

European Institute for
Construction Labour Research

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Undeclared Labour in the Construction Industry

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Regulation and Institutions

The legislative framework concerning undeclared labour is primarily connected to the laws on taxes, duties etc. The legislation provides that it is illegal not to pay tax, duties or customs charges on goods and services - it is thus illegal not to declare earnings from work to the tax authorities. Undeclared labour is subject to fines, and in severe cases imprisonment.

In July 2004, following the inspection campaign on undeclared labour the minister responsible for taxation announced new measures, which include the following:

- all employees must be registered with the relevant authorities from their first working day. This is aimed at dealing with the abovementioned situation whereby tax inspectors are often told that employees found not to be registered with the tax and social security authorities are on their first day of work and thus not registered yet;
- insurance companies must ensure that work carried out to rectify damages for which insurance claims have been made is declared properly;
- Dansk Tipstjeneste, the national football pools, lottery and gambling body, has contracts with 4,000 retailers. Administering its services is a profitable business. It is to terminate its contracts with retailers charged with tax fraud.
- a nationwide campaign that focuses on 'criminalising' undeclared labour with the aim of changing the perceived general attitude that 'a little favour now and then doesn't harm'.

According to Denmark's 2003 National Action Plan (NAP) on employment, it is the government's policy to make it easier in administrative terms to comply with the relevant legislation - including that on the establishment and operation of enterprises - and thus address an important barrier to transforming undeclared labour into regular employment. Under a recent 'competition package', a number of statutory rules and regulations have been abolished, and obligations to submit reports and data to public authorities have been simplified. The package also comprises a number of tax relief measures, such as higher income limits for VAT registration and extension of a special 'business set-up account' scheme.

The Danish Federation of Small and Medium-Sized Enterprises has proposed additional measures, including criminalisation of the users of undeclared labour and a lower VAT rate on services.

Over 2003-4, the public labour market and tax authorities, the police, the social partners and to a certain degree the Danish Immigration Service (Udlændingestyrelsen) have been campaigning against undeclared labour in shops and catering and in construction.

There exist neither legislation on minimum wages nor mechanisms for the extension of collective agreements whereby these agreements become generally applicable ('erga omnes'). The Danish labour market is regulated by autonomous collective bargaining. Social partners have the exclusive right and responsibility to negotiate collective agreements on general wage levels and other employment conditions. Employers belonging to the signatory parties are obliged to apply these collective agreements also to non-union workers.

Undeclared labour was so far not a specific topic during collective bargaining in the private sector. However, Danish Union of Wood, Industrial and Building Workers (Forbundet Træ-Industri-Byg i Danmark, TIB) and the General Workers Union in

Denmark (Specialarbejderforbundet i Danmark, SiD) have reached agreements with the Danish Construction Association (Dansk Byggeri) to undertake monitoring work in the construction sector in order to prevent undeclared and illegal work that is not performed in line with the industry's collective agreement.

According to case law trade unions have the right to take industrial action against a foreign (as well as a Danish) undertaking, which posts workers to Denmark with low wages, and force the undertaking to enter into bargaining.

In January 2006 the Danish Labour Court ruled in two cases concerning the position of temporary agency workers in the relation to the user company and the temporary work agency. The judgement made it clear that temporary agency workers applied to companies in the occupational field of electricians must be treated on the same conditions as permanent staff.

The Danish Labour Court decided 11 January 2006 that temporary agency workers working in companies under the provisions of the sectoral collective agreement, the Electricians' Agreement must be treated on the same level as permanent staff concerning pay and working conditions. The ruling concerned two cases involving the Union of Danish Electricians (Dansk El-Forbund, DEF) and Tekniq, the employers' organisation for heating and plumbing engineering and electrical installation. The electricians in question were assigned to the companies Kemp & Lauritzen A/S and Kaj Jensen A/S by a temporary work agency. In both cases the temporary agency workers did not work under the same conditions as the permanent electricians of the companies. Among other things they did not receive payment for working overtime or working on holidays. Instead they were paid in relation to a contract between the user companies and the temporary work agency.

