



Free mobility and EU's enlargement

Migration of the construction workers after May 2004

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Preface

This book was conceived through collaboration between Bo Sandberg and Gunde Odgaard from the Cartel of Unions in the Building-, Construction, and Wood Sectors (BAT), Nikolaj Lubanski from the National School of Social Work in Copenhagen and Sten Bonke and Elsebet Frydendal Pedersen from the Department of Construction Management at the Technical University of Denmark (BYG.DTU) in the process of organizing a Danish office of the Institute of Construction Labour Research (CLR), under The European Federation of Building and Woodworkers Organisation in Brussels.

In relation to launching the Danish CLR office, - CLRdenmark - an international conference on migration of the construction workers in the European Union at the time of the enlargement in May 2004 was organized. This took place in Copenhagen on the 20th of April 2004.

At the conference a range of perspectives on migration of construction workers was presented. Both seen in a historical perspective as well as how it will influence the future in the European Union. Drawing on migrant experiences from the Spanish construction industry when Spain joined the European Community (EC) in 1986, German construction industry after the East- and West German reunification and the expected consequences of the present, the conference specifically highlighted the social partners perspectives on migration of construction workers and the Danish construction industry's ability to cope with the new situation.

The contributions given by Justine Byrne, (Spain), Gerhard Bosch, (Germany), Jan Cremers, (CLR Brussels), Nikolaj Lubanski, (Denmark), and finally Arne Johansen and Jens Klarskov representing the social partners in Denmark on the conference are all included in the book.

The conference and publishing of this book has involved many persons and institutions, which we should like to acknowledge and thank. This include at institutional level the Danish board for EU information, the Federation of Building-, Construction, and Woodworkers Union, The Technical University of Denmark, Danish Construction Association, the Employment Relations Research Centre, Department of Sociology (FAOS) at the University of Copenhagen and BygSol (Cooperation and Learning in Construction). Our thanks also go to the contributors, to Kirsten Gammelgaard for her work of translation and to Marie Krog for her layout and work with the logo of CLRdenmark.

By Bo Sandberg, Gunde Odgaard, Nikolaj Lubanski, Sten Bonke and Elsebet Frydendal Pedersen

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Chapter 1

Introduction Transitional arrangements or transnational solidarity – migrant workers in the enlarged EU.

By Nikolaj Lubanski and Elsebet Frydendal Pedersen

The development of the European Union is a history of a continent determined to end centuries of frequent and bloody wars. Over the last two hundred years several wars have been fought with devastating effect for the development in the European countries. Conflicts between nation states have kept Europe divided. Lines of conflict have crisscrossed the map of Europe, either north-south with the century long conflict between France and Germany or east-west with the Iron Curtain between communist and capitalist states. After World War II a number of European leaders came to the conclusion that the only way to secure a lasting peace between their countries was to unite them economically and politically. This conclusion became the beginning of the European Union.

The history of Europe is also a tale of continuous change. From the French Foreign Minister Robert Schuman's first proposal to integrate the coal and steel industry in 1950 to a European Union with 25 member states after May 2004 political and economical changes have been on the agenda. Many crises have occurred in this development of the Union, and the processes of change have taken place with different speed but the fundamental idea: to avoid war and unite Europe for the benefit of all the participating countries has apparently been strong enough to overcome the crises. No matter how sceptical one can be in relation to the democratic and bureaucratic problems of building an Europe-wide union, the integrative force that was let loose with signing the Treaties of Rome in 1957 has changed Europe.

The enlargement with ten new member states in 2004 marks the single largest expansion of the European Union (EU) but absolutely not the first one. EU has grown in size following successive waves of accessions. The original six countries from the European Coal and Steel Community was joined by Denmark, Ireland and the United Kingdom in 1973, followed by Greece in 1981, Spain and Portugal in 1986 and Austria, Finland and Sweden in 1995. For some of the countries that have joined in the last decades, the membership has marked dissociation from a totalitarian past and a new beginning to build up a democratic welfare state. Generally, the countries have experienced economic growth and stable democratic institutions after

their accession. It can be argued that this process would have taken place anyway but the political and economical potentials of the EU have definitely influenced the speed through which this process has occurred.

