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Employment in the EU

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Jan Cremers,
AIAS-University
of Amsterdam,
2007-11-07.

Welcome to the New Europe

"You don't pay any employers or social taxes for the workers you rent from us. You also slip employers responsibility, because the employer of the workers is still our company. We send our workers to perform the work at your company.

You save a lot of money on taxes and fees; you save a lot of money and time on salary administrations, since the only thing you pay is one invoice per month. You get highly motivated employees with good knowledge of English/German. You save 50% or more on salaries if you compare with the wage you would have to pay to nationals of your country."

(offers on the world wide web)

The European Institute for Construction Labour Research (CLR) introduced in the spring of the year 2001 a research project and applied for a grant from the European Commission in order to prepare an analysis of the perspectives for social dialogue at company and branch level in six EU applicant states. This research resulted in an account of industrial relations in the construction sector before the EU enlargement. Since then, aspects of migration, of free movement of workers and the development of transnational industrial relations have been in the centre of our concern. Partially based on these research activities, CLR started with a research project on the *Free movement of workers in Europe*, a study commissioned by the European social partners. In that study the implementation and

functioning of the so-called Posting Directive was analysed. Last year CLR finalised an in-depth study on *undeclared labour in construction* and came up with a report called *Shifting employment*, based on the work with a team of experts and the analysis of ten country reports. All studies were published in the series CLR-Studies and further dissemination took place via workshops and conferences (for instance organised by the Dutch and Finnish Presidency). The European Social Partners in construction have always shown a great interest in the outcome and recommendations. Dialogue has taken place with Members of the European Parliament and with the services of the European Commission. Against this background CLR has reacted on the questions formulated in the Green Paper of the European Commission. We concentrated on the issues that

were subject of our studies so far (free movement of workers and posting, impact of EU Enlargement, undeclared labour).

Since the beginning of the 1990s the overall trend has been for less direct employment on the part of the main contractor or leading company. A relatively small and specialised staff is now responsible for procurement, supervision and management; in the execution a chain of specialised contractors/undertakings is engaged. Social responsibility, in some countries safeguarded by liability regulations, can no longer be guaranteed if national regulation is not free-market proof. Other national measures no longer work adequately and domestic legislation is no answer to the ability to render services freely throughout the EU. Companies are able to evade statutory obligations and provisions based on labour law by setting up a front employer between the management and the execution of the works or services. The supply of cheap, unskilled labour has become an integral part of lower level subcontracting with no legal relationship between the user firm and the workers concerned. In such a situation labour law and representation

and bargaining procedures become ineffective. Vulnerable and fraudulent labour-only subcontracting is nowadays a permanent feature of our economy.

In our research (on the free movement of workers and on undeclared labour) we found great diversity in the national regulatory frames. This creates juridical complications in the Europe of the free market; practices that are typical and accepted in one country (because there is no rule and nothing to comply with) can be atypical in another country that has regulated (part of) the labour market well.

In the new Member states we have found a complete fragmentation of industries with no industry-wide provisions, weak industrial relations and poor regulation. In such a deregulated market labour-only practices become the standard - both for the modelling of the domestic industry and for the work abroad. It is of the utmost importance that labour law draws a clear distinction between labour-only subcontracting or trafficking and subcontracting and the provision of services that is based on lawful contracts. A return to old forms of work organisation (casual labour, piecework, hiring in and out of

day labourers via labour subcontractors) is a serious threat to social justice and fair competition.

Collective bargaining stabilises the industry and contributes to the necessary continuity. Social dialogue can be seen as an important instrument for the improvement of decision-making and as a platform for all stakeholders. If the outcome is industry-wide regulation then it is not regulation for the sake of regulation, but the choice of partners to install certain mechanisms in order to promote continuity, quality and fair competitiveness.

Clear areas for joint discussion and decision-making between employers and trade unions at sectoral level have always been those related to the specificities of the industry. Training, safe working conditions, insurance and social benefits, for instance, are all items in collective bargaining at sectoral level. Too often the resulting provisions are nowadays seen as 'red tape'. Industrial relations can be characterised by certain mutually shared conditions or concerns that serve as fields for cooperation as well as potential items for conflict. A mature system of industrial relations built on mutual trust of the partners can cope with confrontation on one item and, at the same time, cooperation

on another.

Production processes often take the shape of a chain of subcontracting/outsourcing and the work is split up into smaller segments and carried out via this chain of subcontracting, starting with the main contractor or central undertaker who 'delegates' part of the work to specialised official subcontractors. A chain can end up in the grey zone, with the result that part of the official work becomes undeclared and compliance is no longer guaranteed. On top of this triangle, there are regular and completely legal undertakings. The lower stratum of the pyramid is an irregular supply of cheap labour via agents or gang masters. Groups of undeclared workers are recruited via post-box companies, advertising and informal networking. Illegal foreign work also appears. The structure of the production chain is complicated, overall coordination weak, and contract compliance difficult to organise. Distortion of the labour market is substantial as the undeclared element may be very attractive for regular contractors. The main undertaker has an often-indirect interest in it because of labour shortages, abnormally low tenders or because it provide a mechanism to circumvent social responsibilities.

The subcontractor/gang master/agent is the go-between for the worker and the main undertaking or the specialised subcontractor. Payment is in cash via the agent who acts as the often 'invisible' supplier of cheap labour in this informal labour market of offer and demand. There is a clear hierarchy with skilled labour as forepersons and unskilled labour for the basic manual or repetitive jobs.

The organisation of the production process has led to this increasing use of specialised subcontractors. The ensuing division of labour makes sense and can lead to an improvement in quality and know-how, higher productivity and economy in overhead costs. A strategy based on the use of labour-only subcontracting with the aim of fixing reduced prices however carries the risk that sooner or later undeclared labour enters. In order to cope with this problematic aspect in a production or services chain, different national systems of liability in the chain have had been tried. Registration of undertakings involved in a chain of subcontracting and a clear legal definition of liability and social responsibility in the chain (including the role of the client) contribute to better awareness of contractors, suppliers and subcontractors of the social standards to be

observed. Systems that include deduction of social security payments and other social obligations guarantee financial backing for these measures. Some of the new registration systems developed in Member States give the promise of more transparency on the administrative side of the market. A further streamlining of registration and more coordination between authorities, combined with an obligation to work with registered undertakings, build a transparent and consistent frame that is promising in the reduction of dubious labour-only subcontracting and other unintended effects of multiple employment relationships.

It is worthwhile to continue the political deliberations and the analysis in this area.

The subject articles in this issue of CLR-News are dedicated to the question whether there is a transformation of labour relations going on. First we have John Grahl with a critical examination of the flexicurity-notion and the Green Paper on *Modernising Labour Law*. He summarises that the European Commission 'does not conclude that it is wrong to lower the employment protection of the most vulnerable groups, but that it is now necessary to undermine

Note from the editor

the standard employment contract as such'. Secondly the subeditor of this issue, Jörn Janssen, elaborates the consequences of the transformation of labour relations in which both sides, the employer and the employee, tend to become blurred and suggests employment as a status rather than an individual contract relation.

George Fuller reports from the site of the Olympics how these developments work out at the workplace.

Under 'Reports', besides a review of an ETUI-REHS seminar, you will find an account of bargaining in the European construction industry in 2007. Have a look at three interesting reviews and a seminar in London!

Flexicurity and European employment law¹

John Grahl

Recent position papers from the European Commission suggest that it is changing its approach to European employment law. New European employment law has, for some time, been very mild, with legislators reluctant to impose serious constraints on employers. But now there are indications of an active desire to deregulate labour markets.

Early signs of this turn came with the Bolkestein directive on service provision. In the form originally drafted by the Commission this would have nullified the posted workers' Directive by making it impossible for host countries to supervise the working conditions of employees temporarily on their territory. Secondly, there have been moves to weaken the working time directive, on the grounds that it is too costly for employers. Neither of these deregulatory moves has yet succeeded: the European Parliament adopted the services directive in a greatly amended form which explicitly ruled out any consequential changes in labour law; and there will be resistance both in the Parliament and from the trade unions to any dilution of the working time directive. Nevertheless, the moves indicate a changed set of priorities in the Commission and these can also be detected in two position papers.

"Modernising" Employment Law

The first of these is a *Green Paper* on the modernisation of labour law (European Commission, 2006). It is always rather difficult to interpret such documents because they are meant to be acceptable to many constituencies. Thus there are the usual gestures towards the "European Social Model", "social dialogue" and so on. These are rather more than rhetorical; the claim that the European Union has a specific social character, distinct from and in contrast to that of the United States is central to its strategy for legitimation and it is hard to deny that the EU today has serious problems of legitimacy.

