

No 4/2008

CLR News

Social Responsibility and liability

CLR

European Institute for
Construction Labour Research

www.clr-news.org

Contents

Note from the Editor	4
-----------------------------------	----------

Subject articles	6
-------------------------------	----------

- The Use of Migrant Labour in Post-Disaster Reconstruction - Case Study of the British Red Cross Maldives Recovery Program, *Peter M Lawther* 6
- Labour rights on the Olympic sites, *George Fuller* 17

Reports	28
----------------------	-----------

- Liability in the chain, results of recent research, *Karin van den Brand* 28
- EFBWWW statement on liability in the chain 39
- EFBWWW research project on 'Actual' Wages on Sites..... 40
- ETUI-ETUC memorandum on European Works Councils 44

Reviews	46
----------------------	-----------

- Dan Plesch, Stephanie Blankenburg, *How to make corporations accountable* ... 46
- Ulrike Muehlberger, *Dependent Self-Employment: Workers on the Border between Employment and Self-Employment*..... 47
- Niels Westergaard-Nielsen (editor), *Low-Wage Work in Denmark* 50
- Paul Krugman, *After Bush*..... 52

Calendar of events	55
---------------------------------	-----------

- Workshop on employment practices, London, 10th December 2008 55
- CLR Annual general meeting, Brussels, 2nd April 2009 55

Note

from the editor

Jan Cremers

Equal treatment and the protection of workers' rights have always been leading principles of the trade union movement. The development of what the ILO calls non-standard employment relations has created new challenges in this field for the trade unions and for progressive politicians. In recent years improvement of the position of temporary agency workers has become one of these challenges. In several countries the approved method of collective bargaining has been introduced in the temp sector and this has led to a "normalisation" of the industrial relations in a sector that till recently had no "workers' voice". Most recently our Swiss colleagues concluded their first collective agreement for the temp sector. And now there is positive news from the European front. In October the European Parliament concluded the second reading of the Temporary Agency Workers' Directive. The aim of the Directive is the equal treatment of temporary agency workers. Compliance with working conditions on the workplace has to be guaranteed and exemption to this principle is only acceptable if it is based on collective bargaining. So there is work to do.

Liability in the case of subcontracting in the construction industry: a preliminary exploration of the question was the title of a contribution that I wrote for CLR-News in 1998. It was a short report of a first investigation with regard to the theme of social responsibility in a production chain. In the meantime this item has come back under different names and in different forms: soft law on corporate social responsibility, codes of conducts and legal instruments like joint and several liability. In this issue of CLR-News Karin van den Brand reports on the latest outcome of a study commissioned by the Dublin Foundation. The result is a basic inventory of legal practices in this area in the EU and the European Parliament has picked up the recommendations for an initiative of its own. But we start this issue of CLR-News with a unique case that was delivered by Peter M Lawther. His paper considers the vulnerability and exploitation of migrant labour as experienced on the Maldives recovery project, lead by the British Red Cross Society. The BRCS Maldives response to this situation is outlined, together with the capacity of the BRCS to demonstrate social responsibility and to provide leadership to tackle such issues. His example demonstrates the importance of contract compliance and respect for workers rights, a basic

element in the fight against bogus agencies and plain exploitation.

Circumvention of labour standards is not only an act of social injustice; it can also lead to distortion of competition and to an erosion of well-established industrial relations. Social responsibility is a value that has to be promoted, in the EU and at the global level, with soft law and with enforceable legal instruments.

From this perspective George Fuller reports on the promotion of labour rights on the Olympic sites in London. Our first review in this issue, on how to make corporations accountable, fits in well with this perspective.

The other contributions have at first glance no common denominator. However, the review on self-employment adds to earlier publications and to the debate about the impact of non-standard employment relations. The reviews of Krugman's work and of the *Low wage* report for Denmark can also be seen as rounding off earlier writings in *CLR News*. We have received a lot of positive feedback in recent months and we are waiting for your contributions.

Peter M
Lawther, British
Red Cross
Construction
Manager

This paper
represents the
views of the
Author and not
necessarily
those of the
British Red
Cross.

The Use of Migrant Labour in Post-Disaster Reconstruction - Case Study of the British Red Cross Maldives Recovery Program (November 2005 – November 2007)

1. Introduction

The unprecedented nature of the 2004 Asian tsunami is well documented. The reconstruction process that followed was a huge commitment of human and financial resources. Whilst the reconstruction is now largely completed, much learning has or is set to occur, as many issues have presented themselves that require contemplation and affirmative action from NGOs and other Agencies involved in post-disaster reconstruction. The use and vulnerability of migrant labour in the British Red Cross Society (BRCS) post-tsunami Maldives recovery program was one such issue. It was an issue that caught the BRCS off-guard to some extent. However, it also provided an opportunity for BRCS to demonstrate leadership in its response to the issues that arose, and forced staff in the field to reflect upon what it means to be a humanitarian organisation. It was ironic that the foreigners who came to Maldives to construct houses for victims of the tsunami were considered more vulnerable and "at risk" than those that they were constructing homes for. That this situation was allowed to develop might be considered an indictment on the BRCS, Government Authorities, and the host communities. In turn, the continuing efforts and commitment of the BRCS to redress the situation were and are commendable.

This paper presents a case study of the use of migrant labour on the BRCS Maldives recovery programme. The paper commences with an overview of the role of migrant labour generally in Maldives, and then considers their vulnerabilities through the recruitment process. The abuse of migrant labour by employment Agents, Contractors, and the host communities is considered in the context of the BRCS Maldives recovery programme. The risks of this scenario for the BRCS (and humanitarian agencies in general) are then considered, and key recommendations presented.

2. Overview of the Role of Foreign Workers in Maldives

The use of imported or foreign labour in the Maldives is not a new phenomenon, and was recognised in 1994 (US Department of State 1995). Therefore, and contrary to some views, it pre-dates the 2004 Asian tsunami. It is also not restricted to the construction industry. Indeed, the use of migrant labour in the Maldives tourist industry is widely known. However, the boom in the construction industry in the Maldives due to post-tsunami reconstruction activities, and buoyant economic conditions generally, has led to an influx of migrant labour. It is estimated that there were 30,000 migrant workers in the Maldivian capital, Male, in September 2007 (GlobalVoices 2007). In a total national population of approximately 330,000, migrant labour represents in the order of 9% of the population. Typically the majority of these workers are from Sri Lanka, Bangladesh and India.

The culture of dependency upon migrant labour in the Maldives is due to either a lack of or an unwillingness of locals to take up the positions filled by foreigners. Sometimes employers who pay lower wages to imported labour than to locals cause this unwillingness. For example, a typical unskilled imported worker from Bangladesh will earn approximately \$100 - \$120 USD per month, whilst the average for all imported labour (skilled and unskilled) is approximately \$300 - \$350 per month. The salary for a local Maldivian worker is in the order of \$300 - \$500 per month. Whilst often required (by Government regulation) to advertise for local workers prior to being allowed to recruit foreigners, it is common for employers to do such advertising at artificially low wage rates and thus deliberately attract no interest locally. (Note: there is no minimum wage law in the Maldives). This situation occurred on all BRCS post tsunami housing reconstruction projects in the Maldives. In a country, which has little if any formal instruments for the protection of migrant labour, these people are in turn vulnerable to abusive practices. Indeed, the overt abuse of migrant labour in the Maldives evidenced by violent physical attacks was on the rise in the second half of 2007 (GlobalVoices 2007). The Maldives is a not a signatory to the International Labour Organisation which has produced a number of documents covering the welfare of migrant workers. Whilst there are employment regulations in the Maldives, which include a section on the employment of foreigners, these are primarily grounded in administrative processes in relation to the recruitment of migrant labour. They offer little in the way of

protection for foreigners. Whilst migrant labour does have the right to report employers to the relevant line Ministry, they usually have little knowledge of their rights, and lack the resources to follow through such processes. It is a situation ripe for abuse.

It would be incorrect to suggest that this situation is unique to the Maldives and / or the BRCS. Indeed the abuse of migrant labour is a global phenomenon. However, the case study presented in this paper has been gained from the BRCS Maldives recovery program.

3. The Recruitment Process

The sourcing and recruitment of migrant labour in the Maldives occurs almost exclusively through organisations known as “employment agencies”, which are engaged on behalf of Employers (Contractors in the context of this paper). The Ministry of Higher Education, Social Security and Labour licenses Employment Agencies to carry out this business. The Ministry dictates that the application and issuing of visas for migrant labour **must** be done through an employment agent. It is interesting to note that this procedure was supposedly developed to stamp out abusive practices surrounding the procurement of migrant labour. Further, there is no code of conduct or ongoing monitoring of the performance of employment agents by Government authorities. As such, any abuse by such agencies goes largely unchecked by the authorities.

The employment agent (often in conjunction with an overseas agency) will advertise (typically in Sri Lanka, Bangladesh and India) to identify workers who match the skill sets identified by the original employer (Contractor) in the Maldives. Interested workers will then apply for the advertised positions and undergo a selection process. Often the workers will be required to pay a fee to a local agent for the opportunity to be selected for the positions advertised. The selected workers then travel to Male where they undergo a compulsory human immunodeficiency virus (HIV) medical examination, and are then deployed to the place of work. Contracts are typically for 12 months duration.

It is important to understand that the workers may be contracted and registered under either the name of the employment agent, or the ultimate employer (Contractor), but not the BRCS. Whoever the workers are registered under retains ultimate responsibility and control of them. This body is in turn responsible for ensuring that all

Government requirements are complied with, in particular the payment of the work visa fees to ensure that workers do not become illegal entrants in the Maldives. Usually, a bond is payable by the Agent / Employer to the Government to cover the costs of repatriation or deportation as the case may be. The bond is generally the equivalent of a one-way airfare from Male to the original point of embarkation.

4. Vulnerability of Migrant Labour

The vulnerability of migrant labour is taken advantage of in many ways. The following summarises some of the more common abuses encountered under the BRCS Maldives recovery programme.

A. By Employment Agents

- Charging the workers a fee to be accepted for employment. (see case-study below)
- Giving false information with respect to the type of work being undertaken (e.g. on Isdhoo Kalaidhoo site there was an example of a baker whom, during the recruitment process, was given the false impression that he would be working in food preparation on a Maldives tourist resort).
- Giving false information with respect to the wages to be paid (see case-study below).
- Charging workers a bond (under the pretence of security of tenure) by withholding the first 1 to 3 months of salary payments.
- Withholding payment to workers.
- Not complying with ongoing visa payment requirements, potentially resulting in the workers being “illegal” in the Maldives, and thus subject to deportation.

B. By Contractors

- Charging workers a bond (under the pretence of security of tenure) by withholding the first 1 to 3 months of salary payments.
- Withholding payment to workers.
- Not complying with ongoing visa payment requirements, potentially resulting in the workers being “illegal” in Maldives, and thus subject to deportation.

- Provision of inadequate or no site induction or health and safety procedures, including the proper use of health and safety equipment.
- No provision of personal protective equipment.
- Provision of substandard food resulting in poor nutrition and consequent unsafe work practices, and increased susceptibility to disease.
- Provision of substandard accommodation and sanitary facilities resulting in:
 - ✓ inadequate shelter from elements;
 - ✓ overcrowding which in turn leads to outbreak of disease (both to the workers and the surrounding community), and;
 - ✓ pollution of the island freshwater lens.

The provision of sub-standard accommodation and sanitary facilities by Contractors was the most contentious issue dealt with by the BRCS with respect to migrant labour.