This is important to remember in the present phase of integrating ten new member states. It is not only the biggest enlargement of the EU but probably also the most complicated one. The issue is not just size in spite of the fact that annexation of 75 million new EU citizens in itself is a huge challenge. The issue is also that most of the new member states have a not too distant communistic past and in general a lower living standard than the rest of EU. This means that the process of integrating these countries will invariable run into problems, which also preliminary has been the case in the ongoing enlargement process. How to integrate the fundamental principles of free movement of capital, goods, services and people secure between countries with very different starting points?

A number of problems became already visible in the accession phase. Just to mention a few: Will it at all be possible to continue EU's subsidizing policy in agriculture after the enlargement? Will most companies in the new member states be taken over by foreign multinational companies? And will the old member states be flooded by cheap labour from east? From the beginning of the enlargement process with the definition of the so-called Copenhagen Criteria in 1993 to the actual accession of the ten new member states in 2004, EU has maintained that the accession countries should accept and implement the "Acqui Communautaire" – the entire legislative foundation of the EU – into national law and procedures. In other words they were ascribed expectations to make an immense effort in order to change their societies fundamentally to adjust to EU standards. Nevertheless, many compromises and transitional arrangements were agreed upon to keep the enlargement process on the track.

The issue of migrant workers was one of them. On the one hand, it was of great symbolic and economic importance to allow workers from the new member states access to the more prosperous labour markets of the old member states. For many years, the borders of Central and Eastern Europe were hermetically sealed, which is poetically expressed in the words of the Polish philosopher Stanislaw Jerzy Lec, who has stated that the message: "No entry" is understandable, but worse is the message "No exit". The breakdown of the communist regime has made it possible for the Eastern Europeans to travel. After 50 years they have obtained what people in the west saw as the most natural thing: the right to move about

freely. This is one good reason not to construct new borders for workers from the new member states. Another reason is that companies from the old member states already have taken advantage of the new markets and cheaper production possibilities in the Central and Eastern European countries. As part of the countries' rapprochement to the EU, they have generally opened their markets for foreign companies in search of new markets, raw materials and cheap labour. On this basis, it can be seen as a bit hypocritical to close our labour markets for the new EU citizens.

On the other hand, it is difficult to evaluate the consequences of a completely open labour market from day one of the membership. In spite of the fact that migration from new to old member states seems to be fairly limited (estimations run from 250 – 450.000 persons per year in the first years after accession), the flow of migrants is likely to be both unequal distributed among countries and sectors. Austria and Germany have up until now received 70% of all migrants from the countries that now become EU members, and there are no reasons to believe that the future pattern will be much different. However, if this kind of immigration into Austria and Germany is not somehow regulated, it could create an enormous pressure on wage and working conditions in the two countries. The unequal distribution among industrial sectors will make the pressure even more visible. Migrant workers tend to find work in sectors where it is possible to integrate them fairly fast and often on a temporary basis. Therefore, migrant workers are over-represented in sectors like agriculture, tourism, building and construction. Open borders and unregulated free movement of workers could be the end of the well-organised labour market systems in the above mentioned sectors in Austria and Germany. Other old EU members like, for instance, Denmark would also be influenced although it would probably not be to the same extent, due to its position and problems with the language.

Transitional periods and arrangements became the compromise. In relation to migrant workers, transitional periods up to seven years were allowed for the old member states before they are obliged to fully open their labour markets. In the negotiations it was implied that this compromise was for those countries, which mostly feared free migration, mainly Austria and Germany. Many other countries e.g. Denmark and Sweden among others expressed their support of free movement from the start of the enlargement. But this was in the negotiation process, now when the reality of an enlarged EU has come closer, and "national interests" seem to have replaced political rhetoric. Almost all the old EU members who realistically can be influenced by labour migration have created some kind of transitional arrangement. Some will simply use the seven years to prepare

themselves for the free movement, and thereby postpone the possible consequences. Others have formally opened their labour markets from the beginning of the enlargement but with so many restrictions that the labour markets in practice are difficult to enter. Austria and Germany belong the first category, and Denmark and Sweden to the latter.