Nevertheless, the *Green Paper* can be seen as launching a new drive for deregulation of labour markets at the EU level. This is introduced in a paradoxical way by admitting that the flexibility drive has, in the past, been unfair and divisive. The introduction

and proliferation of "atypical" employment contracts in most member countries has tended to aggravate labour market segmentation and to reduce the security of the most vulnerable and disadvantaged workers:

Since the early 1990s, reform of national employment protection legislation has focused on easing existing regulation to facilitate more contractual diversity. Reforms tended to increase flexibility "on the margins", i.e. introducing more flexible forms of employment with lesser protection against dismissal to promote the entry of newcomers and disadvantaged jobseekers to the labour market and to allow those who wanted to have more choice over their employment. The outcome has given rise to increasingly segmented labour markets. (page 5)

Of course this, perfectly predictable, consequence of the flexibility agenda was one basis of the critique to which it was subjected from the start. Are we to welcome the Commission as a repentant sinner? Hardly – the Commission does not conclude that it is wrong to lower the employment protection of the most vulnerable groups, but that it is now necessary to undermine the standard employment contract as such! Or, in the Aesopian language of the Commission, it is necessary to identify a "clear deficit between the existing legal and contractual framework, on one hand, and the realities of the world of work on the other" (page 4).

In this context the term, "flexicurity" is used but in this combination of flexibility and security the latter does not refer to job security but to employment security – not to the risk of losing ones job, but that of failing to find another. The Commission regards job security and job protection as economically dysfunctional:

Overly protective terms and conditions can deter employers from hiring during economic upturns. Alternative models of contractual relations can enhance the capacity of enterprises to foster the creativity of their whole workforce for increased competitive advantage. (page 5)

In fact, this assertion has very flimsy empirical backing. The Commission's own annual report on *Employment in Europe*² has acknowledged that the deregulation of hiring and firing has no stable impact on employment levels – a more dynamic expansion

during upswings is counterbalanced by a more rapid decline in recessions. Similarly, the OECD, once a strong proponent of reduced job protection, has had to recognise the lack of empirical evidence for such a view³. The dogmatism with which deregulation continues to be defended by the Commission arises from its ideological commitments, not from any appraisal of the evidence.

In fact, an enormous casualisation of employment in Europe has now taken place. The Commission boasts:

Fixed term contracts, part-time contracts, on-call contracts, zero-hour contracts, contracts for workers hired through temporary employment agencies, freelance contracts, etc., have become an established feature of European labour markets. The share of total employment taken up by those engaged on working arrangements differing from the standard contractual model as well as those in self-employment has increased since 2001 from over 36% in 2001 to almost 40% of the EU-25 workforce in 2005. Part-time employment, as a percentage of total employment, has increased from 13% of total employment to 18% in the last 15 years. It has accounted for a larger contribution (around 60%) to employment creation after 2000 than full time standard employment. Part-time working remains predominantly a feature of female employment – with nearly one-third of women in employment having a part-time job compared with only 7% of men. Fixed-term employment has increased as a percentage of total employment from 12% in 1998 to over 14% in 2005 in the EU-25. (page 7)

Now, if the flexible labour force were as advantageous as was claimed by its proponents, these massive changes would have gone a long way towards the elimination of unemployment (it being the neoliberal claim that any persistent unemployment is due precisely to "rigidities"). Of course, there has in reality been little or no improvement in the unemployment situation. And the casualisation has had victims: the Commission acknowledges that "there is evidence of some detrimental effects associated with the increasing diversity of working arrangements. There is a risk that part of the workforce gets trapped in a succession of short-term, low quality jobs with inadequate social protection leaving them in a vulnerable position."

Policy-makers who responded to evidence might find pause for thought in such outcomes – but not the European Commission. What they want now is to replace the gradual and piecemeal erosion of standard employment contracts by an all out assault:

Legal frameworks sustaining the standard employment relationship may not offer sufficient scope or the incentive to those on regular permanent contracts to explore opportunities for greater flexibility at work. If innovation and change are to be successfully managed, labour markets will need to address three main issues: flexibility, employment security and segmentation issues. The purpose of this Green Paper is to promote a debate about whether a more responsive regulatory framework is required to support the capacity of workers to anticipate and manage change regardless of whether they are engaged on indefinite contracts or non-standard temporary contracts. (page 9)

The adoption of this new approach to employment law, however, does not mean that the Commission is in a position to introduce drastic deregulation in the near future. Member states retain primary responsibility for the definition of employment contracts. And it is clear that the new line will meet opposition in the European Parliament and from the trade union side of the "social dialogue." Thus the proposals in the *Green Paper* are limited and still not clearly spelled out. Some reforms at member state level which blur the distinction between "typical" and "atypical" contracts are declared to be of interest. These include diluting the job protection of workers in indefinite contracts for some initial time period.⁴ But the main thrust here is to suggest that "a combination of more flexible employment protection legislation and well-designed assistance to the unemployed" is what is needed.

From the point of view of construction workers, the *Green Paper* signals a marked change of approach to the self-employed. In the past European legislation has usually attempted to extend employment rights as widely as possible to cover nominally self-employed workers. European legislation thus often refers to "workers" rather than "employees" in order to promote this inclusion. The *Green Paper*, however, suggests that a more differentiated approach will be pursued in future which recognises not only a clear legal distinction between employment and self-employment but even an intermediate zone of "economically

dependent, but not subordinate" employment, provided this is clearly defined. It is then later suggested, in the context of "difficulties" with the posted worker directive, that the EU itself might promulgate a single definition of employment. This would perhaps be a major legal change since it would call into question the relationship between member state and EU law in the sphere of employment.

A non-committal approach is signalled on another issue of great importance in construction employment: subcontracting. On the one hand it is suggested that the effective enforcement of workers' rights might require these to be made the legal responsibility not only of the immediate employer but also of the principal contractors. However, the fear is also expressed that this would give rise to too many constraints, particularly on the trans-border use of labour.

On the working time directive, it is reported that the Council of Ministers could not agree on changes. But the Commission's objective of achieving more flexibility is repeated.

There is, finally, a call for more comprehensive and effective enforcement of employment law. It is hard to disagree with this objective as such but the suspicious reader may find in the related demand to "transform undeclared into regular work", which is facilitated by "administrative of fiscal simplification" yet another deregulatory initiative.

"Flexicurity"

The Commission's changing approach to labour market policy is indicated again and made more clear in its recent statement on flexicurity (European Commission, 2007).

As with the *Green Paper* the starting point is a certain recognition of the damage done by the flexibility agenda in the past – this has sharpened labour market segmentations and precarious jobs.⁵

However, we are soon back with the Commission's usual Brezhnevite celebration of past successes, including the "Lisbon agenda" which, in the eyes of most outside commentators was an absurdly ambitious programme for the development of European economies and which was soon revealed as completely unrealistic.

The essence of "flexicurity" is the claim that, at least potentially flexible employment contracts and economic security can be compatible, or even mutually reinforcing. This claim depends on emphasising employment security, and to a lesser extent income security, at the expense of job security, that is, one is regarded as secure if one avoids long-term unemployment. Job security, on the other hand is still regarded as inimical to economic dynamism.⁶

The other components of the flexicurity package are designed to support this substitution of employment for job security. They are reinforced social security, "lifelong learning" and active employment measures. As for the first of these, the two member states usually recognised as flexicurity models are Denmark and the Netherlands where Employment Protection Legislation is not particularly strong but where unemployment indemnities are exceptionally high. Thus, more is done for the income security of those losing their jobs than elsewhere. The Commission insists that if unemployment indemnities do become more generous⁷, they should be reinforced with stronger disciplines to constrain the unemployed into jobs.

The same applies to active employment measures to assist the unemployed: the Dutch and, in particular, Scandinavian, systems are costly – they express solidarity towards the unemployed in contrast to the so-called active measures found elsewhere which are often conceived as instruments of social discipline or even social punishment. The crucially important distinctions between these types of intervention are not made by the Commission.

Who could be opposed to "lifelong learning"? Once again advanced linguistic skills may be needed for the interpretation of this EU slogan. It does not signify, in the discourse of the Commission, an entitlement of the citizen, or even just the employee, to educational resources throughout one's life. Rather, it is an obligation on those becoming unemployed to accept the retraining programmes prescribed by the official employment authorities.⁸

Once one moves away from the comparatively benign regimes of Denmark and the Netherlands, all three supports become extremely ambivalent. And it is noteworthy that the Commission by no means seeks to generalise the structures or the policies of the Nordic countries. On the contrary, highly differentiated strategies ("pathways") are put forward for groups of countries:

- In countries with highly segmented labour markets, constraints on atypical employment contracts might be tightened up while the typical contract is less tightly regulated; other, reinforcing, measures would come later, subject to public spending constraints (Spain?)
 - In countries with "low job flows" (that is limited job turnover) measures to enhance individual mobility and "employability" would permit a deregulation of mass dismissals (Slovakia? Hungary?)
 - In countries with lots of unskilled workers, upward mobility would be encouraged by allowing employers to recruit less advantaged workers on less constraining terms (England?).
- Finally, in countries with lots of long-term benefit claimants the use of active employment and lifelong learning would be supported by the "transformation" of undeclared into regular work and a reduction in the constraints linked to standard contracts (Germany?)

What is being asserted is that the employment flexibility agenda can be relaunched, on an extremely wide and ambitious basis, provided that it is supported by active employment measures, by training schemes and by "adequate" unemployment indemnities. This is in spite of the total failure of this agenda to resolve Europe's unemployment problems and the indisputable damage it has done, especially to the weakest and most vulnerable sections of society. The social achievements of the Nordic countries, based on solidarity, on massive redistribution of income and on continuous interventions are invoked to legitimise strategies which are virtually the opposite of theirs.