C. By the beneficiary host communities

- Through lack of action, accepting the standard of accommodation and sanitary facility conditions of the migrant labour. In fact, it is incumbent upon the local island authorities to take action in such instances. It was an indictment on the beneficiary communities that they took no action over these conditions on their islands.
- Ongoing violence (albeit isolated instances) directed against migrant labour.
- Lack of substantive action taken by island authorities / local police where migrant labour was attacked.
- Encouraging migrant labour to “sell” construction materials, which is effectively theft.

It should be stated that the workers themselves were not purely innocents in all instances. For example, there were a number of inter-racial physical altercations exclusively within the migrant worker group. There were also instances of migrant labour actively seeking work from, and selling materials to, local communities. However, it is also contended that the latter two examples were merely a consequence of the situation developed by the beneficiary host communities.

Case Study

Jamaal Hussain is a 23 years old Bangladeshi man and the eldest of six children. He has five younger brothers and one sister. He explains nervously, but with a certain pride, that he is a carpenter trained in fine cabinet making. He is the major income earner for his family and, as the eldest, he is responsible for providing for his siblings, including saving enough money for his sister to marry.

Jamaal is a migrant worker working on a Red Cross-funded, post-tsunami reconstruction site in the Maldives. What causes him great stress and worry is the money he owes to the moneylender he used in order to pay the employment broker who came to his village offering lucrative work abroad. The fee he paid the broker was Rupees 1.5 Lakh (2170 USD) By the time the interest is paid he will owe 2 Lakh (2900 USD). In return, the broker advised that he would earn USD 300 per month. However, on arrival in the Maldives, he learned that as a skilled worker his salary is USD 140 per month.

Turning from the translator he spoke of his feelings in English – ***“Feel very no good, how can a man be better here in these conditions?”*** In order to pay the broker for this opportunity, many of Jamaal’s co-workers sold their land or their wives jewellery. This in turn reduces their families’ capacity to cope with stresses and shocks, and increases their reliance on remittances.

Jamaal explains that the “big company man” is in Male’ and he doesn’t always come with the money on time. In addition to this, it takes a further 21 days for the money to reach Bangladesh. When the end of month pay is late, his family has nothing to eat; his five other younger siblings have no money to buy rice or cloth.

He feels isolated and unhappy in the Maldives but must stay to pay back his debt.

(IFRC, 2006)

5. The BRCS response in the Maldives

The abuse of migrant labour was a challenging situation to manage. With no contractual provisions to enforce Contractors to improve standards, BRCS were reliant to some extent upon the goodwill of the Contractors to improve the lot of migrant labour. This was successful to varying extents but ultimately the onus was on the BRCS to address the situation. Such action was restricted to improvements in basic food, accommodation and sanitary provisions, and to “pressuring” Contractors to ensure wages were paid. Pressure was also applied to authorities at all levels to address increasing levels of violence against migrant labour, primarily through “stop works” and threats to leave an island altogether. Little could be done to address the exploitation of migrant labour by employment agencies, save reporting such cases to the Authorities.

Whilst the Contractor on the islands of Fonadhoo and Maabaidhoo showed no inclination to improve the accommodation conditions provided, the Contractor on Madifushi was more conducive to providing reasonable facilities. In all cases, the subsequent provision of BRCS materials warehouse tenting for usage as accommodation tents, greatly improved the situation.

Whilst no contractual provisions around the standard of accommodation and sanitary facilities were included in the initial construction contracts, delayed contracts on Isdhoo Kalaidhoo (April 2006) and Vilufushi (June 2007) provided BRCS with opportunities to undertake incremental improvement. Whilst the provisions on Isdhoo Kalaidoo primarily revolved around Sphere (Humanitarian Charter and Minimum Standards in Disaster Response) (1994), the contractual requirements for the Vilufushi project represented a quantum leap in the provision of accommodation and sanitation facilities for migrant labour, which were in turn adopted by other Agencies (e.g. French and Canadian Red Cross). These requirements included detailed prescriptive accommodation, health, sanitary, food and water requirements to be implemented by Contractors. In addition to the introduction of appropriate contractual provisions, the desire of BRCS staff to deal with this issue and work closely with Contractors was central to the improvements that were introduced.

Clean and watertight accommodation, which was not overcrowded, was provided on Vilufushi. A notice provided information

dissemination (and the suggestion box at least provides an opportunity for workers to air their views), whilst the provision of a basketball ring is evidence of recreational opportunities for workers. BRCS has also assisted the Contractor to build a makeshift cinema on Vilfusuhi. With a workforce of up to 400 men on an isolated and remote island, the provision of social and recreational outlets is crucial for the workers. Visits to the island by the local police were organised to occur every fortnight so that workers would understand that the law still applied on an island where, with no community structures in place (the island population being temporarily housed on a nearby island), there was still law and order to be upheld. Also, it gives the workers an opportunity to report any incidents.

It should also be noted that BRCS were able to negotiate with the Government of the Maldives to retain the school compound for use by the Contractor as their compound and temporary accommodation throughout the housing reconstruction. This was a huge advantage over the other islands, where no accommodation facilities at all were available. But the results were by no means perfect, and there remains room for improvement.

6. Risks for the BRCS through the Exploitation of Migrant Labour

One of the key questions arising from this situation is what duty of care do the BRCS owe to these workers? On a strictly contractual level, the issue lies with the Contractors, and this was the policy of Government (IFRC 2006). The Contractors are responsible for the employment and conditions of migrant labour. In addition, the treatment of migrant labour is often a reflection of the level of Government regulation in place, and the industrial norms of the country. In the Maldives this was clearly the case, with no prescriptive requirements in place and no real will to tackle the problem. The reaction of other Agencies in the Maldives to this issue varied markedly, from clear resolve to tackle the problem to an equally clear willingness to either “sweep it under the carpet” or simply ignore it altogether. One view was that to impose standards upon Government was to compromise one of the fundamental principles of the Red Cross / Red Crescent movement - independence.

Perhaps, however, the reality of these projects is that they were and are projects of the BRCS. Whilst the contractual distinctions between BRCS, consultants and Contractors are recognised by most stakeholders, overwhelmingly they are considered as “BRCS” projects, and BRCS shoulders responsibility for the actions of their consultants and Contractors. The imprimatur of the BRCS runs through every aspect of the project, and they are very public, particularly in the Maldives. BRCS take the kudos and they also take the responsibility. Clearly, as a humanitarian organisation, BRCS has a responsibility to ensure the vulnerabilities of migrant workers are not exploited, if only from an ideological perspective in so far that it is simply the right thing to do.

As an organisation, BRCS invested large resources to be accountable to beneficiaries – it was a central tenet of the programme and rightly so. Surely the same philosophy should be applied to all workers who are engaged on BRCS projects, but in particular migrant workers, given their heightened vulnerability? Additionally, the organisational risk to BRCS of the exploitation of workers is real. Any public perception of an organisation, which permits or tolerates such activity, will be at best embarrassing and at worst highly damaging both in terms of reputation and from the consequent financial perspective.

At the project level, the mistreatment of migrant workers demotivates them, leads to health and safety issues on construction sites, lower productivity, lower quality, delays to the construction programme, and a deterioration in relationships between all stakeholders, including the beneficiary communities. In addition, dealing with this issue required a large time commitment from BRCS management and staff in the field that could have been used more constructively. Investment in basic conditions for migrant labour will assist BRCS in achieving the strategic objective of timely post-disaster shelter re-construction that has been delivered through a process which is in line with the fundamental principles of the Red Cross / Red Crescent Movement.

Clearly, it is incumbent upon BRCS to take affirmative action to ensure these issues continue to be addressed in future projects.

7. Key Recommendations

The treatment of migrant labour provides the BRCS with a clear opportunity to capture organisational learning and demonstrate

leadership within the international humanitarian community, by taking affirmative action to tackle the issues faced in the Maldives tsunami recovery program. Some key recommendations in this regard are listed in the table below.

No.	Recommendation
1.	Formal acknowledgement of the role and rights of migrant labour in humanitarian reconstruction projects, and of the organisational obligations of the Agencies towards them.
2.	Agreement to the development and implementation of appropriate conditions of employment, accommodation and sanitary provisions, and an acknowledgement that this has a financial implication to humanitarian Agencies. This should also include investigations to be undertaken of the contextual conditions surrounding the employment of migrant labour in any particular instance.
3.	The International Federation of the Red Cross (as the co-ordinating body of the Red Cross) to take a collective stance on this issue to ensure the appropriate standards are included in all future Red Cross/Red Crescent (R.C/ R.C) contracts, including providing incentives (e.g. offsets against delay days where standards are exceeded). In particular, a strong collective RC/RC position on the issue can be utilised to assist Governments to take more definitive action.
3.	Monitor / research the experience of migrant labour on humanitarian construction projects including undertaking exit interviews with workers on completion of projects.
4.	Employment Agents / Contractors to sign a code of conduct, which includes a specific charter regarding the employment and treatment of migrant labour.
5.	Beneficiaries and beneficiary communities to sign a code of conduct detailing their obligations as a host community, including their obligations to migrant labour.
8.	Staff training for international deployments to include a component on migrant labour.
9.	On larger projects, a dedicated health and safety officer be employed whose remit would include implementation and monitoring the issues around migrant labour. This could be either as direct employment, or through a consultant as part of the consulting team.

8. Summary

The use of migrant labour in the BRCS Maldives recovery program became a complicated, touchy, and time-consuming issue. The post tsunami reconstruction laid bare the vulnerabilities of migrant labour to exploitation throughout the re-construction process, and the contractual deficiencies, which restricted the initial impact of the BRCS response, notwithstanding the best will in the world. It is a global issue of relevance in any form of construction, but particularly so in a programme founded upon underlying principles of dignity and respect for humanity.

This paper has considered the vulnerability and exploitation of migrant labour as experienced on the BRCS Maldives recovery project. The role of migrant labour in the Maldives has been overviewed, together with the recruitment process and the common forms of exploitation. The BRCS Maldives response to this situation has been outlined, together with the organisational risks posed. Key recommendations have been presented for consideration by the BRCS moving forward.

Finally, this topic resonated with many people involved in the Maldives tsunami recovery programme, both within and external to the BRCS. It was an added complication, which in the end demonstrated the capacity of the BRCS to provide leadership to tackle such issues. Nevertheless, there remains a great deal of work to do to advance this situation formally for “the next time around”. It is hoped that this paper will provide issues for consideration during the implementation of future projects by humanitarian Agencies.

References

- Globalvoices, 2007. <http://www.globalvoicesonline.org/2007/09/03/maldives-inhumane-treatment-of-migrant-workers/>.
- IFRC, 2006. *An Analysis of Migrant Workers Health, Safety and Living Conditions on RedCross Red Crescent Funded Construction Sites in the Maldives.*
- US Department of State, 1995. *Maldives Human Rights Practices, 1994.*
- Sphere, 2004. *Humanitarian Charter and Minimum Standards in Disaster Response.*

George Fuller,
UCATT member

London building workers – long established and migrants in the 2008 recession

This article is based on interviews. I think it shows some similarities between migrant building workers in the Maldives and the migrant interviewees in London. Probably similarities between long established London building workers and the indigenous Maldives building workers position would have been seen had they been interviewed for the British Red Cross paper. Another interesting point is that the Maldives Islands migrant building workers come from parts of Asia formerly under British colonial rule where tea planters' plantations relied on migrant labour systems. The BRC, as a client acting to improve the migrants' conditions, is different in my view from the behaviour of clients in London, primarily the British government.

In a café.

Not far from the eastern end of the Bow¹ flyover is a concrete crushing plant - its product used for site infill - and eating his breakfast in a nearby café is Jim Kelly, 57, the plant foreman, married with three grown up children. Tom came to the UK as a child from Ireland and has worked at the plant for 30 years. Sitting beside him, wielder Tom Friend, age 64, a Londoner, married with 4 children, has worked there 11 years. The Olympic Board is taking over the yard next year to build a multi-story car park. But even before that can happen, the crushing plant has been hit by the recession.