The ruling of the Labour Court has now made it clear that the Electricians' Agreement encompass all work carried out by electricians in companies covered by this agreement whether the work is done by the companies' own permanent staff or hired temporary agency workers. In his ruling the arbitrator argued that the Electricians Agreement is a sectoral agreement, which covers all work performed for a member company within the occupational field covered by the collective agreement. This argument is strengthened by the fact that the temporary agency workers were clearly working under the management and instructions of the employer of the permanent staff - in contrast to work performed by a subcontractor. The arbitrator further stated that the user companies are liable to pay the loss of the temporary agency workers. It was the responsibility of the companies to inform the temporary work agency that work carried out in the companies was covered by the Electricians' Agreement. The result of the case has binding effect in relation to temporary agency work in the sector involved. The fact is, however, that in this case the court could not have ruled different because a ruling has to base itself on former rulings or settlements if any.

In 2003 a similar case was taken up between the same unions about the same issue in the so-called Bravida case. In this case the arbitrator stated that the temporary agency workers applied to sectoral agreement, i.e. the Electrician Agreement, for the same reasons as mentioned above: the agreement is a sectoral agreement and the right to manage and issue instructions lay with the company. When the recent case, however, was taken up in the first place it was due to the fact that the outcome of the Bravida-case was not laid down as a concrete court ruling, even if it was preceded by a judge (of the Supreme Court), but as a settlement between the organisations in a protocol.

Tekniq claimed that the Bravida case only had effect in this particular case. The ruling in January 2006 decided differently, i.e. the settlement in the Bravida case served as legal example.

This does not mean, however, that the ruling has a general effect for all other sectors. In fact Danish temporary agency work applies to at least three large sectoral agreements (*manufacturing industry, service sector and construction*). The agreement in *building and construction* follows by and large the pattern of the agreement in the manufacturing industry, which states that the workers are covered in relation to the Industry Agreement if the agency is member of the signatory employers' organisation of the Confederation of Danish Industries (Dansk Industri, DI). With the addition that in building especially the trade unions want the agreement in force also to cover workers sent by subcontractors. This is a consequence of the special situation in the building sector facing a significant problem bogus self-employed and of bogus companies based in Eastern Europe, trying to circumvent the Danish transitional scheme in relation to workforce coming from the new EU member states.

The conclusion is that no single general provision regulates temporary agency work at national level and that the sectoral context of the work is decisive. A prove of the flexibility of the sectoral collective agreements and of autonomous collective bargaining rather than a lack of uniformity in the area of temporary agency work.

Nature and features of undeclared labour

Definition

Undeclared labour is defined as non-registered productive activities that are not reported and taxed according to existing legislation. It has been relatively widespread in Denmark for a century, after income tax was introduced in 1903. The undeclared activities are illegal because there is non-compliance with the mandatory report to tax authorities, whether for VAT or for income tax. It is mainly found in the provision of personal services to families, friends and colleagues, and in work in restaurants, retail, cleaning, construction, agriculture and horticulture. Although accurate data are not available, it appears that 'domestic' undeclared labour, performed for householders may be skilled or unskilled, and is more likely to involve men in construction work and women in cleaning and childcare. The more 'commercial' undeclared labour in the other sectors mentioned is in many cases performed by students (in all sectors, but especially in restaurants), and migrant workers from Turkey, the Middle East, Pakistan and Somalia (often in retail, cleaning and catering) or from the new Member States in Central and Eastern Europe (notably in construction and agriculture). The unemployment rates of migrants living permanently in Denmark have always been notably higher compared to the total labour force. Unreported activities performed by immigrants without a work permit are defined as illegal work.

According to Gunnar Viby Mogensen (*Danmarks uformelle økonomi - historiske og internationale aspekter*, 2003), undeclared labour represented some 3.8% of GDP in 2001, and this level had fluctuated over previous years - see table 1 below. The same study notes that, as in the formal sector of the economy, there is a gender pay gap in the informal economy. Men earn 15%-18% more than women for comparable jobs.

1988	1991	1994	1996	2001
2.5%	4.4%	3.4%	2.6%	3.8%

Source: Viby Mogensen 2003, quoted in the Thematic Feature – industrial relations and undeclared work, EIRO, 2004.

