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CLR News

**Irish construction
industry -
from sending
to receiving
to...**

CLR

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Note

from the editor

Jan Cremers,
AIAS-
Amsterdam,
18-11-2009

It looks like a self-evident and simple statement in the analysis of the General Household Survey (by Berthoud, 2009) that 'People with poor educational qualifications, and members of minority ethnic groups, are both exceptionally sensitive to a recession'. But the consequences in hard times are enormously. Since the start of the credit crunch a lot has been written about the potential threats for the world's financial system. And the EU Member States were first and foremost in developing a policy to restore the system function of our banks. The worries related to the effects that the financial crisis could have on the real economy came next. And the risks of a sharp fall-off in employment were from the start mainly expressed by the trade union side.

Where are we now and who are the real losers? Some EU Member States like Latvia, Lithuania and Ireland have experienced the sharpest economic decline, of more than 10%. And

together with Estonia and Spain these countries have experienced a severe rise in unemployment.

The neo-liberal experiment (or was it just a dream?) in the Baltic States risks to end in great hardship and deprivation. The figures for these countries indicate drops in construction activity of 17% in Lithuania, 22% in Estonia and 26% in Latvia (ERM report 2009).

Some of the old Member States - in particular the UK, Spain and Ireland - that had experienced a construction boom based on property-related investments are also confronted with a sharp decline in the level of construction sector activity. Employment in these countries decreased by an amount never seen before. The Spanish construction sector has collapsed with a decrease of jobs equivalent to 26% of construction sector employment.

Overall, construction production in the EU had declined by more than 7% in the fourth quarter of 2008. All in all the construction of new buildings, and of residential buildings in particular, has

been hit hardest by the downturn, while civil engineering, renovations and repairs have been less severely affected. Additionally, in at least seven countries – Ireland, Cyprus, Finland, Latvia, Malta, Slovakia and the UK – building projects that were already underway have been abandoned (Eurofound 2009). And the data for 2009 show no recovery at all: next to manufacturing, the relative employment change in construction (between the first quarter of 2008 and the third quarter in 2009) was the highest in Europe (-5.2%) and construction became in that period the sector with the highest absolute loss in Europe.

Many of those concerned seem to have been temporary workers or temporary agency workers. Cutbacks in employment seem to have also mostly affected low-skilled workers, as employers have sought to retain their skilled workers. Moreover younger low-skilled workers have been affected, while in several

countries migrant workers were affected too by jobs cuts. In Ireland, it is reported that many migrants who have lost their jobs are returning to their home country. In addition, it is expected that some Irish nationals who have lost their construction jobs will be looking abroad for employment (Eurofound 2009).

A broad spectrum of arrangements has been negotiated to safeguard jobs through temporary layoffs, reduction in working hours or wage cuts, including unpaid leave, to lower the costs of keeping people in employment.

We will have to come back to the rise of unemployment in later issues of CLR-News and will have to report about ongoing debates in our own ranks. This issue is dedicated to the specific situation in one of the countries that is in trouble, the Republic of Ireland.

The Celtic tiger was long time seen as the figurehead and prototype of European neo-liberalism. The country did everything to please business, with low taxation and a

Note from the editor

`capital` friendly climate. Combined with steady EU subsidies and low cost economic indicators at the start, prosperity was reached and the outlook became gloomy. But the overheated boom proved to be unsustainable. Failing property-related investments lead to a collapse and the heavy correction in property prices caused a serious decline in construction activity.

In this issue we come up with a short country report that I wrote based on basic studies and recent visits to Ireland. Input came from Mairead Lynch, Michelle O'Sullivan and Colm McLaughlin and from our old friend Eric Fleming, longstanding national coordinator for construction in EFBWW's affiliate SIPTU. The second subject article is written by Torben Krings. He and his colleagues from the Migrant Careers and Aspirations project run by the University of Dublin have been very active with research in the field of labour migration, an Irish characteristic that has served

as the title of this special item of CLR-News.

We include a report of a recent seminar in Dublin with CLR-involvement dedicated to 'The Economic Recession and Migrant Worker Employment'. Our reviews fit in the priorities that we have formulated in recent years: free movement of workers, decent work and the rights of workers with vulnerable labour market perspectives.

As ever, input and feedback is welcome.

Ireland's Construction Industry

Jan Cremers,
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Amsterdam,
18-11-2009

Upbeat

One could say that the year 2008 has been in many aspects a turning point for the Irish construction sector. It certainly has been the most difficult year for the construction industry in decades: property values have been eroded, confidence and spending continued to fall sharply and the number of job losses increased from month to month. The housing market has come to a virtual stop and residential construction is at its lowest level in well over a decade. First in this article we will introduce the Irish partners in collective bargaining. Secondly, we will look at the structure of the industry and end up with the hard battle that took place in negotiations for a new employment agreement against the background of an impressive fall in construction output and rising unemployment.

Labour conditions

The existing regulatory framework for the construction industry goes back to the 1960s and is laid down in several agreements (conditions of employment from 1966, on pension insurance and sick pay from 1969). Since then modifications have been negotiated through collective bargaining.

Wages and labour conditions in construction are regulated by a Registered Employment Agreements (REA) - a nationally negotiated deal that sets legally binding minimum rates of pay and conditions. The signatories to collective agreements, setting minimum pay rates and terms of employment, may choose to register them with the Labour Court. These REAs are legally binding, not only for the parties to the agreement but also for other employers and employees in the sector or enterprise concerned (Dobbins & Carley 2008).

As a consequence all building workers are covered by these agreements. It is unlawful to pay less. Breaches of REAs may lead to – unusually for Ireland - criminal convictions and to fines for

employers. This departs from the process used under individual employment legislation by which alleged breaches are referred to governmental third parties such as the Rights Commissioner and the Labour Court. A new Industrial Relations (Amendment) Bill 2009 provides that new REAs will be given legislative effect by Ministerial Order. This Order will then be laid before the Oireachtas (Parliament) and Parliament has power to annul the REA. It also has the power to annul the cancellation of REAs. The Bill was introduced, based on an agreement between the social partners under the *Towards 2016 Transitional Agreement*, that the system of REAs would be strengthened following a number of legal challenges.

The terms in the construction industry must be applied also to posted workers involved in construction or related activities. The international character of the workforce is demonstrated by the fact that the rates and conditions of pay are translated into eight languages (including Chinese, Latvian, Lithuanian and Russian). Employers must become members of the sick pay scheme; workers covered by this Construction Workers Sick Pay Scheme are entitled to sick pay benefits, additional to state payments, for up to 50 days in any calendar year.

A specific agency called the Construction Industry Monitoring Agency (CIMA), established and jointly managed by the social partners in construction, is in control of enforcement. CIMA has to ensure that all contractors are paying their required contributions to the statutory pension and sick pay scheme.

Furthermore, there are specific duties in relation to the management of construction sites and training obligations relating to the construction sector, including a requirement that all workers must have attended an approved "Safe Pass" safety awareness training programme and hold a valid registration card under this scheme.

Employers' health and safety training obligations are regulated in the construction industry by the Safety Health and Welfare at Work (Construction) Regulations 2006. Safety representatives are released, with no loss of earnings and expenses paid, to attend approved health and safety training courses.

Partners in bargaining

In the early days the partners in bargaining were the Construction Industry Federation (CIF) on the employers' side and a whole list of unions:

- Amalgamated Society of Woodworkers,
- Services, Industrial, Professional, Technical Union (formerly Irish Transport and General Workers' Union, Federation of Rural Workers and Workers' Union of Ireland),
- Operative Plasterers and Allied Trades Society of Ireland,
- Amalgamated Society of Painters and Decorators,
- Plumbing Trades Union,
- Irish National Painters and Decorators Trade Union,
- National Engineering Union,
- Irish Society of Woodcutting Machinists,
- Irish National Union of Woodworkers,
- United House and Ship Painters and Decorators Trade Union of Ireland,
- Automobile General Engineering and Mechanical Operative Union,
- Amalgamated Society of Slaters, Tilers, and Roofing Operatives,
- Amalgamated Transport and General Workers' Union,
- Building Workers Trade Union on behalf of Ancient Guild of Brick and Stone layers,
- Stonecutters' Union of Ireland.

Later on other unions joined the industry. In the meantime mergers and fusions have reduced the number of unions involved. Nowadays the trade union side is represented by the Construction Industry Committee (CIC) of the Irish Confederation of Trade Unions (ICTU). The main activity of the CIC involves negotiating on behalf of workers at the National Joint Industrial Council (NJIC). The issues can include pay and conditions, pensions, health and safety, as well as apprenticeship and training. The issues dealt with are pay, unemployment and bogus self-employment.

At the Biennial General Meeting of the CIC (December 2007), Tommy White (TEEU) was elected Chairperson, Noel Dowling (SIPTU) vice Chair, and Denis Farrell (BATU) Secretary. Other unions represented in the committee are Unite-ATGWU, NUSMWI, OPATSI, SIPTU, TEEU, UCATT, and SIPTU-INPDTG.

The CIC nominates representatives onto the following bodies:

- The Construction Operatives Pension Scheme
- The Construction Industry Monitoring Agency
- Construction Training Committee, FAS
- The Construction Workers Health Trust
- The Construction Workers Benevolent Fund
- The Joint Safety Council for the Construction

Most unions can trace their origins to the first decennia of last century when union activists in British-based unions believed Irish workers needed autonomous representation in the emerging Irish state. Some UK unions, such as for instance UCATT and Unite, still organise building workers in the Republic of Ireland.

The largest Irish trade union, SIPTU (the Services, Industrial, Professional and Technical Union), is affiliated to the EFBWWW. It organises and represents working people in a wide variety of sectors. In construction, membership includes banksmen, crane drivers, scaffolders, steel fixers, plant operatives, painters and others. As a result of the Union's efforts in organising construction workers, minimum rates of pay, terms and conditions of employment, pension and sick pay schemes are legally binding in the industry for all workers - irrespective of their nationality. SIPTU is also widely acknowledged as a driving force behind the ongoing campaign to secure proper health and safety standards for building workers in Ireland.

The employers' are represented in negotiations by the Irish Business and Employers' Confederation IBEC, and by the Construction Industry Federation CIF.

The inter-professional confederation IBEC is the result of a merger between the Confederation of Irish Industry (CII) and the Federation of Irish Employers (FIE) in 1993. The CII was founded in 1932, and the FIE, formerly Federated Union of Employers (FUE), was founded in 1942. Today, IBEC is the national umbrella organisation for business and employers in Ireland. An executive management group implements its policies and procedures set by the national council and the board.

The employers' organisation, Construction Industry Federation (CIF), represents and serves over 3,000 members covering businesses in all areas of the Irish construction industry. CIF delivers

its services to members either directly or through a network of 13 Branches in 3 Regions and through its 37 Sectoral Associations. Member firms come from all sectors of the industry and span all sizes of firms from very small to very large. The 37 Associations are grouped in four key categories: General Contractors, Mechanical & Electrical Contractors, Specialist Contractors and Home Builders.

