states take fewer days off sick than Norwegian workers do. More than 80 per cent of the leaders in the construction industry claim that this assertion is true or partly true. The question then arises as to whether this is a real difference or whether these workers go to work even though they are ill, maybe because they are afraid of losing their job. Compared to Norwegian workers, the lower number of days off due to sickness may also partly be caused by the fact that the workers coming to Norway are on the whole younger men. In terms of HES issues, it is not favourable if East European workers push themselves – or are being pushed – to go to work when they should in fact have taken time off; this benefits neither themselves, nor their colleagues.

There are indications that Norwegian contractors and builders regard East European workers as a flexible and cheap reserve labour force. There is also a danger that many Norwegian enterprises in practice accept that these workers receive insufficient training and follow-up, work longer hours than their Norwegian counterparts, and are set to perform strenuous and risky jobs more frequently than their Norwegian colleagues. This involves not only immediate consequences for the life and health of the workers, but also the long-term effects on workers who are exposed to accidents or overwork. The extensive use of workers coming to Norway as service providers (meaning that they are not hired directly by the enterprises), might be an explanation for a more ignorant treatment concerning training, housing, working time and sickness.

New demands and challenges for supervisory authorities and regional safety deputies

As described above, the presence of foreign labour is not a new phenomenon in the Norwegian construction industry. Nordic

enterprises and workers have for many years been a common sight in Norwegian workplaces. However, the use of East European labour has given rise to a new set of demands and challenges to the supervisory authorities and the regional safety deputies. The supervisory authorities and regional safety deputies encounter similar language barriers and communication problems as enterprises that use East European labour. This complicates efforts to disclose violations of the regulations and to implement appropriate measures.

Following EU enlargement, the Labour Inspection Authority and the Petroleum Safety Authority have been given the new task of monitoring compliance with the generally applied collective agreements. In spite of increased financial grants, the resources remain limited in relation to the efforts required, and this may divert attention away from HES considerations and towards a focus on wage levels. In this context, however, we will concentrate on the particular challenges for HES.

The role of the regional safety deputies falls somewhere between that of the public supervisory authorities and the trade unions. The posts are financed by the enterprises, but the Norwegian United Federation of Trade Unions and the Norwegian Union of General Workers employ the deputies. Their level of authority is the same as that of the regular safety deputies in enterprises – but only with regard to enterprises that have no safety deputy of their own. They can thereby suspend operations where there is a threat to life and health. Their position also gives them the same authority as the regularly elected safety deputies to collect information from the enterprises. The regional safety deputies therefore see themselves not as performing public supervisory functions, but mainly as providers of guidance. An important part of their job is to report to the Labour Inspection Authority on matters they discover during their site visits. In many regions there is close cooperation between the public labour inspectors and the regional safety deputies.

On-site visits and inspections mainly consist of conversations with the site management, safety deputies, forepersons and ordinary workers. In addition, documents are checked, including HES plans and staff lists, and a walk-through of the site is undertaken. As regards the East European manpower, problems are reported in terms of both communication and documentation. The individual workers as a rule are apprehensive or unwilling to reveal facts about their own situation,

or they are unable to do so because of language problems. Some have been told by their employer not to disclose information on their employment relationship, under threat of being sent home if they fail to comply. As regards the leased workers, the responsible employer (the manpower agency) is rarely present on the site. The East European sub-contractors often have only a site representative, who tends to refer to the main office or the manager in the home country. Some workers have been handed out several sets of work contracts and payslips. To have three such sets is not uncommon: one, which is shown to the Norwegian authorities, another that is shown to the Polish authorities, and a third which contains the real information. In this context, the regional safety deputies are regarded as part of the public supervisory authorities and they consequently encounter major difficulties in soliciting the correct information. In terms of language barriers, the problem goes both ways. Several of the regional safety deputies report having no command of any foreign language, and a possible command of German or English among the Eastern Europeans is therefore to no avail.

Many violations of the HES regulations are discovered on building sites. However, violations of the regulations on working hours are close to impossible to discover in the absence of real payslips, staff lists and an opportunity to communicate with the workers. Finding the employer and revealing actual labour conditions can be a puzzle, as well as determining whether the person in question has received any training. Poor housing conditions can also be difficult to uncover. The public supervisory authorities report that certain cases have to be shelved because they require excessive casework. On some occasions, the Labour Inspection Authority has brought along an interpreter to inspections of enterprises. However, this has not yet become common practice, both because of the cost and the lack of qualified interpreters. But even with the help of an interpreter, it has proven difficult to solicit information on the labour conditions of the Eastern European workers.

When the Labour Inspection Authority uncovers violations of the HES regulations, an instruction to improve compliance is handed out. If the instructions are not followed by the specified deadline, the enterprises are issued with a coercive fine warning. In the case of imminent danger, operations can be suspended immediately. When gross violations of the regulations are uncovered, the Labour

Inspection Authority reports the cases to the police. A number of formal complaints have been launched with regard to the use of foreign labour, related to violations of the provisions pertaining to wage levels in the generally applied collective agreements, violations of regulations on working hours, hazardous work and deficient safety precautions. However, it is the experience of the Authority that the police have insufficient resources to follow up these cases, and that most are dropped. The police confirm this, and claim that they have received no additional resources designated for matters pertaining to labour migration following EU enlargement. The extra resources provided to the Labour Inspection Authority have enabled it to submit more cases, and the police therefore act as a bottleneck in this system. According to some reports, the police are placing considerable emphasis on these cases in some locations.

Still, time is of the essence. It takes a long time to investigate violations of the HES regulations and bring a possible indictment, and as a rule the building project will be completed and the foreign parties will have left the country before the case can be brought to court. The same problem applies to the instruments of the Labour Inspection Authority. When an instruction is handed out and must be followed up, possibly with a coercive fine, recovery of the fine from foreign enterprises may prove difficult.

Extended effects for HES in the Norwegian construction industry, and possible countermeasures

Short-lived contractual relations and lower standards for one type of labour – in this case firms and workers from the new EU member states – could result in knock-on effects on the labour market, in the form of increasing demands for flexibility, deteriorating HES standards and the advent of different classes of workers in the same workplace. In order to assess possible knock-on effects in the construction industry, we also need to take into account the particular challenges that this industry is facing, first and foremost time and cost constraints. The mobile nature of the industry necessitates a continuous creation and recreation of productive and safe labour conditions. A third factor is the major differences between small and large enterprises, reflected in both the questionnaire survey and the qualitative interviews. These are important concerns, regardless of the use of East European firms and labour force.

Both time and money can be saved by not adhering to the HES regulations, provided that possible injuries and accidents are left out of the equation, for example in the form of absence due to illness. Systematic HES efforts, including planning, training and follow-up at all stages, require resources. The regulations are regarded as beneficial, but they are also detailed and can be inaccessible.

In general, employers and employees alike indicate lack of awareness and proper attitude as a key challenge to the HES situation. This attitude often emerges in expressions like: «I will only…» and «This has worked well before». When workers who are unfamiliar with both the language and the Norwegian regulations exhibit this attitude, the builder, the enterprises and the Norwegian co-workers may face a considerable additional problem. Our survey revealed a substantial gap between the need for training and the actual situation. These problems are exacerbated by the fact that most workers from the new EU member states spend relatively short periods in Norway, and therefore perceive learning the language, the regulations, and the new working methods as unnecessary.

At the same time, we should emphasise that two out of three Norwegian enterprises report having undertaken training sessions and assistance in order to secure a satisfactory HES standard in the workplace after having hired East European labour. As regards violations of these regulations, one of the major problems is likely to be lack of knowledge of the conditions and control down the contractual chains. Norwegian enterprises most likely make insufficient efforts to obtain information on the training that has been provided to the sub-contractors' employees and the leased manpower, on the nature of the information in the HES plan that they have been given, and on whether regulations on working hours have been violated. In additions, time constraints and communication problems may hinder follow-up of whether the workers have understood and comply with HES regulations while work is being done. This responsibility rests unequivocally with the builder and employers, and our survey indicates major weaknesses in this system.