The government launched an inspection campaign in April 2004 against undeclared labour in restaurants and pizzerias, kiosks, taxi driving, agriculture and gardening, markets, nightclubs, newspaper distribution, massage parlours and bakeries. The campaign involved a partnership between different ministries and public authorities, with the social partners and trade associations also participating.

Table 2 shows that failure to declare work, whether because of unsatisfactory accounts or undeclared work proper, is quite substantial. Almost all pizzerias and kiosks are owned and staffed by immigrants from countries outside Europe. Overall, it could be concluded that 45.6% of the workers inspected in June 2004 were performing undeclared labour, since their employment was not known to the tax authorities, with those supposedly working their first day accounting for a substantial part of the problem.

Construction was not a target group of that campaign. Later on the construction sector became more and more involved. Activities of the trade unions, primary boycott and secondary sympathy actions, aiming to force (foreign) companies to comply with the

bargaining tradition contributed to this stronger involvement. These activities got widespread attention in the media. The fact that the labour market partners in the industry could come to joint positions in this field also brought more attention to the phenomenon.

Table 2. Findings of undeclared work inspections carried out by tax authorities, 3-13 June 2004

	No. of companies inspected	% of companies with unsatisfactory accounts	No. of workers in companies inspected	% of workers listed in MIA*	% of workers said to be on first day at work	% of workers receiving unemployment benefit	% of workers receiving social benefit %
Pizzerias, restaurants	678	40.7% (276)	1,846	45.4% (839)	18% (332)	7.4% (136)	10.1% (186)
Others	1,099	24.7% (271)	2,271	61.7% (1,401)	6.6% (149)	2.8% (64)	5.1% (116)
Total	1,767	31.7% (547)	4,117	54.4% (2,240)	11.1% (481)	4.9% (200)	7.3% (302)

Source: Ministry of Taxation.

* New employees have to be registered within the first month of employment in an establishment in the Monthly Report on Employees (Månedlig Indberetning af Ansatte, MIA). Thus if the workers inspected in June 2004 were claimed to be on their 'first day at work' at the establishment, this could not be verified by the authorities.

Different forms

According to the government, the share of undeclared labour in total tax evasion has been increasing, and currently stands at about two-thirds.

The issue of increasing 'bogus' self-employment is seen as a problem by the main building industry employers' organisation, the Danish Construction Association. Out of the 11,000 sole operators in building and construction, only half are considered to be genuinely self-employed by both trade unions and employers.

In summer 2003, the TIB trade union announced plans to set up an affiliated organisation that will offer membership to self-employed people in the construction sector. This initiative was targeted at people working as self-employed under questionable circumstances, usually receiving lower pay than set by collective agreements.

The social partners in building/construction have agreed to monitor workplaces, as far as possible, and report any cases where the employer cannot account for workers at the workplace. Local branches have been asked to be 'on the alert'.

As far as the functioning of the restrictions of the transitional scheme after EU-enlargement is concerned several examples were cited by the BAT cartel.

Many citizens from the CEE countries work in the sector as bogus self-employed (they are only working for one employer who also provides tools and materials), or as temporary agency workers, or for a company in for instance Poland, which provides workers for a contract in Denmark under the provisions of the law of posted workers. In these cases the Danish collective agreements are not in force or at least the coverage is blurred, as in case of the temporary agency workers. This grey zone covers persons who are working illegally (undercover of being posted) and persons who can be said to fulfil the right of company establishment inside the EU. Although a manual has been produced for all parties involved (employers, unions, police) to

make the rules more transparent and result oriented it is still difficult to determine in which cases the law has been broken. As expressed by a union leader from BAT: 'We have to check if posted workers from companies in Poland, etc. fulfil the terms of the law or if they in reality are hired by the company in Denmark. In this case we can demand that the company sign an adoption agreement or otherwise legally boycott the company. It is difficult. We have to do what they did in the infancy of the trade unions. We have to go out there and sign and defend collective agreements.' The law on posted workers provides that workers posted from other EU countries work under the same conditions as Danish workers.