Some characteristics of the construction industry

The majority of construction companies are medium and small size, and types and sizes of firms in the sector vary from self-employed, small subcontractors to large companies with hundreds of employees. However, like in other EU countries, large firms have gradually shifted from direct labour to using small subcontractors and self-employed in the execution of various tasks. Of the 281,800 workers employed in the construction sector in the second quarter of 2007 almost 65% worked for very small enterprises employing less than 10 people. Larger companies (over 50 workers) employed less than 10% of the workforce, but their share in construction output was above 80%. Turnover generated by medium and large construction enterprises has grown year on year, increasing by over 130% in the period from 2000 to 2005 whilst turnover in the small business category grew by just 63% since 2000 (CSO 2008). Some authors have expressed the feeling that 'the use of outsourcing and subcontracting in the Irish construction sector may have a detrimental effect on training and apprenticeships and may lead to the growing casualism of work' (Ana 2008).

The Celtic tiger has been through a unique boom. Construction flourished between 1993 and 2006. Housing prices went up and housing supply increased substantially. The sector became very dependent on residential construction accounting for up to 60% of construction output in 2007. After early 2007 the housing market has been in free-fall. This is not only demonstrated by the number of starts or completions. Figures show that mortgage loans have gone down dramatically and that there is an increase in vacant property for buy-and-rent as job losses continue. Available data suggest that this trend continues to date.

Non-residential building, faced with an oversupply situation, and public sector construction and infrastructure, confronted with cuts in public spending, could not escape the fall. Public construction

projects are postponed or delayed and there is a stock of vacant space in the residential market. The accumulation of problems in the sector includes oversupply of buildings created during the boom period, the inability to secure financing both for clients and developers, and a substantial reduction in investment in infrastructure for the next three years.

In the current economic situation confidence in the sector has reached an all time low as new business continues to weaken, the pace of employment losses accelerates and companies remain pessimistic about the future outlook. The total volume of construction output is forecast to decline sharply over the next three years - by 34.6% in 2009, by 16% in 2010 and by a further 7.2% in 2011 - following an estimated decline of almost 18% in 2008. Thus overall output in construction is projected to be 58% lower in 2011 as compared to the peak in 2007, equivalent to an annual average decline of 19.6% per annum over four years (Euroconstruct 2009).

Whilst all sectors of the construction industry have been affected and unemployment is rising sharply, as a result of this slowdown, companies are no longer taking on apprentices at the same levels as in past years. A statutory apprenticeship system applies to craft trades in construction. It is organised by the Training and Employment Authority (Foras Áiseanna Saothair, FÁS) in cooperation with the Department of Education and Science, employers, and trade unions. In 2008 there was a 55% decrease in apprenticeship registrations for construction related trades in the first six months of the year. The Construction Skills Certification Scheme sets out the training that must be undertaken according to certain specific tasks (such as crane driving).

The problems of employment law enforcement and contract compliance can be seen as structural phenomena of the industry. A review by the National Employment Rights Authority, published in spring 2009, showed that its inspectors detected an increase in breaches of employment law in 2008, with high levels of breaches detected in the contract-cleaning sector, in hotels, restaurants and catering, as well as construction. The highest level of arrears was recovered in the construction sector, where €710,475 in arrears due to employees was recovered. With some 300 inspections on construction sites, the number of breaches peaked around 62%.

Some of the more serious practices uncovered and problems encountered included:

- not keeping any records in relation to employees or failing to produce records for inspection;
- falsifying records including payslips and timesheets;
- requiring employees to work in excess of the legal limit;
- paying employees for significantly fewer hours than actually worked;
- paying employees less than their legal entitlement;
- not providing employees with payslips;
- making unlawful deductions from employees' wages.

Employment from boom to bust

The employers' organisation in construction, CIF, is far from optimistic, predicting that: 'More job losses are inevitable, particularly in the construction industry, and it is difficult to see where job creation will come from in 2009' (CIF annual report 2008). The most recent forecast from the European Commission predicts that the Irish GDP will contract by 9% in 2009 and 2.6% next year. The Euroconstruct forecast, based partly on a more negative scenario for building and construction is worse in 2009 and 2010. The Irish economy is not forecast to start recovering until 2011. This year the general unemployment situation will rise sharply with further job losses expected to result in an unemployment level reaching 360,000 by the end of 2010. This corresponds to an overall unemployment rate of over 17%, compared with 7.7% in the fourth quarter of 2008 (Euroconstruct 2009).

Some sectors continue to add jobs, while others are shedding employees at a higher-than-average rate. By far the greatest number of jobs has been lost by the 'shake-out' in construction that also spills over to related industries. In January 2009 the numbers employed in construction stood at 190,000, down 90,000 since the peak in the third quarter of 2007. The bulk of this adjustment has taken place during 2008; in the first quarter of 2009 72,000 fewer people were employed in the sector, compared with the first quarter of 2008. In the latest Quarterly National Household Survey (CSO 2009) the largest decline over a twelve-month period (2nd quarter 2008 - 2nd quarter 2009) was recorded in construction where numbers employed fell by 86,000 (-35.6%).

Also for non-Irish nationals the largest decrease in employment occurred in construction (-20,800). Ireland was one of the three EU Member States that, against the background of a favourable economic situation, fully opened the labour market after enlargement in 2004. Ireland became very popular especially for migrants from the Baltic region. Large numbers of migrants were attracted and the great majority, predominantly young and single and often overqualified for their jobs, were employed in simple manual work.

A survey of Latvian workers in Ireland showed that, after an adjustment period in which language skills improved and inside information of the labour market was gained, upward mobility was achievable. The figures for Latvia show that migration (in 2005-2006) to Ireland (11,200 migrants) was almost as popular as migration to the UK (16,600), with Germany (1,700) far behind in third place. The most important reason for choosing Ireland were "better wages than elsewhere" and already existing social networks. Construction (up to 33%) was the dominant industry for males, and the main occupation was building labourer (Galgóczy 2009).

The huge growth in unemployment finished the ability of the labour market to absorb inflows of migrants as apparent by the downward trend of registered foreign workers.

Employment in construction now stands at 155,000, a level not seen since 2003, and is likely to fall even further. Commenting on the new Central Statistics Office (CSO) data, IBEC economist Reetta Suonperä said recently: "Three sectors, construction, wholesale and retail, and industry, account for over 80% of jobs lost over the year. The impact of the recession is most sharply felt in the domestic sector of the economy. Manufacturing, with the exception of one or two sectors, is also suffering severely from a combination of the global economic crisis and Ireland's lost competitiveness" (IBEC 2009).

The major problem facing construction workers, therefore, has been the collapse in employment. The CIC endeavoured to reach an agreement with the CIF on a central agreement for dealing with lay-offs. As no progress was made at the level of the National Joint Industry Council, a number of lay-off disputes in individual companies were processed through the Labour Relations

Commission and the Construction Industry Disputes Tribunal. The CIC called for the full implementation of the National Development Plan infrastructure programme in order to secure jobs (ICTU 2009).

Bargaining in a hardened climate

One of the characteristics of Irish industrial relations is the crucial role of 'interprofessional' social pacts, concluded between Government and the social partner organizations IBEC and ICTU. These are in fact centralised tri-partite agreements with guidelines on minimum and maximum wage increases for companies and unions at company level. *Towards 2016* was the seventh in a series of agreements between Government and the social partners dating back to 1987. The shared goals of this ten-year social partnership framework agreement (2006-2016) were: nurturing the complementary relationship between social policy and economic prosperity; developing a vibrant, knowledge-based economy and stimulating enterprise and productivity; re-inventing and repositioning Ireland's social policies; integrating an island of Ireland economy, deepening capabilities, achieving higher social and economic participation rates and more successfully handling diversity, including migration. The pay terms of the agreement covered a 27-month period.

In labour intensive industries or sectors like construction, characterised by the existence of many small to medium sized businesses, additional regulation is settled at industrial (sectoral) level by joint labour committees. The REA for construction fits into this system. As a consequence of the deepening crisis, relations between the social partners in construction were eroded. Negotiations in the construction sector on draft pay for a new REA became difficult. At the start, SIPTU General President Jack O'Connor rejected a call by Tom Parlon, Director General of the Construction Industry Federation, for a 12-month pay freeze and a 30% cut in entry rates for construction workers. O'Connor said that the call had the potential "to turn building sites into battle grounds" (www.SIPTU.ie). The discussions, which began in April 2008, were long and arduous and talks broke down without agreement in August 2008. However, the Government invited all sides back for further talks in early September as a final attempt to conclude an agreement. The social partners and the Government

concluded the negotiations on 16th September 2008.

The outcome of the *Towards 2016 Review & Transitional Agreement* in terms of the draft pay proposals were as follows:

- The agreement would last for a period of 21 months.
- A pay freeze of three months from the expiry of the first module of *Towards 2016*. The expiry date of the first module of *Towards 2016* in construction was 30th June 2008.
- An increase of 3.5% for the next 6 month beginning in construction 1st October 2008.
- An increase of 2.5% for the next 12 months beginning in construction 1st April 2009.
- The agreement would expire 30th March 2010.

Other issues requiring further discussion included employment rights for agency workers, employee representation in non-union workplaces, non-victimisation of employees and pension provisions under a transfer-of-undertaking situation.

Quarrel over result

The union side formally ratified the *Towards 2016 Review & Transitional Agreement* at a Special Delegate Conference in November 2008, with 305 votes in favour and 36 against.

The employers' confederation IBEC indicated its acceptance of the terms at the same time, while the Construction Industry Federation stepped up its campaign of opposition to the deal and attempted to impose pay cuts across the sector.

The Construction Industry Federation (CIF) finally rejected the terms of the *Towards 2016 Review and Transitional Agreement*. In December 2008 the construction employers served a claim to unions to cut 200,000 workers' wages by 10%, just a week after they rejected the national pay deal.

CIF wanted to issue the claim to alter the existing agreement due to the "collapse of the sector" and announced the willingness to negotiate a lower rate with members of the Irish Congress of Trade Unions' Construction Industry Committee; but in the likely event of a dispute, the claim was to be referred to the Labour Court.

The CIC processed this matter through the REA disputes procedure

and the Labour Court issued its recommendation in March 2009. The Court accepted that the REA, far from undermining competitiveness, helped ensure fair competition within the industry and recommended as follows (ICTU 2009):

'It is agreed by the parties that there can be no doubting the current recessionary state of the industry. ... During the years before 2008, when property prices and employment levels were at all-time record levels, there was considerable competition in the market for labour, which was partly supplied from other countries because of the skill shortages in Ireland. During that period, the REA rates tended to operate as a floor rather than a ceiling. This is borne out by the CSO quarterly statistics on average earnings and hours worked which reveal that in early 2008, the hourly rate for skilled workers in the construction industry stood at €21.28 per hour for an average 43.3-hour week, compared with the REA craft rate which was €18.60 per hour. The figure supplied to the Court for the whole of 2008, when rates had begun to drop, was €20.91 per hour. This was still 12.4% above the REA rate.