The increased availability and use of Eastern European firms and manpower on short-term assignments and contracts has reinforced the trend towards outsourcing of services, the use of temporary manpower, and thereby more flexibility. Enterprises may profit from adjusting the number of employees according to their projects and

dealing with peaks in their production by hiring Eastern European sub-contractors and manpower supply firms that are not subject to Norwegian collective agreements. This may also have consequences for the HES situation. Previous HES studies in Norway have shown that the safety deputies and the enterprise managements are the main initiators of HES efforts. The studies also show that Norwegian employers and employees generally have shared views of the HES situation in the workplace (Torvatn and Molden 2001). A survey from the United Kingdom showed that workers hired through sub-contractors were treated differently from the employees of the main contractor with respect to health and safety (Gyi et al. 1999, quoted in Klemsdal 2003). In other words, an appropriate HES standard is linked to favourable industrial relations and having an orderly system, which also includes the appointment of a safety deputy. As a rule, a well-organised enterprise will have a large number of permanent employees who wish to secure and develop their own workplace and implement an appropriate HES system. Temporary employees, leased manpower and sub-contractors' employees are likely to be less motivated to make a contribution in this area.

Workers who have a loose affiliation with the labour market or the enterprise have a lower likelihood of joining a trade union (Nergaard and Stokke 2006). Social dialogue between the industrial partners and collective agreements may have a special importance in the construction industry, because of the high mobility of labour between different employers (Klemsdal 2003). The employers claim that unionisation has positive effects with regard to HES. An increasing and persistent use of sub-contracting firms and temporary manpower from the new EU member states may also contribute to a lower rate of unionisation, partly because of differences in traditions. Unionisation and social partnership are close to non-existent in several of the new EU member states, and the trade unions are often regarded as a relic from the Communist era. As regards unionisation in Norwegian enterprises, even here we can see that the industry is split into two groups of small and large enterprises respectively. In our sample, a total of 23 per cent of the small enterprises (1-9 employees) and 66 per cent of the large enterprises (more than 10 employees) were members of an employers' organisation. Only 13 per cent of the small enterprises were part of a collective agreement, as compared to 51 per cent among the large enterprises. The Norwegian United

Federation of Trade Unions has initiated systematic efforts to recruit East European workers as members, in order to improve conditions for the individual worker as well as communication with their Norwegian colleagues.

The public supervisory authorities base their control of the workplace on random checks. The probability of being caught violating HES regulations is therefore relatively minor. In addition, both monitoring and follow-up of foreign workers and firms have proven to be complicated.

If enterprises are caught violating HES regulations, the sanctions are so limited that attempts to cheat may pay off. This problem is not a new one, and is not exclusively related to the use of East European firms and manpower. There is little doubt, however, that the availability of East European manpower increases the opportunities for those who cheat deliberately – not only with regard to HES, but also in terms of legal registration, taxes and social security charges. Improved monitoring and tougher sanctions against those who threaten the industry's reputation are therefore also essential in this context.

According to available knowledge about the industry, the need for control and supervision is greatest in the smallest enterprises. Figures from our survey show that both the Labour Inspection Authority and the regional safety deputies make most of their visits to enterprises with more than ten employees. It should be added that many small enterprises are present as subcontractors on large construction sites, and consequently these are also included in the visit.

One explanation for the more frequent visits to the large enterprises may be that by visiting large sites the inspectors can also establish contact with a number of smaller enterprises acting as subcontractors. It is also the case that many of the smaller sites – with the smallest enterprises – are not reported to the Labour Inspection Authority. The inspectors and the regional safety deputies will therefore remain unaware of such short projects, unless they are discovered by coincidence.

The enterprise survey shows that the attention devoted to HES efforts increases following a visit from the Labour Inspection Authority or the regional safety deputies.

On this basis, the supervisory authorities and the regional safety deputies may still have cause to consider whether the inspections are sufficiently well tailored to the conditions prevailing in the industry. More inspections, possibly in combination with improved interpreting services and tougher sanctions, could constitute appropriate measures. As regards sanctions, higher coercive fines are pointed to as an effective instrument and the Labour Inspection Authority could be given greater authorisation to impose such fines on the spot. This would be most relevant in the case of flagrant violations, and would function in the same way that parking fines are imposed. There is a strong wish for the regional safety deputies, supervisory authorities, police, taxation authorities and social security offices to establish patrols that can jointly visit the sites in order to undertake comprehensive reviews of permits and labour conditions. Simpler and speedier casework by the supervisory authorities and the police is also high on the wish-list.

More systematic training of East European workers would seem to be an obvious measure to improve the HES situation. The chief obstacle seems to be a combination of lack of awareness and time, as well as cost constraints in the enterprises. As mentioned above, formal responsibility rests with the individual employer. Our survey indicates that this system is insufficient in an industry that commonly involves long chains of subcontractors, and that this responsibility often evaporates. Satisfactory adaptation of foreign enterprises to Norwegian conditions– for example language training, HES regulations and working methods – costs time and money. Foreign sub-contractors may have insufficient knowledge of the regulations, and thereby provide unsatisfactory training to their employees. A possible solution could be for Norwegian contractors to be obliged to demand documentation from both Norwegian and foreign subcontractors that this has been taken into account when the tender is submitted, and that the implementation of actual training courses is documented. Another possibility is for Norwegian contractors to take greater responsibility for training – irrespective of the employer's liability – and training costs to be deducted from the price.

Documentation of the personnel present at any time on site, the type of work contract they hold, and what kind of training they have completed may be included in the forthcoming ID card scheme. If this

documentation becomes available in several languages, this may simplify the supervisory functions.

Because leasing is the most common form of affiliation for East European workers, a more thorough regulation of such enterprises could be envisaged. This could result in better training of the workers deployed in Norwegian workplaces, possibly supported by higher coercive fines for deficient training programmes.

In order to establish a satisfactorily functioning system within a mobile and international industry like the construction industry, stronger and more practically oriented cross-border cooperation is likely to be required, between both the authorities and the industrial organisation in the countries concerned. This will enhance knowledge of each other's systems, also among the enterprises and the workers themselves.

The construction industry is a turbulent one, and the frameworks for HES efforts have been unstable, not least because the work itself is organised into projects and based on extensive use of sub-contracting. The responsibility for HES is shared between many parties, and the level of knowledge is variable and insufficient. Using firms and employees who do not understand the language and are unfamiliar with the Norwegian regulations can have a negative impact in this respect. Cooperation and communication between the various enterprises and construction workers involved are essential to achieve a satisfactory HES situation. Language barriers, cultural differences and different working methods tend to create hazardous situations.

Unsatisfactory HES conditions seem to be what characterises many Norwegian construction sites with East European workers and subcontractors, thus prompting the need for distinct action to be taken at firm, industry and authority levels to improve health and safety and reduce the risk of injuries and accidents. In a period of labour scarcity it is paradoxical that Norwegian enterprises do not pay better attention to labour that seeks to take on assignments and work in this country.

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EU's Services Directive – status and comments

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Introduction.