The interesting aspect of these policies of safety precautions is that they are established to avoid a likely but in reality unknown situation because we do not really know how many will leave their country in order to be employed in the old member states. Likewise, our knowledge of the possible consequences of workers migration is limited. More questions than answers in relation to the future development on the European labour market can be raised. For instance; Will migrant workers travel from the new member states to the old ones in substantial numbers? What will be the consequences for employment relations in the recipient countries? Will migration lead to pressure on employment- and working conditions? To what extent will migration be of mutual benefit for both the home and the host country of the migrant worker?

Many predictions and forecasts have over the last years been put forward, but mostly they have been a part of a political programme either in favour of or against free movement from day one of the enlargement. More rarely seen have been non-political sector studies, which have tried to investigate these important issues and implications and answer some of the many questions.

This is the background for this book. Our wish has been to gather some of Europe's best researchers in the field of employment relations in the construction industry in order to obtain an overview both of the consequences of earlier migration waves and of likely consequences of the present enlargement process. The focus on building and construction has been chosen because this sector generally is a magnet for migrant workers. Thereby, the construction sector can be seen as a critical case where the possible consequences become visible at an early stage. Due to both the temporary and mobile characteristics of construction, this sector often goes to "extremes"; employment relations can be both fully regulated and almost completely disorganised. The consequences in this sector being either no change at all or only moderate, hopefully bring us closer to a conclusion that east-west migration is manageable for most sectors in general.

The book presents a historical perspective to the present developments. Through the analysis of earlier processes of enlarging

EU, it is possible to extract important experiences that can assist us in predicting the future consequences of this enlargement. Therefore, the first chapter will analyse the development in the Spanish construction industry after Spain's membership of the EU in 1986. This is followed by an investigation of the consequences of the German reunification process. Then the last fifteen years of development in the Central and Eastern European countries that are now joining the EU is presented. Finally, the Danish situation is analysed in order to estimate the likely size of immigrant workers, the established transitional arrangements, and the consequences for Danish employment relations in construction.

Justin Byrne from Fundación Juan, Centre of Advanced Study in the Social Sciences in Spain analyses the flows of migrant labour out of, but more significantly into, the Spanish construction industry since Spain joined the European Community (EC) in 1986. He concludes that on the supply side these flows are located in the broader context of Spain's evolution from a country of emigrants to one of immigrants. Analysis of the demand side inevitably focuses on the Spanish building industry, firmly ensconced on a low track path of expansion based on cheap, flexible labour. This combination of supply and demand factors account for Spain's very limited participation in intra-European movement of construction labour over the last two decades, as well as the much more significant flows of extra-community nationals into the industry in Spain in recent years. While offering few grounds for optimism about the future, the paper suggests the Spanish union's inclusive defence of the rights of all workers is the only way forward for construction labour, both native and migrant.

Gerhard Bosch from Institute of Work and Technology, IAT, Germany, points out the lengthy tradition of using foreign workers in the German construction industry. These foreign workers are integrated into the German social security system, as they are employed by companies and work in accordance with the collective bargaining terms in force. The article describes the various legal basis of posting, presents on quantitative trends in recorded postings from EU countries and Eastern Europe and analysis the legislative postings on the German construction labour market. The author concludes that the traditional regulatory system of the German construction industry is being undermined and that new regulatory framework for social and economic policy is needed in order to preserve an innovative construction sector.

Jan Cremers from Institute of Construction Labour Research, Bruxelles states initially that the EU enlargement to include another

10 countries introduces a huge task in the unification process of the European market that started in the eighties. In his article he presents some observations linked to the free movement in the "new" EU. By first looking back at the developments in Europe since the start of the internal market project - from the middle of the eighties on - and the fall of the Berlin wall he reasons for the importance of looking on what happened in the CEE and former Comecon states as a consequence of European and American pressure to open up their markets, via "shock therapy" as for instance in Poland. The article is concluded with a plead for open borders combined with concerted action against illegal recruitment and irregular employment and that compliance with collective agreements and labour legislation in the territory where the work is done should stay the guiding principle.