For unskilled workers, the average hourly figure in the first quarter of 2008 peaked at €17.99 over 46.1 hours, vis-à-vis rates between €14.88 and €18.04 provided for in the REA, but averaging, according to the C.I.F., about €16.00 per hour. For the whole of 2008, the C.I.F. put forward the view that the hourly rate averaged €17.80 per hour. This again is some 11.25% above the REA rate.

As the industry contracts and pay rates drop, as both sides agree they are doing, (and this is borne out by the CSO figures) they will, logically, bottom out at or near the REA rates (which can only be varied by agreement).

Given the amount by which the market will naturally reduce the rates, the Court does not feel that a further reduction, as claimed by the C.I.F., is justified nor would it necessarily, of itself, create or maintain employment in the industry. The Court does not therefore recommend concession of the CIF's claim.

Discussions on the 3.5% increase due under the current phase of Towards 2016 have been perfunctory, largely obfuscated by the demand from the employers' side for a 10% deduction in pay.

The Court has noted, in the course of the hearing, a willingness on

the part of both sides to engage in further discussions with a view to revisiting the increase of 3.5%. In this context, the Court reminds the parties that the Court has for many years, by the joint will of the Social Partners, been the guardian of successive National Agreements. Quite a number of Companies have already paid the terms and neither the Employer Organizations nor the Government have abandoned the Agreement despite expressing an economic inability to pay the terms due on time.

Given all of the above, the Court recommends that the parties re-engage meaningfully, as a matter of urgency, with a view to reaching an accommodation regarding the terms of the Agreement. As implementation of the terms has already been delayed by some nine months, the Court is of the view that this engagement, which would be most appropriately entered into at the Joint Industrial Council for the industry, should conclude within one month, at which stage, failing agreement, the parties may revert to the Court for a definitive Recommendation on this part of the claim.'

The CIC accepted this recommendation and SIPTU National Organiser Noel Dowling welcomed the Labour Court recommendation on the construction industry. It ruled out the 10% pay cut sought by employers. Dowling, acting as chairman of the Irish Congress of Trade Unions Construction Industry Committee, said "The Court's ruling has vindicated the position of the ICTU Group of Unions (...) We particularly welcome the Court's recommendation that both sides 're-engage meaningfully, as a matter of urgency' through the existing industry structures. We are, and always have been, ready to engage in negotiations with the employers. Hopefully the posturing by Tom Parlon on behalf of the Construction Industry Federation will now end. While his delaying tactics may secure some short term gains for some of his members it is at the enormous cost to tried and trusted industrial relations structures that have served the country well for decades." Now, six months later, there is still no formal answer from the CIF on whether they accept the Labour Court recommendation. According to SIPTU quite a number of companies had already paid the terms and neither the employer organisations nor the Government had abandoned the Agreement despite expressing an economic inability to pay the terms due on time. However, other observers note that individual employers are not breaking the line at this stage.

Despite the recommendation that both sides re-engage, matters appear to have come to a standstill, with little or no indication that an accord has been reached, or indeed will be reached at any point in the near future.

In the meantime CIF and the unions are working together on non-pay issues. As the construction industry in general continues to suffer, SIPTU has called for a €5bn stimulus from the Government for construction investment. They assert that such a cash injection would lead to the creation of 70,000 much needed jobs in the sector and have called on the CIF to support their position.

Binding character under fire

In addition to the dispute described above, which affects the construction industry as a whole, there has been a significant ongoing dispute within the electrical contracting sector. This dispute involved the TEEU, the National Electrical Contractors of Ireland (NECI), the Electrical Contractors Association (ECA), the Association of Electrical Contractors (AECI) and the Unaligned Group of named electrical contractors.

At the beginning of 2009, the TEEU applied for a 5% pay increase under the existing REA, which has been in place since 1990. This application was rejected by the Labour Court on the grounds that it lacked support from the REA employers. At the same hearing, the Labour Court received an application from the NECI and the Unaligned Group to cancel the REA entirely. The Labour Court held that, whilst there has been substantial change in the industry since the registration of the REA, those changes had "not made it undesirable to maintain registration of the REA" (CD/09/158).

The TEEU went out on July 6th in protest that the existing terms of the REA were not being met by employers. Following a 4 day national strike (supported by ICTU), talks began between the union, the AECI, the ECA and the labour relations commission. Following on from those talks, the Labour Court issued a non-binding recommendation that pay increases be applied at the rate of 4.9% over two phases. This recommendation was rejected by the AECI members by a large majority, and at the time of writing there is still a threat of further strike action from the TEEU to secure pay

increases for the sector.

In addition to the damage to the industry in general from strike action by the electrical contracting sector, the ongoing dispute described above may have further resonance for industrial relations in Ireland. The NECI, formed in 2008, and the Unaligned Group have been arguing that the REA is not representative of the industry as a whole and therefore invalid. Additionally, these bodies argue that the Industrial Relations Act of 1946 is unconstitutional, as it allows agreements to be registered that are binding on parties who were not signatories of the agreement itself. In furtherance of these arguments, three cases relating to these aspects of the REA are due to be heard concurrently by the High Court on December 1st 2009. Employer groups and unions will supposedly be watching this case closely as a decision that the REA is invalid would have wider repercussions across industry in Ireland.

Following on from the strike action in July in the electrical sector, Tanaiste and Minister for Enterprise, Trade and Employment, Mary Coughlan announced an independent investigation into the dispute that has been welcomed by all parties. At the time of writing, this investigation is ongoing.

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Labour Migration and the Irish Construction Sector

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The construction sector has been among the most buoyant sectors of the Irish economy in the last decade. In 2006, its total output was €37.6 billion and it accounted for 25 per cent of the General National Product (DKM Economic Consultants 2009). Employment grew at a faster rate than in any other sector of the Irish economy. At the peak of the construction boom in 2007, almost one in seven of the Irish workforce was employed in the sector. However, if construction represented the heyday of the Celtic Tiger, it also inevitably stands for its decline. Ireland has been severely hit by a recession in 2008. This became nowhere more apparent than in the construction sector where output dramatically declined and jobs were shed at a faster rate than elsewhere.

During the boom years, the sector attracted a large number of migrant workers in the light of widespread skill and labour shortages. In particular EU enlargement in 2004 and Ireland's open labour market policy led to a large-scale inflow of migrants from the new EU Member States (NMS). However, now that the sector has been hit by a severe crisis, questions have been raised about the future intentions of migrants. This article examines the role of migrant labour in Irish construction as the sector moves from 'boom to bust'. By drawing on ongoing research on the experience of Polish migrants in the sector as well as some employer interviews¹, we show how immigration appeared as a 'win-win' situation for both sides of the employment relationship during the boom years. However, in times of a dramatically transformed employment situation, the future of the multinational construction workforce appears to be uncertain.

1. The research on which this article is based is part of the Migrant Careers and Aspirations project at Trinity College Dublin. The core of this project is a Qualitative Panel Study that involves repeat interviews with a group of 22 Polish migrants over a period of two years. Whereas this study focuses altogether on four employment sectors, construction, hospitality, financial services and software, for this article we confine ourselves to those eight migrants who work in construction. Our participants are found in a variety of employment positions, ranging from less-skilled construction labourers to higher skilled civil engineers and architects.

Immigration and an unprecedented construction boom

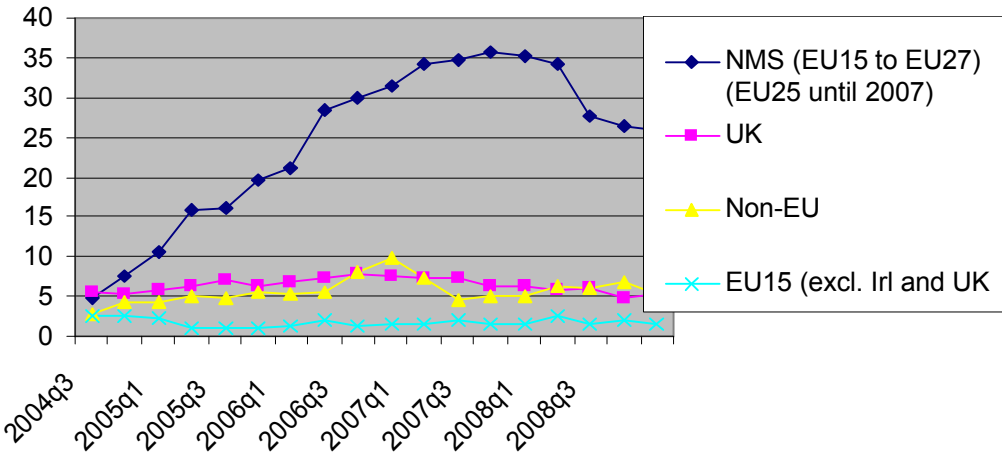
Ireland has traditionally been a country of emigration. For generations, Irish people migrated to countries such as the USA, Britain and Australia. Irish migrant workers were particularly widespread in the building trades. Stephen Castles and Mark J. Miller (2003: 60) observed for Britain that it was 'Irish navvies' (a slang term derived from navigators) (who) dug Britain's canals and built its railways'. However, as Ireland experienced an unprecedented economic boom in the 1990s ('Celtic Tiger'), it began to attract foreign workers in growing numbers. Immigration significantly increased when Ireland opened its labour market to the citizens of the NMS in 2004. By 2007, migrants accounted for 16 per cent of the Irish labour force. Besides manufacturing, retail and the hospitality sector, it was construction in particular that attracted a large number of migrant workers.

Whereas in the 1990s the Celtic Tiger was driven by foreign direct investment and export-led growth particularly in high tech manufacturing, in the 2000s it was largely sustained by an unprecedented building boom. The size of the Irish construction sector is well illustrated by the following comparison: Whereas the average rate of house completions per 1,000 inhabitants across nineteen EU countries was 5.3 in 2007, in Ireland (and Spain) the rate was 18. This is well reflected in the employment share of the sector that accounted for 13 per cent of total employment in 2007; this compared to a EU average of 8 per cent (CSO 2008).

In the context of an unprecedented construction boom, the sector experienced large-scale immigration from the NMS in particular (Chart 1). As many Irish construction workers moved into semi-skilled job positions, there was a particular demand for less-skilled construction labourers. At the same time, migrant employment in the sector is not confined to low-skilled occupations, as migrants have also been recruited for skilled Trades positions such as electricians and carpenters and higher-skilled positions such as engineers, site managers and quantity surveyors (Bobek et al. 2008). By the end of 2007, migrants accounted for 17% of the total construction workforce. As can be seen from Chart 1, immigration from the NMS, predominantly from Poland, hugely increased after EU enlargement in 2004, accounting for a majority of all non-Irish construction workers. The chart also shows that NMS nationals appear to be the most affected by the recent downturn in the

sector, something that we will return to at a later stage.