"There's nothing going out and not a lot coming in. Out of 15 lorries, sometimes 10 are parked up for a week or 3 weeks. Generally things go quiet before Christmas but now things are worse than in the early '90's recession".

They expect their firm, which has other crushers, to fold in this recession. Half the 30 strong workforce at their plant are migrants

1. A neighbourhood in East London

from Eastern Europe. As 2 of only 6 workers 'on the cards' PAYE² their £450 weekly wage is unaffected by the slowdown and they should get redundancy pay. But the rest are 'self-employed'³.

Hurriedly eating their breakfast are Paul Smith and Brian Fairweather, one black one white, both aged around 40. They are working for a marine civil engineer, as pilers, building a sluice-gate. They say that unemployed housebuilders looking for work are putting their wages and jobs under pressure. They work from 7 AM to 6.30 PM and are worried that the government will cut back on the Waterways building programme.

At another table are four members of the project management team on a 23-story block of flats across the road. They said that "Things are ok in the Stratford bubble" because of the projects proximity to the Olympic site. But if the project had been outside the bubble and only 30% built, or just a concrete skeleton, the developers would have shut it down.

"Anyway we're over 50% built - if we left it it would rot".

They say subcontractors' prices are keener. They're more likely to do a deal - when before they would put the phone down. Labour suppliers came on the site and offered to drop their rates – not their own wage but the wage rates of the labour supplied. The project team insist that migrants were not being kept on at the expense of British labour.

"We keep-on our core workers, locals or migrants regardless. Not the chancers⁴. We keep the good guys. Guys who do the work of two other guys. They're all paid the same." One of them adds: "But if they're cheap and good – that's a bonus."

A lot more unemployed are calling on the site. 'No Vacancies' notices in red lettering had been put up at all the site entrances.

-
2. An employee, not bogusly 'self-employed', paying correct tax, receiving employer's National Insurance contributions and enjoying employment rights. PAYE = **Pay as you earn**.
 3. 'Self-employed' but in fact working under the control of a firm, though paying self-employed tax and a very low level of National Insurance, having very few rights at work.
 4. Workers regarded as taking a chance on their level of skill applicable on the job, often suffering many dismissals as a 'chancer' until eventually the skills are gained – a major source of skilled workers.

At another table Victor, 33, single, a labourer, Lithuanian, 2 years in the UK, is working on a 45 storey hotel development that's just coming out of the ground. He says labourers are paid £6 per hour, ground-workers get more. If anyone has a day or two off, even for sickness, they are sacked. He pays £200 a month rent plus £30 utility bills for a shared room. About 60% of the workers on the hotel site are Romanian. Overhearing the conversation Michael, a young Polish engineer, comments that Romanians are replacing Poles on the sites. This occurs when Poles go home (not necessarily to stay) and because Poles have more opportunity, they can get jobs as employees 'on the cards' in any UK industry whereas Romanians and Bulgarians are restricted by UK law to work as 'self-employed' on the yellow card⁵.

Outside a building site.

Across the road from the café, at the hotel coming out of the ground site, the man at reception tells callers that no new workers will be started until after Christmas.

One of the callers is carpenter James Antony, 60, a UCATT member⁶, originally from the Republic of Ireland but a long time in London, he has also worked in Berlin and Frankfurt and for a short time building flats in Madrid. He says:

"It's pointless. All the good companies have gone. Now they are just management companies using subcontractors. On most sites 90% of the labour is Rumanian working on a Home Office yellow card work visa. The problem is the subbies⁷ are paying the labourers about £54 a day, carpenters about £120 and bricklayers £80 to £90 a day. The migrants have to go to work everyday to pay for their room. It doesn't matter if it rains or snows they are out in it. The employers have got universal cheap labour."

He names a dozen construction companies who he says overwhelmingly employ migrants and says their directors are getting greedier and greedier.

5. Issued by the UK Border Agency to 'self-employed' Romanian and Bulgarian site workers. Applicants for this card submit 'business plans' before the card is issued. They are then issued with self-employed a tax document and become site workers.

6. Union of Construction and Allied Trades and Technicians.

7. Sub-contractors.

“They don’t know what to spend their money on. They’re buying yachts, helicopters, and aeroplanes and spending fortunes on golfing holidays. They’re bleeding the workers. They’re as thick as thieves teaching each other the tricks of exploiting migrant workers.

I don’t blame the migrants – I’d be the same in their shoes. They are brilliant at picking up the language. If we had to go to their countries to work we’d be eating stones before we learnt their language. But everybody knows they are afraid to talk. Talk and they’ve no job. They have to look and smile as if someone is tickling them with a feather and be all over the boss. I’d have no problem with the Rumanian or Albanian workers if they were paid the proper rate for the job.”

James Antony continues:

“At one time if you went on a job the union steward⁸ could check the books⁹ to see that workers were being paid according to the union site agreement⁹. But nowadays the books are closed. The subbie is your boss and steward. The only answer is to hurry up and die. If you get to the station of an evening and there is someone under a train you should spare a thought”.

Other callers at the hotel site are Rumanians Daniel, 26, married with one child and Alex 24, also married. They’ve been in the UK and working in construction for 5 years – the first 2 years as labourers. They learned shuttering¹¹ carpentry on the job. In 5 years they had never been sacked.

Daniel said:

“Now suddenly no more jobs. When you are good at your job you don’t expect to be sacked. We’ve been building office blocks, apartments and social housing. At first we were ‘self-employed’ labourers on £90 a day for a ten hour day, then as shutterers getting as much as £150, sometimes working a six day week. Some of our

-
8. A union member representing other union members in his trade on a site to employers and also often a member of the site stewards committee covering all trades on a site – as occurred mainly during the 1960s and early 70s.
 9. A union steward would measure bonus gangs’ production and check that the resulting pay for each member of the gang was correct.
 10. agreement based on National Agreement between union and employers plus agreements made on site – backed up by threat of general meeting and strike action.
 11. The casing or mould, either wooden or metal, into which wet concrete is poured to make the concrete frame of the building.

workmates are still working, with English and Irish on £120 a day and Rumanians on £100. Saturdays – which had been seen as a bonus - had been cut out.

My rent is £1100 per month. If I can't find a job within 2 months I'll have to look for help - look for Housing Benefit¹² but I don't know if I'm entitled as a Rumanian EU citizen. But we don't want Benefits we just want work.

The big companies exaggerate the recession because they want people to work for free and do a good job. We've been looking all round for jobs. We've had one offer of a job at £100 a day.

"Take it for £100 or we'll find somebody else."

But the wage for shuttering carpenters is £150. Not £100.

But we won't be going home. Back home in Romania it is the same recession. Nobody is buying anything. People there know there is a recession also in the UK because they are calling us.

But the recession is not the main problem. The main problem is that the UK employers treat people badly. Their sites are not safe and if there is an accident they will cover them up. With foreigners the foremen are always shouting and swearing. You cannot say anything because the next day you will be sacked.

The Queen in her speech¹³ said the British have priority for jobs. We've had a couple of fights with foremen who are saying;

'You are fucking foreigners. You should shut up.'

This is 80% of the time. It depends on the foreman. But most of them are the same – we know because we speak to our friends. They want us foreigners to work hard, to do the job properly. But when we say anything they say:

'You are foreigners. Shut up.'

12. Payment from the state to pay for rent whilst unemployed.

13. The Queen's Speech – sets out the governing party's policy at the Opening Session of Parliament, read out by the Queen.

They [foremen] turn away and make it a joke. Sometimes we close our eyes. But sometimes you can't. I think this is the biggest problem on the site – only foreigners do the hard jobs but they are not appreciated. But without us I don't know what they were building. Sometimes I think this amounts to racism. This is not a story. This is a fact.

Pay is another problem. We are doing the same job – at the same speed or faster but an Irish shutterer will get £180 and we'll get £150 just because we are foreigners. Sometimes we spoke with managers. Ask them why we're not paid the same money? They say:

“What do you get in your country? Isn't it enough for you?”

What can you say? Shut up or get sacked. We knew a Romanian carpenter – an older guy - doing stairs. He was getting £180 whereas the English and Irish were getting £220. We asked him why he didn't speak to the manager. He said:

“We are Romanians. We are foreigners.”

Everybody knows this story. I think we're never going to be equal in the EU. Lithuania has been in the EU for years. So it will be the same for us. We're never going to be equal. I finished at university in Romania. I have a degree in Economics and Finance. Alex did a course in Management and Agricultural engineering - and now we have been working in UK construction for five years. The racism: there are too many companies and too many bad people for it to stop. If we can take all the foreigners out on to the street maybe we can stop it. But otherwise no.”

Later I checked the Housing Benefits position with a Romanian community leader. She said workers with the UK Border Agency Yellow 'self-employed' cards could not claim UK benefits. People had become settled with families, some were paying off mortgages on houses, had brought parents over to help with childcare. Now with unemployment many had gone home, but others were in a fix with no work in UK or Romania.

14. Bryant and May match factory site of historic successful strike by women matchmakers in the late 19th century.

At the other end of the Bow flyover.

In the site office at a large flats building project near the old Bryant and May match factory¹⁴ in Bow, East London, the project manager said that, when the big national housebuilders had laid off thousands of staff and workers, they were getting rid of a lot of 'dead wood'¹⁵.

"We're getting job applications from unemployed site agents. But they are not good enough. They're 'house bashers'¹⁶ – not up to civil engineering."

He hadn't had many East European workers coming round for work but mostly Irish. He refused Building Worker permission to speak to the workers at break-time without going through the company press office – from past experience a long-winded and fruitless quest.

In a nearby café, Mark, 45, a steel fixer¹⁸, married, with 2 children, from Bromley, Kent said:

"Over the last 6 months things have deteriorated badly. One guy I worked with – a good steel-fixer – was out of work a couple of months and is now working as a labourer on demolition to pay his bills. You can't blame the East Europeans but a lot of firms are taking full advantage and driving down people's wages. On average, at the top of the boom, steel fixers got £150 a day, chippies £180 - £190. 6 months ago our firm had a 100 steel-fixers, now it's 28. With a recession there's usually a 2-year time lag before it hits civil engineering. We're hoping to get through Christmas into the New Year and then it will pick up. There are a lot of people with debts up to their eyebrows. They buy a nice car and get a mortgage on a house. Now it's all stopped.

Younger workers have never seen a recession. The migrants come over thinking it's a land of milk and honey. We had a young Polish labourer. His father was a mechanical engineer back home but his son could make as much in a week as his father made in a month.

15. 'Non-effective' – 'waste of space' workers.

16. Rapid volume builders of mostly brick houses of simple design.

17. Name of trade union magazine.

18. Fixes steel that reinforces a buildings concrete structure.

They love to come here and go back home with some money. Now they are in for a big shock”.

In Kennington.

Brian O'Donnell, 58, bricklayer since 1968, UCATT member, originally from Glasgow but 36 years in London said:

“There was plenty of work in the boom. The most I got was £150 a day in 2003. But I've been out of work since July 2008. My last bricklaying job was building an office block near Kings Cross. Since then I've done one weekend private job¹⁹ and worked 'on the bins'²⁰ on the minimum wage²¹ £5.73 per hour for 5 weeks. I had to turn up to a Southwark council yard and take a shift if one of the council workers called in sick. The first week I got 4 days, the second 3 days, the third 2 days. On the fifth week I got sent home. Then I got a phone call to go clearing leaves. For 6 days 7am to 2pm I was paid £177. Now I'm receiving Job Seekers Allowance²² of £60.50 a week. My Council Tax Support²³ has been suspended and I'll get no help with my mortgage²⁴ until January 22nd 2009. Even then I'll still have to find £500 a month out of savings.