Conclusion

The notion that employment flexibility and economic security are, or can be rendered, mutually supportive is a daring paradox. A consideration of the whole flexibility agenda, from the UK and the US in the early eighties to continental Europe in the late eighties and nineties, to the transition economies after the collapse of the Soviet bloc, not to mention the disastrous experiments in many developing countries under the auspices of the IMF, would show that the essence of the agenda is a restoration of labour market discipline and a shift of both income and power towards employers. That was what was intended and that was what was brought about. In this strategy the key weapon was fear –

meaning especially the fear of unemployment. Job insecurity was meant to, and in fact usually did, bring labour to heel.

The conflicts of interest inspiring flexibility strategies have not gone away. In this context the European Commission postulates an impossible reconciliation of fear and security. Its actual motive is perhaps to rescue these hated strategies from the opprobrium they have, quite deservedly, gathered among wide sections of the public. Its actual consequence is unlikely to be a major series of deregulatory reforms – the Commission is not powerful enough to secure such an outcome. But it has in the past, mitigated the flexibility drive at member state level with some significant qualifications and constraints on employers at the level of European legislation. It appears that the Commission is no longer willing to do this. Europe will cease to mitigate in its employment policies the neoliberal economic policies it has so consistently pursued. Given the serious problems of legitimacy facing the European Union, such a decision may imply certain risks

References

- European Commission (2006) *Green Paper: Modernising Labour Law to Meet the Challenges of the 21st Century*, COM (2006) 708 final
- European Commission (2007) *Towards Common Principles of Flexicurity: more and better jobs through flexibility and security*, COM (2007) 359 final
- Standing, G. (1999) *Global Labour Flexibility: seeking distributive justice*, Macmillan, Basingstoke

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1. My thanks to Klaus Dräger, researcher for the GUE group in the European Parliament for advice on analysis and help with documentation.
 2. *Employment in Europe*, 2002, chapter 2, page 57. In the section, "The Role of Temporary Contracts", it is acknowledged that these lead to higher unemployment in downturns and it is even suggested that it is therefore important to maintain the "employability" of workers during recessions. The best way to maintain their employability would often be to maintain their employment.
 3. The findings of the OECD were pointed out in the European Parliament's resolution on the *Green Paper*: "The European Parliament.....Points out that recent OECD and other studies have shown that there is no evidence for the claim that reducing dismissal protection and weakening standard employment contracts facilitates employment growth; points out that the example of the Scandinavian countries shows clearly that a high level of dismissal protection and employment standards is fully compatible with high employment growth." (P6_TA-PROV(2007)0339.
 4. Some of the measures mentioned might be more acceptable to the employees' side – for instance an Austrian proposal to allow workers moving jobs voluntarily to retain some of their rights to severance compensation.
 5. This amounts to a (silent) recognition that some of the criticism of the flexibility agenda was very well founded. A notable example would be Standing (1999) which insists on the direct link from flexibility to insecurity.

6. The Commission claims that its arguments are supported by economic analysis, meaning by that its own economic analysis in its annual publication, *Employment in Europe* (2006) chapter 2. In fact the empirical work cited in this chapter hardly justifies the Commission's hostility to Employment Protection Legislation (EPL). It reports that EPL does not reduce employment; nor, although unsurprisingly reduces labour turnover, does EPL have a negative impact on growth or productivity. The most that can be said is that some groups may find it harder to move out of unemployment when there is strong EPL. This is not seen, however, as grounds for determined intervention in favour of these groups, but as a basis for a comprehensive assault on standard employment contracts.
7. In fact, it prefers the term, "adequate".
8. It goes without saying that "learning" is always economically instrumental in this discourse. Education is never thought of except in a labour market context.

Employees without employers, a new status¹

Jörn Janssen
CLR-GB, London

This note is first about collective representation, agreements, and rights and how these cannot subsist without employers and their representation. Secondly, it will draw conclusions about the status of employees without employers. Thirdly it will try to outline principles of a framework for workers rights under this regime.

The most striking phenomenon in the recent development of capitalism is the transformation of the identity of the owner of capital or productive assets, and of companies as employers of labour. Shareholding has become the dominant form of ownership. In turn, shareholding itself has turned into a jungle of equity ownership relations in funds and funds of funds etc., making it virtually impossible - even for insiders - to identify what is owned by whom. Also the ownership in companies can be mixed up with other sorts of investments and ventures including, in particular, pension funds and real estate. Each company may be owned by thousands of investors and every investor may own thousands of companies. This opacity was sufficiently discussed in the financial press after the relatively negligible debacle of the US mortgage market. Most financial institutions, equity funds, let alone individual equity speculators, were unable to find out to what extent they were affected by the actual losses and subsequent reactions of the credit markets. It might be argued that this metamorphosis of ownership concerns only companies on

shares. But the effects go far beyond these. Every company is a potential object of take-over by an equity company and this possibility will hardly be ignored in the day-to-day running of the business. As the owners of financial assets hardly know what they own in terms of productive assets, they certainly do not know who they employ. Those who still have access to the payroll may cease to be in this position at any moment of even minor 'restructuring'. In short, the identity of the employer as owner of productive assets has vanished or is about to do so. The public sector is not protected against this development as the present disputes of the British Post Office workers and German engine-drivers demonstrate.

In the absence of an owner, what happens to the company, the unit of production or services which employs the employee? The company has equally lost its stable identity. It is a temporary conglomerate of elementary processes which can be 'filleted', carved up, merged, or reconstituted in a different shape. The partial processes can be farmed out, subcontracted, integrated into other units, closed down, or relocated. In these operations the emerging new entities may change their products, legal forms, management structures, names – everything which might be regarded as the identity of a company. This permanent transformation of production chains and services is driven by the development of technical and social innovation, political vicissitudes, movements in financial speculation, and the market of goods and services. As with regard to ownership, there are no protected islands or sectors. The examples are abundant of small companies being sold off to another one, some equity fund or a subsidiary company of an equity fund. Every company will also have to consider, whether it is opportune to buy a competitor. Those which have remained in the direct ownership of individual persons or families – sometimes featuring as exotic animals in the financial press – are nevertheless under the same regime in which they struggle for success or survival. They all float in the same ocean of a universal market. Those who resist will be washed away. The employees in this constantly changing environment are equally variable, whether as parts of elementary processes, whether as exchangeable components within these.

Who are the agents in this process? Who takes responsibility in the absence of owners and looks after these ultimate foundations of 'shareholder values', securities, or equities, maintaining a degree of continuity and recognisable objectives. These are, of course, the managers, usually shareholders themselves. They are supposed to

represent the shareholders' financial interests, but may - perhaps for good reasons - not hold any shares in the company they manage. It is the managers who also care about employing staff capable of carrying out what is required to keep production and services going; to be more precise, it is 'human resource management' (HRM). Again, human resource management is a special elementary process, which may be separated as a profit centre, subsidiary unit, subcontracted, or be the service of a labour agency. Yet there will still be the managers higher up in command of HRM, and ultimately the chief executive. Again, the turnover rate of chief executives is perfectly under the rule of labour market flexibility. And these captains of industry must necessarily change with the transformation of production units. Whilst somebody still signs employment contracts, it becomes increasingly difficult to make out the identity of the employer, especially if the contract is mediated by a labour agency, creating a triangular - or multiple - employment relationship. It should be added that, as with owners and companies, we have been looking at the dominant mode, which may not be present everywhere, but nevertheless determines the standards.

As transactions between shareholders are outside the scope of 'information and consultation', works councils, and codetermination, production units may be formed, which have no employee representation in the process. There are typically cases in which management and employee representatives find themselves in the same boat confronted with decisions against their shared interests, made by financial institutions representing owners. This is the situation which entirely perverts the whole concept of employer-employee as well as management-worker relationships, as neither of them has a say any more. Employee rights become suspended altogether let alone the modest institutions of industrial democracy.

In the 20th century employment conditions and contracts in advanced capitalist economies became regulated not only by civil and labour law but also collective agreements between employers and employees. In this sense standard employment is partly a collective relationship, established by individual contract. This collective relationship used to be based on bodies representing the employees on the one hand and the employers on the other. But how can employers be represented, whose identity is a mere formality or even ambiguous in the typical case of labour agencies and subcontractors? Nobody should be surprised that these bogus or

substitute employers have no incentive to join employers' federations and that former members opt out of their organisation or withdraw their mandate. They simply cannot be represented anymore as employers because they have widely given up this function. Inversely, employers' federations fall short of a sufficient mandate to conclude agreements with labour unions.

To the same degree as the identity of the employer that of the employee is also crumbling away. Typically the hybrid status of the self-employed has been mushrooming, not only in Britain, and other forms, subsumed under 'undeclared labour', are filling the vacuum of employment relations without coverage by collective regulations and statutory labour rights (Cremers/Janssen 2006). These self-employed may fill the bottom end of subcontracting chains in construction, work in catering, and agriculture. They may also be used in the domestic sphere delivering all sorts of services between cleaning, repair and maintenance, tutoring, health care and nursing directly to the client. In the vast majority of cases, neither can these clients be classified as employers, nor their workers as entrepreneurs. Regulations on wages (prices?), working time, sick pay, health and safety, social security, taxation etc. are virtually absent in this segment of the labour market.