Chart 1: Non-Irish Workforce Construction (000s)



Source: Quarterly National Household Survey, Central Statistics Office (CSO); note that the CSO does not include architects in their classification of construction occupations

For NMS migrants, the changed regulatory environment meant that they could not only freely move to Ireland but they found employment in the booming construction sector with relative ease. This particularly applied to less-skilled general operatives positions that were increasingly vacated by Irish workers but also to skilled Trades positions (e.g. plumbers and carpenters) and highly skilled professional occupations such as engineers and architects. The latter were more likely to be directly employed by larger construction firms. Some of these firms made a conscious choice to target Poland as a potential source country for engineers and went over to recruit, sometimes in co-operation with Irish and Polish recruitment agencies. In turn, the majority of migrants in Trades positions (e.g. electricians and plumbers) and Labour jobs (e.g. general operatives)

were more likely to be employed by subcontractors and recruitment agencies.

The increasing usage of subcontracting arrangements is linked to some broader structural changes in the industry during which the production process has become more fragmented. During the last two decades large firms have transformed into 'management firms' (Veiga 1999, in Schierup et al. 2006: 239) who increasingly outsource individual tasks of the production process to subcontracted smaller firms and self-employed construction workers. Consequently, the share of construction workers who are directly employed by the larger companies has diminished. This is well explained by this HR Manager of a construction firm that normally acts as the general contractor for building projects:

At any one time on a very big project you may find that only perhaps 15 out of a 100 people working on the job are working for xxx (their company)...We would tend to subcontract all elements of the construction process, from the piling structure work right through obviously to the painting and carpets and air-conditioning units and so on. The only people that we would employ directly would be the technical staff, the engineering, project management, site management, the quantity surveying.

For migrants, the widespread nature of subcontracting in construction provided an opportunity to enter the labour market even if they did not have a good command of the English language. Indeed, language was one of the reasons that Irish employers gave for not employing migrants in Trades and Labour positions directly but rather as part of the various subcontracting chains. This is also linked to considerations about costs. Previous research on migration and recruitment strategies in the European construction industry found that subcontracting is frequently utilised as a cost-saving strategy (Fellini et al. 2007). According to an HR Manager, '[t]he subcontractor, particularly the foreign subcontractor, is able to provide a similar service to the Irish subcontract but at a lower cost.'

Subcontractors are formally bound by the industry-wide collective agreements known as Registered Employment Agreements (REAs) that are negotiated between employer bodies and trade unions (Bobek et al. 2008). However, there is some evidence to suggest

that further down the subcontracting chain the sector is less regulated. The complex web of subcontractors involves Irish firms, foreign firms, recruitment agencies and self-employed Irish and migrant workers. This Polish construction labourer worked for an Irish subcontractor and was asked to register as self-employed, although he was effectively working as a dependent employee: 'They were paying me cash through an envelope...In addition to that I was getting a form that I am a subcontractor for him' (male, 24). In the context of such a rather informal environment, migrants working for subcontractors were less likely to receive the prevalent rates for the sector:

When it comes to wages, these are not great because we don't even have the minimum (wage) for labourers...in the beginning I was earning really small money...80 Euros for ten hours. And then it was raised to 120 (construction labourer, male, 30) [*the lowest hourly REA rate is €14.88*].

Such incidents appeared to have been relatively widespread in the sector, particularly in the immediate aftermath of EU enlargement and Ireland's open labour market policy in 2004. Indeed, it sometimes appeared as if such cases were part of 'the 'bargain of convenience' (Wickham et al. 2009: 95) between migrants and employers. Although migrants were often paid wages below the REAs, particularly if it involved subcontractors, the level of payment was usually still better than for instance in a traditional low-wage sector such as hospitality.

Having said this, we do not suggest that migrants are generally content with wages below the 'going rates'. Indeed, there have been cases when migrant workers protested against the violation of their employment rights, most notably in the Gama case in 2005. The Turkish-based multinational Gama company was engaged in a number of construction projects in Ireland. It brought over its own Turkish workers who, as it transpired, were paid a fraction of the REAs. After the workers engaged in unofficial industrial action against their treatment, they were eventually compensated in a case that created considerable publicity in Ireland (Flynn 2006).

Our interview data suggests that the longer migrants stay in the country, the more they become aware of their employment rights and try to negotiate better pay and working conditions. A greater insistence upon their employment rights is likely to be assisted by

the fact that as EU citizens, Polish migrants have the same labour market rights as Irish nationals and are not dependent upon the renewal of their work permits. Moreover, a greater awareness of employment rights is also linked to the presence of trade unions in the sector. In particular the Services, Industrial, Professional and Technical Union (SIPTU), Ireland's largest union, has raised the issue of employment rights among the migrant construction workforce through various information campaigns and a number of newly appointed Eastern European organisers.

Sometimes, however, migrants did not go to the unions or made use of the official industrial relations channels when encountering violations of their employment rights. Instead they tried to make the subcontractor compliant by threatening to inform the general contractor about the situation:

We threatened them (the subcontractor) that we will send (the unions) to the main developers, those where they have the jobs from...and the negotiations started. After two weeks everything changed, we have kind of normal wages now...those lowest ones in construction, but it is much better anyways (male, 30).

The large construction firms appear to be quite aware of the fact that co-operation with non-compliant subcontractors can generate negative publicity and have adverse consequences for their own business:

It would be damaging for us to have non-compliant subcontractors...where we are so dependent on the state projects. When you are completing the tender documents for the project, if you had a history of non-compliance, it would damage your prospects (HR Manager).

Hence the large construction firms were adamant that subcontractors have to adhere to the prevalent REAs. Nevertheless, it appears as if at least to some extent the general contractors insulate themselves from responsibility for employee rights and protection by making extensive use of subcontracting arrangements.

In spite of incidents of underpayment, immigration appeared as a 'win-win' situation for both employers and migrants during the

boom years. As the former were keen to fill skill and labour shortages, the latter found employment with relative ease. However, now that the construction sector has gone from 'boom to bust', the employment situation has been dramatically transformed, as we will discuss now.

After the boom: job losses, intensification of work and an uncertain future

In the light of the global economic downturn, the construction sector in many countries has seen rising unemployment. Migrant construction workers, almost all of them men, were among the first to lose their jobs in the current downturn (Martin 2009). In Ireland, the sector has been particularly badly hit as the building boom came to an abrupt end in 2008. Since then, almost 100,000 construction jobs have been lost. In the light of such large-scale job losses, employment for Irish workers declined by 35 per cent, whereas employment for NMS migrants went down by almost 60 per cent (CSO 2009). Thus, both Irish and non-Irish workers are affected by the crisis, with NMS migrants being particularly badly hit by the downturn.

Laying off people, however, is not the only option that employers have to cut down on costs. Other responses may include pay cuts, an increase in unpaid overtime and redeployment of existing staff (Rogers et al. 2009). As a result, work may become more intense as experienced by these construction labourers:

Because of the whole recession they added one hour of work for us. Instead of finishing at half four we finish at half five for the same amount of money...I work for 45 hours per week for the wage that I had for 40 hours before the recession (male, 24).

They are trying to get more and more out of us...before we had a norm of installing 50 plates per day. And now it is 70 per day...If you are asking too many questions...then he (the boss) will simply tell you that you are the fixer and you will get fired (male, 30).

Not surprisingly, the crisis exercises downward pressure on wages. While until recently wages in the sector have continuously risen,

this trend has been reversed by the recession. In the light of more intense competition for jobs, the bargaining position of employers has increased. As pointed out by a Manager from a recruitment agency that specializes in supplying Trades and Labour workers to large construction companies:

There are 20 men looking for every job now, pay scales have gone down. There are crane drivers who now work for us for x amount whereas two years ago they wouldn't have imagined doing that... they got €250 a day, now if they get €150 a day, they are lucky!

In order to avoid unemployment, construction employees may have to accept occupational downgrading. As spelled out by an HR representative from one of the largest service contractors in the industry:

There was a law that it was just Trades people being let go... but it then started creeping up the ranks. Foremen were being downgraded to charge hands... Foremen being downgraded to electricians... the only choice was 'we can either make you redundant or we have a position for an electrician, we can move you there.

Our interviews with employers suggest that even though all firms have made some redundancies, large companies appear to be more inclined to hold on to their workforce. Indeed, one large company even tries to view the current crisis as an opportunity to invest more in training:

In part our view is that it offers us an opportunity to do some training... there is a cost to training but there is also a cost of not training so sometimes when you are in a downturn, it's the best time to training because when you are trying to train in the good times, people are too busy (HR Manager).

In turn, subcontractors and recruitment agencies appear to be more likely to respond to the downturn by laying off people. This, however, does not mean that such rather precarious employment relationships are likely to disappear any time soon. There is some evidence to suggest that in the context of a recession, non-standard forms of employment may become more widespread

(Peck and Theodore 2007). Indeed, some interviewed employers stated that they might increasingly utilise agency labour should they resume recruitment in the future. This may offer greater flexibility in the light of possible future ups and downs in the industry.

On the migrant side, there is less appetite for a job move in the current economic climate. Those migrants who are still in employment appear to be holding on to their jobs, even if it involves pay cuts and an intensification of work. Among those who have lost their job, a considerable number have already left Ireland, with possibly more to go in the months ahead. It is a reasonable assumption that less-skilled construction labourers in particular who have lost their jobs may consider returning to Poland or move on elsewhere. For these migrants there would only be a limited prospect of finding new employment, particularly if they lack English language skills.

Returning home, however, is not the only option that migrants have when losing their job (Krings et al. 2009). Indeed, some of our participants have already expressed a preference to look for new employment in Ireland, rather than opting for the 'return ticket', well aware that social welfare arrangements here may temporarily cushion the impact of possible unemployment. Moreover, the role of social networks and a belief in continuous employment opportunities may impact upon the decision to 'stay or go'. Although this architect has recently lost her job, she has little desire to return to Poland:

You know, I would go back to Poland and then what? I would get 570 PLN (Polish Zlotys) (per month). I would have to move back to my parents (who) live in a village. No, then I prefer to stay here...In here I have my friends and I am in the city...You know, maybe something will work out here (female, 28).

What becomes apparent is that in a downturn future job prospects appears to be beyond the control of individuals. This may indeed influence the decision of individuals whether to 'stay or go'. As this construction labourer explains:

If somebody is asking me when I will go back to Poland then I always say that I don't know. Because it can be like that I lose my job, I don't find another one and I could be back in a

month time (male, 30).

In uncharted territory: a multinational workforce in times of economic crisis

Ireland experienced an unprecedented construction boom in the first decade of the twenty-first century that attracted a large number of migrant workers in particular from the NMS from Central and Eastern Europe. However, now that this boom has come to an abrupt end, questions are being asked about the future intentions of migrants. While a significant number of migrants who have lost their jobs in construction have already left the country, others are 'here to stay', for the moment at least. Those who remain in employment try to hold on to their jobs, in spite of worsening terms and conditions of employment. What remains to be seen is how the crisis will impact upon inter-group relations 'on site'.