A bricklayer friend has a job at £80 a shift, 7.30am to 4.30pm, then working overtime until 11pm they make their pay up to £140 a shift. I find it depressing. I've been a member of UCATT since 2002. In 2005 I wrote to the Home Office²⁵ about migrant labour undercutting our wages. I got a letter back saying that migrants do not compete for British workers' jobs. But everywhere I go I hear foreign workers' voices and quite a few are bricklayers. When you phone some brickwork subcontractors – x Brickwork is one - if you speak in broken English you'll get a start - if you speak your own English you've no chance. I wrote a letter to UCATT about the need for a level playing field. The big brickwork subbies – most of their workers are migrants. The subbies are loving it. They're gang masters²⁶. But there is nothing

19. A small job, that is building neighbours' garden wall for a few pounds 'in the hand'.

20. Emptying household and commercial rubbish bins for the local council or municipality.

21. Minimum wage rate payable as laid down by government.

22. State payment whilst unemployed.

23. Local state payment to unemployed person to pay local tax.

24. Debt on house purchase.

25. Ministry of the Interior.

26. Notorious exploiters of labour, especially migrants – usually associated with agricultural work.

you can do about it because the EU says they can come here.

I know loads of bricklayers. I've got 37 bricklayers numbers in my diary and only about 3 of them are working. I called on a job in Bermondsey²⁷. They said that if I was after more than £100 a week I was wasting my time. But I don't blame the migrants. I've got migrant workers' phone numbers. My grandfather was a migrant from Ireland. My girlfriend lives opposite a house where migrants stay. They've got bunk beds in the living room. In the morning they come out wearing high-viz vests. I know that abuse of migrant building workers goes on. Brickwork, their top foreman brags about it. He thinks it's funny. I don't like it. I think everybody should be equal. But it works both ways. I had to leave one site. I couldn't lay bricks because the migrant labourers wouldn't put muck on my spot-boards²⁸.

The working class is in a bad position. It hasn't got a voice at all. It's an absolutely ridiculous position. I could be facing repossession of my house²⁹. I go round construction sites all the time and just as many are closed as are open."

In Islington.

Armir Ademi, 39, a pavior, UCATT member and union steward on his last job on £350 a week take-home, married with 2 children. A shoemaker and footballer in Kosovo. He came to the UK in 1998, now a British citizen. Armir Ademi said:

"It's been very difficult. I talk to many companies. The managers say that they are laying-off more workers and could soon be laid off themselves. Everywhere I go and look for jobs – paving, groundwork, building site - is the same answer. I went to the Job Centre³⁰ but it was full of people. I've never seen so many people since I arrived in '98. I've been buying papers – Evening Standard, Loot to try to find a job. But the jobs are only for one week or two on the minimum wage. My friends are still unemployed. So many companies have lost contracts or gone bankrupt. God knows

27. Inner London district on the South Bank of the Thames.

28. Muck – heaped on spot boards – is the stuff brick are laid in.

29. Bank seizes the house back because of non-payment of mortgage.

30. Government office to register as unemployed to receive unemployment pay and to get assistance in seeking work.

what's going to happen.

The government says there will soon be 2 million unemployed. I read the papers – the Standard and Guardian – I have time. But I cannot see any great light to be optimistic. But I'm an optimist and I'm doing my best always to look for jobs and I'll never stop looking. I took out a loan for £7500 to redecorate and buy new furniture for my council flat. Now it is very difficult. How can I pay? I hope the recession will be dealt with and not take too long. Money is not so important but my wife and two kids are everything."

Interviews.

None of these interviews took place in a site mess room or canteen whereas a few years ago a site agent (31) or subcontractor's foreman would readily agree to this. Now you're always referred to the company press officer – with negative results. As one project manager for a giant firm said:

"Sorry mate they're pretty tight on that. You'll have to go through the monster."

Another gave the spiel about going through the press office adding:

"Anyway, unless you can speak Polish you're gonna struggle."

Conclusion.

Solutions will not be achieved purely at a national UK level. The UK is just one part of the EU economic and political space that capital, migrant labour, and political power operates in. An EU-wide strategy is required. Arguments need to be developed. For example widely accepted arguments based on principles of sustainability and equality – cutting carbon emissions and achieving a sustainable natural environment across the EU - could be applied to questions of construction labour. 'No working poor in the EU' is a slogan I've heard. Where toxicity is being belched into the construction environment – as, I believe is the case with the UK – there should be an EU wide response reasoning that: 'An injury to one is an injury to all.' Wherever the issues arise, trade unionists and employers – the social partners - of all EU nationalities should be publicly present - be it

London, Vienna, Bucharest etc to symbolise the EU wide dimension not only to construction workers but also the wider EU public. The traction of this approach would be enhanced if it were concurrent with an EU wide Green New Deal.

Corruption (www.transparencyinternational)

This is part of the general context according to research by the Chartered Institute of Housing in 'Corruption in the UK Construction Industry. Survey 2006.'

The survey's 1,404 respondents who mainly worked for large companies at middle and senior management levels responded to various questions as follows:

'How common do you think corruption is?

Extremely common 8%

Fairly common 43%

Not very 41%

Not at all 8%.

Employment of illegal workers?

Very corrupt 30%

Moderately corrupt 46%

Not very corrupt 21%

Not at all 3%.

Do you think the government is doing enough to combat corruption in the UK construction industry?

No 75%

Yes 25%.

END.

Reports

Karin van den Brand,
Rijksuniversiteit Groningen
(International relations and international organisations, international and European Law)

Liability in the chain, results of recent research

Over the last 25 years, the European construction sector has seen a rapid spread of subcontracting. The introduction of the free market principle has changed the traditional subcontracting, through a stable and cooperative division of labour, to a type of outsourcing that was much more cost driven. Contractors started to use subcontracting as a mean to avoid liability and to reduce labour costs¹. The growing use of subcontracting does not necessarily lead to deterioration in working conditions, but it has certainly created a decrease in the direct social responsibility of the principal contractor. Due to a lack of transparency, social fraud will increase, especially in cross-border situations and with long and complicated chains. Against the backdrop of the European and national political attention given to this highly sensitive issue, the regulations on liability in subcontracting processes in the construction sector in eight Member States have been explored by Eurofound, the European Foundation for the Improvement of Living and Working Conditions. In this article, the Eurofound research report shall first be summarized and discussed. Secondly, the presentation of the research report in the Employment and Social Affairs Committee of the European Parliament and the reactions of the different stakeholders shall be examined. And finally, the report on his own initiative of the Member of the European Parliament Lasse Lehtinen, on social responsibility of subcontracting undertakings in production chains, shall be discussed.

1. The Eurofound research report²

Over the years, eight countries have introduced legislation on liability in subcontracting processes in the European Union: Austria, Belgium, Finland, France, Germany, Italy, the Netherlands and Spain. In these countries the reason for introducing legislation was employers evading their obligations and employees' rights being abused in subcontracting chains. In three countries, Austria, France and Italy, regulations have been developed, also or mainly, in a cross-border context to prevent social dumping. Because most problems concerning subcontracting are to be found in the construction sector, this sector has been analysed by Eurofound in its report. The research includes nine reports: eight national reports and one European

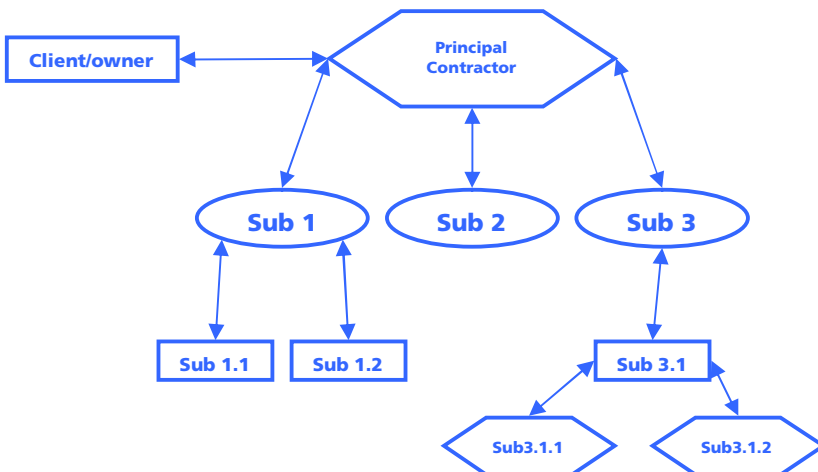
comparison. In this article, only the European comparison shall be discussed. The comparative report is divided into four chapters. Chapter 1 introduces the subject of liability in subcontracting processes, chapter 2 provides a detailed overview of the national laws and actors involved in the eight Member States, chapter 3 examines the practical implementation of the liability arrangements and the effectiveness of the instruments and chapter 4 draws some concluding remarks.

• **The subcontracting chain**

The subcontracting chain starts with the client, which is often also the owner of the place where the work is carried out. The client hires one or more contractors and, if those contractors outsource part of the work to other contractors or engage external labour to perform some of the work, a chain of subcontracting arises. Due to the fact that companies at a lower level in the chain are often not in a position to act on an equal footing with the main contractor, an imbalance of power can arise in the lower parts of the chain that can lead to questionable contracts. The problems at the lower ends of the chain have led to liability legislation in the eight Member States under consideration.³

Figure 1: Example of chains of contractors in subcontracting processes

Source: adapted from figure 1 of report by International Labour Organisation (ILO 2008, p.21)



The liability provisions

The first chapter of the research introduces the liability provisions. The study differentiates between two main types of liability. First, joint and several liability only applies at one level of the employment relationship. When a subcontractor does not fulfil its obligations, the contractor, together with the subcontractor, can be held liable for the entire debt of the subcontractor. This type of liability concentrates on one link in the chain. Secondly, chain liability applies not only in relation to the contracting party, but also to the whole chain; all parties in the chain may be addressed for the entire debt of the subcontractor. Different variations of chain liability arrangements can be found in Finland, Germany, Italy, the Netherlands and Spain. A purely contractual liability can be found in five countries and joint liability in three of them.

This leads to the question of what is covered by these liability provisions. The coverage of the arrangements can be categorized according to: 1) the obligations that fall within the liability, or 'the material scope'; 2) the personal scope; and 3) the territorial scope. In relation to the material scope, three categories of obligation can be distinguished: minimum wages, social security contributions and tax on wages. The research found that the liability schemes of the eight Member States covered at least two of these categories of obligation. The personal scope of the liability regulations differs between countries and also frequently between regulations within each country. The liability provisions may apply to the principal contractor only or to all contractors that subcontract part of the work or services. Furthermore, the liability may also or exclusively apply to the client. With regard to employees, the liability regulations of the eight Member States cover all workers employed by the subcontractor; this includes 'flexible' workers with fixed-term or part-time contracts. Freelance workers and other workers who do not have an employment contract with the subcontractor are not covered. Finally, the territorial scope of the provisions. In all eight countries the regulations apply throughout the country, which in principle covers all parties established in other Member States when providing services in the country concerned.

To make sure that these rules are obeyed, all of the countries, except Belgium, have preventive tools that seek to diminish the possibility of liability for the parties concerned. There are measures seeking to check the general reliability of the subcontracting party and measures aiming to guarantee the payment of wages, social security

contributions and wage taxes. Some countries have no preventive tools, in some countries they are optional and in some obligatory. In some countries, when there exists no general obligation for the client or the principal contractor to check the reliability of the subcontractor, not checking can result in a higher chance of liability and is sometimes sanctioned with a more strict liability regime. Parties that do not abide by the rules regarding the liability arrangement in place may be sanctioned through a number of means: back-payment obligations, fines and/or alternative or additional penalties, such as for example exclusion from public tendering. In all of the Member States, besides Finland, employees can, in case of non-payment of wages, take legal action against their own employer and, depending on the liability regime at stake, jointly against their corresponding contractor.