Following the gradual demise of the employers and their federations the trade unions are losing their opposite for collective bargaining, once their essential function and attraction for recruiting membership. At the same time the ambiguous status of many 'workers' between entrepreneurship and subordination undermines their identification with dependent employees and motivation to join unions. Loss of membership weakens trade union bargaining power as well as their legitimacy as representatives of workers. As a consequence, as Richard Hyman put it in a recent article: "Almost universally, trade unions in Europe (and globally) are on the defensive, having suffered a decline in membership, in public status and in effectiveness in achieving their objectives." (Hyman 2007)

Summarising this transformation, or rather plasticisation of structures in production and services and its effect on the identity of employers and employees, it appears that industrial relations as employer-employee or 'management-worker' (en.wikipedia.org) relationships are about to lose their basis and to act in a vacuum. At the same time the level of dependency and subordination, in particular uncertainty ('précarité'), is rising. For an increasing share of people social security rather than the wage or salary is the prime cause of worry about making a living. For many the distinction between employment and

unemployment has become unclear: neither does dependent working necessarily mean being employed nor does not working automatically mean being unemployed. The legal status of the employee is at stake, as it is less and less identifiable with an individual contract of employment. In a recent article Simon Deakin questioned whether every personal contract of employment and the term employee is still meaningful in present day labour relations and can be trusted to imply coverage by employment law. (Deakin 2007) He suggests – with Mark Freedland (Freedland 2003) - to revive the concept of the ‘worker’.

It may be admitted that the transformation of chains of production and services is not reprehensible as such and that it depends on the objectives guiding the changes in units of production and services and how they are linked, whether or not they can be regarded as beneficial or detrimental. It may also be admitted, that a single personal employer is not a precondition for decent working conditions. After all, occasionally employees themselves may have experienced the traditional individual employer-employee relation as restrictive, are doing better without it, and have helped to obstruct its rules. We would then have to consider adequate means to protect the ‘dependent worker’, whether under a contract of employment, freelance, self-employed, illegal, undeclared or whatever.

How is the employee to be defined, who has no contract with an individual employer? Is the intermediate status of the ‘economically dependent’ worker as used in a few countries, with at least a minimum of regulation and protection, a way out (Perulli 2002)? Irrespective of which term is used, an employee or dependent worker is the person prepared to take on work in exchange for wages and other emoluments. S/he has rights and duties including: the right to enjoy living conditions corresponding with general levels of living standards, as long as s/he is prepared to offer his/her labour or services for the collective process of work; and the right to vocational education at the level of his/her qualification and according to existing legal and conventional regulations. Unemployment would cease to exist, and - in cases where labour is not being used - learning take its place. Social protection would become obsolete, as it is included in the wage. Bernard Friot has elaborated in more detail such an employment status, independent from an individual employer, and describes the collective of wage earners (“salariés”):

The labour collective would not primarily be a creation of the employer; it would be an attribute to the wage earner (“salarié”),

a right of the person. In such a perspective the employment contract would not disappear, but would be generalised by changing its meaning. It would express the relationship with the labour collective or social responsibility of the enterprise rather than subordination. (Friot 2007, p. 14 - translation J.J.)

If, therefore, despite the abuses rife in a stage of break up of traditional relations, we take the transformation of employment relations as an irreversible and possibly beneficial process, how is it to be framed for the benefit of the workers and society? How do we conceive employees or workers as agents in a production process that is not under the control of its owners? This requires a 'status' - not contract of employment - unrelated to an individual employer, to which a series of clearly defined rights should be attached. Such a concept is being discussed in France as 'sécurité sociale professionnelle':

A real project of 'sécurité sociale professionnelle' (vocational social security) is meaningful only if it allows for a separation between the status of a wage earner ("salarié") – in other words the whole of the rights which s/he enjoys as wage earner – from his/her personal situation at a given moment. This presupposes a continuity of rights (to training, remuneration according to qualification, health service, pension entitlements etc.) which allows these to be guaranteed to the wage earner whether in employment or not. (Michel Husson 2006 - translation J.J.)

It may not be accidental that in this debate social security is the cornerstone in defining the rights attached to a new status of the 'dependent worker' (salarié). In the second half of the 20th century in many European countries social security has come to represent about the same value as direct wages. Nowadays a stage has been reached, where both direct and indirect wages should be joined and paid out of a general industrial wage fund, differentiated according to the different situations in working lives.

Who are the collective actors in this new constellation of employees without employers or of 'workers' providing services in a process under an anonymous regime? Trade unions - a name that lost its meaning already half a century ago at least - will have to adjust to an entirely different and variable structure of clientele. They cannot possibly be conceived as divided according to nationalities and to private or public industrial sectors. The International Labour Organisation (ILO) might take on the mandate of all those working for wages (or salaries) and would logically be funded from the general wage fund. Conversely,

employers' federations will represent only those employers who are themselves owners of their companies. In addition a representation of the anonymous owners needs to be organised. It is perfectly evident that ownership will have to be made accountable and transparent as well as to be represented at all levels, including the individual unit of production and services. The organisation of the owners will be funded out of a general fund of holders of financial assets.

The interaction of the collective actors needs an international legal framework, perhaps under the United Nations Organisation. Such a framework would provide a common set of basic rights with minimum standards attached to the status of the 'dependent worker'.

This project can only be realised as a process superseding existing institutions, practices and legal regimes. For this purpose it will have to set strategic aims according to which the present actors of employment relations, social partners and governments, may proceed to transform themselves. Pragmatically speaking, this could be a project initiated by the ILO. If this proposal appears to be unrealistic, we ought to be aware that the assumption that traditional employment regulations can be defended for ever is equally unrealistic. Moreover, too many 'dependent workers' are not protected any more by these regulations and fill the ranks of poverty.

References:

- Linda Clarke, Jan Cremers, Jörn Janssen (2007) *The Transformation of Employment Relations or 'Undeclared Labour', the case of the construction industry*, Typescript.
- Cremers, J., Janssen (2006) *Shifting Employment: undeclared labour in construction*, CLR-Studies 5, I-Books, www.antenna.nl/I-Books, Utrecht.
- Deakin, Simon (2007) 'Does the 'Personal Employment Contract' Provide a Basis for the Reunification of Employment Law?' In *Industrial Law Journal*, Vol. 36, No. 1, p. 68-82.
- Freedland, Mark (2002) *The Personal Employment Contract*, Oxford: Oxford University Press.
- Friot, Bernard (2007) *La proposition CGT de sécurité sociale professionnelle: de la sécurité sociale à la mise en cause du marché de travail*. Typescript.
- Husson, Michel: 'Sécurité sociale professionnelle: Attention aux contrefaçons!' *Le Grand Soir.info*, 17 août 2007.
- Hyman, Richard (2007) 'How can trade unions act strategically?' In *transfer 2/2007*, p. 193-210.
- Perulli, Adalberto (2002) *Study on economically dependent work/parasubordinate (quasi-subordinate) work*, submitted to the European Parliament

1. This paper draws on a paper presented to the European Conference of the 'International Industrial Relations Association' (IIRA) in Manchester 2007 by Linda Clarke, Jan Cremers and Jörn Janssen (see references) and carries forward some of its issues.

George Fuller
London, 8/11/07

Regeneration of East London

In east London a multi-billion Pound regeneration programme, spread over many years, has begun. East London has high levels of unemployment, low incomes and a large young black and ethnic minority population. In these circumstances the actions of government – central and local – big developers and contractors - have a raised public and political profile.

The devolved London government - the GLA (Greater London Authority) - under Mayor Ken Livingstone has spoken of the regeneration not only in terms of the built environment but also in terms of human regeneration. The public policy call is for 'an inclusive London' building industry with training and well-paid employment for sections previously poorly represented in the industry: black and ethnic people, women, and the disabled. They are seen as a vitally necessary addition to the labour resources of London.

The inclusion of these groups could also help bolster electoral support for the governing party and other established parties because in the outer white working class boroughs the far-right British National Party has won council seats and in the inner boroughs the anti-Iraq war Respect Party has made gains. Reliance on migrant labour to fill 'skills gaps', according to the GLA, is unnecessary short-termism.

Expectations have been raised amongst sections of the population, but there is a healthy degree of scepticism based on the history of previous urban renewal schemes. Will this GLA public policy initiative change things in the London building industry or will the fine words just serve as a façade for business as usual?