In recent years, when both the employment rate and the wages of Irish construction workers significantly increased, the incorporation of almost 50,000 foreign nationals into the sector has been relatively unproblematic, in spite of some complaints about migrant underpayment and wage dumping. However, in times of an economic downturn tensions may increase. Recent protests in the UK against the deployment of 'posted' workers from Italy and Portugal to an oil refinery in Lindsay ('British jobs for British workers') illustrate the potential for an anti-foreigner backlash during a recession (Rogers et al. 2009).

Although similar scenes have so far been absent in Ireland, it is not inconceivable that such disputes could emerge here as well. To avoid a souring of intergroup relations, political leadership is required by the social partners, policy-makers and other stakeholders to ensure a 'level playing field' between Irish and migrant workers to the greatest extent possible. This is of particular importance when it comes to the delicate question of redundancies where a situation should be avoided where redundancies are decided on the basis of nationality. Moreover, unemployed migrants should be afforded the same opportunities to retraining and upskilling as Irish workers. This is all the more so the case as the construction workforce is likely to continue including migrant workers in the future, albeit in smaller numbers than during the boom years.

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Discussion

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Social Security or a Wage for Working Life - a review essay

This essay is a review of a number of publications and initiatives of the Swiss group Thinknet (Denknetz) in the field of social security:

- Ruth Gurny und Beat Ringger: *Die grosse Reform: Die Schaffung einer Allgemeinen Erwerbsversicherung*, AEV. edition 8, Zürich 2009. (The Great Reform, Setting up a General Occupational Insurance)
- Ruth Gurny and Andreas Rieger: *Altern und Alter*. In Denknetz Jahrbuch 2006, pp. 20-30. (Aging and Old Age)
- Denknetz Fachgruppe Politische Ökonomie: *Sicherung der Altersvorsorge: Modellvorschlag für eine Totalrevision*. In Denknetz Jahrbuch 2009, pp. 56-82. (Safeguarding Provisions for Old Age: model-proposal for a total revision)
- *Renaissance der Volkspension*, Thementisch 18. November 2009 in Zürich. (Renaissance of the Public Pension, Round Table)

How can these initiatives adequately be honoured? How do we approach social security and pensions as integral parts of the wage? These are daunting questions to someone who regards wage relations as the essence of social dynamic. Yet social security is an emergency issue and, relative to its social and political bearing, irresponsibly neglected. All the many deficiencies in social security systems across Europe cannot forever be treated with little adjustments and amendments. Nor can bilateral agreements permanently replace transnational regulations for a transnational labour market. This much on the background of the following modest attempt to promote the subject under the guise of a review essay – essay in the original sense of the word, a try. A try to supersede social security through a wage for working life.

What is dubbed the 'European Model' of wage relations is rooted in medieval poor relief as a necessary concomitant to wage labour, taking account of the temporary nature of employment. In the course of the twentieth century social security, health insurance, and old age pensions have gradually been built up in various ways in different countries either as wage components or as state benefits and services amounting to the value of the gross rate of wages and more. They cover times of non-employment – e.g. for holidays, sickness,

education, old age, disability, and unemployment – as well as unpredictable costs for health care. As these components were introduced piecemeal differently in every individual country they form a variety of patchworks and, therefore, the principal obstacle to transnational wage coordination within an open economic community boasting ‘the free movement of workers’. Objectively reform is overdue.

Ruth Gurny and Beat Ringger offer ‘Die grosse Reform’ through ‘a general occupational insurance’ (AEV). Beat Ringger and Hans Baumann, also member of Thinknet, have summarised the proposal¹:

- Instead of the existing range of single insurances, a comprehensive ‘social insurance’ will be set up which guarantees subsistence during the period of working life for all inhabitants of Switzerland.
- Those, who cannot take on or are not offered any acceptable and sufficiently paid employment because of sickness, accident, unemployment, civil or military service, maternity or participation in childcare, are secured through daily allowances from AEV amounting to 80% of their previous wage. Those who are permanently unable to be gainfully employed are entitled to a pension at the level of the daily allowances. The allowances have an upper limit. In cases of accidents and sickness, the existing level of pay will be maintained through employers’ supplement. Thus the present gap in daily sick-allowance will be covered.
- The AEV is based on the concept of mutuality. It combines the duty to work with the right to ‘decent work’, that is the right to decent work in the sense of the International Labour Organisation. The pressure on those unemployed to accept any, even most precarious, employment – involving all these fateful human, socio-political and economical consequences – will thus be lifted.
- A temporally unlimited claim will exist for people who have been resident in Switzerland for 5 years at least. For citizens of the European Union or the European Free Trade Association, claims depend on bilateral agreements with the European Union.
- Two more large gaps in the network of social security will be covered through the unrestricted inclusion of self-employed and through the introduction of supplementary AEV family allowances (AEV-Familienergänzungsleistungen).

- Social benefit will be integrated into AEV and be based on a unified basis for the whole of Switzerland. Social benefit will be relieved from absorbing structural poverty problems. Instead it will resume its original objective to support people in situations of need.
- As a separate issue, Ruth Gurny and Andreas Rieger have presented a programme for "Aging and Old Age" which dismisses the traditional concept of a retirement age. Andreas Rieger has summed up the strategy of his concept in a paper dating back to 2004 (denknetz-online.ch, Sozialpolitik/Altern und Alter) in three theses:
 - Paid employment in the early stages of old age up to at least 60 years of age is supported. In this regard the objective is full employment. This prevents the driving out of the aging, strengthens the economy and averts overburdening social insurance.
 - Between the age of 60 and 65 there is a right to a step-by-step retirement, which can be used without loss of income in particular by those who had to be permanently in paid or charitable employment, that is having contributed over 40 years.

From the age of 65 there is a legal right for all to receive a pension. This is the right to retirement for all and the option of 'activirement' ("Aktiv-Stand") for all those who would like to. 'Activirement' is publicly supported by positive incentives, whilst the continuation of paid employment should not be materially attractive. In the recent article 'Safeguarding Provisions for Old Age' a Thinknet team argues that the 'second column' (implicitly of course the third as well), based on private insurance contributions, ought to be scrapped in favour of upgrading the pay-as-you-go pension fund system (Alters- und Hinterlassenversicherung). In the long run this would be more cost effective in terms of transaction costs, yield safe returns on contributions, be more social, and finish stimulating financial crises.

Both programmes will be discussed at a 'Round-Table' on 18 November 2009 in Zurich. It is to be expected that this event will produce further ideas and publications.

For somebody not familiar with the Swiss social security and pension systems, it is difficult to assess the detailed proposals transforming existing structures. But it is obvious that a reform along these lines would be a seven-league step forward in any EU country.

Nevertheless, in the light of an historical Pan-European perspective, as outlined above, three reservations can hardly be held back:

First: If we conceive wages for working life and working life as open ended, why is old age treated qualitatively different from other phases of non-employment. In particular, if its funds are raised through the payment of labour - rather than taxation -, pensions could well be integrated in a general social security system, as long as this remains systematically separated from wage earning.

Secondly: We have raised the issue of wage earning as a permanent status independent from a contract of employment². Bernard Friot has been arguing for years that the status of 'salarié' should be dissociated from actual employment³. If we accept that working life is not defined exclusively by subordination under an employer, social security benefit ceases to be a separate form of pay but turns into an integral part of the wage to be claimed by all workers according to their qualification - employed or not. Wage is not a remuneration related to working time any more, it is for working life and working life lasts beyond the duty to work under employment contract.

Thirdly: The thought that in every individual European country social security and pensions would be reformed with respect to their traditional principles is a nightmare. But this is precisely what the Swiss Thinknet experts do. In pragmatic terms though, they did not have a choice. There exists no supra-national institution for social security coordination, except bilateral agreements. Moreover, Switzerland is not even an EU Member State. Thinknet, therefore, is not to blame and should be congratulated for pioneering the Herculean task to clear the chaos in every individual country as well as in the transnational economy. Let us not forget, this chaos wastes fortunes in transaction and administrative costs and feeds bubbles of financial assets - e.g. pension funds - as well as profits in the insurance sector, money which deserves to be used for the remuneration of wage earners.

The great merit of Thinknet can hardly be overestimated. The team is fighting in the frontline to resolve a problem piled up through the secular transformation of wage relations. The destabilisation of employment relations and the rise of life expectancy are consistent factors tipping the balance of direct and 'indirect wages' - as the French call it - towards indirect wages. In other words, the gross

wage - even more so the net wage - becomes a minor part of earnings including related benefits under social security and pension provisions. At the same time, with the internationalisation of the labour market, an increasing proportion of wage earners are indirectly and self-employed, not covered any more by social security and dependent on private insurance or savings. Construction is one of the sectors in which this transformation is most advanced. There is a desperate need for emergency action.

Fatefully, the victims of this development are typically unorganised. That is why trade unions have not taken much initiative in this field. Variably between the countries, a considerable segment of social security and pensions are under governmental authority where a lobby of wage earners is virtually non-existent. This state of affairs explains why, in recent years, social security and pension provisions tended to be dismantled or scaled down rather than reformed. Poverty is expanding as a result.

Unless the trade unions take action on this issue, which concerns the major part of wage earners' subsistence, their organisation will suffer in a spiral of decline. Equally, as authorities of social justice, governments will lose legitimacy and suffer a substantial erosion of credibility and support. Demonstrations of pensioners are likely to become familiar events.

A major obstacle in the discussion of this transformation of wage relations and consequent deterioration in living conditions of part of the population is the incompatibility between its transnational nature, on the one hand, and national institutions of social regulation, on the other. It is imperative, therefore, to take into account that initiatives at national levels be regarded as exemplary steps in a transnational environment. Conversely, transnational – e.g. EU – initiatives will have to allow room for manoeuvre and adaptation at national levels. Given the special relevance for the construction industry, CLR is a predestined forum to raise the debate of Thinknet to the European level.

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 2. Jörn Janssen: Employers without Employees, a New Status. CLR-News 3'2007, pp. 17-23.
 3. Bernard Friot: La revendication d'un « statut du travail salarié » à la CGT, enjeu d'unification du salariat ? In Sophie Bérout et Paul Bouffartigue : 'Quand le travail se précarise quelles résistances collectives ?' La Dispute, Paris 2009.