• **Temporary work agencies**

Apart from outsourcing work to specialised subcontractors, contractors may also engage external labour to perform some of the work to be done under their supervision. In the last decade, the practice of hiring workers from temporary work agencies has only gradually become accepted in the construction industry. The liability arrangements of nearly all eight Member States include separate regulations for subcontracting and temporary employment through temporary work agencies. In some countries⁴ these regulations on subcontracting and temporary employment are laid down in separate legislation. In the other countries these partly separate regulations are laid down in the same legislative act. In some of the countries the reliability of the temporary work agency has to be checked in order to avoid or decrease liability.

• **Practical relevance and effective impact of rules**

Now the general rules on liability in subcontracting processes have been discussed, the impact of these rules shall be examined. Chapter 3 of the report begins with a discussion of the rather effective tools in the Member States and continues with the ineffective or less effective tools. Because this is a summary, not all effective and ineffective provisions can be examined here. Overall, the liability rules were deemed to be effective in achieving the specified objectives. Preventive tools offering incentives to clients or principal contractors through the limitation of or exemption from liability were largely considered a positive element of successful liability regulation.

The problem when examining the views of the actors on the effectiveness of the rules in place was that effective regulations are not necessarily supported by all of the stakeholders. Most employers are in principle not in favour of the chain liability instrument because it burdens them with responsibilities which should be, according to them, left within the domain of public authorities. They believe that the liability of the guarantor should depend on fault and negligence. On the contrary, trade unions highlight the effectiveness and flexibility of the provision because it is not limited to blameworthy clients alone. Nevertheless, both the trade unions and the employers assessed some liability arrangements or elements of them positively. In Italy, all interviewees agreed that it is important that both sides of labour are involved in developing and implementing measures concerning chain liability.

- **Liability in cross-border situations**

One point upon which all stakeholders in the eight Member States agreed was that the liability rules largely fail to have an effective impact on fraudulent situations and abuses of posted workers in cross-border situations of subcontracting. In Austria for example, the theoretical possibility is given that posted workers from outside the EU may have to prove, in the framework of the wage liability in place, that the principal contractor passed on the contract to another party despite the fact that such subcontracting was not allowed. Only if that can be proven, will the wage liability rules have effect for the third country posted worker. Furthermore, practical obstacles to start legal action for illegally posted workers from a country outside the EU are high. In Austria it became evident that employers did not apply the same employment conditions and wages as specified by the law to these employees and that employers aimed to recruit less well-informed employees. And, even if posted workers were to try to pursue their demands and could manage the challenges of language, information about the legal situation and the problem of cross-border judicial proceedings, they would still not be armed against questionable practices of the employer, such as deducting costs for accommodation and food supply from wages.

In general, reasons why posted workers from outside the EU do not often pursue their rights are: fear of not getting future work; risk of deportation; difficulties in producing evidence; not being members of the trade union; too short a period of stay; that illegal work and bogus subcontracting are to a certain extent socially and

economically accepted; and, finally, due to the large wage gap between the home and host country, that the wage is still high for the posted worker.

Another reason why the liability provisions may be much less effective in the context of cross-border subcontracting practices is of a legal nature. In Belgium, for example, the principal contractor does not have to withhold money and the liability cannot be invoked if the foreign subcontractor has no 'social debts' in Belgium and if all of its workers possess a valid transfer certificate (E101 form); these workers do not fall under the scope of the Belgian social security system at all. In all countries, the exception for posted workers in Regulation 1408/71, allowing them to stay under the scope of the social security system of the home country, leads to problems.

- **Conclusions Eurofound research report**

The conclusion starts with underlining the significant differences that exist between the various liability regulations in the eight Member States under consideration due to different traditions of legislation and industrial relations systems. Nonetheless, findings across the eight countries were similar in relation to the objectives of the regulations, the substantive and territorial scope, the mainly legislative form of the instruments, and the involvement of the social partners in one way or another. The study may serve to facilitate the exchange of experiences and good practice among Member States on the subject of liability in subcontracting processes. At the same time, it may enable the social partners and legislators to become better informed in relation to an increasingly important debate.

2. The presentation of the report in the European Parliament

The last sentence of the report emphasises one of its aims as being to inform the legislator on this important subject and this was probably the reason why it was presented in the European Parliament. The most important stakeholders were invited for this presentation and were given the opportunity to present their opinions on the research and on the continuation of the process.

The rapporteur on this subject, the Finnish social democrat Mr.

Lehtinen opened the discussion by announcing that he had almost finished his draft report on the subject. He underlined that it will be difficult to come up with proposals with regard to liability in subcontracting processes because a legal basis for this does not exist in the Treaty. Furthermore, because of the different traditions in the Member States and the interests of companies and enterprises, the process will not be easy. Lehtinen continued by throwing in the question of what would be the best proposal, if any - only a code of conduct or more, as for example the harmonization of rules? He followed this by questioning whether these rules should apply only to the construction sector or to all sectors.

Mr. Karppinen, director of Eurofound, who presented the study, continued the debate. He gave a summary of the report and stressed the aim of the study: giving the social partners and the legislator more information. He said that the focus of the report is on assessing the effectiveness of the rules in the eight Member States that have specific legislation in this area. The study aims, according to Karppinen, at identifying best practices, shortcomings and common denominators. He underlined that the findings are still provisional and that more research is needed on this subject. The discussion about the liability of subcontractors can and should be connected to the discussion concerning the Andersson report on Collective Agreements and industrial relations systems.

After this presentation, the most important stakeholders were asked to express their opinions on the subject. Mr. Campogrande from the European Construction Industry Federation (FIEC) represented construction enterprises. According to him, the study is an interesting instrument to compare and evaluate the existing regulations. However, because there are only eight countries that have provisions, which are also once more very different, the study has its limitations. Because of these, he found it difficult to extrapolate the results to the Community level. He stressed that alternative solutions should be found and considered that there are other instruments preventing fraud, including the Posting of Workers Directive, if adequately implemented, which can be more effective than the application of joint and several liability. Subcontracting has arisen for technical and economic reasons; it was necessary. The existing regulations sometimes do not differentiate between subcontractors that deliberately try to avoid regulations and subcontractors that have good intentions. He concluded his speech by saying that there does not exist a solution that fits all parties and that, for this reason,

maybe the European level is not the best level to search for solutions. The emphasis should be placed on good practices and the promotion of cooperation across borders. The Posting of Workers Directive and the European social security regulations can offer a solution. Also Jørgen Rønne from Business Europe underlined the limits of the study. He said that generalizing the results from only one sector in eight countries should not be done. There are nineteen other countries that also need to be looked at. Business Europe does not want subsidiary liability to apply in the European Union.

After the employers, the floor was given to the employees, to Mr. Kerstens from the European Federation of Building and Woodworkers (EFBWW). He confirmed that the construction industry is sensitive to fraud especially because cost savings can produce quick profits. He took the view that the growing complexity and opacity of subcontracting chains call for a clear identification of the main contractor in order to determine responsibility in case of fraud. For this reason regulation is necessary and the research provides a starting point for legislation at European level. Every main contractor should take responsibility and therefore be held completely liable for its subcontractors. Especially in cross-border situations, with temporary work agencies and post-box firms, it is often difficult to determine who is responsible which makes social fraud more likely to happen. European legislation to prevent social fraud and efficient liability regulations should be demanded for this reason. After Mr. Kerstens, Catelene Passchier from the ETUC took the floor. She recognized the importance of economic freedom but underlined that the right circumstances should be offered. For her there are, among others, two phenomena that create problems in Europe and need to be solved. First, temporary agency work is on the increase and is used more and more to avoid regulation. The directive concerning temporary agency work does not have a compliance mechanism. Secondly, a revision of the Posting of Workers Directive is needed; this directive does not have a compliance mechanism either. She considered that the Eurofound study came at the right time. The Posting of Workers Directive has a judicial basis in the Treaty; so, it must be possible to find a judicial basis for regulation with regard to chain liability as well.

To end the debate, some Members of European Parliament gave

their comments on the report. They all welcomed the research and agreed upon the point that cross-border problems need cross-border solutions.

3. Draft report on the social responsibility of subcontracting undertakings in production chains⁵

The rapporteur, Mr. Lehtinen is also convinced that European problems need European solutions. Mr. Lehtinen is tasked with finding a European solution to subcontracting problems. He has drafted the *report on social responsibility of subcontracting undertakings in production chains*. The report has not yet to be amended or adopted in the European Parliament. The explanatory statement of this draft report begins by stating that subcontracting in all sectors is a possibility for a company to use a specialised workforce in a flexible way and has been a factor behind increasing economic activity, thus creating more jobs. So far so good. However, while subcontracting has been on the increase, the potential for misusing it and avoiding legislation has been on the increase as well. He welcomes the recent study of Eurofound and is convinced that a European 'joint liability' or 'client liability' system would ensure that the main contractor gives greater consideration to whether the contracting party is reliable and whether it intends to act in compliance with the requirements of the legislation in place, notably the Posting of Workers Directive.

The European Commission has on several occasions taken up the liability issue. In its Communication concerning the Directive of Posting of workers⁶, it foresaw further action in the field by stating that: "*whether subsidiary liability could constitute an effective and proportionate way to increase the monitoring and enforcement of compliance with Community law merits further examination and reflection.*" A similar question was included in the Commission's Green Paper on Labour law⁷.

In the case *Wolff and Müller*⁸, the European Court of Justice (ECJ) has judged on the subject. The case concerned a Portuguese construction worker employed in Berlin by a construction undertaking established in Portugal that carried out work for the German company *Wolff & Müller*. The Portuguese worker sought payment jointly and severally from his employer and from *Wolff and Müller* by an application lodged with the *Arbeitsgericht Berlin*. The case was finally referred to the ECJ which had to formulate an answer to the preliminary

question of whether Article 49 EC, concerning the free provision of services, precludes a national system setting joint liability. The ECJ ruled that freedom to provide services does not preclude a national system setting joint liability.

Taking this into account, the rapporteur calls on the Commission to raise awareness of good practice, existing guidelines and standards and social responsibility practices among companies. He has reiterated the invitation to the Commission to put forward a proposal on social labelling, based on criteria such as compliance with core labour standards, social rights, employee training and equal treatment. The European Parliament resolution on corporate social responsibility⁹ should also be taken into account. The rapporteur calls on the Commission to establish a clear-cut Community legal instrument introducing joint and several liability at European level, while respecting the different legal systems in place in the Member States and the principles of subsidiarity and proportionality. He is convinced that such an instrument would benefit not only employees, but also Member State authorities, employers and especially SMEs (small and medium sized enterprises) in their fight against the grey economy. Clear, transparent Community rules would drive dubious operators out of the market, thus improving the functioning of the single market. The scope of the liability prescribed in such an instrument should include at least wages, social security contributions and taxes.