The Commission's original proposal ("The Bolkestein Directive")

The European Commission presented its first draft for a Directive on services in the internal market on 13 January 2004. The aim of the Directive was to improve the basis for economic growth and employment in the European Union, to establish a genuine internal market for the provision of services by removing legal and administrative obstacles and, at the same time, to establish legally binding obligations for an effective administrative co-operation between Member States. The draft introduced the so-called 'country-of-origin' principle, stated in Article 16, and at the same time went a long way towards giving precedence to the country of origin's rules during the operation of services. The host country's access to and possibility for control and following up was extremely limited. The draft Directive created, moreover, an unclear relationship to employment legislation and the Posting Directive in addition to opening up competition by rogue traders, and social dumping. There was massive opposition to the proposal not least from the whole

European trade union movement. Vigorous mobilisation and intensive lobbying by the European trade union movement prior to the first reading of the draft Directive by the European Parliament resulted in the massive demonstration in Strasbourg on 14 February 2006.

The European Parliament's compromise

Parliament's reading of the 14-16 February 2006 ended with a broad political compromise between the Christian Democrats and the Social Democratic/Socialist parties.

The 'country-of-origin' principle was removed and replaced by "the freedom to provide services". This means that the host country's rules can be applied as long as they are non-discriminatory, necessary (that is to say justifiable on the grounds of public policy, public security, public health and the protection of the environment) and proportionate. This does not prohibit Member States from imposing their own rules of employment including enforcing regulations in collective agreements, if these are in accordance with Community law. The Directive was unclear regarding certain areas such as the scope of activity covered and how the provisions should be interpreted. This applies particularly to Article 16.

Parliament amended a number of formulations in the text. According to the amendments the Directive will not affect labour law, employment terms and conditions including collective agreements, and the right to take industrial action (in Member States). It is also clarified that the Posting Directive has precedence over the Services Directive. This means that, generally speaking, the same measures that are in use today will be available to regulate the labour market.

More services were excluded from the scope of the Directive, among them temporary work agencies. Parliament requested that this area be regulated in a separate directive.

The Commission's revised proposal and the Council's first reading

The Commission presented its revised proposal on 4 April 2006. The proposal builds on the compromise that was adopted in Parliament in February albeit with certain amendments. A number of amendments lead to further uncertainty. There were amendments on labour law. This led to confusion as to whether or not labour law was in fact covered by the scope of the Directive.

The revised draft now stated that it was the services of temporary work agencies that were excluded from the Directive. The Posting Directive was still to have precedence to the Services Directive but the Commission had at the same time, however, presented interpretations on the Posting Directive that would have negative impact. Article 16 passed unchanged through the Commission.

The Council's draft does not differ much from the Commission's revised text. However, more stringent criteria were introduced in assessing exceptions to be considered as unreasonable restrictions on cross-border services. Member States shall in accordance with the Council's proposal undertake a review of national legislation in this area and report results to the Commission. The intention is to counteract national protectionism that extends beyond the stipulated exemptions. The text regarding labour law was also amended. As a result labour law and collective agreements are still excluded from the scope of the Directive. Article 16 remains unchanged as a result of the Council's vote.

Political agreement on the Services Directive was reached at the Council's meeting on 29 May. All Member States supported the Council's proposal except Lithuania and Belgium, which abstained.

Fellesforbundet's official stand from a hearing on the Commission's revised draft Services Directive, May 2006

During the hearing Fellesforbundet stressed the fact that at present there are few barriers regarding establishment and the provision of services. At the same time today's regulations tend to favour rogue traders with pricing levels that are based on a presumption that the Posting Directive does not work in practice. Fellesforbundet sees the need for the regulations we have today, improvements in existing regulations and further regulations. Norway already has a relatively liberal market for services so the introduction of a Services Directive will not necessarily lead to substantial changes. However, regarding certain points, concern and uncertainty was expressed about the interpretation of the text in the draft Directive. On other points we saw a need to amend the text. This applied especially to the Directive's Article 16, which deals with the freedom to provide services and with the restrictions on the host country's ability to make requirements for free access and free exercise of the service activity (prohibited requirements). Fellesforbundet expressed concern that the prohibited

requirements can affect particularly Norway. Among other things, questions were raised as to whether the anti-contractor clause, the system of ID cards on building sites and the obligation for foreign employers and employees to provide information would comply with the Services Directive.

Fellesforbundet commented also on discrepancies in the text connected to which arguments the host country can use to impose requirements on service providers. It was not consistent throughout the Directive text that requirements to service providers must be justifiable on grounds of overriding reasons relating to public interest. Fellesforbundet considered that the wording in Article 16 had to be amended in order to clarify the fact that requirements that are justified in so-called ' overriding reasons relating to public interest' are permitted.

Supervision and control measures were also areas covered in the hearing report. We were satisfied that the Commission retained the improvements to the text on 'letter box firms', making the place where the service provider has his main activity the deciding factor as to where the business establishment is actually located. The right for the country where the service is being provided to decide if an employment relationship exists is also positive. Fellesforbundet also urged that it be made clear whether other parties besides public authorities have the right to carry out supervision and control. The question of whether the exception concerning temporary work agencies should cover the hiring out of labour in general was also raised. We also requested clarification of the implications of the Commission's guidelines on the implementation of the Services Directive in Norway.

The 'country-of-origin' principle and the freedom to provide services

The 'country-of-origin' principle, in the form it was presented in the Commission's proposal, has been removed in the course of the European Parliament reading and replaced with the provision on the freedom to provide services. Member States cannot impose restrictions on foreign providers that are not; non-discriminatory, necessary with regard to certain specific indispensable general public interest objectives, and proportionate, meaning restrictions are not to

be extended beyond what is necessary in order to fulfil their objectives.

Furthermore, prohibitions of certain other specific requirements are introduced. The list of prohibited requirements has been reduced as a result of Parliament's reading. However, it still includes restrictions against demanding that a service provider has business premises, authorisation or offices in the host country, against contractual obligations that would hinder the self-employed from offering services, identification card requirements and requirements for equipment and materials other than what is considered necessary for health and safety reasons.

Requirements that are supported by a labour court judgment may be allowed. In cases where there is doubt about a court decision it will be up to the European Court of Justice (ECJ), in most instances, to decide what is justified and what is not. If a requirement is supported in the labour court it still has to be subjected to an assessment of proportionality. It is not always such that a requirement that is disproportionate in one country is necessarily so in another. The way that working life is organised will, amongst other factors, play a role here.

The preliminary comments from the ETUC have expressed satisfaction with the fact that the most 'damaging' points are removed from the list of prohibited requirements. However, the Directive's list of requirements that are prohibited from being imposed on service providers from another Member State still includes prohibitions that entail that Norway has to amend its legislation, prohibitions where it is unclear whether Norway has to amend its legislation and prohibitions that are or could prove a barrier to the legislation which Fellesforbundet and LO demand that Norway implements.

The ECJ has established Community law concerning overriding reasons of general interest and it encompasses a number of fundamental rights and considerations that can justify national restrictions in the light of EU prohibited restrictions. The list of considerations, which are accepted by the ECJ as being overriding reasons of general interest, is incorporated in the Services Directive.
With regard to freedom of establishment, Member States can only subject service providers or employers to such restrictions if they are non-discriminatory, of overriding general interest and proportionate. The same standpoint does not, however, apply for service providers

that are established in another Member State. In these cases allowance to impose restrictions on Member States is limited to conditions that are justified on grounds of public policy, public security, public health or the protection of the environment.

Restrictions to service providers, that are justified by an overriding reason relating to the public interest are not consistent here, something which would have been natural. Consequently it is not possible to justify a restriction or a requirement to a service provider on grounds of overriding general interest other than those stated. Concerns to protect workers, concerns for fair competition and the concern to combat swindle are among the considerations that are not mentioned among the general considerations which can justify imposing requirements to service providers.

Fellesforbundet has demanded that the wording be reformulated so that requirements that are justified on grounds of overriding general interest, such as defined in the Directive (Recital 40), are permitted.