Extent

There is currently a heightened awareness among workers (and in the general public) about undeclared and illegal work. This has partly to do with the enlargement of the EU in 1 May 2004, which triggered many debates about possible illegal workers coming from the new Member States. In this context, building/construction and agriculture trade unions (and employers' association to a certain degree) have called on the authorities to introduce rules to prevent undeclared and illegal work. As to the latest predictions of the number of Polish workers coming to Denmark, it seems that new figures are being produced every week on the numbers of workers due to arrive from the new Member States. The divergence between the figures is great, and the best course would be to monitor the situation and see what actually happens. The trade union's aim is to monitor the situation at Danish workplaces intensely and ensure that every worker from CEE countries has a work permit.

It is however, also said that workers who have come since the enlargement of the European Union in May 2004 have contributed to counteracting the emergence of bottlenecks on the labour market - in particular in agriculture and horticulture and in the building sector. This is one of the results of a report published by the Ministry of Employment on 30 November 2005. That report recommends that new initiatives should be considered with a view to attracting highly skilled experts and researchers as well as skilled workers in building construction. It is also recommended to examine the possibilities for relaxing the rules as laid down in the transitional scheme.

Like most other 'old' EU countries, but in contrast to the neighbouring country Sweden, Denmark introduced a set of transitional rules as of 1 May 2004 concerning the immigration from the new Member States. A majority in the Parliament and the social partners supported the rules, which was aimed at protecting the balance at the labour market as well as protecting the social welfare system against 'social tourism' from the East. As Denmark has no national minimum wage defined by law or by collective bargaining, the initiative also aimed at supporting the existing collective agreement system, in broad terms called the Danish Model, where wages are agreed at sectoral level and company level. The worst scenario was that otherwise the country would experience an invasion by Eastern European workers, shopping around, and working at wages well below the collectively agreed levels and sooner or later to be counted among the unemployed.

According to the transitional law workers from CEE countries can only obtain a working and residence permit if the work to be done is a full-time job paid according to a collective agreement. A number of public authorities including the tax authorities, the police, the Danish Immigration Service (Udlændingestyrelsen) and the Regional Labour Market Councils (De Regionale Arbejdsmarkedsråd, RAR), which includes

representation of the social partners, monitor the observance of the rules, and a monitoring committee was set up in cooperation with social partners at national level.

It seems that the rules have worked in so far as the expected and feared invasion of cheap labour has not taken place.

An overview of the Immigration Service reports (by the end of March 2005, so almost one year after enlargement) that there were 1,931 active working permits. The difference between permits given and active permits is due to the fact that a number of the Eastern European citizens with a legal permit at the calculation date either had finished their work or had not started yet.

The active permits are divided among the following sectors (March 2005):		
Sector	Number of persons	Change since Feb 2005
Agriculture and gardening	838	+153
Industry	165	+12
Building and construction	172	+26
Trade, hotel and restaurant	135	+11
Transport	54	+4
Finance	98	+22
Public and personal services	375	+77
No data	94	+43
Total	1,931	+348

The majority of the permits were given to citizens from Poland (809), Lithuania (685) and Latvia (191).

As of April 2005 the Immigrant Service had received 5,167 applications for a working and residence permit from citizens in the new Eastern EU-countries. According to the provisions of the law the permits given were divided as follows:

- 64% were covered by a collective agreement at the company
- 10% were given to researchers and professional on individual contracts
- 26% of the permits were given to workers in companies covered by an adoption agreement.

By the end of August 2005, a total number of 5,472 workers, mainly from Poland and the Baltic countries, had been granted a work permit in accordance with the rules laid down in the transitional scheme. About 4,000 were active while the remaining permits had either expired or had not yet taken effect. The report thus draws the conclusion that the total number of work permits must be said to be rather modest. Half of the active permits had been given in agriculture and horticulture (corresponding to 5% of the total workforce in this sector), while 7.1% of all permits have been given in the building sector. By August there were 285 active work permits in this sector. The number of posted workers and of persons that have chosen to establish a company in Denmark is rather blurred, but does not exceed a couple of hundreds.