Observation of sites

In my borough Newham, there is a 60% black and ethnic population, and near where I live, between a busy main road and the Olympic site, are 6 tower-craned construction sites. Over a period I've been checking-them-out against the GLA's 'inclusive London' criteria. All the jobs are housing tower blocks, mostly social housing for housing associations. Most sites have notices on their hoardings announcing funding by the Housing Corporation (a government sub body) or The Office of the Deputy Prime Minister). By standing outside the sites just observing or when distributing my union's magazine as workers

arrive at the sites between 7 am and 8.20 am, I'm aware that around 400 workers in total are working on the sites. I see few, if any, people of what I think of a trainee age – 18 to early 20's. About 8% to 10% of the workforce, including security guards, is black or Asian. Possibly I see one female site engineer, a handful of women working in the site canteens. Also there must be a few women office staff and receptionists who arrive for work after I leave at 8.20 am. I don't notice anyone obviously disabled according to 'the inclusive London' criteria - though some of the older workers by the way they walk are suffering from wear and tear on their bones and a few people look very depressed. It is difficult to tell the percentage of eastern European migrants because most – but not the south-eastern Europeans – look racially the same as the indigenous whites, but from the languages being spoken they could make up around 18% to 22%. It's not possible to tell who is local – east London - and who is not. Workers arriving at sites in the early stages of construction appear tense, presumably because they are new to the site and pressure is on them to perform. At the nearly completed sites however, workers - of all races - are more relaxed, greeting each other warmly as they enter the site gate, having built up friendships over the period they've been working on the job.

Training programmes

Under the shadow of the tower cranes is a low-rise Building Crafts college. When I spoke to the college vice-principle he told me there was a London-wide strategy to get local young people 'site ready' so they could take advantage not only of the job prospects arising from building of the 2012 Olympic facilities but also of the wider regeneration of east London including repair and maintenance of old properties and the new Thames Gateway scheme. He said roadshows are being taken to local schools, colleges, and communities. Students had been invited to the various construction training colleges on taster courses. The training in building skills was connected to a brokerage whereby building contractors could avail themselves of the 'site ready' graduates who would then work in a programme jointly agreed by the employer and the training organisation. But he said that as yet only one programme – with a housing association maintenance department – was in place.

Training on the sites

After my conversation with the craft college vice-principle, I visited 3 nearby sites to ask the site managers what sort of training was

taking place. At the first site the assistant manager said that, as he worked for the main contractor, he knew nothing of any training: subcontractors did all the actual work. At the next site, where I could see dozens of bricklayers cladding the tower blocks in bricks, a member of management said that the only way anyone could get training on the site to become a bricklayer would be to get a job as a labourer with the subcontractor and then try to work himself up to become an 'improver' bricklayer. Further down the road formwork shutterers and concreters had almost completed a 14-story concrete skeleton and bricklayers had commenced laying concrete blocks. The site manager said that they sometimes took on labour when people called on the site. Labourers who showed enthusiasm had a chance of doing more skilled work after about 3 months.

Local labour agreements

All the sites are covered by S106 agreements. These are agreements whereby the borough council, in this case Newham, gives planning permission to a developer if the developer agrees to train and employ a percentage of locals - in Newham's case 20%. But the S106 agreements are only 'aspirational' agreements. The client gives the work to the main contractor who markets the work to subcontractors.

'Free-rider' principles apply: things like training and employment of locals are not legally locked into the contracts. On the contrary: a subcontractor who seriously undertook training would be at a 'cost' disadvantage to his non-training competitors. So the free-rider imperative is to 'clean' the contracts of 'costs' like training, National Insurance contributions, recognition of trade unions and workers protection law, migration law etc. - be 'cleaner' than your competitor and win the race to the bottom.

I know from working on sites that this has been the norm for years. It conditions the mindset of most people in the industry and important connected institutions and society generally. In 2005 on a large site sponsored by the Ministry of Education and Science signing a 'Contract of Self-employment' which dispensed with employment rights and employers' insurance liability was a condition for getting work on the site. Only after weeks of demonstrations outside the site by trade unionists was this document removed.

When I phoned Newham's S106 council office I was told they had great difficulty placing any trainees on sites; they had had some

success in training people to become forklift truck operators. Migrant workers who'd just arrived – and likely to be supplied by British financed labour agencies – were counted as locals. The S106 official who went round the sites explained that he was limited in what he could achieve in placing trainees and locals in employment by the tight prices subcontractors' were working to. A recent piece of academic research in London found that S106 Agreements don't work and people who came across them – staff of the developers and main contractors - thought the S106's main function was to give local people the impression that the local council was doing something for them in terms of local skills and jobs.

Conclusion

I left the tower cranes and walked across the main road into a Thai owned café for a cup of tea. The same Thai woman has been behind the counter for the past 20 years – with the same smile. The café was full of office and building workers, a couple of them black. A young girl wearing a Moslem headscarf was sitting, her elbows on the table, reading the Sun tabloid newspaper with its usual lurid headlines.

I think that for the GLA's 'inclusive London' public policy to work in the regeneration of east London it must be part of a universal reform embracing all London's building workers and firms – or at least those funded by public funds. I can't see how the 'inclusive London' policy with training and well paid jobs for women, black and ethnic, and disabled people can fit into the current free rider 'cost cutting' regime? And how can this GLA policy fit in with the British government's neo-liberal EU policies that treat Eastern Europe and its labour resources as part of the 'Global South' - feeding free-riderism? I think the GLA's 'inclusive London' represents opportunities for trade unions.

Reports

Ernst-Ludwig
Laux
21.10.2007

Summary of
discussions
in the
EFBWW
Standing
Committee
Building on
17.10.07

Bargaining Policy in the European Construction Industry 2007

As in past years, an exchange of views on the current collective bargaining scene in each country was discussed during the second day of the meeting held by the 'Standing Committee Building' of the *European Federation of Building and Woodworkers*. Not all the national representatives were present, unfortunately, but I have added information on the subject from previous discussions so as to provide the fullest possible overview.

Summarising the findings it is possible to make the following key observations:

1. As in some countries collective agreements also including pay revision have been concluded which cover a number of years, during 2007 no bargaining took place there.
 2. Indexation clauses are being concluded increasingly frequently or else regulated by law. Consequently, a half-yearly or annual adjustment is made automatically to keep pay in line with inflation so that collective agreements only cover the pay percentages over and above that level.
 3. In many countries the increase in the minimum wage (sector-related or general) plays an important role.
 4. In the Eastern European countries, bargaining has proved to be very difficult and successful only in a few cases.
 5. It should be pointed out that in very many countries retirement age/early retirement/part-time working for older workers and similar questions have played a significant role.
 6. In this connection, in several countries the specific demands made by work are being discussed, such as the degree of difficulty, with a view to setting different retirement ages.
- The efforts to obtain regulations to combat undeclared work and illegal employment continued to figure large. The definition distinguishing between an employed or self-employed person is also receiving considerable attention although no definite successes are in sight so far.

This is a summary of my own evaluation. No doubt additional interesting information would be brought to light if future discussions were to delve more deeply and this would be very helpful for national bargaining policy and could add fresh impetus

to the current debate.

I propose that an overview of bargaining policy be conducted once a year in future, split into two halves: a.) An overview of current discussions, disputes and results, b.) Tables, data and statistics for specific conditions of employment, e.g. wages, working time, leave, retirement age, special payments, etc.

National overviews

Austria

A two-year wage agreement was concluded in 2006 so that no pay bargaining took place in 2007. This year, the elections resulted in a social-democratic led coalition so that the building union is hoping for a better bargaining climate in the future.

In 2008 the problem of winter unemployment will therefore be discussed with employers and the government. A pay increase is to be agreed in the collective agreement.

Belgium

In Belgium there is a two-year wage agreement for 2007/2008. It is laid down by law that pay must be adjusted to the inflation rate every six months. The building unions have clearly highlighted their aim of increasing purchasing power for their members and are therefore currently involved in intensive bargaining on the increase in the allowance for travel between home and work. An additional factor here is the major congestion on Belgian motorways, resulting in ever longer travel times to the construction site.

The existing early retirement provisions in the construction industry expire at the end of 2008 so the bargaining parties are negotiating on an extension. The employers want early retirement to be linked to arduous working conditions and the difficulty of the work. How these concepts are to be defined is a disputed matter. In this connection, research by occupational health agencies in construction firms needs to be stepped up so as to obtain a better basis for evaluating the difficulty of the work.

Denmark

The highly favourable economic trend in the Danish construction industry made it possible to conclude a three-year wage agreement starting on 1 March 2007. Under the industry-level agreement annual wage increases of around 3.7 to 4% are to be paid. These

increases are to be raised further by local and plant-level pay talks by about 0.5%. As the trade unions see it, this can be judged to be a very good result. Furthermore, the negotiated pension was increased and now 12% instead of 10.8% is paid into the social funds.

France

The French presidential elections have ushered in a new era as the clock is being turned back on strike laws as well as many social and collective provisions. Strikes are likely to take place in the near future as the French unions will use all their resources to fight the dismantlement of social provision.

The three largest trade unions, after many discussions, have jointly called on the employers' organisations to negotiate with them on provisions for reducing stress at work.

Talks have also been going on for around two years now between the social partners on future retirement and early retirement pensions. Sources of particularly fierce disagreement have been the difficulty of work and criteria for assessing the degree of difficulty of work.

These assessments are also disputed among the trade unions. In regional and plant-level pay bargaining, an inflation rate adjustment was made to wages as well as a number of improvements. It remains to be seen what happens to the increase in the *SMIC* (minimum wage laid down by law).