4. Conclusion

In this article the most important problems concerning subcontracting have been discussed. The regulations that exist in eight European Member States and their shortcomings have been summarized. The opinions of the most important stakeholders with regard to the Eurofound research and the introduction of legislation at European level have been examined. Now, it is up to the European Parliament to convince the European Commission with its draft report to propose legislation. The timetable in the European Parliament will be as follows: 12 December is the deadline for amendments, 20-21 January the amendments will be discussed in the Employment and Social Affairs Committee (EMPL), 11 February the report shall be voted in EMPL and in March it is expected to be voted in plenary. After that, hopefully, the European Commission will be convinced that cross-border problems concerning subcontracting need cross-border solutions

Sources

- Cremers, Jan, *Downsizing and collective bargaining in construction*, European Institute for Construction Labour Research (CLR), Report for the GURN workshop, 24, 25 January 2008, Brussels, 1-11.
 - Houwerzijl, Mijke and Saskia Peters, *Liability in subcontracting processes in the European construction sector*, Eurofound 2008.
 - Lehtinen, Lasse, 'Draft Report on the social responsibility of subcontracting undertakings in production chains', 2008/2249(INI), Committee on Employment and Social Affairs.
 - European Commission, COM(2007)0304.
 - European Commission, COM(2006)0708.
 - European Court of Justice, Case C-60/03 Wolf & Müller.
 - European Parliament, OJ C 301E, 13.12.2007, p. 45.
 - International Labour Organization (ILO), *Labour clauses in public contracts. Integrating the social dimension into procurement policies and practices*, Report 97 III (Part 1B), General Survey concerning the Labour Clauses (Public Contracts) Convention, 1949 (No. 94) and Recommendation (No. 84), Geneva, ILO, 2008.
1. Jan Cremers, *Downsizing and collective bargaining in construction*, European Institute for Construction Labour Research (CLR), Report for the GURN workshop, 24, 25 January 2008, Brussels, 1-11.
 2. Summary extracted from: M. Houwerzeel and S. Peters, *Liability in subcontracting processes in the European construction sector*, Dublin, Eurofound 2008.
 3. International Labour Organization (ILO), *Labour clauses in public contracts. Integrating the social dimension into procurement policies and practices*, Report 97 III (Part 1B), General Survey concerning the Labour Clauses (Public Contracts) Convention, 1949 (No. 94) and Recommendation (No. 84), Geneva, ILO, 2008.
 4. Austria, Belgium, France and Germany.
 5. Lasse Lehtinen, 'Draft Report on the social responsibility of subcontracting undertakings in production chains', 2008/2249(INI), Committee on Employment and Social Affairs.
 6. COM(2007)0304.
 7. COM(2006)0708.
 8. Case C-60/03 Wolf & Müller.
 9. OJ C 301E, 13.12.2007, p. 45.

EFBWW statement on liability in the chain

THE EUROPEAN FEDERATION OF BUILDING AND WOODWORKERS CALLS FOR A EUROPEAN DIRECTIVE PROVIDING FOR GENERAL CONTRACTOR LIABILITY

Today (5.11.2008) the European Parliament is organising a hearing on the liability of general contractors in subcontracting chains. During this debate John Kerstens (Chairman of the Standing Committee Building of the EFBWW) is calling for a European Directive providing for liability of general contractors.

Increasingly labour inspectorates and trade unions are discovering general contractors using complex forms of subcontracting to commit social fraud on construction sites. Long and complicated subcontracting chains enable fraudulent operators to gain access to the sites. Meanwhile, the general contractor hides behind the smokescreen offered by the self-employed status of the subcontractors, who are free to operate as they wish.

Forms of human trafficking and exploitation are repeatedly being discovered on construction sites. These almost always involve bogus self-employed workers and fraudulent firms acting as subcontractors.

Eight countries currently have laws governing the liability of general contractors: the Netherlands, Belgium, Germany, Austria, Finland, Spain, France and Italy. The constantly growing number of foreign firms becoming involved in subcontracting chains makes it necessary to find a European solution.

The European Federation of Building and Woodworkers wants to see the adoption of European regulations that make general contractors liable for the payment of wages, social security contributions and taxes by subcontractors. General contractors must be responsible for overseeing their sites and subcontractors. It cannot be the case that a general contractor subcontracts work but is not liable for abuses perpetrated on the sites.

The European Parliament will now voice its opinion on the desirability of European legislation. The Finnish MEP [Lasse Lethinen](#) is tasked with finding a European solution. A proposal is expected before the European Parliament elections (June 2009).

For more information:
Werner Buelen
Policy Secretary Building
Tel: +32(0)2 22710 40
GSM: +32(0)475 84 06 48

Ernst-Ludwig
Laux, CLR
Germany

Research on 'Actual' Wages on Sites of the European Construction Industry

I report on an EFWW project running from July 2008 to 2009, which I shall carry out as an 'Expert'. The results will be presented and discussed in a conference on collective agreement policy by an EFBBWW working group in June 2009 in Bonn.

1. Task

The construction industry is a mobile sector in which trans-border activities and the posting of employees into other European states is on the increase. Europe is becoming increasingly integrated and has expanded considerably in the last years. Therefore the freedom of movement of workers, in particular in the construction industry, has become increasingly important.

The Posting Directive of 1996 has set important mandatory stakes for this sector. An evaluation of 2003 concerning this Directive as well as its national legal implementation has, however, pinpointed problems relating to the *wages actually paid on sites or workplaces*. In order to achieve comparable and equal wages at the workplace, the very complex wage conditions in collective agreements, labour law and employment contracts need to be transparent. The project description shows very well the complexity of wages as well as of systems of remuneration in the construction industry. It is now

important to describe the different wage systems in a transparent way and examine the wages actually paid at the workplace for the 9 countries included in the study.

At the same time the research shall look at gross and net wages in order to make construction wages and related purchasing power comparable. This will be a difficult approach, but it is indispensable for benchmarking and for an evaluation of streams of migration. This research can be a first step also for the other EU countries to be examined but not yet included. It will offer help for other sectors seeking to make transnational work and remuneration more transparent.

2. Countries involved and different types of bargaining systems and/or labour legislation

By selecting the nine countries in the project it has been ensured that the main systems of labour legislation and bargaining in Europe are covered. The countries **Denmark** and **Finland** represent what is known as the "Nordic system". Collective agreements and a very high unionisation rate regulate industrial relations. **The UK** represents the "Anglo-Irish system", which has undergone considerable changes in recent years, has been deregulated and relies heavily on case law. The **Netherlands** and **Germany**, also **Spain** in many respects, are influenced by what is termed the "Roman-Germanic system", in which industrial relations are governed by clear legal provisions and bargaining autonomy as well as the relationship between plant and worker, and between trade union and employers' organisation. **Belgium** can be said to have a markedly "tripartite approach" in which the State, trade unions and employers' organisations agree on workplace provisions, based on a very high unionisation rate. As new EU countries, **Poland** and **Hungary** are in the process of choosing one or other of the systems described, but experiencing major teething problems after the very lengthy period under the socialist economic system.

It will remain to be seen what consequences all these systems have on wages paid directly at the workplace and whether, where appropriate, benchmarks can be developed.

3. The final report and aspects to be researched

- *Labour legislation and structure of collective agreements/ bargaining policy at national/regional and/or plant level*

In order to achieve the project aims, the basic conditions for industrial relations, wage settlement and legal security for income need first of all to be described briefly and succinctly for each country. The keywords here are: legal bases, definition of the bargaining parties, structure of collective agreements, wage structure and occupational groups, implementation at plant level, where applicable collective agreements declared to be generally applicable, as well as minimum wages and the prevailing national and European legislation on these matters.

Recording this information in tabular form could considerably facilitate making European comparisons and incorporating future changes.

- *Actual wages at the workplace*

This point describes the main task of the project, as is also defined in the contractual conditions. The basic assumption is that provisions laid down by law and in collective agreements must be implemented and complied with at the place of employment.

Under this project, the negotiated wages and fringe benefits need first to be defined and described for each country. They essentially include the following:

- ✓ hourly, weekly and monthly wages,
- ✓ where appropriate, differentiated by region and plant,
- ✓ with overtime, night-time, Sunday, public holiday and other premiums,
- ✓ bonuses for productivity and difficult work,
- ✓ allowances for travel, meals and overnight stays,
- ✓ daily allowance, etc. depending on individual contractual provisions in the countries.

On examining these statistics, individual country descriptions and in particular the expert interviews, the actual conditions of pay at construction sites and workplaces can then be incorporated. For this purpose, questionnaires need to be devised and sent out in advance or filled in directly during the interview. This will be a very difficult part of the exercise as there are many different kinds of employment relationship and industrial relations to be found on European construction sites. Furthermore, illegal employment and undeclared

work are widespread and in many cases wages are paid without deduction of taxes.

In some of the countries studied, the phenomenon of so-called "bogus self-employment" is also widespread on construction sites. In such cases there is no employer-employee status, but a "work contract" is concluded that often does not stand up in law but is exposed to wage dumping.

It is necessary to wait and see how well founded the findings are in the light of the expert interviews.

- *Comparison of gross/net wages, first attempt*

In order for the wages paid directly at the workplace to be comparable at European level it is necessary to convert gross into net income. For this purpose, an attempt should be made to work out the amount of taxes and social security charges and, from this, to calculate the net wages. The figures for the purchasing power index also need to be included so as to ensure the greatest possible measure of comparability. This should be regarded as a first attempt to create the most comprehensive transnational benchmarks possible.

4. Network for bargaining policy-makers and wage experts

The project also includes the goal of setting up a network for wage experts and bargaining policy-makers so as to achieve the transnational exchange of information directly and promptly. To this end, an e-mail- and fax-based information system needs to be developed which is user-friendly and does not cause any confusion with regard to definitions and language. This system needs to be devised in consultation with the relevant experts, and proposals on this matter developed in the course of the project.

5. Wage benchmarking

The research carried out in this project will determine the wages actually paid at the workplace. As required in the project conditions, the information, data and background particulars will be exchanged promptly via the network so that bargaining policy-makers in the countries concerned can use this to devise benchmarks for national collective bargaining. For this purpose, tables, overviews and explanatory operating instructions need to be formulated.

Romuald Jagodzinski,
Norbert Kluge
and Jeremy Waddington

Memorandum European Works Councils ETUI-REHS

Summary / Brussels 2008

The EWC directive set in place a new approach to information and consultation within transnational companies. Fourteen years after the adoption of the directive it is now clear that several aspects of the directive are in acute need of revision if the purposes intended of the directive by the European Commission are to be met. This view is also confirmed by the experiences of EWC members who identify marked inadequacies in the quality of information and consultation available within EWCs. This memorandum reviews the inadequacies of the current directive and isolates those areas in which need to be revised if the directive is to work as intended by the Commission. The key research findings identified by the memorandum include:

- European directives must reflect that information and consultation is a fundamental right in the European Union. Thus, a revised EWC directive has to ensure that this right is applicable, at the appropriate level, in the everyday working lives of persons employed in multi-national companies operating in Europe;
- In more than 60 per cent of eligible companies **no** EWC has yet been set up. Court judgements at European and national level have revealed and drawn attention to numerous shortcomings in the current directive. Many of these shortcomings are linked to the inadequate definitions and the absence of appropriate sanctions in the directive. A revised directive should contain measures clearly designed to remedy the non-implementation of the directive. Among these measures should be provision for a EU company register that guarantees transparency on employee figures and for a shortening of the negotiation period prior to the establishment of an EWC;
- The shortcomings of the current EWC legislation are attributable mainly to the insufficient and inappropriate nature of the information provided to *Recommendations for policy-making based on current experiences* 5 EWCs, which prevents proper consultation. Definitions of information and consultation must be upgraded, at least to already existing standards (for example requirements of the SE directive 2001/86/EC) and geared towards negotiation designed to lead to transnational agreements. Similarly, a definition of the term "transnational" must be

included in a revised directive to ensure that EWC representatives can adequately represent their constituents;

- Access to legal remedies for any deficiencies in the directive should be available to all parties irrespective of their financial circumstances. A revised directive should guarantee such access.
- The position of European trade unions vis-à-vis EWCs has been shown to be constructive and essential to the operation of EWCs. Linkages between European trade unions and EWCs should be strengthened in the revised directive to ensure the creation of an adequate building block for an effective future system of EU labour relations and to reinforce social inclusion in Europe;
- EWCs are an appropriate platform for the conduct of social dialogue at global level. Thus, a revised directive must strengthen EWCs' competence to engage in transnational collective negotiations where representatives consider such negotiations to be appropriate;
- EWCs make a major positive contribution to the economic situation of companies insofar as they help to create common corporate identity and to seek ways of dealing creatively with cultural diversity amongst employees. Thus, EWCs have to be regarded as a key element of employee participation and corporate governance;
- The absence of a clause in the directive that specifies an allowance for training for EWC representatives with no loss of pay has resulted in many representatives being inadequately prepared to perform their duties. A revised directive needs to remedy this shortcoming.