Reports



Summary Report from Research Workshop entitled: “The Economic Recession and Migrant Worker Employment: exploring the intersections and impacts social science can make in this area”

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Background

Internationally, migration remains a politically sensitive issue. There is increasing (if ungrounded) fear, especially in developed nations, of unprecedented levels of immigration. Across Europe, for example, attempts are being made to strengthen borders to curtail immigration, and in particular clandestine immigration, from outside the European Economic Area. Immigration is a complex issue. Yet the diversity of migrant populations in terms of legality, routes to entry, length of stay and purpose of migration etc. can often be ignored in public discourse on immigration. Instead, popular views of immigration can confuse migrant populations as homogeneous and tend to militate against further immigration flows. Consequently, governments across the world have responded by embracing some form of managed migration. The current economic recession has seen governments taking on a somewhat nationalistic, protectionist approach to regulating labour markets, further reinforce the ‘no outsider’ mentality that can often prevail in debates on migration.. At the same time, migrants from the recent accession states in the EU have been reported to return eastwards. This raises interesting questions about the dynamics of employment relations and future developments in the economy.

The presentations and discussions

The scene was set by Paul Chan from the University of Manchester who provided a snapshot of migration research leading on to the contemporary focus across the world on 'Managed migration'. Given the tide of globalisation and the free movement of people agenda, he argued that more work needs to be done to advance our understanding of institutional perspectives and the role of governance structures (especially of inter-governmental coordination) in managing migration dynamics. Drawing from the public management literature, he illustrated various forms of authority that characterise governments, including state-centred (top-down), market-based, expert-based, and populist forms of authority. In turbulent times of economic recession, governments can often be seen to offer knee-jerk responses to public sentiment surrounding immigration. He then questioned the role social science researchers can play in providing a reasoned voice to public policy in this area.

Professor Jane Hardy from the University of Hertfordshire then discussed migration dynamics in the context of economic boom and bust. She argued that migrants stand to face the brunt of the effects of the economic recession. Interestingly, she noted that recent trends suggest that whereas the employment of UK nationals has fallen in the recession, the employment of non-UK nationals has in fact risen. This therefore raises the question on the role migrant labour plays in the production process, and she casts doubts on the notion that migrant workers merely form the reserve pool of labour. In any case, she stressed that migration dynamics are complex and that policy makers often have to manage the tensions and contradictions that exist. She emphasised that migrant workers are complex agents, at both the individual and collective levels of analysis. Furthermore, she suggested that more work needed to be done to examine what she termed as the "chain of migration", where sending countries are themselves receiving migrants from countries that are perhaps lesser developed. The discussion following Jane's presentation pointed to the possible problems with labour market intelligence and the lagging nature of statistics. A point was also made that, especially in the EU where free movement of people is relatively encouraged, the term 'migrant' may itself be problematic.

Following on from the morning break, a series of three presentations were made by Ian Fitzgerald from Northumbria University, Marcin Fronia from the Polish Academy of Sciences and Torben Krings from

Trinity College Dublin, outlining recent migration research undertaken. Ian reported on work undertaken across three regions in the North of England (North East, North West and Yorkshire and Humberside) that examined the efficacy of institutional frameworks in coordinating responses to migration. This research highlighted the heterogeneity in responses at the local and regional levels, and raises the question as to whether managed migration driven by national governments can ever be enforced. Furthermore, the research highlighted the inherent tensions between global and regional and local levels. Ian also argued that community actors are often regarded as peripheral to policy-making in this area yet can mobilise to become powerful intermediaries in tackling migration dynamics at the grassroots. The discussion that followed brought to the fore the issue of inter-connectedness between city regions and local government interventions. Questions were also raised on methodological challenges surrounding the ability of research teams to gain access into the complex landscape of actors at government, corporate and community levels in order to paint an accurate picture of the realities of migration dynamics.

Marcin talked about social development and the Polish transformation, focussing particularly on context of post-2004 when Poland became one of the accession countries. He discussed the key determinants of social development in relation to the Polish experience and traced the key ideological shifts from modernity (pragmatism) to neo-modernism (anti-universalism) to a discourse of transformation (with EU structural funds) to a discourse of the end of transformation. In the constant recontextualisation of the Polish transformation, Marcin highlighted the existence of competing discourses between 'social transformation' and 'economic transformation', how these intertwine with Polish emigration post-2004 and the conceptualisation of benefits for both the migrants and their families. Jan Cremers from the University of Amsterdam and CLR questioned the criticality of 2004 as a watershed moment and suggested that there was already a level of undocumented migration prior to accession. The discussion also broadened to consider how the ideology of open borders within the EU interplays with the competing discourses observed within nation states.

The workshop then focussed on the impacts of the economic recession on migrant worker employment in the Irish construction industry. Torben explained that the industry is typified by a high degree of mobility given its project-based nature. He observed that the recession affects both Irish and non-Irish workers and questioned whether it is fruitful to shape discussions solely about the migrant. Through a

longitudinal, qualitative panel study, Torben suggested that the effects of the recession included increasing work intensification and a downward wage pressure. He also found that subcontractors and recruitment agencies were more likely to lay off people and that the propensity to opt for non-standard forms of employment appeared to be on the rise. The discussion resulted in a debate on whether distinctions between migrants and indigenous workers were helpful. Furthermore, a question was raised as to whether migration can simply be explained through a rational, economic perspective. Torben also suggested that more research needs to be undertaken to examine the dynamics of return migration; when migrants are reported to return 'home', 'home' is sometimes not the country of origin but another host country (e.g. Polish return migrants in Ireland moving to Sweden). Therefore, the policy intent of national governments in hoping that the migration 'problem' will dissipate needs further scrutiny.

The third stream of presentations focussed on methodological perspectives. Agnes Maciocha from the Dublin Institute of Technology presented on the role of statistics and data mining to identify critical issues that differentiate between migrants and non-migrants. She illustrated with a recent study aimed at investigating the differences in experience between indigenous and migrant populations in relation to work role definition, work activity importance, work activity confidence and work activity freedom. Through normal statistical analyses of a sample of 70 responses, Agnes and her researcher could not distil any significant differences. This led her to deploy rough sets methodology (similar to fuzzy sets) to identify critical sets of issues that distinguishes between the experiences of migrants and non-migrants. A discussion developed as to whether the expectation of differences to manifest between migrant and non-migrant groups is a valid one to have. Could the non-existence of differences be in itself a valid finding?

Rafal Smoczynski from the Polish Academy of Sciences then explained how moral panics discourse theory can be deployed in migration studies. He outlined potential lines of inquiry. First, there is scope for utilising moral panics discourse theory to reduce anti-migrant antagonistic cognitive schemes. Rafal suggested that research could be undertaken to examine how social institutions employ hegemonic structures to systematically construct a moral panics discourse. He argued that we often hear of the discourse, but rarely know how these are recruited and deployed. Second, he suggested that

researchers can emphasise the non-passive role of migrants in fighting back moral panics discourses. How do migrants mobilise to offer a counter-hegemonic position to resist stigmatisation? Finally, Rafal suggested that empirical and theoretical investigations can be undertaken to examine wider picture of conflicts in modern Europe, e.g. concerns with Islam phobia. These lines of inquiry, Rafal argued, demand the use of qualitative, longitudinal techniques to trace the motivation of actors and chronological development, and legitimisation, of dominant discursive frameworks. Questions were raised during the discussion on the usefulness of 'moral panic' as a concept. Furthermore, can longitudinal studies of moral panics discourse contribute effectively to quelling the rising tide of extreme nationalistic sentiments (e.g. the rise of the British National Party and similar institutions across Europe)?

Finally, the workshop concluded with a panel discussion to identify the way forward for research and policy in this area. The panel comprised Jan Cremers (University of Amsterdam and CLR), Professor Howard Gospel (Kings College London), Frank Murray (visiting researcher at University College Dublin) and Peter Finnegan (Dublin City Council). In summary, the future agenda included (though not exhaustively):

- The need to mandate the agenda of equal treatment of all workers;
- The need to delineate connections between deregulation and precarious labour;
- The need for a nuanced approach to investigating return migration;
- The need to debate the tensions between free movement of workers and the impacts of social dumping;
- The need to examine how national solutions within an increasingly global context are joined up;
- The need to engage with other disciplines such as economics, history, law and political science;
- The need to look at the historical context of migration dynamics, especially in times of previous crises;
- The need to examine changing dynamics especially of those countries that have switched between receiving and sending nations;
- The need to engage with employers;
- The need to explore complementarities between quantitative and qualitative work;
- The need to examine immigration policy with wider social, economic and political systems, and to find a balance between rationalistic approaches and socio-emotional perspectives;
- The need for researchers to engage with field workers and their experiences at the coal-face;
- The need for research to explain the implications on policy and

- practical interventions;
- The need to align research and policy strategies with the interest on social justice;
 - The need to look at intra-national migration;
 - The need to distinguish between within-EU migration and migration from non-EU countries;
 - The need for transnational cooperation (neo-colonialism);
 - The need to examine discrimination from within migrant communities, and;
 - The need to investigate education-related migration.

Reviews

Bernd
Eisenbach

Dead migrant workers are not even a case for the accident statistics

THE CCA/IRWIN MITCHELL REPORT DEMANDS: HSE and the Government must do more to ensure the safety of non-UK employees

This report can be downloaded under the title „*Migrants' Workplace Place Deaths in Britain*“ under <http://www.irwinmitchell.com>.

One can make a lot of money out of migrant workers. Their framework of social conditions is permissive: Migrant workers work for half the wages of native workers. Usually they receive even less. Holiday pay, other social security benefits and safety costs (e.g. expensive staff for supervision, instruction, protective equipment, scaffoldings etc.) are nil. Working time is long, work speed is high. Thus, thanks to migrant workers enormous extra profits are made in Europe, particularly in the construction industry: Here the share of migrant workers is particularly high and social conditions are particularly precarious. Employers and (private and national) clients share the construction industry's extra profit between themselves. More than half of construction work is public work and authorised by the state. The state as a client is interested in cheap building on the one hand and operating as „monopolist“ authority of industrial safety regulations as well as organiser of prevention and monitoring on the other. Under these conditions, can one expect the state to improve work safety on construction sites for migrant workers? The researchers of the CCA/Irwin Mitchell report do. They demand from the British Safety and Health Executive (HSE) „*more industrial safety for migrant workers, particularly in the building and in the agriculture sectors*“.

According to their findings migrant workers clearly perform more dangerous work, than noticed publicly. The CCA/Irwin Mitchell report follows the common definition. They understand as migrant workers „*seasonal workers, who must visit their job far away from their residence*“. (Cf. Duden on-line) The scientists were alarmed by the fact that since 2002 the number of fatal industrial accidents quintupled among migrant workers in Britain. The report evaluated all 46 fatal industrial accidents among migrant workers in England and Wales in the last seven years. Their accident circumstances and court process results were evaluated. The accident victims came from

24 countries of origin, though the largest part originated from Eastern Europe: 16 from Poland and two each from Ukraine, Romania and the Czech Republic. One of the 46 fatal accident victims was a German construction worker. Most of the migrant workers' fatal accidents occurred in the construction industry, followed by the services sector and agriculture.