Nikolaj Lubanski from Human Resources and Development at the National School of Social work in Copenhagen addresses the outspoken fear of unregulated migration of construction workers into the Danish construction sector in relation to the enlargement of EU and whether the traditional Danish model of cooperation between the social partners will be able to cope. He points out two different migrant workers, one being the single drifter seeking employment and the other foreign firms working in Denmark with labour from another EU country. The Danish government has with the East Agreement from December 2003 made restrictions in term of insuring both groups and individuals equal employment conditions as for the Danish workers. The agreement can, however, be criticized for insufficient social security. The author concludes that Denmark probably only will have a limited migration, so the expressed fear might just be "much ado about nothing".

There are never simple solutions to complex problems. The process of integrating ten new member states in EU will not end with the enlargement. This is more likely just the beginning. There will be a profound need for finding a combination of transitional arrangements and transnational solidarity for the benefit of all countries in EU, and following this a need for further cooperation and research. This book marks a first contribution to this.

Chapter 2

A South European perspective on migrant construction workers: Spain since 1986

By Justin Byrne

In few other industries in Spain has migration, and more specifically immigration, been as important a phenomena as in construction. This has been the case since the mid-1980s, coinciding with Spain's entry into the then European Community (EC) in 1986. Contrary to the expectations of some, however, European integration has had a very limited direct impact on the Spanish construction labour market, as there has been only very limited movement of construction workers between the Member States. Minimal intra-European migration to and from Spain has contrasted with the growing, since the late 1990s soaring, presence of extra-community nationals on Spanish construction sites. This paper traces and attempts to account for these flows of migrant construction labour, focusing in particular on the challenges that non-European immigrants pose to the industry, and most importantly to the workers, both native and foreign, working in it.

FROM A COUNTRY OF EMIGRANTS TO A COUNTRY OF MIGRANTS
Spain has historically been a country of emigrants, exporting labour to Latin America and increasingly over the course of the twentieth century, to Western Europe. Emigration intensified in the 1950s and 1960s, taking tens of thousands each year to Germany, France and Switzerland. While most went legally, many did so irregularly. Outflows dropped dramatically following the 1973 oil crisis, only remaining of any significance to Switzerland, the principal destination of Spanish migrants through the 1980s (MTSS 1993; Fernández Asperilla 1998).

It was then that Spain's position in international migration flows was reverted. From 1981, the number of Spanish migrants returning to Spain outnumbered those leaving the country. More importantly, between 1985 and 1995, the total number of foreign residents in Spain rose from 250,000 to 500,000, divided fairly equally between EU citizens (many of them retired people from the colder Northern European countries) and non-Europeans (above all from Morocco). Since 1996, there has been a spectacular increase in immigration to Spain, above all from outside the EU. Up by over 300% over the previous eight years, in December 2003 the total number of legally

resident foreigners numbered 1,650,000 (Ministerio del Interior: 2002 and 2003). Of these, over 75% were extra-community nationals, essentially from Latin America, North Africa and Eastern Europe. At the same time, current estimates suggest that as many as 1 million people may currently be living and working in Spain illegally (*El País* 29 January 2004).

THE SPANISH CONSTRUCTION INDUSTRY: DOWN THE LOW TRACK

The construction industry worldwide has a long tradition of importing migrant labour from less developed economies. This becomes necessary when the supply of native workers reluctance to take '3D' (dirty, degrading and dangerous) jobs dries up, and particularly attractive to employers as the pressure to cut costs intensifies. At the same time, the existence in many countries of a large informal or underground economy in the construction industry has made this a traditional port of entry into the labour market for migrants both legal and irregular, whose very vulnerability and disposability forms part of their attraction for employers (IFBWW 2004).

In the 1950s and 1960s, these demand-side factors drew tens of thousands of Spanish migrants into the construction industries in France and Switzerland, where they constituted a flexible supply of cheap labour and were strongly over-represented in the secondary labour market and the informal economy (Fernández Asperilla Babiano and Farre 2002). In the same way, the expanding presence of extra-community workers in the industry is directly linked to the path taken by the Spanish construction industry over the last two to three decades (Byrne and van der Meer 2003).