Attempts to circumvent the rules are mainly found in construction in the form of the establishment of 'bogus' one-man-firms where the alleged self-employed person is actually in an employee relationship as he/she receives all instructions and working tools from the alleged customer. The number of reports to the police about such

illegal work, and the number of charges and court decisions has been increasing from 2004 to 2005.

The National Labour Market Authority (Arbejdsmarkedsstyrelsen) has estimated that the accession of workforce from CEE countries has not had a great effect on the labour market. However, according to the labour market authority, the effect seems positive in agriculture and gardening where persons from CEE countries cover a large part of the demand for work that would otherwise be difficult to fulfil.

Per Konghøj Madsen, professor of labour market studies, has opposed this viewpoint and argues that the influx of workers from Eastern Europe will put a pressure on wages and the union density in the building and construction sector, as it is happening in Germany.

But all in all the invasion did not take place, and the authorities' estimation of the situation is that the law has had a positive effect. Still the success depends of the eyes of the beholder. Especially the unions in building and construction, represented by the cooperation cartel, the Building, Construction and Wood Industry Cartel (Bygge-, Anlægs- og Trækartellet, BAT) continue to point at the pitfalls of the law.

Since 1 May 2004 the BAT cartel has reported 177 cases of illegal work to the police covering 710 citizens from Eastern Europe.

Recent figures (Rockwool, April 2006) indicate a decrease of the extent of undeclared labour in construction. The authors see various reasons for this decrease. First of all the perspectives on the construction labour market have improved; there is a high demand of labour, also for the years to come, in the official, declared part of the market. Labour shortages have an upward effect on wages and probably lead to more direct employment. On the other hand the costs of and hourly payments asked for undeclared labour have increased sharply.

Secondly the decrease might be a result of the Fairplay campaign set up by the government with construction as one of the focus sectors.

No recent reliable figures are available; earlier estimates (2001) come up with up to 25% of the hours worked in construction being undeclared.

Functioning of the undeclared labour market

Actors

The activities in the building and construction industry comprise construction, repairs and maintenance of houses, offices and industrial buildings, and the establishment and maintenance of roads, harbours and airports, bridges and tunnels and sewerage systems. The drastic fall in house building throughout the 1970s and 1980s has reduced production and employment in this sector considerably. In the late 1990s the sector experienced an increase in production and employment. In 2000 production value of this sector constituted nearly 5% of the total gross factor income as against 12% in 1972 when the sector's activities reached a peak. Since then almost 43,000 jobs have been lost in this sector, so that employment in 2000 was down to approximately 166,000 jobs, corresponding to some 6% of total employment. Recent figures show that even with an increase of production activity employment in construction has more or less stabilised at that level (2004: 165,000). The official figure of self-employment has not really changed since 2001 and stays at the level of 21,000 workers.

The building and construction industry is mainly made up of small companies in which independent and assisting spouses constitute a relatively large proportion of those employed. The rapid decline has in the first half of the 1990s led to the industry being more export-oriented; partly through Danish firms with their employees being increasingly active in the German market. However, since 1996 the domestic market has grown constantly.

Main characteristics.

The shadow economy consists of unreported productive economic activities and tax evasion. In many cases both the seller and the buyer of goods or services are aware of the character of the transaction. Within the different occupational groups, unskilled and skilled workers are frequently present, closely followed by self-employed. Unemployed are not overrepresented. Several authors suggest that it is more difficult to get access to potential customers as soon as you are no longer part of the formal labour market. What is more, unemployed have less possibility to 'borrow' tools and equipment from their regular employer for the undeclared labour outside the standard working hours. A typical person active in undeclared labour is a young (semi-) skilled male, combining a full-time job in construction with non-reported activities. The highest payments for undeclared labour are to be found to self-employed and salaried workers.

Foreign labour.

Campaigns in Denmark against undeclared labour go hand in hand with the campaign against illegal work, and illegal work is often connected to immigration. However, public debate has a tendency to exaggerate the role of the immigrants in undeclared labour. Undeclared labour has existed since income tax was introduced a century ago and, while being quite widespread, it does not appear to have grown in any very significant way. In recent decades undeclared labour has involved immigrants to a considerable degree, and the current campaign against undeclared labour is concentrated on sectors with a relatively high share of immigrant workers.