Areas that are excluded from the scope of the Directive

Labour law

The European Parliament's compromise excluded labour law from the Directive. This applies, for example, to the right to negotiate collective agreements and the right to strike. Recently doubt has been cast on the extent of this exclusion. In the Commission's revised draft it states that the Directive does not affect labour law, which "acts in accordance with Community law". The Council has amended this to "which respects Community law". This is a definite improvement and it helps clarify that it is the labour law and the collective agreements in the country where the service is carried out that are applicable. The right to take industrial action is protected too and it is the host country's rules that apply here.

The following is now stated in Article 1.6 of the Council's final text (July 2006):

> *"This Directive does not affect labour law, that is any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work and the relationship between employers and workers, which Member States apply in accordance with national law which respects*

Community law. Equally, this Directive does not affect the social security legislation of the Member States."

However, the amendment has not been made throughout the whole version of the Council's resolution made officially available on 17 July 2006. Among other things the term "in accordance with Community law" is used in Article 16.3. This has been interpreted by LO as to mean that conditions that are laid out in collective agreements are not affected by limitations in Article 16 but that limitations can arise from the EEA Agreement or other rules in the EU. Seen in this light, the reference to Community law can be seen as a reminder to all parties to uphold agreements previously entered in addition to previous and future judgements of the EC/EFTA Court. Notwithstanding, the use of different terms to illustrate relations to Community law creates uncertainty.

Relationship to the Posting Directive

The European Parliament's compromise makes it clear that the Posting Directive takes precedence over the Services Directive.

The EU's Communication 96/71/EC on the posting of employees in connection with the provision of services, the so-called Posting Directive, obliges Member States to ensure that employees who are sent by their employer from their home country to work for a limited period in another Member State, are guaranteed the same minimum standards that are in force in the host Member State. This should be achieved through law, regulations and/or through the general application of collective agreements.

This does not apply to all conditions of work and employment. It concerns the hard core of terms and conditions, which are stated in the Directive: maximum work periods and minimum rest periods, annual holiday, minimum rates of pay including overtime rates, conditions of hiring out of workers, health, safety and hygiene at work, protective measures concerning terms and conditions of employment of pregnant women or women who have recently given birth, children and young people, equal treatment of men and women and other provisions on non-discrimination. The host country's working terms and conditions shall apply for posted workers. In addition to this, Member States have the possibility to apply other terms and conditions of employment to posted workers. However this possibility is limited to

cases "when it concerns provisions on public policy". This limitation was introduced following an initiative from the Commission on the grounds that such a reservation was necessary to prevent the provision from becoming a barrier to the free movement of services. What "public policy", concerning pay and working conditions, means is disputed. The term has been interpreted as anything from 'everything is permitted' to ' nothing is permitted'. Many Member States have extended their applicable working conditions well beyond the core conditions. Which conditions are made applicable differ from country to country. In Norway we have imposed requirements on working contracts and the entire chapter on working time in the Work Environment Act.

The Commission has had a restrictive attitude throughout. The Commission is of the opinion that it is not permissible to allow a Member State's entire employment legislation to apply to service providers from other Member States. The Commission means that many Member States have gone too far, and indeed further than what is authorised in the Posting Directive, by making other conditions applicable beyond the hard core terms and conditions of employment which apply for posted workers. The Commission had also spoken out earlier, urging these countries to amend their legislation (COM (2003) 458 final).

In the 'Bolkestein Directive' an attempt was made to limit the possibility of making other core conditions applicable to posted workers. According to the Commission, Member States should not be permitted to impose restrictive measures on service providers from other Member States beyond those stipulated in the Posting Directive (originally Recital 59).

The recital has been removed by Parliament and has not since been reintroduced.

Parliament instead introduced a recital that confirms the main content of the Posting Directive. It confirms that the Services Directive does not pose a barrier to imposing universally applicable provisions laid down in collective agreements, nor that it poses a barrier to making conditions of employment other than the core conditions applicable to posted workers in cases concerning provisions on public policy, as in the Posting Directive.

The Council has, in the course of its reading term, incorporated an extremely restrictive definition of 'public policy' into the Directive.

The term should as a result "cover protection against a genuine and sufficiently serious threat affecting one of the fundamental interests of society and may include, in particular, issues relating to human dignity, the protection of minors and vulnerable adults and animal welfare". The restrictive definition will, if incorporated into the Posting Directive, make it very difficult to enforce conditions of employment other than the core conditions, on posted workers. This can have implications for the implementation of the Posting Directive in Norway.

Temporary work agencies

The European Parliament approved that the Directive should not apply to temporary work agencies. The Commission has, in agreement with the Council, amended this so that the Directive does not apply to *service provision from* temporary work agencies.

Implications of the amendment are made evident in the Commission's guidance document on the posting of workers in the framework of service provision, published this summer. National rules obliging a service provider to obtain authorisation from their competent authorities is, in compliance with Community law, a disproportionate restriction on the free provision of services, according to the guidance. The fact that a number of Member States insist on imposing requirements on temporary work agencies is used as an example in this context.

The implication of the amendment is, therefore, that the execution of services from service companies is excluded from the Directive, whereas access to exercise service provision is not.

Bogus postings and contractor activities

The freedom of establishment and bogus postings

The draft Services Directive makes a division between the freedom for service providers from one Member State to be established in another Member State on the one hand and the freedom to providers that are established in one Member State to provide services in another member State on the other. We have seen many firms that are registered in the new EEA countries, which post workers in connection to service provision but have no operation in the 'home country'. They are established for the sole purpose of supplying employers in Norway with hired labour. The workers are employed

with the one and only reason of being posted on an assignment to Norway. They only have a letterbox in the 'home country'. This is what we call a bogus posting. This problem of letterbox firms has been taken up repeatedly by the European trade union movement both in connection with the Posting Directive and the Services Directive.

The Parliament compromise draws a line between firms that are established in a Member State and letterbox firms. To be established in a Member State means to operate a business over a long period of time from a permanent address in the Member State. According to this definition, a letterbox firm is not established in the country where it has its letterbox. It is established in the country it operates from. The consequence of this is that letterbox firms will not be able to assert their right to the freedom to exercise service provision that will be introduced with the Directive.

Employee or self-employed

The Posting Directive states that it is up to the host country's legislation to define who is a 'worker'. It is also up to the Member State where the service is provided to distinguish between who is an employee and who is self-employed. The Services Directive states in Recital 87 that it is the Member State where the service is carried out that has the right to determine the existence of an employment relationship, and the distinction between the employed and the self-employed, including the 'bogus self-employed persons'. Following on in the provision it states that the most important characteristic of an employment relationship "is the fact that for a certain period of time a person provides services for and under the direction of another person in return for which he receives remuneration". And, following on from this: "an activity which a person performs outside a relationship of subordination must be classified as an activity pursued in a self-employed capacity". There is consequently a contradiction between the first and the second part of the recital. While in the first part it is up to the Member State itself to define the existence of an employment relationship, a definition of 'self-employed' at EU level is given in the following sentence. This definition differs from how we define 'self-employed' in Norwegian law.

The ETUC proposes that the last part of the text is removed. If such a formulation is retained it will be left up to the ECJ to assess and judge any disagreements on a case-by-case basis.

How will the Directive affect the chance of upholding strict legislation against rogue conduct and social dumping in Norway?

General application of collective wage agreements

The Services Directive is not a barrier to the general application of collective agreements. Restrictions on what statutory employment conditions can be imposed beyond the core conditions that can be exerted to posted workers can, however, limit to a similar extent what provisions laid down in collective agreement can be applied.

Parliament's text established that the Directive does not cover the right to negotiate, enter into, enforce or make the application of collective agreements universal. In the Commission and the Council text the words 'general application' are omitted. It nevertheless establishes that the Services Directive does not apply to either employment conditions that apply to posted workers in accordance with the Posting Directive, or to the pay and conditions of employment that are laid down in collective agreements (Recital 86). Whether there is more opening to make existing collective agreement provisions applicable than there is to make current legislation applicable is questionable.