Reviews

John Foster,
University of
Glasgow

Dan Plesch and Stephanie Blankenburg:
How to make corporations accountable
*Published by the Institute of Employment
Rights, Price £6.50*

Seldom could so small a book be so important or so timely. The authors focus on the unique legal freedoms enjoyed by corporations under limited liability and their disastrous social and economic consequences.

Under English and American law the owners of limited liability companies bear no individual responsibility for wrong doing by corporations from which they financially benefit. Nor do they have any responsibility for its corporate losses.

Speculation may result in losses running into billions but under English and American law shareholders are not liable. Nor, in general, are the executive officers if they are considered to have been acting as agents of the shareholders. They can walk away with all the past proceeds – even if they lose the nominal value of their shares in the bankrupt company.

At the same time corporations enjoy the legal protections of the individual. The directors of Farepak kept their massive earnings. The directors and shareholders of Union Carbide, or its purchaser Dow Chemicals, were judged to bear no legal responsibility for the deaths at Bhopal incurred by the Indian subsidiary which they owned.

Yet other collectives are not so blessed. Under British law trade unionists and trade unions enjoy no immunity from commercial liability for their actions.

Dan Plesch and Stephanie Blankenburg document the relatively recent legal origins of this strange and anomalous situation and contest claims, most recently made by the *Economist*, that the legal protection afforded by limited liability is somehow responsible for the dynamic growth of capitalist economies. Not so, they argue.

Limited liability has been associated with the dominance of monopoly and finance – and slower growth.

In the United States the legal protections offered by limited liability only go back to 1886 and were not allowed by some states, such as California, until 1931. In Britain their legal status dates from the 1866

Companies Act as determined by a House of Lords judgement in 1897.

Plesch and Blankenburg link the speculative booms and busts of the last twenty years to the unregulated freedoms of Anglo-US limited liability companies and their ability to use their increasing economic power to tilt the political balance still further in their favour.

They argue that it is now urgent that this process is reversed. 'The owners and directors of corporations must be made accountable in law for their actions. Society needs successful business. But today business is taking over society'.

There are, they note, obvious alternatives – such as proportionate liability that protects small shareholders (as operated in California before 1931) or insurance for liability. And, no less important, the legal playing field must also be levelled off – by giving protection to other collectives such as trade unions and consumer groups.

If working people are once more to be mobilised to shift the balance against unaccountable corporate power, the importance of such legal changes cannot be overestimated.

Ulrike Muehlberger

Dependent Self-Employment: Workers on the Border between Employment and Self-Employment

Basingstoke: Palgrave Macmillan, 2007, hardback, £55.00, 217 pp.

Monique Aerts,
University of
Amsterdam

A dependent self-employed worker is legally self-employed, but works under the same conditions as an employee. These self-employed are dependent because they work exclusive or mainly for one firm or because they are subordinated to a principal who dictates the time, place and content of their work. These dependent self-employed find themselves in the grey area between employment and self-employment. They bear the entrepreneurial risks of self-employment (uncertainty about future work, uncertainty about payments, and lack of social security) without gaining the benefits (independence, control over working conditions, profits). Muehlberger aims to develop a systematic understanding of

dependent forms of outsourcing and the creation of dependent self-employment. She claims that dependent forms of self-employment and outsourcing are widely studied and discussed, but that a sociological and economical theory that explains the emergence and consequences of this development is lacking. By questioning the informal and formal mechanisms by which dependency in the insurance, business service and transport industry in Austria, Italy and the UK is created, she tries to explain why firms deploy dependent self-employed workers, and why individuals supply this form of work.

According to Muehlberger, dependent self-employment could emerge because this form of work mitigates the risks of outsourcing, both for the firm as the worker. Firms deploy self-employed workers to gain from the benefits of outsourcing, such as transferring entrepreneurial risks to the worker, circumventing social law and weakening the bargaining power of internal labour, while avoiding the risks of outsourcing by introducing elements of control. Deploying dependent self-employed workers guarantees employers the availability of labour by long-term relational contracts, creates incentives of firm-specific skills acquisition, solves the problem of capital loss by transferring ownership and reduces transactions costs. Also the self-employed workers choose dependent self-employment to mitigate the risks of self-employment. Dependent self-employment reduces some uncertainties of self-employment by establishing long-term relational contracts with firms and hierarchical structures, but it does not reduce all uncertainties. In most European countries, the legal protection of dependent self-employed workers is weak. They lack labour protection and are excluded from social security schemes that protect employees, with whom the self-employed workers have much in common, against the risks of unemployment, sickness and incapacity for work.

The major problems of the dependent self-employed worker are dependency, power asymmetry and the weak legal protection. Muehlberger observes that dependent self-employed workers, like employees, are strongly controlled by their principals, are integrated into the business of their principals, and are obliged to accept any work the principal offer them. Also, principals transfer a large amount of the entrepreneurial risks to the dependent self-employed. However, conflicts with the principals are seldom brought to court. There is evidence that the European Union will try to protect these dependent self-employed workers by granting them basic social rights such as health insurance, family benefits, equal treatment and additional right such as health and safety regulations and anti-discrimination law.

According to Muehlberger, the complexity and ambiguity of dependent self-employment, due to very heterogeneous circumstances of industries and professions, enhances the importance of collective agreements at both the national and the EU level. These collective arrangements are not made yet, because governments purposely choose not to regulate the grey area between independent self-employment and dependent employment in order to foster business start-ups.

Muehlberger describes the emergence and consequences of dependent self-employment very accurately and her conclusion is that both firm and worker gain from this type of employment relationships, because it mitigates the risks of being active on the labour market. Dependent self-employment seems like a win-win situation. The firm has access to a dependable and flexible labour force and the worker has access to stable work. However, the main problem, which Muehlberger recognises but hardly addresses, is that this form of work protects the firm more than the worker. The dependent self-employed workers bear entrepreneurial risks while being controlled by their principal. On top of that, they are not even compensated for that dependency by labour law and social security law like the employees are. Self-employed workers have the worst of both worlds. They bear the risks of self-employment, but lack the benefits of self-employment as well as the benefits of dependent employment. I wonder whether the certainty and stability these workers gain from dependent self-employment weights up to what they lose by not working as an independent self-employed or even as an employee. More important is that this inequality goes against the rules of social law. It is considered a problem that has to be solved. However, a solution is not easy to find. It remains difficult and maybe even impossible to include the dependent self-employed like the employees to the scope of social law while excluding the independent self-employed, without creating a grey area. There will always be a group of workers that work legally like a self-employed, but basically as an employee. Maybe this is a problem that remains unsolvable, but I deplore that Muehlberger did not even try to make an effort to contribute to a solution.

Niclas
Andersen,
Technical
University of
Denmark

Niels Westergaard-Nielsen (ed.)

Low-Wage Work in Denmark

Russell Sage Foundation, New York 2008, ISBN 978-0-87154-896-2

“It is from comparison that knowledge comes” – the quote from Novalis, 1772 – 1801, is valid when reviewing research that examines and compares the incidence of low-wage work in Denmark, Germany, France, UK and the Netherlands. The recent study of low-wage work in Denmark constitutes, together with the other four EU countries, a sequel to the Russell Sage book, *Low-Wage America*, which attracted much attention when it was published in 2003. The common objective of this extensive research programme is to investigate how developed economies accommodate unskilled and poorly educated workers in labour markets where many jobs are highly technologically advanced. The study constitutes a solid foundation for comparison from which the specific characteristics of the labour market of low-wage work in Denmark can be analysed and understood.

Denmark has an established incidence of low-wage work at 8.5 percent of the total number of employees, which makes the country ‘best in the class’ compared to the other countries in the survey. France is closest to Denmark, with a rate about 12 percent of low-wage work, while Germany and the Netherlands are above 20 percent, and are increasing. The UK has a stable rate of around 23 percent which is surpassed only by US, where low-wage workers represent 25 percent of employees. Thus, even in the most developed western economies, as much as one in four jobs constitutes low-wage work, which implies an imminent risk of prevailed segregation and destitution, specifically in the identified risk categories of low skilled workers, part-timers, women, immigrants, young people.

The restricted rate of low-wage work in the Danish case, in comparison to the other countries, is worthy of attention and receives respect as a model state where a flexible labour market is combined with a generous system of unemployment insurance. The Danish government enables fairly free scope for employers and labour unions to regulate wage structures and working conditions, while, at the same, providing compensation for the unemployed. In comparison to the US case, representing the other extreme on the scale of low-wage work, the free labour market prevails but with neither a corresponding level of

unemployment nor health insurance system. Danish low-wage workers are not poor, they enjoy the public medical service and, not least, they are generally not stuck but prove to have the shortest residence time in low-wage work.

The reverse of the Danish incidence of low-wage work is a tax rate which is one of the highest in the world. The tax level generally acts as a deterrent to market investment and to the establishment of foreign companies in the Danish market and has a restraining influence on the number of available jobs on the market. Besides, Danish 'welfarism' does not allow for an unbalanced ratio of unemployment, which contributes to the restrictive immigration policies in Denmark compared to the US and other countries. The incidence of low-wage work among (non-Western) immigrants in Denmark is almost twice as high as it is among Danes.

The report on low-wage work in Denmark includes an editorial overview on the subject followed by a comprehensive quantitative analysis and background description of the development of low-wage work in Denmark. The general opening sections are supplemented by profound Danish case studies covering the food-processing industry, retailing, housekeeping work in hotels, nursing assistants and cleaning staff in public hospitals and call centres.

The book constitutes an eminent contribution to the description and understanding of the Danish labour market, and its characteristics, both in general and for the five selected industries in particular. The significance of the work is as an empirically well-founded study, which connects comprehensive macro-economic data with detailed case studies that include interviews with employers, managers, workers and union representatives. The wide approach to the subject is objectively reported and depicts both the pros and cons of the Danish system.

Essentially, however, the report constitutes a celebration of the Danish system of social welfare, providing respectable living conditions for low-wage workers. In that respect, Denmark serves as a model compared to its European neighbours and, above all, the US. Market conditions are, however, continuously changing. The welfare system of Denmark, as well as for other countries, will be challenged by increased international competition and industrial mobility which will call for cost reductions, higher productivity, technology change, and not least, the risk of work being outsourced to Asia, Eastern Europe or other places in the world. Market competition and the case of

outsourcing will principally hit low-wage work in Denmark, leaving the unskilled and poorly educated workers with an increased risk of unemployment, in a labour market where principally technologically advanced work remains. The issue of unemployment is relevant to point out in this context as unemployment actually is not a factor of analysis in the definition of low-wage work. According to the definition, a low-wage worker is anyone who earns less than two-thirds of the national median wage, which makes the rate of low-wage work an index of wage distribution that says nothing about the absolute wage level.

The study analyses low-wage work in terms of, for instance, work quality, job security, supplementary training and the chance of getting promoted and leave low-wage work for a higher wage level. Thus, low-wage work is reviewed in the context of the Danish labour market, where it is compared to better paid work. If however, the alternative to low-wage work is unemployment, then a comparison between those two options becomes relevant. Thus, if Novalis is right, the knowledge and the answers you receive are dependent on the comparisons you choose to make.