The core results of the report are: the probability to be killed by a fatal industrial accident in Britain is about twice as high among migrant workers than among British workers. In the construction industry the risk of migrant workers being killed by a fatal industrial accident has increased five-times in the last five years. Actually (2007/2008) 17% of all fatal industrial accidents in the construction industry concern migrant workers, which is twice as much, as would be expected - with 8% employed in this industry.

The authors of the report criticise:

- a lack of supervision over the jobs of the migrant workers,
- the low level of research into the working conditions of migrant workers, and
- that HSE does not present the nationality of the accident victims in its accident statistics.

The authors of the report see a striking contradiction in the neglect of the migrant workers by the HSE with regard to the results „of the (HSE-) Commission for Vulnerable Employment“. In its report 2007 this Commission put migrant workers into the category of vulnerable employees and demanded, *„that the number of inspections in the building and in the agriculture sector had to be increased“*.

The report sets out several demands to improve the situation:

- As an important consequence, the report demands from the HSE that, in order to improve work inspection for migrant workers in the construction industry, this sector should be included into the *„Gangmasters Licensing Act of 2004“*.
- Further the HSE should indicate the nationality of accident victims in its statistical report.
- Given the sad data situation and the miserable state of research, CCA and Irwin Mitchell demand that the HSE should invest in more research on the working conditions of migrant workers. Research is necessary above all, in order to answer the question why migrant workers work on construction sites under riskier working conditions than native employees.

Evaluation

From my point of view the demands by CCA/Irwin Mitchell should be taken up and implemented. However it is necessary to extend them by some practical aspects.

The CCA/Irwin Mitchell report owes its special relevance to the high number of serious accidents among migrant workers. From the point of view of humanity, the report covers a special prevention field, which should be given very high priority in all European countries. As a result of globalisation, nowadays each European country has a dual concern for migrant workers, as their country of origin and as their host country. Furthermore, European countries have to respect non-discrimination legislation of nationalities and minorities. (Cf. e.g. ILO Convention C143, migrant Workers, 1975)

What recommendations should be given?

My first recommendation is that improved industrial safety prevention should respond to language deficits, cultural differences as well as to unsatisfactory knowledge of industrial safety techniques among migrant workers. Consequently the following are recommended for implementation:

- understandable systems for instruction, training and operating instructions;
- multilingual and/or language neutral media (instruction cards, exhibits, also films like the "Napo");
- operational management systems, which include migrant workers.

Fruitful approaches to these proposals have been elaborated e.g. by Helmut Ehnes and Peter Schrandt. (Cf. Ehnes, Helmut and Schrandt, Peter: *Multikulti on the job, chances by variety - challenge for prevention*, in: www.steine-und-erden.net > 2007 > 6/07)

„European “prevention approaches, however, are inhibited by fragmented social welfare systems, an intended effect of the European treaties. Through the close connection, which exists in all European countries between accident insurance and prevention systems, and because of the differences, which exist between the national accident insurance systems, rag-rug “*accident insurance*” produces its own rag-rug “*national prevention system*”.

However, despite all varieties, some basic types of prevention for migrant workers can be found. Those basic types can often be found side by side at the same time in the same European country.

The following examples are taken from Germany, where temporary and agency work is forbidden by law. In Germany migrant workers therefore mostly do not appear as employed workers in German enterprises, but work for subcontracted construction enterprises, whether employed or self-employed. According to German accident insurance regulation, the country of origin covers insurance protection. Legally or illegally, given all the engrained variability between legal and illegal workers, one may state without exaggeration that such foreigners are unknown to German industrial construction safety insurance. One consequence is: in cases of accidents migrants do not receive financial compensation from the German occupational accident insurance. A further consequence is that they are not relevant for official accident statistics. Under such a constellation of interest, an effective prevention strategy for foreign workers can hardly be developed.

In other sectors where temporary and agency work is legally permitted, we find another type of prevention. Here, migrant workers more often appear as employees in enterprises, employed as temporary and agency workers, and working with a subcontractor. Thus they enjoy the benefits of German accident insurance. It is in the logic of such a constellation of interest that appropriate prevention strategies for migrant workers could emerge more easily.

One approach to prevention reflects the fact that foreigners must be informed and trained linguistically and culturally for health and safety protection in the host country. For example, the German *Berufsgenossenschaft*, responsible for industrial safety in quarries (*Steinbruchs Berufsgenossenschaft*), recommends sophisticated equipment for an operational industrial safety strategy, which favours migrant workers. (Cf. Ehnes, Helmut and Schrandt, Peter, *ibid*) Similar to the recommendations of the CCA/Irwin Mitchell report, another approach considers work and health protection for temporary and agency workers. Because migrant workers often work in such firms, this prevention approach is equally helpful for the improvement of migrant workers' occupational health and safety. This approach is taken for example by the present "Common German Occupational Safety and Health Strategy (German: *Gemeinsame deutsche Arbeitsschutzstrategie*"), in which [temporary work](#) represent a 'common focal point of prevention' of professional prevention bodies and social partners. (Cf. *Gemeinsame Deutsche Arbeitsschutzstrategie, Fachkonzept und Arbeitsschutzziele 2008 – 2012 Fortschreibung* - Stand: 13.08.2007).

Furthermore, from my point of view, not least in view of the differentiated picture offered by European industrial safety prevention, the promotion of European research by the European Commission should be demanded. In an initial stage of such research, a critical inventory should be drawn up. Later on, research should support the development of a European-wide prevention culture. (Cf. Ehnes, Helmut and Schrandt, Peter, *ibid*) As pointed out by the CCA/Irwin Mitchell report, participation systems, which include victims and their families, should be at the centre of the focus.

Finally, quasi as a side note, also the following reference should be permitted: Because the volume of the CCA/Irwin Mitchell final report is small (48 pages) and because it is quite easy to understand, it can also be recommended as providing more practical information about interesting details of the accident prevention system in the United Kingdom, where the active role of the victims' families and lawyers' taking legal action play an important role. The non-British reader becomes acquainted with conditions in Great Britain: e.g. that also in the United Kingdom a dramatic misfortune had to happen, before industrial safety became legally regulated for temporary work agencies. According to CCA/Irwin Mitchell, this law was passed in 2004, after 21 Chinese cockle pickers were drowned in the rising tide of Morecombe Bay. Now - as the authors urge - their actual findings should be used to expand this law also into the construction and the agricultural sectors.

Rita Donaghy's report to the Secretary of State for Work and Pensions, July 2009

Bernd
Eisenbach

INQUIRY INTO THE UNDERLYING CAUSES OF CONSTRUCTION FATAL ACCIDENTS PUBLISHED

One Death is too Many

Rita Donaghy, former chair of the Advisory, Conciliation and Arbitration Services group and since December 2008 head of the British Government's inquiry into construction safety, handed over her final report on her "*Inquiry into the Underlying Causes of Construction Fatal Accidents*" in July 2009. The Inquiry, commissioned by the Secretary of State for Work & Pensions (DWP) in December 2008, arose from concern over the number of construction deaths and was intended to examine

what more could be done to tackle the underlying causes. The latest Health and Safety Executive (HSE) fatal injury statistics for 2008/9 records 53 fatal injuries to construction workers recorded – a rate of 2.4 per 100,000 workers (provisional figures), while the average number of fatalities for the previous five years was 70.

Based on a widespread stakeholder consultation and on a separate study of recent construction fatal accidents, the inquiry's final report sets out far-reaching and widespread recommendations for improving safety in the construction industry, extending across safety representatives, building control, the legal system, training and competence, and public procurement.

A speaker of the British Government meanwhile announced *"that Government Departments will now consider her recommendations, alongside the current and future safety challenges posed by the construction industry to bring the number of accidents down. DWP will now be consulting with the Health and Safety Executive (HSE), the industry, trade unions and other relevant Government Departments, to fully consider all the recommendations before responding later in the year"*.

Beside a huge number of detailed findings describing *"underlying causes"* as well as a broad scale of recommendations. Rita Donaghy sees the root of the problem of fatal accidents in the construction industry in the fact that (despite or because?, B.E.) *"everyone in the UK is touched by construction work in one way or another from domestic work through to schools and hospitals and to national or international prestige projects and everyone has a view about it **but there is no sense of shock at the regular toll of fatalities in the industry.**"* So, her principle recommendation asks for raising *" **the profile of these tragedies so that a construction fatality becomes socially unacceptable.**"*

The British trade union UCATT has already reacted. Alan Ritchie, General Secretary, said *"Construction is the most dangerous industry in the United Kingdom...No amount of warm words and glossy advice leaflets will change the attitude of these companies. The only way that small companies are going to dramatically improve their safety record is through a greatly increased inspection regime, supported by a far higher level of enforcement and prosecutions. Companies must know that safety breaches will be identified and they will be charged. Greatly enhanced enforcement must be supported by the introduction of statutory director's duties. Companies would be required by law to*

make a director responsible for health and safety. If a company then flouted health and safety regulations and a worker was killed, there would be the option of a prison sentence for the director responsible."

It has to be recommended from my personal view that UCATT asks the British Government to install a **Governmental Permanent Committee of Initiators** invited to work on Rita Donaghy's recommendations. This Committee should – with a broad approach - start a large number of initiatives for the practical and moral renewal of behaviour and practices in the British construction industry. One of the most important measures should be to strengthen safety and health regulations and to improve work inspection on site.

"The global economic crisis and migrant workers: impact and response"

Paul W Chan

Ibrahim Awad ISBN 978-92-2-122403-7
International Labour Organization (2009)

In a time when governments, economists and banking professionals across the world are trying to make sense of the causes and scale of the global financial crisis, issues of excessive risk-taking and bonus schemes in the financial system have been brought to the fore. Yet, relatively little attention has been paid to how the crisis, and more critically post-recession recovery strategies, impacts on employment relations and specifically on the dynamics of labour migration. This ILO report by Ibrahim Awad on the impacts of and responses to the global economic crisis and migrant workers is therefore worthy to note, especially given his skill in juxtaposing in-depth statistical data with the current state-of-affairs as depicted in the public press.

The report presents a global picture of how the dynamics of migration have shifted as a result of the crisis, focussing in particular on the trends of unemployment among migrant communities, the transformation of government policies and transnational cooperation on immigration matters and the material experiences of migrant communities across the world. Unsurprisingly, Awad identified that, in times of crises, migrant communities are often extremely vulnerable, not only in terms of confronting the prospects of unemployment, but also because of the likelihood of slipping into precarious labour and irregular immigrant status. Furthermore, he observed that women appear to be more

vulnerable than men in this respect. Such vulnerabilities are exacerbated by the fact that there is little evidence of return migration in this economic crisis. Accordingly, migrants appear reluctant to return to their home countries for a myriad of reasons, including *inter alia* the possibility that they have settled down in their host countries and/or the perception that the situation is worse in their home countries than in their host countries. In some instances, as in the case of Vietnamese workers in Europe, migrants do not choose to return to their home countries because of their apparent resilience to the economic crisis since they do not work in affected industries such as construction, manufacturing, hotels and restaurants.