Joint liability for wages

Fellesforbundet has proposed that the 'employer' should have joint liability for businesses that are covered by general applicable regulations. Employees who do not receive their rightful pay in accordance with the regulations of general application have to try their case as a private person following rules laid down in court procedure law. Alternatively their trade union can take the case to a civil court. This is an inappropriate rule given that the reason for trying the case is to redress a grievance. We have, therefore, proposed that the 'employer' be made jointly responsible for the payment of wages. This would mean that the hirer would have a payment obligation to workers at the hiring agency, and that the employer would have payment obligation to workers with all the subcontractors and so on in turn down the line of subcontractors. Fellesforbundet has furthermore strongly expressed the need for a similar proposal for joint liability for pay and holiday allowance on the hiring of labour, so that the agency that hires out and the hirer have a joint duty to ensure that pay obligations are met.

This system of joint liability for pay is not unknown in other parts of Europe and is indeed practised in a number of countries. The European Parliament has stated that the main contractor should be made liable for the subcontractor's obligations to their workers. The Commission's report on the Posting Directive pointed out that joint liability has many advantages. It gives the posted worker an alternative possibility for claiming compensation, which can prove useful especially when the employer 'disappears' or is deemed insolvent. It creates a stronger incentive for firms that contract out to ensure that the conditions governing posted workers are 'in order', and will deter them from contracting out work to firms they are uncertain of.

The European Court of Justice delivered a judgement in 2003 in the Wolff & Müller Case whereby Member States, according to the Posting Directive, are obliged to ensure that firms that post workers to their territory pay minimum wages. Member States must also, therefore, guarantee that sufficient ways and means of securing minimum wages are made available to posted workers. A Portuguese bricklayer, who worked for a Portuguese firm carrying out concreting work on a building site in Berlin for the German firm Wolff & Müller, took a case to the labour court in Berlin with the claim that Wolff & Müller should pay his outstanding wages. The claim was put forward pursuant to a provision in the German law on posted workers whereby a firm which uses another firm to carry out building work is responsible for seeing to that all parties involved in the building process are paid minimum pay.

The employer naturally opposed the demand on the grounds that this would be a restriction on the freedom to provide services.

The court judgement established that freedom to provide services is not a barrier to joint liability with the intention to secure minimum pay. Joint liability can be a suitable measure in the event of insufficient observance of the Posting Directive. The judgement refers to the fact that the Posting Directive has a provision that requires Member States to ensure that workers and/or their representatives have sufficient ways and means available to carry out their obligations in accordance with the Directive.

Transparency and authorisation
Fellesforbundet has demanded the right for trade unions to carry out inspections in the event of hiring of labour, outsourcing work, where the aim is to document a demand for the general application of a collective agreement, and when the aim is to implement infringement measures in accordance with the law covering general application of collective agreements.
The effects of the Services Directive on legislation are unclear.
In the Directive text it states that a 'competent authority' means:

> *"any body or authority which has a supervisory or regulatory role in a Member State in relation to service activities, including, in particular, administrative authorities, including courts acting as such, professional bodies, and those professional associations or other professional organisations which, in the exercise of their legal autonomy, regulate in a collective manner access to service activities or the exercise thereof;" (Article 4.9)*

The Services Directive prohibits requirements that are not justified by reasons relating to public policy, public security, public health and the protection of the environment, being imposed on service providers. Legislation on the right for trade unions to carry out inspections will be excluded from the prohibition in cases where it is covered by labour law which is excluded from the Directive. Legislation on the right for union inspection must, however, be formed so as to fulfil requirements on proportionality; that is to say must not go beyond what is necessary to attain the objective pursued.

The Services Directive establishes prohibition against the requirement imposed on a service provider to obtain authorisation from the host country's authorities except when the Directive or Community law allows this. This prohibition will, if the Directive covers access to the particular market, be a barrier to the introduction of a system of authorisation for hire firms - a measure Fellesforbundet has expressed the need for.

Obligation to provide information on employees and workers
Norway has special legislation concerning businesses and public agencies that have granted assignments on mainland Norway or the Continental Shelf. They are obliged to provide information about

foreign employers and employees to the tax authorities. The obligation to inform is part of a chain that involves responsibility at all levels along the contract chain. Those that fail to fulfil the information requirement can be fined a daily penalty, a fee and in extreme cases the liability for due but outstanding tax deductions and employment tax, the so-called joint liability. Until 2004 the information applied only to the building and construction industry and the offshore sector. From 2004 it has been extended to cover all foreign employers and workers, independent of industry. In February this year the Department of Finance put together a working group whose task it was to revise the reporting procedure system. The background for this was that the Department had been uncertain as to whether the expansion of the reporting system that took place in 2004 was consistent with EEA regulations. The working group's report was handed over to the Department in May this year. As far as is known, the working group did not look into the relationship between the reporting system and the Services Directive.

The report concluded that EEA regulations are not an obstacle for a reporting system similar to the one we have today. It emerges, however, that current rules in a number of areas go beyond what is justifiable on the grounds of effective tax control. It is supposed that an obligation to provide information based on nationality does not comply with EEA regulations, and that the obligation to provide information should instead depend on where the employee is registered for tax purposes or domiciled. In effect this probably means that the obligation to provide information on foreign employees who are employed by Norwegian firms will no longer be applicable. The proposal is to limit the rules to areas where the need for separate rules associated with tax control is considerable, and greater than for taxpayers resident in Norway. There is also a proposal to limit the tax and excises authorities' jurisdiction to impose the requirement on joint liability.

We have posed questions as to what extent this information obligation will stand up to the Services Directive's prohibition to instruct the employer to send a report to the Member State's authorities (Article 16-2(g) and Article 19(a)). Tax legislation is, however, excluded completely in the Parliament's compromise of the Services Directive, and the Commission accepts this. As a result the Services Directive will not be a barrier to our continuing enforcement

of national legislation on the requirement of information on foreign employers and employees. On the other hand the EEA Agreement can prove a barrier to the continuation of our present rules.

ILO Convention 94

The relationship between the Services Directive and the ILO Convention has been deliberated in Sweden in connection with extensive report on the subject of public procurement (SOU 2006:28). The report concluded that it appears uncertain, in today's situation, whether a modification of the requirements the Convention demands are compatible with EU's Directive on Public Procurement and other Community law rules.

There is, however, nothing in the Services Directive at present that is a distinct obstacle to including labour clauses with requirements to pay and working conditions in public tender contracts.

Anti-contractor clauses

Anti-contractor clauses were introduced in 1992 as a result of pressure from Fellesforbundet, at the time as an absolute condition of contract for building and construction workers engaged in central government building projects. In its original form it was a provision to ensure that only contractors and employees who were in an employment relationship could carry out building for central government, or in some cases by using a subcontractor. There had to be good grounds for subcontractors' use of self-employed builders or hired labour and they had to be approved by the property developer.

Today the clause appears as a provision in the regulation on public procurement where the public authority builder *can* use such contract provisions. We have registered an increase in contractor activity in the aftermath of the EEA enlargement. The intention here is to evade requirements on standard wages which are the result of transition rules and rules of general application. Fellesforbundet has demanded that all contracts of public procurement *shall* require that work must be carried out by employees in an employment relationship, or if needs be by subcontractors, and that this shall apply independent of threshold values.

The Services Directive introduces prohibition to using special contract provisions between service provider and service receiver that obstruct or limit services rendered by the self-employed. It is

uncertain whether the anti-contractor clause will stand up to such a prohibition.