Germany

This year the collective bargaining round proved to be highly complex. Although lengthy bargaining in the spring produced a result, this was rejected by some of the employers' organisations in the individual federal states. This in turn sparked off protracted dispute resolution negotiations and strikes in the federal states concerned, particularly in northern Germany, causing the employers to throw in the towel.

Despite the good result of 3.1% more pay for 2007 and further improvements for 2008, the fact remains that the employers succeeded in concluding company agreements containing pay cuts with *Indutriegewerkschaft Bauen-Agrar-Umwelt* (IG BAU). Only by agreeing to this concession was IG BAU able to maintain the industry-level agreement. The minimum wages, declared universally applicable, were raised.

Ever widening splits in the construction industry employers'

organisations are clearly visible so that in future there might not be any more nationwide industry agreement. The financing of benefits and services by the *SOKA-BAU* were also newly regulated in this year's bargaining round.

Hungary

The industry-level agreements are making only very slow progress as a result of efforts by the trade unions. Collective agreements are declared generally applicable and minimum wages set for the relevant training diplomas. In the construction industry, agreement was reached on pay improvements of 12% for 2008 and it is now a matter of implementing the increase in the plants. The national minimum wage is currently approx. 300€ and is moving up only very slowly.

Italy

During the years of the Berlusconi government many social and labour laws of great importance to workers and their trade unions have been abolished. The three largest trade unions are therefore demanding changes from the present government and are also prepared to fight for this, particularly for the reintroduction of the wage indexation clause.

Under the current bargaining policy of the construction unions a number of collective agreements with terms of over one year have been concluded in which some occupational groups are better off, higher pay increases have been achieved for the lower wage categories and working times must be reported to the Italian paritarian social funds in order to better combat undeclared work. At present, bargaining is taking place on the following questions: combating temporary employment in the construction industry, early pensions for construction workers undertaking difficult work (controversy raging over the definition of difficult), higher pension payments through the paritarian social funds and equality for manual and non-manual workers concerning the first three days of sickness leave.

The workers are closely involved in all demands so that a positive trend in membership can be observed.

Luxembourg

Following the economic recession in the construction industry, during 2006 no pay increases were achieved, but now a two-year collective agreement has been concluded. Under this agreement,

which includes a pay indexation clause, an additional pay increase of 0.10€ in March 2007 and again in 2008 is provided.

In addition, a paritarian training institution has been established for basic and further training in the construction industry, financed by a 0.75% allocation from the total wage bill.

Differences still existing in the collective agreements between manual and non-manual workers have been removed, resulting in an improvement in negotiated working conditions for the workforce.

The Netherlands

The economic situation in the construction industry is good so that the building unions were able to achieve some of their demands. During the bargaining round for 2005/06 with the employers' organisations, agreements were reached on career planning for construction workers, such as career development from bricklayer to project leader. To this end, 28 units have been set up in the Netherlands where construction workers can obtain career planning information. The aim of the bargaining parties is to retain qualified construction workers in the sector as well as attracting them back from other sectors. So far the scheme has been highly successful, with around 3200 workers undergoing further training funded by both sides of industry. They have better working conditions and it was also possible to enhance safety on the construction sites.

Current bargaining is now aimed at ensuring that from 2008 untrained construction workers are no longer employed on construction sites and also that the building unions are involved in training for managerial and professional workers.

During collective bargaining in 2006 the employers spoke out against an industry-level agreement and wanted pay increases to be regulated by plant-level and company agreements. However, this has led to a considerable distortion of competition so that currently the employers' organisations in the construction industry want to conclude an industry-level agreement. The final outcome is still awaited.

The dispute with the government over early retirement, including those with work incapacity, has now been resolved. By law and based on a sectoral contribution, 80% of worker's pay in the construction industry is to be paid again on retirement.

The agreement was reached on two further questions: 1) temporary agency workers are to be hired out only from firms included on lists monitored by both sides of industry, and 2) in order to avoid bogus self-employment, self-employed workers must only be recruited under standard contracts which are binding upon the general contractor. As

a result of these measures, a positive membership trend has been observed.

Norway

A 2-year pay agreement has been concluded, providing a 3.5% increase for 2007. As a consequence of resolutions passed by the trade union Congresses, it has now been determined that 2008 will focus fully on retirement at age 62 as this agreement expires in 2010. As these negotiations will be carried out on a tripartite basis between the bargaining parties and the State, the trade unions are hoping for the support of the current Red/Green government. The trade unions attach great importance to this demand and it is also very popular with the members so that strike action can also not be ruled out.

Poland

The bargaining situation has not improved. There are no industry-level agreements in the construction industry, both employers' organisations refuse to conclude any and are also not affiliated to *Fédération de l'Industrie Européenne de la Construction*. Nor do they have any intention to change their organisational structures with a view to becoming a bargaining party.

For these reasons, there social dialogue is only with the government, although this is very difficult as the current Minister for House Building wants to regulate many matters on his own and/or dominates the discussions. In the short term, the building unions are striving to achieve a minimum wage which would then be incorporated in the individual work contracts. Possibly things will change with the new Government.

A government agreement between the Netherlands and Poland regulates some working conditions for Polish workers in the Netherlands.

Spain

A comprehensive five-year collective agreement was concluded in June 2007 for the Spanish construction industry. It provides for a 1.5% pay increase every year. The inflation rate is incorporated in pay via an indexation clause.

In addition, an annual minimum wage of 13500.00 € has been established for an unskilled worker (lowest level) as well as 8 daily working hours, 1738 annual working hours and 21 days leave. This means that the minimum wage comes to 7.70€ per hour.

A very important new provision applies to temporary workers in the construction industry, as they receive 7% of their total pay after the end of their temporary employment contract as compensation. For the first time the collective agreement also contains health and safety provisions and regulates training of workers and supervisors. As in many other countries, a discussion has also started up on early retirement for those working in difficult conditions, such as tunnels, mines or on high scaffolding. It is not yet clear how this is to be defined in the collective agreements.

Sweden

A highly unusual bargaining round took place in the Swedish construction industry during the spring of 2007. Although a three-year pay agreement comprising an increase of 10.2% was very quickly concluded, subsequently some major differences of opinion arose as to who should negotiate the productivity bonuses. Until then these had been decided by the local bargaining parties, including the representatives from the plants, but the employers wanted the arrangements to be agreed centrally in future, to the disadvantage of the workers. There followed a dispute during which around 1000 workers went on strike. A settlement was finally reached in the course of a conciliation procedure.

Bargaining is currently taking place on working conditions for machine workers and here too a fierce dispute cannot be ruled out.

Switzerland

For no obvious reason, the construction employers' organisations gave notice to terminate the national framework agreement at the end of September 2007. This is a highly uncharacteristic event in Switzerland. The *Gewerkschaft Bau und Industrie* has since organised several strikes involving up to 5000 members. In particular, on the large-scale tunnel construction sites under the Alps, posted foreign workers have also taken part in the strikes, with inter alia around 800 Austrian construction workers.

We will have to wait and see how things develop, but solidarity measures by other building trade unions are certainly necessary.

UK

In 2006 a three-year a collective agreement was concluded. In June 2007 wages were increased by 3.45% and will be raised another 6% for 2008. The minimum wage has now been set at 9.72€. Construction activity in south and south-east England has undergone

huge growth of between 8 and 10% and this is expected to continue until around 2012. Across the sector it has been observed that recognition of collective agreements in the plants has risen significantly and that ever fewer bogus self-employed workers are to be found on the construction sites.

There are two major problems currently overshadowing the socio-political debate in the construction industry: 1) the huge growth in the problem of poverty among the old, as former bogus self-employed workers did not pay into the pension system and 2) poor vocational training provision in recent years making skilled workers a scarce commodity. This situation often leads to bricklayers and workers in other occupations having to work until 65 or even 70 years of age owing to the low pensions but also often being retained by employers for their experience and skills. For these reasons, there is often a majority of foreign, in particular Eastern European, workers to be found on large and complex construction sites.

Europe's social realities according to trade unions

Jörn Janssen
CLR-GB,
London

It was one of those seminars that you leave with the feeling, well, there is always something to learn, but you do not know what, except you had a very interesting discussion over lunch and exchanged addresses with someone you might want to work with in the future. By the way, lunch was sumptuous.

Seminar
organised by
ETUI-REHS
15.10.07,
Brussels

Concerning 'Europe's social realities' one might expect to be confronted with new challenges, an enlightening approach to understanding current changes, a strategy to confront unsolved problems such as the decline in union membership, the widening divide between rich and poor, the rise in undeclared labour, etc. These are the kind of expectations which were frustrated.

The report on 'European Social Reality', published by the European Commission in February 2007, can be downloaded from the web. As all these reports, it is packed with statistical data and was presented in the first session by Roger Liddle and Femke De Keulenaar. The problematic points were highlighted by Roshan Di Puppò of the 'Social Platform'.

The second session on 'The New Labour Market – winners and losers' raised one of the most alarming aspects of present social development, such as growth of poverty in Germany by Katharine Erdmenger and a continuing backlog in Poland by Barbara Surdykowska. With no attempt to analyse the causes there was no basis for a strategic outlook, instead the advice: follow the Swedish model of mutual trust relationships between all social actors and the economy will thrive (Roger Mörtvik).