In a number of destination countries, government policies have been introduced either to curb the inflow of migrant workers or to encourage voluntary return migration. For example, the UK government has amended the points-based migration system to make it harder for migrant workers to gain employment, whilst the Czech Republic offers payment for voluntary return migration. Awad observes, however, that such tactics do little to secure employment opportunities for native workers and question the efficacy of such policies. Of course, the crisis has also seen an increase in discrimination, xenophobia and even violence against migrants at the grassroots. Such tensions are unlikely to dissipate if popular media continue to illustrate the unsubstantiated claim of the displacement effect that migrants have over natives when it comes to job opportunities.

Awad notes that the experiences across the globe are differentiated. However, where restrictive policies are on the rise in countries of destination, there is evidence that governments and NGOs in sending countries have started to introduce policies and initiatives to ease the return of those citizens who have previously moved away. Awad also observes transnational cooperation in this respect. However, concern is also raised in relation to economic development, especially of poorer countries, given projections – though unsupported by statistical data – of a decline in remittances.

Awad must be commended for presenting such a comprehensive report on the economic crisis and the dynamics of migration, drawing on what must be limited evidence available. Notwithstanding this, a number of omissions remain notable. First, Awad discusses migration dynamics in somewhat simple, binary terms of sending and receiving nations, and does little to delve into the complexities of the immigration chain, i.e. where sending nations are also receiving nations at the same time.

Secondly, it would have been useful had Awad, and perhaps the ILO, included a discussion of how the picture would look like in terms of post-crisis recovery and also to what extent the crisis has been connected with the intensification of the global movement of capital and labour. Examining the latter might just shed some light in terms of what policy-makers should be thinking about to safeguard welfare for all.

Self-employment and bogus self-employment in the European construction industry.

Jörn Janssen
CLR
14.09.2009

Part 1: Summary of a comparative study of 11 member states, by Yves Jorens,

Part 2: Abstracts of 11 country reports, ed. Werner Buelen.
Available on www.efbww.org / *EU Projects*

The phenomenon of different forms of bogus-self-employment is widespread at a European level and might endanger the actual social system, including vocational and professional training. It is clear that further measures have to be taken at national and European level to combat the consequences of bogus-self-employment as social dumping etc... In particular there is a need for a well developed framework and European tool to combat social fraud.

Yves Jorens, Part 1, 'Conclusion', p. 31.

There is no denying, the modes of employment in Europe are in a critical stage of change. The notion of standard employment is vanishing across Europe. Self-employment is a term borrowed from a former era covering a wide range of different relations of employment and services. The status of the employee is on the defence and about to be superseded by the wider definition of the 'worker', whether directly or indirectly employed or self-employed, under fixed-term or open-ended contract, providing labour-only or services, under statutory, collective or individual agreement, declared or undeclared, legally or illegally, etc. Any study setting out to provide orientation in this jungle, in particular at transnational level, meets a most urgent need in the field of social rights generally and of workers rights in particular.

This present study of 11 Member States is not the first of its kind. A similar project on a related subject also for the EFBWW and FIEC was carried out by the European Institute for Construction Labour Research in 2005. Instead of self-employment it focussed on “undeclared labour in construction”. That study was published under the title “Shifting Employment” and it seems, indeed, that the shift has continued since. Unfortunately only one of the country reports on ‘Self-employment and bogus self-employment’, for France by Sandrine Gineste Part 2, pp. 21-28, refers to its predecessor in this publication. There exist, of course, innumerable national and comparative, sectoral and trans-sectoral studies on changes in employment relations which, unfortunately, are not systematically referenced in the reports. This leaves us with the question what this study on bogus self-employment in the EU construction industry adds to our knowledge.

If we compare the figures, imprecise and as a rule incomparable, the picture has hardly changed in the last four years. Italy, Poland, Spain, Romania and the United Kingdom - Bulgaria not included - have remained top of the league of self-employment and, according to the authors, the Netherlands has joined them. The Scandinavian countries seem to catch up slowly.

The reports predominantly emphasise the legal distinction between employment, self-employment and its bogus segment. What emerges unmistakably is the specificity of these definitions within their respective national frameworks. Though some country reports are more precise in this respect, e.g. those on Poland (Anna Kwiatkiewicz) and Britain (Mark Harvey), it remains unclear whether employment or contract conditions covered by the same (English) terms are the same in reality and what the figures represent in transnational comparison. The report on Romania is particular nebulous - referring even to “forced labour leasing” (p. 113) and “royalty contracts” (p. 125). Whether this chaos is reality or due to the inadequacy of the analytical tools can only be guessed. Generally, since our study on ‘Undeclared Labour’, there is no sign of progress in harmonisation of national regulations or in Europeanisation of collective or statutory rules, nor of statistical categories.

Each report ends with ‘conclusions and recommendations’ which appear to have been drafted without prior discussion between the country experts. The recommendations for the prevention of various forms of abuse can be divided into two groups: the first pleading for consolidation and enforcement of national regulations (France,

Germany, Netherlands, Romania, Sweden, United Kingdom) and the second to introduce transnational EU regulations in order to adjust to the realities of the transnational labour market and to stop different legal and institutional frameworks undermining each other (Belgium, Ireland, Italy, Poland). However, in any case the prevention of unwanted practices has to be based on a common strategy which can hardly be detected in the whole study and which had obviously not been included in its remit. Most reports approach the growth of self-employment, including its bogus variant, defensively. The obvious advantages for both sides of the employment relationship are listed in the Dutch (pp. 152 f.) and summarised most positively in the Spanish report (p. 138):

“Moreover, we have reached the conclusion that self-employment is very common in the construction sector, especially in the form of subcontracting. This allows, in many cases, a higher degree of specialisation and training of workers and a frequent use of technical resources, which affects positively the investment in technology. Moreover, it facilitates the integration of small and medium-sized businesses in the construction sector, while it contributes to the creation of new jobs.”

This statement might have provided a fruitful starting point for a strategic discussion on new forms of employment. But the heterogeneous panorama of the reports reflects the diversity of approaches which makes it virtually impossible even to compare between the countries. This difficulty is compounded by a number of shortcomings which could easily have been avoided:

- None of the reports defines its construction industry. In France, for instance, it includes the finishing trades: “second oeuvre” - translated as “secondary job”! (p. 37). Does it include them in all other countries? What about repair and maintenance? Does it also include ‘travaux publics’ in France, ‘engineering construction in the UK’, etc.? The demarcation has a tremendous impact on the level on self-employment, bogus, informal and illegal practices and should have been taken into account.
- The individual national regulations defining ‘employment’ are extremely difficult to compare as the descriptions do not relate to each other or to a common standard, are differently structured, belong to specific legal systems, and are expressed in different languages. ‘Bogus-self-employment’ is a case in point. It is well defined in Britain and in English, but takes varying meanings in the

context of other countries and languages.

- Linguistic problems are omnipresent. For instance the Polish report uses the terms 'work agency', 'temporary agency', and 'temporary work agency' (p. 101). Are these different or identical agencies and synonymous with 'employment agency' in other reports. Above all, are the practices identical? We can only guess. Sometimes, however, it is not clear whether a word is used by mistake or in order to express a specific meaning, such as with "forced labour leasing" in the Romanian report. Perhaps this is only a reversal of words meaning 'labour force leasing', something like labour only subcontracting.
A coherent proofreading and editing would have helped to make the reports more readable, understandable, and comparable.
- Referencing is totally haphazard and often inaccurate or incomplete. Only the Belgian report provides a list of literature (p. 20).

Given the secular importance of establishing or restoring workers' rights in new – 'shifting' – forms of employment and at transnational level, it is imperative that the present forms of employment relations are thoroughly explored, mapped, and evaluated. This would be a major project, based on transcending categories applicable to all EU member States - bogus self-employment is not internationally transcending and covers a mix of various and disparate employment relations. Such a project ought to be carried out by a team of experts from a representative sample of countries and languages. A first step for such a team would consist of working out the core categories providing the plane of projection and analytical tools to identify the dominant forms of employment, irrespective of their legality or relationship to existing 'standards'. The perception of such standards is rather an obstacle to impartial observation and empirical study. In a second step, existing forms of employment would have to be explored across the sample of countries and mapped in a comparable form. Thirdly, the empirically found forms would have to be organised in a typology and assessed according to their dynamic and position in the developing productive environment. On this basis, in a fourth step, recommendations might be formulated with a view to inform the political process of legal reform.

Studies of the kind reviewed here - probably abysmally under-funded - are likely to be quickly shelved and forgotten rather than instigating a well founded political debate about the future of labour and social

relations. The money as well as the efforts put into snapshots of this kind might better be invested in a more in depth study.

Yves Jorens' words must be taken serious, "different forms of bogus-self-employment ... might endanger the actual social system".

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1. Jan Cremers and Jörn Janssen (2006) *Shifting Employment: undeclared labour in construction*. CLR Studies 5, International Books.

Projects

Ernst-Ludwig
Laux/Jan
Creemers

Integration, Security, Innovation - European answers to the global financial and economic crisis.

For more than ten years the Foundation *Arbeit und Leben Niedersachsen* based in Osnabrück has been organising European projects related to the world of labour. Project partners have been the ETUC, the German trade unions, several German foundations such as the Hans-Böckler Foundation, and unions and institutes from other EU countries.

CLR will be involved in a new project called *Integration, Security, Innovation* and members of our network will take the responsibility for some of the activities. In this project we can rely on the results of several CLR studies, especially our activities related to the *Enlargement* process. Activities will start in 2010. Last November the EU-Commission approved the financing of the project. The project has three dimensions:

- Further integration of the CEE countries (including the Western Balkan) by a permanent improvement in industrial relations.
- Securing pensions and active ageing as the foundation for our social security.
- Social innovation as a means of humanising labour in Europe.

In line with the central aims of the EU budget line, an analysis of the crisis has to lead to reflections on the need to reregulate and/or to redefine the concept of a 'Social Europe'. Furthermore a network of multipliers and of links between the world of science and the world of labour has to lead to the creation of a higher notion of the European dimension in our labour relations.

The opening of the project will be in Bratislava (probably March/April 2010). The partners will discuss in that meeting the basic items for 6 consecutive seminars and a final conference in Osnabrück. The series is planned according to the following themes:

- *Integration, Security, Innovation – European answers to the global crisis.*
- *Seminar Labour relations in the CEE countries – How to improve integration*

- Seminar *Labour relations in the CEE countries – How to improve integration including the Western Balkan*
- Seminar *Social security perspectives – European concepts for a secured old age*
- Seminar *Social security perspectives – European concepts for active ageing*
- Seminar/Expert workshop *Strategies for innovation - indicators for sound labour conditions and health and safety*
- Seminar/Expert workshop *Strategies for innovation – stocktaking, challenges, perspectives*
- International Congress Osnabrück *Integration, Security, Innovation – European answers to the global crisis* (13. Nov. 2010)

We will come back to this project in the next issues of CLR-News.
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