'Bogus self-employed'

In addition to the increase in the number of sole operators, a key reason why the trade unions in the building industry have launched new initiatives is the view that most

sole operators are in fact 'bogus self-employed' ('falske selvstændige'), whether they have been asked to work as such or it is their own free choice. Their existence is seen as constituting a hazard to collective agreements as long as the employers find it profitable to recruit such false self-employed workers. Examples have been reported of building workers working under a collective agreement who have been encouraged or even intimidated by their employer to obtain a VAT number to provide evidence of their registration as self-employed. However, despite the change in the worker's formal status, it is still the same employer that deals with orders, materials and tools and organises the work. The unions want the tax authorities to intensify their controls of one-person firms and the firms which employ them, and in August 2003 they approached the building industry organisation, Bygherreforeningen i Danmark, and asked it to take measures to prevent member companies from hiring bogus self-employed people.

Segments

The government and the social partners made a great effort during 2004 in tackling undeclared labour. Cooperation on this issue took place between police, governmental agencies, ministries, employers' associations, employers' trade organisations and trade unions. A number of illegal workers, in particular from CEE countries, Turkey and middle-eastern countries, were found to be working in hotel and restaurants, in pizzerias, in kiosks and in the construction sector. Critics claimed that the raids undertaken by the police were concentrated in areas and sectors mainly populated by people with a non-Danish ethnic background, whereas undeclared labour in private homes, which has existed since the introduction of income tax in 1903, was not inspected in this way.

Reasons

Undeclared labour has been relatively widespread in Denmark since the introduction of income tax at the beginning of the 20th century. Initially, this was mainly in building sector, but undeclared labour later spread to restaurants and shops, and was in many cases combined with other forms of tax fraud.

The high level of income taxation and VAT rate might act as a stimulus to undeclared labour. By international comparison however, undeclared labour seems to stay relatively low except for the undeclared activities undertaken by (salaried and self-employed) workers that have already regular earnings in the formal part of the market.

Effects

Workplace visits by the tax authorities have revealed widespread tax fraud and undeclared labour. At the end of the 20th century the annual shortfall in state tax revenues due to undeclared labour was estimated to be DKK 25 billion (EUR 3.3 billion), though the extent of undeclared labour was thought to be declining.

In the Danish context the first effect of undeclared labour is that it limits the tax base because of lower revenues. If this leads to higher taxation undeclared labour can even become more popular. At the moment undeclared activities are seen as some 'extra' income next to the decent, regular earning. A development of more systematic income fraud would be a serious threat to the existing socio-economic system.

Secondly the legitimacy of the labour market organisations as such could be at stake. The labour market model is based on strong social partnership with autonomous

employer's organisations and trade unions that jointly 'rule' the market. Systematic fraud and undeclared activity will undermine this pillar of market regulation.

Measures

In 2003, at the behest of parliament, the national police was asked to draw up an action plan to combat illegal and undeclared labour. Innovatively, the police's plan involved a wide range of different authorities, along with the social partners, in a cooperative effort to combat crime in this area. Public authorities such as the police, the public prosecutor, the Immigration Service (Udlændingestyrelsen), the Customs and Tax Authority (Told & Skat) and the Public Employment Service (Arbejdsformidlingen, AF) met representatives of trade unions and employers' organisations to discuss possible initiatives in this field. The result was the creation of regional networks, with the local branches of trade unions playing a major role in the detection of illegal workers at workplaces, and employers' organisations helping in particular to identify the ringleaders who organise the illegal workers and the employers that hire them. The campaign has so far been successful in uncovering the scope of undeclared labour and tax evasion. In June 2004, the Ministry of Taxation launched a campaign on avoiding undeclared labour aimed at employers, and trade unions in construction are to do the same. This was followed in the same year by the Fairplay campaign consisting of advertisements and control activities focusing on the fact that undeclared labour isn't fair and can be punished. Construction was an important target group during this campaign.