In the third session on 'Welfare systems as liberators and factors for competitiveness?' Pascale Vielle outlined a new regime to overcome the family based social security. I do not remember what Josef Niemiec/ETUC said and failed to take meaningful notes.

Finally the audience was assured by Anke Hassel that the social dialogue is beneficial for trade unions as a way to cooperate with government and lend it legitimacy. Maria Helena André/ETUC talked about the various forms of the social dialogue and concluded that trade union membership and collective agreements are crucial for success.

John Monks closed the seminar reminding the audience that there is a reason for optimism as social conditions have vastly improved since the Second World War.

Maybe this is a rather cynical account of a seminar, which boasted a well informed audience, as proved by a number of interesting contributions to the debates at the end of each session. Yet disappointment from somebody who was recently involved in an alarming trans-European research on undeclared labour is perhaps understandable. One might also expect a more militant and inspiring approach from the European Trade Union Institute.

Reviews

Industrielle Beziehungen, 14/2, 2007: **Gewerkschaftsmitgliedschaft in Deutschland: Strukturen, Determinanten und Tendenzen.**

Jörn Janssen,
CLR-GB
London,
August 2007

(Trade Union Membership in Germany: structures, determinants and tendencies) Editors: *Claus Schnabel and Joachim Wagner.*

Rainer Hampp Verlag, Mering, ISSN 0943-2779, EUR 19,80..

Across Europe trade union density is on the decline. There are exceptions, but generally since the 1990s an erosion of trade union membership and bargaining power is undeniable. Even Denmark and Sweden start showing signs of weakness. Within this panorama Germany, the most populous country of the European Union, once boasting a legally well underpinned strong trade union movement, is the most dramatic casualty of membership losses in the last fifteen years. Therefore the issue of "Industrielle Beziehungen" 14/2 on "Trade Union Membership in Germany" is relevant beyond this individual country. In their introduction the editors point out that employer organisations are equally affected by loss of membership, indicating that we may be witnessing a decline of both sides of organised autonomous employer-employee relations. This wider perspective is, however, not covered by the five empirical studies scrutinising the German case.

Jelle Visser, mainly relying on statistical evidence, puts Germany into the international context and debate and recognises its wider significance: "If German unions continue their decline ... this is bad news for their European friends" (p. 115). But he remains vague with regard to the specific timing and "the manifold reasons" (p. 115) of the loss of membership in this country since the early nineties. Quoting John Monks, General Secretary of the ETUC, however, he points to a development that may explain an irreversible transformation of industrial relations: "We may not have liked it, but we knew where we were with Ford Motor Company. Goldman Sachs by contrast is foreign land and hedge funds are a different universe." (p. 115)

Claus Schnabel and Joachim Wagner present an ambitious analysis of statistical data showing that between 1992 and 2004 trade union density declined from 29.76% to 21.52% in Western and from 39.26% to 17.83% in Eastern Germany (Table 4). But more interestingly "Such a negative trend can be observed for men and women and for different groups of the workforce" (p. 129). This evidence refutes explanations based on changing gender, white collar - blue collar, public-private sector employment structures. Schnabel and Wagner, therefore, offer instead "other relevant factors ... such as union policies, workers' experiences and individual attitudes" (p. 130).

Hendrik Biebler and Hagen Lesch also consult statistics for an explanation of "membership erosion and loss of popularity" of the German unions. The only hard evidence they refer to is the correlation between trade union density and size of establishment ("Betriebsgröße"). This is certainly a very significant, though not very surprising, discovery. As this correlation is a factor working against unions and outside their control, the authors offer a menu of ways to compensate for these losses (p. 150) such as bonuses for members in collective agreements, creating "new social milieus", intensification of efforts to establish works councils in small establishments, improving the public image of trade unions through more emphasis on preventing dislocation of production, and shifting activities from regional to firm representation in order to produce a "renaissance or enforcement of in-firm group dynamics" (p. 151). All very well meaning but nothing new.

Lazlo Goerke and Marcus Pannenberg use most sophisticated statistical methods to confirm the well-known correlation between trade union membership of works councillors and trade union density in establishments. But they wonder whether this correlation stems from 1) "recruitment efforts", 2) "enforcing a norm or social custom", 3) "influencing personnel policy", 4) "providing employees with the experience of unionism" or 5) the representation of "the institutional face of trade unions at the establishment level" (p. 171). To find this out they recommend further research. Will they find a sponsor?

Anke Hassel finds the philosophers' stone in "The Curse of Institutional Security" (heading p. 176). Her starting point is from a EU transnational perspective that Germany is/was primarily structured according to industrial sectors. This structure, she argues,

exposes the unions “to a fast de-industrializing economy” (p. 177). The “corporatist stability”, once the basis of trade union strength, has shaped the union organisations in a way which has turned into an impediment to “adjust to the new economic environment” (p. 178). Having been “traditionally weak in services” (p. 189), the increase of employment in these sectors is identified as the predominant factor of the “Erosion of German Trade Unionism” (heading p. 176). Interestingly, she points out the significance of the emergence of small new unions and professional organisations filling an obvious vacuum in employee representation.

The display of empirical statistical studies is certainly more impressive than what these provide in terms of understanding the reasons of the present historical transformation in industrial relations. Whilst the respect for facts and data is not to be discredited, we ought to keep in mind that a theoretical approach and hypotheses determine what data are needed and what can be extracted from them to comprehend the dynamic of social change, within which the decline of employee (as well as employer) organisation is only one aspect. Had the consideration of such wider changes been given more space, the transnational level would have required more attention and future perspectives (rather than all the many proposals for the reconstruction of industrial relations) might have come to the fore. However, with this scholarly scrutiny of union membership development in Germany, the editors and authors have contributed to a solid basis for the debate. The extensive bibliographies provide up-to-date access to the relevant literature. All but one article (Biebler/Lesch) are written in English and thus accessible to an international audience.

Vocational Education. International approaches, developments and systems

edited by Linda Clarke and Christopher Winch, Routledge
London and New York, 2007

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The purpose of this book is to provide an investigation of the ‘origins of the central ideas that animate VET systems in different parts of the world and the way those ideas became to be so

dominant'. The book is thus concerned with both the history of ideas and the history of national VET institutions. This approach, whilst well established in cognate disciplines such as the history and philosophy of school education, is novel in the field of VET studies. This approach complements the considerable literature on comparative national VET systems and the key influence on these institutions of differences in political and economic structures such as those governing regulation of the labour market and industrial relations. Such studies typically focus on the current operation of these institutions and sometimes on their historical evolution, but rarely on the ideas 'animating' these institutions.

A key theme in the book is the relation between vocational and academic education and the way different countries have resolved the tensions and demands of these two streams. Chapters deal with divergent VET systems across Britain, France, Germany, Holland, the US and Australia. It is not possible to convey in a brief review the richness of historical detail and ideas provided by the 13 authors. A few examples focussing on the more historically oriented chapters may provide a hint of these riches.

Gehin describes how, following the French Revolution, medieval town corporations and guilds were destroyed and the effort over the last two centuries to reconstruct a VET system. The state, through a variety of colleges, became the principal provider of initial vocational education. The origins of this approach lie partly in the historical legacy of a strong central government, the scholastic and humanist tradition in French Catholicism which prompted an 'academic' approach to vocational education and the Revolutionary principles of universal rights and equalite pursued through a standardised national education system. One of the advantages of this approach is the creation of a standardised national VET labour market. The availability of a large pool of labour of known quality in turn 'guides the French production system, particularly the structure of jobs...and recruitment policy of firms' (39). Concertation of both capital and labour as it developed in the post war period is especially important, as described by both Gehin and Mehaut, in continuing vocational education of the existing workforce where there is a comprehensive system of training levies and worker entitlements to training.

In contrast to France where the Revolution dissolved pre-modern institutions, including apprenticeship, Greinert argues that Germany

after unification sought to reinforce the existing apprenticeship system as a means of protecting the petty bourgeoisie against 'proletarianisation'. Combining general education with vocational training was seen as essential to nation building, especially amongst the petty bourgeois and working class. For the lower classes the concept of *Beruf* was to be the key to socialisation as *Bildung* was for the bourgeoisie and ruling class. One of the under-appreciated foundations of the German vocational system, emphasised by Greinert and Hanf, is the influence of the 'American method' of production. In the last decades of the nineteenth and early twentieth centuries the developing German mega-corporations, Loewe, Siemens and AEG, looked to America as the world leader in industrial productivity. They sought to emulate the standardisation of product design, interchangeable parts, capital-intensive production methods and apply 'rational' Scientific Management to labour recruitment and disposition. Importantly however, rather than develop their own large internal labour markets and training systems in isolation the large German firms integrated their training systems with the developing national VET institutions set up by the government and employer associations. Indeed, they were instrumental in establishing and administering these institutions. Hanf does not directly address the reason why German firms did not vigorously pursue the skills fragmentation element in Scientific Management but implies that the precision demanded by German firms could only be met by creating a class of 'quality workers' standing between engineers and basic machine operators.