Ernst-Ludwig
Laux, CLR
Germany

Paul Krugman

The Conscience of a Liberal.

*W.W. Norton & Company, New York, 2007,
Hardcover 352 pp., \$25.95, ISBN 978-0-393-06069-0*

Paul Krugman, one of the world's most important and best known economists, having been an advisor in 1984 of the Reagan administration for a year and from 1992 of Bill Clinton during his presidency, is one of the sharpest critics of George W. Bush's policies. After having taught at the MIT and Stanford University, he is now professor at Princeton University. In his weekly column in the New York Times he criticised the Bush administration and showed perspectives for a post-Bush era. This is also the contents of his book published in New York 2007 and in Frankfurt/M in German 2008.

Based on very many examples he describes American history as well as the economical and political situation after World War II skilfully and with great knowledge and constantly relates these insights to recent

developments since the beginning of the Bush presidency. Under the Democratic and Republican presidents from 1945 until the 1970s a broad middle layer of society developed in the US. The principles and decisions stemming from the 'New Deal' were carried forward by the legislators and the social partners. The gap between rich and poor declined significantly through purposeful taxation of earnings and profits. This can be demonstrated by two examples: the average federal tax on enterprise profits rose from 14% in 1929 to more than 45% in 1955 and the highest inheritance tax rose gradually from 20% to 77%. As a consequence the concentration of capital ownership declined significantly.

In the 1960s a conservative group of politicians gained influence in the Republican Party and, with the exception of the 8 years of the Clinton administration, became determinant from the 1970s. These neo-conservatives have opened up the path of a systematic redistribution of wealth in favour of the rich through the so-called neo-liberal economic policy.

Based on numerous facts, Krugman describes how at present in the US social inequality has reached a level not seen for 100 years. Social division is rising whilst, without political support, the trade unions are too weak to bring about a turnaround.

Under the influence of cleverly staged electoral campaigns, support by the media and opinion leaders, people in the US came to vote Republican (ultra conservative) without being aware that, through this neo-liberal economic policy, social inequality almost exploded. Headline issues, such as the increasing violence in towns, as always racism, 11. September, the war in Iraq, and other foreign policy dramas have hardly left any space in recent years for decisions on social policy in favour of the working people and the poor in the US.

On the contrary, many acts and political regulations have been passed typically against trade unions, collective agreement rights and strikes. At the same time acts were passed on taxation which clearly served high income earners and the wealthy and increased social imbalance. Only two examples may highlight the situation: For decades the earning of a top manager was 40 times that of a skilled worker, nowadays it has risen to 370 times and there is no end of the tunnel; what is more, the top rate of taxation of 70% in the 1970s has been lowered to only 35% at present.

As a result of tax relief for companies and even hedge funds, the public budgets receive less money, consequently public services are being cut

down and privatised and, hence, have to be paid for by the individual citizens unable to afford them out of their small earnings. Thus a downward spiral increases poverty and social inequality.

The US is still a leading power in the western world. This is why - as clearly apparent - these developments have been copied more or less in European states. With the unprecedented globalisation in the last 20 years this style and neo-liberal thinking has spread into the remotest corners of the world and has become cultural heritage like Hollywood, television, fast food and modern life. Krugman summarises his assessment: it was above all through the systematic union busting, internal disputes among the trade unions, and the slow pace of developing new strategies that a determining voice and organisation of employees was missing.

It is only slowly that awareness of all this increases among people in the US. That is why 'change' is a catchword and has been skilfully staged by the democratic candidate.

In his book Krugman suggests linking up with the time after the New Deal because without a broad middle layer and functioning trade unions democracy is in danger. Unfortunately he does not put forward many proposals for how this could be brought about. But he deals in detail with the project of health reform aiming at providing health insurance for all people in the US. Further he suggests to learn from mistakes of recent years, to put the Democrats into power, to strengthen trade unions as essential guarantors of democracy, and thus to reverse social inequality.

I would like to summarise. Based on evidence and examples, Krugman has written a very readable book about the onslaught of neo-liberalism, how democracy is in danger because of union busting, and how despite 'democratic elections' the rich become richer and the poor poorer. Therefore it is a reckoning with the politics of George W. Bush and an expression of hope of the end of Republicans and neo-liberals.

Woodrow Wilson, acting president of the US in 1913, said: "If there are men in this country rich enough to own the US Government they will own it'." Krugman's comment: "Well, now they exist and they do it." And I add, I would never have thought that an American president would formulate such an unmistakable sentence. However ... this was almost 100 years ago.

ARCOM/CLR Workshop on Employment practices in new organisational forms for the well- being of the European Construction Industry

Hosted by: Northumbria University in conjunction with University of Westminster (Westminster Business School and School of the Built Environment)

Date/Time: Wednesday 10 December 2008

Location: HRM Suite, Room M215, University of Westminster, 35 Marylebone Road, London NW1 5LS

We are pleased to announce a joint Association of Researchers in Construction Management (ARCOM) and European Institute of Construction Labour Research (CLR) Research Workshop on Employment Practices. Supported by ARCOM, as well as CLR, the British Council and Platform Beta Techniek, this workshop seeks to bring together researchers from both the UK and the Netherlands to debate and discuss on employment practices in new organisational forms in labour-intensive industries for the benefit of European Construction Industry. Limited funding is available to fund travel, especially for Dutch researchers working (or are simply interested) in this area.

Europe is currently at the forefront of dynamic change. For example, EU expansion brings about immense opportunities deriving from a growing and vibrant economic market. However, this is also matched with the challenges of dealing with the influences of *inter alia* global competition (esp. from the BRIC nations¹) and the need for sustainable working practices in view of climate change and effects of global warming. At the same time, political and corporate supporters of the free movement of workers (Cremers and Donders, 2004) consider the flexible labour market to be extremely beneficial for the economy, whilst there is the danger that this is at the expense of the worker (Ruhs, 2006). Concomitantly, corporate organisations all across the globe are also going through changing forms. The increasing trend of contracting-out and practices of outsourcing have resulted in many firms becoming what is known as “hollowed-out”

organisations (Castells, 2002). This means that many firms no longer undertake the task of production, but merely manage the process of production. These developments inevitably transform employment practices across Europe, especially in labour-intensive industries. Take the European construction sector, for example, which contributed 10% of Europe's GDP with a turnover of 1 trillion euros in 2006 (FIEC 2007). Increasing mobility of workers across national and regional boundaries has given rise to the 'Polish' builder phenomenon in the UK (Mandelson, 2006). The employment of Polish workers has temporarily plugged the skills shortage problem faced in UK construction. However, this in turn presents challenges of managing worker health and safety and poses possible problems with finding substitution if they leave. Furthermore, it does little to resolve the construction sector's endemic vocational training problem. More generally, perpetuation of subcontracting and the phenomenon of having extended supply chains in construction have resulted in short-term economic benefits for firms on the one hand, but a lack of clarity in terms of employer liability for the welfare of workers on the other. Similar observations have recently been made on the equally mobile seasonal workers in across the European agricultural sector (Siecker, 2007).

Therefore, the objectives of the workshop are as follows:

- There is an urgent need to critically examine employment practices given changing organisational forms and the contemporary issue of free movement of workers across the EU;
- More specifically, the workshop will highlight research that investigates the economic and social benefits and challenges of managing people across organisational and geographical boundaries;
- Workshop participants will be able to discuss the impacts of such practices on employment relations, worker welfare and skills training and development;
- Additionally, the workshop will provide a useful opportunity for participants to discuss methodological challenges in the field when collecting and making sense of the data on how people are managed in new organisational forms in labour intensive industries in Europe, and;
- Finally, there will also be a strong connection of this workshop to the policy arena, whether this relates to governmental or corporate policy.

1. BRIC nations include Brazil, Russia, India and China.

Calendar of events

Programme on Wednesday 10 December 2008

Time	Description	Speaker
1000 – 1015	Welcome and setting the scene.	Professor Linda Clarke University of Westminster
1015 – 1115	Theme 1: Government issues <ul style="list-style-type: none"> • Government policy affecting skills and vocational training in construction • Challenges in researching labour practices and relations from a historical perspective 	Kate Ness University of Reading tbc
1115 – 1145	Coffee/tea on the run	
1145 – 1245	Theme 2: Firm-level issues <ul style="list-style-type: none"> • Issues and challenges with strategic human resourcing in construction • Inter-organisational communication dynamics: implications for the control and organisation of work • SME strategies in employee development 	Ani Raiden Nottingham Trent University Chris Gorse Leeds Metropolitan University Robert C Moshier Northumbria University
1245 – 1345	Lunch	
1345 – 1445	Theme 3: Worker issues <ul style="list-style-type: none"> • Careers management in the boundary-less organisation • Research Programme on Low-wage Work 	Joseph Gaiva Kappia Loughborough University Marc van der Meer University of Amsterdam
1445 – 1500	Coffee/tea on the run	
1500 – 1630	Future scenarios of employment practices in European Construction, with special attention paid to how we examine a range of employment practices that take place across organisational boundaries	All

References:

- Castells, M. (2002) Internet and the network enterprise. Plenary address given to the 18th EGOS (European Group for Organizational Studies) Colloquium, Barcelona, July 4.
- Cremers, J. and Donders, P. (Eds.) (2004) *The free movement of workers in the European Union*. Brussels: Reed Business Information.
- FIEC (European Construction Industry Federation (2007) *Construction Activity in Europe*, Brussels
- Mandelson, P. (2006) The Polish plumber and the Chinese textile worker: Europe's response to economic change. Speech presented to the Polish Enterprise Council. 2 June, Warsaw, Poland.
- Ruhs, M (2006) *Greasing the wheels of the flexible labour market: East European labour immigration in the UK*. WP 38, Oxford: COMPAS.
- Siecker, M. (2007) Opinion of the Section for Agriculture, Rural Development and the Environment. Brussels: European Economic and Social Committee.

Informal Post-Workshop Event on Thursday 11 December 2008

Participants are also invited to continue the discussions developed on Day 1 to further explore potential collaborations in terms of joint publications and/or research proposals. It is hoped that participants will engage in a discussion of a number of issues, including (although not exhaustively):

- ✓ What are the challenges of employment practices under new organisational forms in Europe's labour-intensive industries that are currently underresearched?
- ✓ What are some of the future issues in relation to employment practices in Europe's labour-intensive industries?
- ✓ How can this group address some of the research gaps identified during the workshop?
- ✓ How can the group bring in relevant expertise from the extended networks of individual participants?
- ✓ What are some of the practical action points for the future that can be taken to sustain the relationships and interactions forged throughout the workshop?

Announcement: CLR Annual General Meeting 2009

Thursday 2nd April, 16 -18h

Brussels, European Parliament (venue will be announced later on).

Participants will have the opportunity to visit the morning session of the EP plenary meeting and the meeting can be combined with a seminar on nanotechnology.

More information soon.

1. Presentation of participants
2. Annual report 2008 on activities and finances
3. Reports and planning:
 - ✓ Activities (migration, vocational training, health and safety, transformation of labour relations, social funds, self-employment)
 - ✓ Regional Offices
 - ✓ CLR research/studies
 - ✓ CLR News and Observatory
4. Current projects and research priorities (please bring abstracts)
5. European cooperation/networking

Editor

Jan Cremers

Phone: +31/30/2712140

Or +31/6/53 43 86 79

clr@mjcpro.nl

Review Editor

Jörn Janssen

Phone: +44/207/7007821

joern.janssen@btinternet.com

Layout and Production

Frank Leus

Phone: +32/2/2271041

fleus@efbh.be

Contact and Orders

CLR-News

c/o Frank Leus

EFBWW

Rue Royale 45

B - 1000 Brussels

Phone: +32/2/2271040

Fax: +32/2/2198228