Despite sometimes violent fluctuations, notably during the deep, decade-long slump between 1975 and 1985, the long-term trend in the industry in this period has been one of growth in both production and employment. The latter reached broke its historic record of 1,300,000 in 1998 and the milestone of 2 million in 2001. Expansion has been characterised by and based on profound structural and organizational change. The key mechanism has been the intense outsourcing of production through subcontracting, including extensive chain subcontracting. This has consolidated a strict division of labour between firms and a highly polarized business structure. At the top, since shedding their site labour in the depression decade of 1975-1985, the very few large construction companies have concentrated almost exclusively on the promotion, design and management of projects. Mergers are still shrinking the number of major corporations, engaged in the complementary processes of diversification into other sectors and internationalisation, contracting major projects in Latin America, the EU and North Africa. Meanwhile,

the actual physical production is done by smaller subcontractors, often performing very specific tasks and carrying out different functions within the production process. The relatively unregulated nature of the product market, and the proliferation of subcontracting have facilitated this atomisation of the business structure; an estimated 75% of the workforce is employed in companies with fewer than 20 employees. Some 70% of such "firms" have fewer than 3 employees, and many consist of collectively hired "gangs", or individual self-employed workers (Colectivo Ioé 2001: 41; FECOMA 2003a: 2021).

These organizational and structural developments have given rise to a labour market with a number of crucial industry-specific features: very low levels of formal education and or training; extremely high levels of temporary or fixed-term contracts (in 1999, 97% of new contracts were fixed-term); high levels of self-employment (fluctuating between 17% and 23% since the mid-1980s); very high and increasing accident rates (Byrne 2000); and a flourishing informal economy. Recent estimates suggest that as much as 20% of all construction jobs and anything between 10 and 50% of all labour may be in the underground economy (CCOO-Madrid 1994: 221-31; (Colectivo Ioé 2001: 41). The vigour of the informal economy is a reflection of the weakness of state control, widespread social acceptance, and the dynamics of price-competition, free-riding, and productive fragmentation that have engulfed the industry.

It is also a result of the weak and ineffective interest representation in the sector. In 1997, the building federations of the two main national confederations *Comisiones Obreras* (CCOO) and the *Unión General de Trabajadores* (UGT) claimed a combined union affiliation rate of just 10% of the workforce. Their members are concentrated above all among permanent workers in larger companies; in small firms and sites, unions have a strictly limited presence in the workplace. The industry-wide employers' organization, the *Confederación Nacional de la Construcción* (CNC) claims to include around a quarter of all firms in the industry, but its capacity to represent and ensure the collective discipline of employers in the industry is undermined by the continued autonomy of sectoral and local employers, and the predominance of small companies outside the reach of all organization. Hence the limited effective implementation of the generally binding collective agreements in the sector.

Since the mid-1980s, the fragmentation of production and employment, labour market flexibilization, and ineffective interest representation and enforcement of contractual agreements and labour legislation have combined to send the Spanish construction

industry down the “low road” of development recently outlines by Gerhard Bosch and Peter Philips (2003). As exemplified by the Spanish case, this impedes organizational and technological innovation, and investment in training and the workforce, instead making the industry dependent on generally low-skill, insecure, and, at least for the unskilled, low-cost labour, as competition is based on price rather than the creation of added value, and the pressure on costs intense. Labour market flexibilization, and the chaotic destructuring of companies and outsourcing has facilitated the continued operation (and probable expansion) of the ultra-flexible, informal or underground economy which underpins the production, and profitability, of companies in all sections of the industry. It is here that the expanding demand for cheap, disposable, labour in the low-track Spanish construction industry meets the supply of migrants, coming to Spain in increasing numbers since Spain joined the European Community (EC) in 1986.

EUROPEAN INTEGRATION 1986: THE EUROPEANIZATION OF CONSTRUCTION LABOUR?