The report card on VET in Britain across several chapters (Winch, Clarke, Halliday and Keep) is unrelentingly damning. Clarke notes the adverse ideological environment in Britain under liberal capitalism over the last four centuries to the growth of a modern and robust apprenticeship system after the decline of the medieval system of indenture. Halliday suggests that in order to sustain the 'myth' that 'governments are working towards a socially just society' the fiction is propagated that the economic returns from acquiring VET qualifications are sufficiently high to promote economic equality for persons not pursuing academic studies. The reality he argues is the opposite which prompts government to constantly remodel qualifications and delivery mechanisms in order to preserve the myth. In this way the myth cannot be falsified. (Along the same lines the US school VET system, Lewis argues, has also been an 'unwitting instrument of social inequality' because of racial segmentation in schools and the labour market). The permanent

revolution in English post war VET structures is, according to Keep, propelled by the deregulated labour market and absence of coordination by the industrial parties. This precludes any means for designing and delivering VET, paradoxically, other than through intensifying cycles of government control. In addition to Halliday's view that avoiding critical evaluation of poorly performing VET systems is the mother of re-invention Keep also suggests constant change is a product of the hubris of public servants more or less in total control of the VET system and tinkering tied to short term political cycles.

The book provides a powerful argument for the force and persistence of ideas even when, to use the obvious example of the UK, these ideas act as a fetter on the development of the means of production.

Jan Cremers,
AIAS-University
of Amsterdam,

Draft opinion of the European Economic and Social Committee on *Cross-border agricultural labour*

Section for Agriculture, Rural Development and the Environment (NAT 357).

ECOSOC has just produced an own-initiative opinion on cross-border labour in agriculture based on a report with arguments and findings as partly formulated in the CLR-Study *Shifting Employment*.

In the report it is said that a type of employee has returned who until recently was thought to be long since extinct: the day labourer. Furthermore the effects of outsourcing and subcontracting are mentioned resulting in the supply of cheap, unskilled labour. Finally the evasion of labour law and social security obligations by means of unfair contracts for bogus self-employed is cited by quoting the EC report on the functioning of the transitional arrangements: "reflected in an exceptionally high influx of posted workers or workers claiming to be self-employed".

ECOSOC's conclusions:

- Labour migration is of an economic nature and is the consequence of free movement of labour in a Europe in which great differences in living standards exist between the various Member States. High unemployment rates in a number of the new Member States and the demand for cheap, semi-skilled labour in the 15 old Member States ensure a steady stream of job-seekers.
- In 2004 and 2007 transitional arrangements were agreed upon to enable the old Member States to regulate migration from the new Member States. (...) the old Member States wanted to avoid tensions caused by too great an influx of migrant workers arising on the labour market, possibly resulting in illegal employment.
- The result of the transitional arrangements was precisely what the old Member States were trying to prevent. In its Report on the Functioning of the Transitional Arrangements, the European Commission states that restrictions on legal work for migrants from the new Member States actually lead to a proliferation of undocumented work, bogus "self-employed" work, and fictitious service provision and sub-contracting.
- (...) There are enough migrant workers from the new Member States who are willing to do the work, but many of them are not allowed to do it because of the restrictive measures.
- In this situation the work often ends up in the black economy. (...) There are employers who directly exploit the weak position of migrant workers by treating them worse than they are obliged to do in accordance with national employment legislation. But much more frequently arrangements are made by dubious recruitment agencies which are especially active on the internet. Many of the middlemen make sensational offers (in the Netherlands one such agency distributed an advertising brochure amongst employers with the slogan "buy two workers, get one free"). However, ultimately the price war is paid for by the migrant workers themselves who have to make do with incomes that are below the social minimum. Often employers who take on seasonal workers do pay the market rate but the agencies do not make tax and social security deductions. On top of this, the middlemen who do this also frequently pocket part of the migrant workers' salaries. There are also websites with telephone numbers in both Eastern and

Western Europe which offer self-employed workers for whom no payment of tax or employers' social security contributions are required.

- This situation is undesirable in a number of respects. The basic principle must be that migrant workers must be treated in every respect in the same way as the legally resident workers alongside whom they are working. There must be equal pay for equal work and better conditions with regard to access to social security. (...) It is also economically important to employers (a level playing field for fair competition) and financially important for the Member States (tax authorities).
- There is a proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals that provides for harmonised sanctions for employers and preventive measures, as well as the identification and exchange of good practices between Member States on the implementation of employer sanctions.
- As long as the restrictions on migrants from the new Member States remain in place (...) the proposed directive should also apply to employers who illegally employ workers from EU countries which are still subject to restrictions. Moreover, the EESC considers it essential that the EU should ensure that the directive is not just enacted in legislation in all Member States but is also enforced in practice.
- The combating of the black economy would benefit from an unambiguous European definition which makes a clear distinction between the taking on of work (the supply of services) and the carrying out of duties in an employer-employee relationship (the employment contract). The ILO has issued a clear recommendation on this subject. This gives bona-fide self-employed workers whose specialism goes beyond the supply of cheap, unskilled labour a clearer position in the world of work, and employers the protection they are entitled to.
- (...) The EESC also calls on the European Commission to explore the possibility of lifting all restrictions on workers from the 12 Member States that joined the EU in 2004 and 2007. A large proportion of the European social partners also hold this view, provided that real action is taken at EU and national levels, as well as at social partner level, to monitor equal treatment for migrant workers.

Calendar of events

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

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

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

**Friday December 7th, 10.30am - 4.00pm, Room M324
followed by: CLR GB AGM 4.30pm – 6.30pm**

If you would like to attend, please contact:

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

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

About the workshop

The title of the workshop 'Labour in Neverneverland' expresses our concern that, due to a lack of regulation, many migrants working in the construction industry in Britain do not know where they are or what is going on. For some Britain may have appeared as a dream island but this has proved to be a deceptive fiction. Many are self-employed or at the mercy of agencies and gangmasters, employed below the terms and conditions established and agreed for the industry. They become used by subcontractors for social wage dumping, causing resentment and problems for the domestic construction labour force and hardship for themselves. This suggests that the first issue is to ensure that they are employed on equivalent terms and conditions, as established by the Posted Workers Directive and the Agency Workers Directive and that they are not subject to exploitation by gangmasters as proposed in the extension to the Gangmasters Licensing Act.

One key reason why migrant labour is being employed to such an extent in the British construction industry is severe skill shortages, due in large part to an inadequate system of training. Many migrants are overqualified for the work they are employed on; others have inadequate skills but no means to acquire the necessary training. At the same time, as we learnt in the last seminar, many thousands of youngsters on construction courses in Further Education Colleges cannot enter the industry because they are unable to obtain the necessary work experience on sites and/or the training itself is inadequate or inappropriate. As we also learnt, there is no comprehensive training scheme in Britain for, for instance, groundworkers, concretors or formworkers – activities on which currently many migrants are employed. This suggests that the second issue concerns skills, ensuring that migrants have their skills recognized through the appropriate CSCS (Construction Skills Certification Scheme) card and have access to any training needed. At the same time, it is critical that a long term comprehensive scheme of training is developed for the industry, to avoid what may be simply a short term solution to the skills crisis.

One problem with both exploitation and inappropriate skills and training is that this exposes the workforce, in an already extremely dangerous industry, to ever greater health and safety risks. There are increasing reports of accidents and fatalities amongst the migrant construction labour force. Our third issue concerns, therefore, the need for greater health and safety regulation, as well as a compulsory occupational health scheme covering the migrant labour force.

To discuss these issues we have invited a range of speakers – representing employers, trade unions, and policy-makers, as well as academics, lawyers and practitioners – to give their perspective on what is happening and what is and can be done to regulate the situation for migrants. Our aim is to clearly identify the problems and the means by which these may be tackled, and to discuss these in a round table forum at the end of the day. We then plan to continue and extend the discussion through a special issue in January of CLR News – the review of the European Institute for Construction Labour Research.

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

**Friday December 7th, 10.30am - 4.00pm, Room M324
followed by: CLR GB AGM 4.30pm – 6.30pm**

10.30am	Registration and coffee
10.40am	Welcome Professor Linda Clarke University of Westminster
10.45am	<i>What is happening?</i> - Migrants or foreigners? - Jörn Janssen , CLR - The trade union view - Bob Blackman , Unite (TGWU) Construction - The employers' view - Gerry Lean , Construction Confederation
11.45pm	<i>What research is going on?</i> - Beyond Tunnel Visions : stories of work, place, and identity from Olympic Park - Phil Cohen , University East London - Polish migrants in the North of England - Ian Fitzgerald , University of Northumbria - Movement of migrants into and out of construction - David Beaney , University of Northumbria
12.45pm	Lunch
1.45pm	<i>What is being done?</i> - Health & safety - Colin Ettinger , Irwin Mitchell Solicitors - Wage Transparency - Bernard McAuley , Amicus - RIFT - Jan Post , RIFT
3.00pm	<i>Round table discussion: What can be done?</i> Led by: tbc MP including across Europe - Jan Cremers , CLR and health-wise - Michelle Aldous , Constructing Better Health
4.00pm	Tea/Coffee
4.30pm – 6.30pm	CLR GB AGM

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