ID cards

In October 2005 the Bondevik government agreed to introduce a requirement in the property developer's regulations making ID cards compulsory on all building and construction sites with effect from 1 January 2006. The scheme was set up in such a way that anyone could issue ID cards without checking whether the employer or the employee was registered. Fellesforbundet and the employers' organisation (BNL) came together and requested the new Stoltenberg government to postpone the scheme. This was accepted. The question of improved ID cards for the construction sector is one of the measures to be dealt with in the government's programme of action against social dumping in the Revised National Budget for 2006.

In March 2006 a working group was set up in the Ministry of Labour and Social Inclusion with a reference group consisting of representatives from the two sides of industry and Fellesforbundet was represented here. The working group was to consider whether an amended requirement for ID cards at building and construction sites would make them a better means of combating social dumping. Among other things the working group had to deal with the relationship to the EEA regulations. The following is written in the report regarding this:

In the text for a directive on services, the amended proposal having been presented by the Commission on 4 April 2006 after political agreement was reached in the Competitiveness Council on 29 May 2006, Article 16(2) e) states that requirements from competent authorities for identity documents to exercise a specific activity is not permitted. This prohibition is, according to the Directive proposal, absolute and cannot be legitimised by using either paragraph 1or 3 in the provision. If ID card concerns are encompassed by the labour law regulations exemption in the Directive proposal's Article 1(6), will the question nevertheless fall back on the general provisions in the EEA Agreement, as discussed above.

The working group's recommended plan for a new ID card scheme builds on a solution that should have a positive effect with the view to facilitating the official control of Health and Safety in building and

construction. Furthermore, the scheme should counteract rogue conduct and social dumping, something that appears to be a problem, particularly in the building industry.

From the foregoing discussions the working group finds it sufficient to point out that there is uncertainty as to whether the proposed ID card scheme will be in line with the opportunities given within the EU/EEA legal boundaries. The introduction of ID cards in this sector is, however, something that appears to be spreading, anyhow in the Nordic countries, with Finland having introduced a scheme and Denmark planning a similar one.

How will the Directive affect the possibility of carrying out supervision on foreign service providers?

The original proposal from the Commission stated that the home country's Local Labour Inspectorate was responsible for checking and controlling that pay and working conditions in the host country were complied with. This was amended by the compromise in the European Parliament and, later, followed up by the Commission and the Council.

The main responsibility for supervision and control on service providers' activities in the host country falls under the authorities of the host country. This is absolutely fundamental in order to enable supervision to be carried out on activities exercised on one's own territory. It is, however, the Member State where the service provider is established that is responsible for the supervision of service providers established in its territory, although the Member State's authorities in the country where the service is provided is obliged to assist with monitoring based on the principle of 'mutual assistance'. The approaches taken in this area appear all in all to be acceptable even though there will undoubtedly be some practical challenges. Effective information exchange is dependent on competent authorities and supervisory bodies having sufficient human and financial resources. Transparency and cooperation is also necessary from all parties involved. It will not prove possible, for example, for all countries to establish an electronic information system overnight. Setting up well-functioning and effective administrative systems and building up cooperation with other Member States will naturally take

time and is an argument against rushing through the implementation of the Directive.

The Council introduced an evaluation/supervision process too where Member States are obliged to account for their national requirements. The intention is that the requirements must be justifiable and proportionate. Member States must also report on any changes to requirements or the introduction of new requirements to the Commission, which in turn will pass the information on to the other Member States. There are no sanctions relating to the reporting procedure. The Commission will, on the basis of the information it receives, prepare an annual analysis and briefing on the use of these provisions. It is not unlikely that this will take the form of 'guidelines', similar to what we have seen on other directives, for example the Posting Directive.

At the same time as the Commission submitted its revised proposal of the Services Directive, it submitted an assessment of how provisions in the Posting Directive are controlled and complied with in the individual member countries. The background to this was that the Articles in the Services Directive (Article 24 and 25) that had influence on the interpretation of the Posting Directive had been removed. In the Communication Member States were urged to improve their measures for effective information exchange and revise and improve their control mechanisms. In addition the Commission reintroduced a number of proposals that were removed in the European Parliament's compromise: for example that it should not be permitted to impose requirements on service providers to have a permanent representative or to keep certain documents on the territory of the host country. The Communication is at present subject to Parliament reading and, therefore, its future is unknown. There is, however, a general consensus among Members of Parliament that the Commission has here gone far beyond what is considered to be established practice by the European Court of Justice.

Further work on the Directive and Norwegian reservations

The proposal is now submitted for a second reading in the European Parliament. The Committee on Internal Market and Consumer Protection shall debate the matter on 4-5 October and vote on it on 23 October. The deadline for comments to the Committee is 20 September. The European Parliament's plenary vote is scheduled for

14-15 November. After a new round in the Commission the matter is submitted for a second vote in the Council. If the Council does not support the proposals for amendment presented by the European Parliament, an arbitration board comprising members of the Council and of Parliament deals with the matter (The matter follows the so-called codetermination procedure). A decision in this type of board should be reached within three months.

A part of the discussion on the Services Directive has been the question of whether or not Norway should use the EEA Agreement's opening to reserve itself from the Directive. Fellesforbundet has not taken part in the discussions. Fellesforbundet has been occupied with the forming of the Directive on the understanding that neither we nor the rest of the European trade union movement will benefit from a Directive on services that promotes social dumping.

Fellesforbundet has demanded stricter legislation to combat social dumping. We will continue to work for the establishment of such legislation. If the Services Directive is adopted next year Norway will have a three year deadline for the implementation of the Directive into Norwegian law. Fellesforbundet's opinion is that Norway must see a ratification of the Directive in connection with the need to establish stricter legislation on social dumping.

REVIEWS

Review by Graham Hollinshead

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The Nordic Labour Market two years after the EU enlargement; mobility, effects and challenges (2006), Nordic Council of Ministers, Copenhagen, ISBN 92-893-1370-6 / Jon Erik Dølvik and Line Eldring. Fafo

The report is published by the Nordic Council of Ministers under the auspices of Nordic co-operation, one of the oldest and wide ranging regional partnerships in the world, involving Denmark, Finland, Iceland, Norway, Sweden, the Faroe Islands and Åland. It reflects the research and deliberation of a Nordic working group consisting of participants from various relevant government authorities with the research institute, Fafo, as its secretariat. It centres upon an issue of primary concern for work, employment and politics in the region, which is, as a manifestation of EU enlargement, the effects of labour migration from the 'EU-8' countries on indigenous labour markets. Such migration, mainly from Poland and the Baltic countries, is set in the context of the Nordic 'welfare' model which has been associated with high pay, compression of pay scales, job security and a tradition of consultation between major stakeholders in employment, notably trade unions, employers associations and governmental agencies. A starting, optimistic, premise of the report is that 'labour migration benefits everybody!'(preface) as Poles, Estonians, Latvians and Lithuanians and Estonians travelling northwards are able to find work at attractive rates of remuneration, whilst their employment is alleviating skill shortages in the Nordic economies primarily as an effect of the ageing of the population. Later in the report it is asserted that migration has 'greased the wheels' (page 45) of labour markets through providing a 'spare reserve' of temporary labour, this contributing to volume flexibility of the enterprises workforce and also being consistent with increasing production and employment,

curbing prices and interest rates and extending room for manoeuvre in economic policies.