In December 2003, the Danish parliament approved measures aimed at preventing illegal work and possible misuse of the Danish welfare system when workers from CEE countries seek jobs in Denmark following EU enlargement on 1 May 2004. However, trade unions in the building and construction industry claimed that loopholes in the new provisions will enable them to be evaded, and for workers from the new Member States to be employed on wages below collectively agreed rates. Under transitional arrangements agreed by the EU and new Member States, which join in 1 May 2004, the existing Member States may limit movements of workers from the new Member States for a period of up to seven years after enlargement. In December 2003, a majority in the Danish parliament (Folketinget) supported a government proposal to introduce such transitional limitations. Thus Denmark joined the other 'old' Member States, with the exception of Ireland, in taking a number of precautions in order to prevent any fears of an excessive movement of workers from the east. In terms of the nature of its transitional measures, Denmark is in the middle of the EU range; with Ireland at one extreme and Germany and Austria at the other (the latter have reportedly acted to restrict all movement of workers from the central and eastern European countries for the full seven-year transition period).

According to the measures, citizens from the new EU Member States can seek work in Denmark on the same footing as other EU nationals from 1 May 2004. However, they have no right to receive social benefits while searching for a job. If they find a job, they will - unlike other EU nationals - have to apply for a special work and residence permit which will be granted only if they have a full-time job on terms corresponding to those normally applying on the Danish labour market. This means that no permit will be granted for part-time work or work at a wage which is lower than that laid down in collective agreements

This means that workers coming to Denmark from, for example, Poland or the Baltic states - the nationalities most likely to seek work - will not have any right to Danish social provisions such as unemployment benefits. If they are unable to find a job or are dismissed, they will lose their residence permit and will have to leave.

It has been claimed that there will be possibilities to circumvent the new provisions and for workers from CEE countries to take a job at a wage lower than the relevant collectively agreed rate. The umbrella organisation of trade unions in the building and construction industry (Bygnings-, Anlægs, and Trækartellet, BAT) criticised the government for seeking to pass transitional measures, which are 'full of holes'. The criticism resulted from a number of cases. A Danish entrepreneur had set up a company in Poland, through which he was offering to perform building work carried out by Polish workers at half the cost of Danish workers. Another example was a Polish company offering to install kitchens and bathrooms for a price 50% lower than Danish companies. In both cases, BAT claimed that these moves were possible under the Danish legislation implementing the 1996 EU Directive (96/71/EC) concerning the posting of workers in the framework of the provision of services. This law overrules the provisions on transitional rules on free movement of labour in connection with the enlargement of EU. The transitional scheme applies only where a Danish company hires workers from, for example, Poland.

The BAT cartel demanded that the law should make it absolutely clear that every worker from the CEE Member States must have a work permit according to the rules of the transitional scheme. This is seen as imperative, as new figures suggest that more Poles than previously expected will seek work in Denmark.

After a visit to Poland by journalists from *Fagbladet*, the magazine of the General Workers' Union (Specialarbejderforbundet i Danmark, SiD) reported that, according to Polish Ministry of Labour, 85,000 workers will go to Denmark over the next 10 years provided the high level of unemployment in Poland does not change. The scenario changes in line with the level of unemployment, with lower unemployment leading to fewer emigrants.

With regard to the simplification of business environment the government had the intention to ease the administrative costs of establishing and running private firms (the promotion of 'entrepreneurship' in line with the European Employment Strategy). A second thought is to intensify incentives to declare work, to reduce marginal tax rates and a special tax reduction of earned income.

Good practices

The social partners support the various initiatives taken by the authorities, including practical support as far as possible. They agree that undeclared labour is a violation of, and a threat to, the Danish collective bargaining system, which regulates most labour market issues.

Trade unions in construction have criticised government campaigns against undeclared labour for not addressing building work in private households. They also state that the tax authorities can only pay inspection visits to establishments, but a construction site is not defined as an establishment and is thus outside the scope of inspection visits from the authorities.

The Danish Federation of Small and Medium-Sized Enterprises (Håndværksrådet, HVR), which represents enterprises mainly in building, construction, services and small industry, while welcoming recent measures to address firms that use undeclared labour, believes that customers that avoid paying the full price for services should also be criminalised. The member enterprises of HVR are often asked to work 'without a bill' - in most cases meaning without charging VAT. HVR also calls for large-scale initiatives to change attitudes towards undeclared labour. Undeclared labour represents a substantial parallel economy damaging the competitiveness of small enterprises and resulting in increased taxation on them, HVR claims. In this connection, HVR proposes a lower VAT rate on services and a lower minimum turnover above which firms must register for VAT. Both trade unions and employers' organisations have raised the possibility of excluding members that carry out undeclared labour.

On the trade union side, it is especially TIB and SiD that are involved. The cartel in building and construction (BAT-kartellet) is coordinating the unions' efforts. In summer 2003, the Danish Union of Wood, Industrial and Building Workers (TIB) announced plans to set up an affiliated organisation that will offer membership to self-employed people in the construction sector. This initiative is targeted at people working as self-employed under questionable circumstances, usually receiving lower pay than set by collective agreements. Sole operators work alone without any employees and do not meet the conditions to be considered as companies, as all they provide is their own labour - i.e. in reality they work as normal wage earners (they are known as 'arme og ben-firmaer', or 'arms and legs firms'). TIB estimates that there are around 11,000 such sole operators, and the number is increasing. According to the union, their presence in the industry results in 'dumping' in terms of prices and safety. Typically, they work at lower wages than employees covered by a collective agreement, and TIB and BAT-kartellet see this as a serious problem. The unions are aiming to combat this phenomenon, both through unionising the more 'serious' of the self-employed sole operators and closing down the less serious 'arms and legs firms'. TIB draws inspiration from the Netherlands, where the FNV Bouw construction workers' trade union has organised 3,000 out of 30,000 self-employed workers in the building sector in an affiliated organisation with its own policy and own employees, FNV Zelfstandigen Bouw. That proposal to organise self-employed people in a trade union was initially met with scepticism, but the initiative turned out to become very popular. According to TIB, this is due to the fact that sole operators are not very different from employees and have the same needs for security, regular wage conditions and a safe working environment.

In principle, the main employers' organisation in the sector, Danish Building Industry (Dansk Byggeri), agrees with the unions' criticism of bogus self-employment. 'It is actually wage earners in disguise that we are dealing with and that is not acceptable. By having a work team of 10 workers registered with the VAT authorities as 10 self-employed persons all agreements concerning pay conditions and pensions, safety and health conditions and other matters are set aside. And we fully agree with the trade unions that this will actually completely erode the welfare system, which we have together built up. We cannot stand by and watch this; it has to be stopped,' the director of Dansk Byggeri recently told the *Jyllands-Posten* newspaper. Dansk Byggeri does not fear that it will lose members to TIB. It has 700 sole operators as members, but they are characterised as firms, which advertise the services they provide. They must have several years' experience before joining the organisation and employees who change overnight to being self-employed cannot expect to be admitted as members of Dansk Byggeri.

However, other employers' organisations have a different attitude, especially with regard to the plans to admit self-employed people to TIB. The joint employers' organisation for heating and plumbing engineering and electrical installation, Tekniq, calls the plan 'desperate' and sees it as an expression of bewilderment. Tekniq has made ironical comments, asking whether the next step will be for TIB to join the Danish Employers' Confederation (Dansk Arbejdsgiverforening, DA).

TIB's plan for an affiliated organisation that organises self-employed people is the first of its type in Denmark. In principle, it should be possible, as there seems to be no major overlap between the sole operators who are members of an employers' organisation and those who are merely one-person 'arms and legs firms'. Given the strong growth of various forms of 'atypical' employment across Europe, the establishment of a trade union for the self-employed may be less self-contradictory than it might appear. There is a very delicate borderline between sole operators, free agents, casual workers, freelancers and bogus self-employed people. The common feature is that they are all forms of atypical employment and that there is major growth in such employment.

The problem of bogus self-employment can easily be linked to that of illegal workers from central and eastern European countries, working under the cover of bogus self-employment and hired in as such by employers in order to circumvent the rules on employment terms and collective agreements. If such a practice is allowed to go on uncontrolled the result is fewer apprenticeship places. Workers will go directly into the market as sole operators. Social provisions, trade union membership and the collective bargaining system are in threat in such a situation.

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