Central to the analysis of the report is the observation that patterns of migration to the various Nordic countries have been of a diverse nature, a major explanation for this being the differential state of 'transitional arrangements' in the region. Essentially transition arrangements facilitate a temporary continuation of the institutional *status quo* in the country in question, for example, as in the Finnish case, a specification that labour conditions for immigrants should comply with prevailing regulations and collective agreements. Although the total volume of migration into the Nordic region remains moderate (between around 0.2% and 0.4% of the total workforce) there are nevertheless significant variations in influx across the region. Moreover, an important insight provided by the report is that the *type* of migration, i.e. whether 'regular' job seeking or service mobility and associated 'postings' depends upon the restrictiveness of the transitional arrangements currently in force. Thus, there has been a strong tendency towards service mobility in Finland and Iceland which have placed considerable premium on 'assessment of needs', whilst Norway has a relatively high influx of both job seekers and service providers. Drawing upon previous reports, the authors point to a somewhat alarming scenario in which service mobility is being concentrated in certain regions and in industries, notably construction, that are undergoing significant growth. Accordingly, the prospect of labour market segmentation is becoming real, with increasing acceptance of low wage competition in high cost countries. In the construction industry the use of sub-contracting and employment of atypical workers as an emergent labour strategy by enterprises will tend to distort competition, exert downward pressure on prices and lead to circumvention of regulations and agreements relating to hiring ,wages and working conditions, health and safety regulations, taxes and duties. Such developments would be detrimental not only to societal interests, but also to *bona fide* enterprises. Furthermore the authors draw upon international studies to suggest that, whilst indigenous higher skilled groups complementing the new supply of labour are likely to benefit from increased labour migration, the 'losers' will be those directly competing with lower paid posted workers.

The phasing out of transitional arrangements and consequent deregulation of Nordic labour markets is confronting trade unions with new and ambiguous challenges. In Denmark, for example, where regulative influence is being relaxed, trade unions are simultaneously being required to play the role of 'wage police' for migrant workers whilst also seeking to maintain their jobs and engendering solidarity with Danish workers in their struggle against social dumping. Reading between the lines of article, cracks are beginning to appear in the Danish social model as trade union legitimacy depends upon the acquiescence of governmental and employer partners to the principle of equal conditions for migrant workers and, more broadly, the reaching of tri-partite consensus on employment matters. As the report implies "disassociation" and "repudiation of liability" are the potential ramifications of heightened price competition and labour market deregulation.

Indeed, as a general observation, one might take issue with the optimistic tenor of the paper and with a strategic assertion that tensions and dilemmas associated with labour migration from EU 8 countries may be resolved through the formulation of a unified and long term policy within the Nordic region which will serve to deal with migration on a more 'targeted' basis. Undoubtedly it is productive for the Nordic countries to consider responding to the pressures of labour market integration in a concerted fashion, and the implementation of minimum wage in the most exposed industries as recommended may well offset the most deleterious effects of social dumping. However, in the light of the main conclusion of the Nordic contact group recorded in the paper that "individual labour immigration to large extent appears to be demand driven and adapts to the needs in the recipient countries' labour markets" (conclusion), the fissure between actual and officially proclaimed economic orientation in the region may already be wider than policy makers have recognized, and could well continue to grow with increased migration from the Baltic region. One should then question the possibility of benign co-existence of neo- liberal labour market developments, placing an emphasis on short termism and price reductionism, with the time honoured 'high road' of Nordic employment welfarism and work regulation. In this respect the previously protected Nordic region is arguably being exposed to the forces of 'marketization' that are an undeniable product of global capitalism.

SOS – selling our services:
The Draft Services Directive versus Social Europe
A conference of the Institute of Employment Rights, London 12 July 2006

Little is known in Britain about the Services Directive. As a result the participation of the British trade unions in the demonstrations in Brussels and Strasbourg against it was limited. This judgement, however, needs to be differentiated, among the unions organising construction workers Amicus has certainly done more about this attack against employment rights than other construction unions. Just before the summer recess 'The Institute of Employment Rights', a think tank of the British trade union movement, made an attempt to raise awareness and provide some knowledge about what many routinely classify as interference of EU bureaucracy in British sovereign affairs. Among the 33 'delegates' no union officials in charge of construction trades attended, UCATT, GMB, and Amicus were not represented at all. A single UCATT member attended on a private basis. Unison had delegated by far the greatest contingent, 11 officials. Was the whole conference set up to harness Unison for fighting the Services Directive?

The first intervention set the scene, as one might have expected, by a Member of Parliament, chair of the 'Labour against the Euro' group. Ian Davidson presented the Directive perfectly according to the intention of its proponent Frits Bolkestein as an instrument to remove barriers to competition on the European market. It was not very clear whether he was supportive to this move in European legislation or not. He was unambiguous, however, in his concern that this Directive would be another step in the building of a European 'super state' and that "freedom of legislation (would be) taken away from the nation states".

By contrast, the European officer of the GMB, Kathleen Walker Shaw, gave an informative factual account of trade union efforts in Brussels of "pulling the teeth from Bolkestein" in the process of amending the original draft Directive. Implicitly she drew a picture of the actors involved and their positions. She finally summarised the

“outstanding concerns” and rightly concluded, the “campaign continues”.

What actually happens on the European labour market, in particular in the construction sector, despite the Posting Directive and without the implementation of the Services Directive, was pointed out by Charles Woolfson, “New Threats to Preserving Labour Standards in a Liberalised Europe”. His core message was that, with the consent of the respective governments, labour from CEE countries is used to erode existing wage levels, social security, job security, and labour rights in the old EU Member States.

This first roundup concluded with a discussion targeting the role of the British Government in its unconcealed efforts to sabotage European labour regulations. But it emerged also, that the British trade unions are not (yet?) particularly motivated to join a European trade union front for the defence of labour standards.

This deficit of awareness in Britain about the attack on labour standards across Europe was tackled by Nick Crook, international officer for Unison. He highlighted the legal aspects and the important role the unions have to play, in particular in defending public services and hence the EU Services Directive. He made clear also, that there is little chance for success unless the opposition is organised at European level.

Jan Cremers, CLR administrator, gave an historical overview over the debates since the 1970s in Brussels to regulate the free movement of workers eventually leading to the Posting Directive (1996) and assessed the Services Directive in this context as an attempt to reverse the protection provided under the former. He singled out the Council of Ministers as the driving force in the liberalisation of the European labour market, whereas the European Parliament had predominantly been defending the European Social Model. He finally pleaded “for free movement based on a decent registration of posted workers, guarantees for social liability and a high level of protection of workers.”

As a solicitor Stephen Cavalier informed about a number of legal details concerning the nature of the provision of services as compared to the employment of labour. This distinction raised the definition of self-employment – still unresolved. But this is not the only loophole in the edifice of the Directive, in particular it does not cover the services of temporary work agencies.

From a more theoretical point of view John Foster, Emeritus from Paisley University in Scotland, identified the culprit, “the European Union institutions are structurally neo-liberal”. Consequently he argued that labour rights are best protected at national level which is where also democracy needs to be defended, such as through the votes against the EU Constitution in France and the Netherlands (2005). He forgot to draw the conclusion in relation to the Services Directive: the best terrain to oppose it is at national level, that is in Great Britain - or Scotland?

The final discussion did nothing to revive the sprits of the delegates in the sense of taking on the fight against a Directive which is designed to erode labour standards where they still exist. Everybody knows that the British Government, whether Labour, Conservative or Liberal, opposes even minimal measures of protection such as the working time Directive (‘opt-out’ confirmed 7th November 2006) as a means to promote the ‘competitiveness’ of the British industry. But it was depressing to spend a day witnessing a dominant part of the British trade union movement paralysed through its parochial perspective. The Institute of Employment Rights is fighting an uphill struggle.

Trial in Copenhagen

Conference of CLR Denmark, Copenhagen, Tuesday, 25th April 2006

This conference was set up as a mock trial. The Danish building industry was charged with wilful negligence in its provision of the Danish people’s built environment. The charges cited shoddy work, late delivery, and unjustifiable expense.

As a ‘self-employed’ bricklayer working for sub-contractors on sites in London I have always had the highest – and somewhat mystified - respect for the Danish building unions who have 127,000 members (73%) out of 175.000 employees in the construction industry. Oil paintings depicting workers engaged in various jobs hung from the conference hall’s walls. Two interpreters supplied translation into English via headphones for the three non-Danish speakers attending.

Mr John Larson, chairman of BAT (The Danish co-ordination organisation of 8 trade unions within construction) opened the conference and Mr Nikolaj Lubanski of CLR Denmark was the moderator.

Prosecuting was Mr Knud Busk, chairman of the Danish Association of Construction Clients. Defending was Mr Jens Klaskow of the Danish Employers Association. Both were subject to questions and contributions from the 70 strong 'floor', which included academics, architects, employers, and unions.

The trial was given a EU wide perspective on labour standards by Charles Woolfson of Glasgow and Latvia Universities and John Kerstens of the Dutch building unions.

As the trial was long and complex I have only reported what stood out in my mind.

Prosecution:

Knud Busks:

Too many - twenty visits of trades persons to convert a domestic kitchen; large apartment blocks delivered late and in a shoddy condition; firms operated cartels; negative public image; no multi-skilled workers.

Lack of process management: few experienced project managers on sites because prestige and the biggest financial rewards were gained at head office rather than on site where the wealth was created; emphasis was now being put on craft workers' ownership of competences in planning work, but this competence was also required by the site management; high turnover of both management and workers lead to a loss of experience – 'white heads' should be retained.

Defence:

Jens Klaskov's:

The prosecution's case was too much doom and gloom. The Danish building industry had a relatively good image: it didn't have a problem recruiting young people to take up skills training – unlike other countries; the fact that Danes had the highest floor-space per head in Europe counted against them being dissatisfied; good progress was being made in training the workforce in digital skills; fatal accidents were relatively few, and health and safety was being

continuously improving; it was true that the industry had to be more conscious that it was a service industry where the customer came first.

Floor (speaking to both prosecution and defence)**:**
An academic: Knowledge systems - big turnover should be positive for building a firm's experience, but people are lone wolves who keep it to themselves to build their prestige – so sharing knowledge doesn't work in practice – there is a negative downward spiral.
A trade unionist: The importance of the skilled craft worker to the planning process; the customer is not always right – the customer should be educated to what was involved in delivering the 'flawless product'; multi-skilled workers were something sexy that journalists liked - but what worked was multi-skilled teams.
Another speaker: contractors beholding to clients, tendering for work and offering too tight completion dates, made big problems for work planning.
Over coffee a Danish trade unionist expressed a degree of scepticism towards the employers' leader's commitment to improving the workers status in production. He was also not content with fellow EU building unions' commitment to combating the employers' use of migrant labour to destroy agreements – in Denmark they stopped sites until agreements were respected.

The exemplar firm:
The employer said that he had negotiated much greater ownership by his workforce of work planning – they had 'planning tools' which were working well - particularly with the foremen. The firm had multi-skill teams; a greatly expanding part of the workforce was becoming salaried staff. The firm was getting orders and making money.
A trade union speaker said the firm was working well from the trade union point of view, the unions wanted more firms to adopt this system; the unions resisted management setting parameters to planning.
Another speaker asked why no other firms in Denmark were following his example. The employer blamed conservative attitudes.

EU-wide perspective:
Charles Woolfson said the European Social Model was under attack and being presented as an outdated concept. The UK, Italy and Germany were supporters of a neo-liberal agenda. And the political and business elites in post-communist New Member States were resistant to the ideas that underpin the European Social Model. The Eastern enlargements (current and future) could create by stealth the erosion of labour standards (so called flexibility) that the political class in the older EU member states (e.g. France) were finding hard to bring in. Woolfson gave comparative statistics i.e.: the Baltic states' minimum wage was 10% of UK's; the coverage of collective agreements was only 12%; the suicide rate was up to 5-times the EU average. Woolfson asked if a new 'race to the bottom' in which the New Member States were being used by neo-liberal forces to undermine labour standards throughout Europe could be prevented. He said Baltic states working people must be assisted.

Dutch scene:
John Kerstens said the Dutch building industry had suffered a heavy blow to its image when cartels of construction firms getting infrastructure contracts were exposed. Dutch young people were not attracted to the industry, which had a 'bum-cleavage' stereotype. There had been a growth of the 'self-employed', most of them migrants from Eastern Europe who were working at about one-third of the Dutch Industry Agreement rate – which was their selling point in the labour market. A significant number of these 'self-employed' workers were being recruited, however, but on insurance policy principles rather than trade unionism.

The verdict:
After hearing the evidence the Danish building industry was found not guilty of intent to inflict losses and damages on the Danish public. But it was found guilty of repetitive negligence and of at times preventing the growth of a modern culture of education, organisation, and business that hindered production of high quality and inexpensive product for the end users.
The industry was sentenced to 15 years community service and ordered to report annually on progress in mending its ways. It also had to present a vision of where it would be in ten years time. Every firm

would have sign up to this – and clients would have to only use firms that signed up to these goals.

Conclusion:
It was a revelation to hear some of the ideas and terminology used in the 'trial' to address the complexity of production in the building industry. In the subcontracting system in London the only idea of improving production and quality is for the perfect worker to walk through the site gate asking for a job on low wages. The employers 'cost-cutting' free rider practices with near zero formal training, evasion of social charges and denial of employment rights produces an intellectually stunted culture.
'Culture of independence, but should train for a culture of co-operation, this must be turned into a critical mass – not just a few islands'. 'Silent knowledge is something site workers have, but with turnover can be lost. So instead make them full-time employees'. 'Only 555 in 60-65 age-group in the sector, which is a shame, because they could hand over their knowledge'. 'To have planning competences we must have language to have practical comprehension to describe things'.
This isn't building site language and it could just amount to a rarefied corporate-speak, but its essence could be adapted. Action on the kind of thinking at the trial, with development of the workforce's status and capabilities, tied to trade unionism and policies of elected democratic institutions could help to realise a new progressive settlement on London sites.
At Sweden's Malmö airport on my way back to London, I got talking to a Swedish student studying economics at Lund University. According to him Sweden was a totalitarian trade union society. Swedish building workers earned more than accountants! All the way back to London Stansted on the Boeing I duelled with this young, male, blonde 'market forces' automaton, who couldn't wait to see Swedish and Danish workers 'market fit' in the globalised labour market.

George Fuller/CLR-GB

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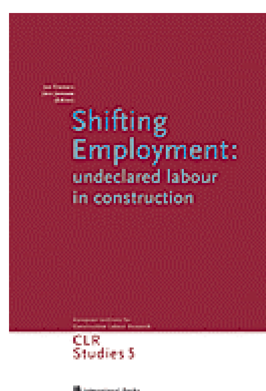

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N E W
Shifting Employment: undeclared labour in construction

Jan Cremers and Jörn Janssen (Editor)
CLR Studies 5

This study is the result of preparatory European research and national investigations on 'undeclared labour' in 10 European Union Member States. The main objective of the research is to analyse the variety of forms subsumed under 'undeclared labour' in the construction industry, to assess current measures to prevent and combat undeclared labour, and to make recommendations on the basis of best practices. In all countries the shares of undeclared labour output and employment appear to be much higher in construction than their averages in the gross domestic product and overall employment. From the evidence of the reports the authors conclude that:

• the highest incidence of undeclared labour relates to work carried out by workers in addition to their regular job;
• the status of self-employment is abused, with bogus practices by national citizens as well as foreign 'independent' workers entering the market through labour-only subcontracting;
• dubious agencies and labour traffickers supplying cheap illegal labour mainly from abroad have returned. "Illegals never complain and work hard" and only little "persuasion" is needed because of their illegal status.

This publication includes desktop research, a summary of the findings with conclusions, and the experts' 10 country reports.

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