Spain joined the EC, along with Portugal, on 1 January 1986. Since then, or at least until very recently, Spaniards and their successive governments have been enthusiastic participants in the widening and deepening of integration. Spain’s Euroenthusiasm is partly based on historical and cultural factors (and the deep-rooted association existing between Europe and modernity in the broadest sense), but also on the evident macro-economic benefits that membership has brought. The investment and commercial possibilities opened up by the single market, as well as the large scale transfer of funds from Brussels, have been decisive in the major and, despite the recession in the early 1990s, sustained economic growth registered since the mid-1980s. This has enabled Spain to significantly reduce the gap with its wealthier European partners: in 1970, Spanish per capita GDP stood at around 70% of the EC average; it has now risen to around 86%. At the same time, and particularly under the Socialist governments in the 1980s and early 1990s, increased spending went into the development of a European-style Welfare State and public education system, with a particularly important expansion in higher education. These were important elements of convergence with Europe, which also meant the adoption by successive governments of the economic orthodoxy of liberalization and flexibilization, notably of the labour market.

European integration has had a direct and manifold impact on the construction industry. It has certainly been one of the principle beneficiaries of this period of long-term economic expansion, which has fuelled demand for private and public building and construction

project, many funded by EU structural funds. Integration has also fuelled the consolidation and internationalisation of Spain's largest construction companies, merging in order to ensure their capacity to compete with other European companies both in and beyond Spain. While internationalisation is essentially restricted to the two dozen very largest companies, all levels of the industry have been affected by Spain's progressive assumption of EU directives on the transparency of tendering and contracting processes, environmental standards, health and safety and, crucially for what concerns us here, the free movement of labour within Europe.

Given the historical record of emigration from Spain (and Portugal) and fears of an influx of migrants from both countries to the more prosperous member states, a seven-year moratorium was imposed on implementation of the free movement of Spanish workers. Accordingly, this only came into effect on 1 January 1993, since when Spain has been incorporated into the single market of labour. However, for qualified technical posts Spain's slow assumption of EU directives on recognition of professional qualifications has interfered with the operation of the free market. In 1999, Spain incorporated the EU's directive on posting into national legislation (Ley 45/1999), another significant step forward towards the consolidation of the free movement of labour within the EU.

In practice, however, European integration and the consolidation of the single market have had only a very minor impact on the Spanish construction industry. In the case of migration from Spain, like the Spanish workforce as a whole, Spanish construction workers have not taken advantage of the single market to seek work abroad. Rather, and again like the population as whole, European integration has had a more significant impact encouraging the return of older Spaniards migrants who had left Spain for Northern Europe in the 1950s and 1960s (for example, by facilitating the transfer of pension rights, the possibility of free movement for visits to and from Spain).

The very limited presence of Spanish construction workers in other European countries is probably explained by a combination of demand-and supply-side factors. On the demand side, by the 1990s there was little demand for migrant labours in other European countries, themselves suffering from relatively high levels of unemployment, and which had largely closed the gates to mass migrant labour in the 1970s, thereby interrupting the flows and social networks on which these were based. On the supply side, many of those who had lost jobs in the watershed decade 1975-1985 left the industry for good. Young Spaniards were already reticent to enter an industry strongly associated with 3D jobs, and still less to leave their families to do so, especially when national wage differentials were much lower than they had been in the heyday of immigration in the 1950s and 1960s. At the same time, the prospects of a recovery in

the Spanish construction industry, appeared, and in fact turned out to be, good. By the second half of the 1990s, the Spanish construction industry was experiencing major and increasingly acute labour shortages for the first time in its history.

Nor have Spanish construction companies sent workers abroad in any significant numbers. In fact, two successive surveys into posting carried out by the European Foundation for the Improvement of Living and Working conditions in 1999 and 2003 make no mention of Spanish workers being employed within Europe by Spanish companies (EIRO 1999 and 2003). Further ongoing research into the issue seems likely to confirm this finding. This might appear surprising given the expansion in the Spanish construction industry's presence abroad, but is in fact a logical consequence of the "hollowing out" of the large, Spanish companies, which are those that operate at the international level. While they do send highly qualified technical and managerial employees to supervise their large civil engineering and building projects undertaken in the rest of Europe or beyond, since shedding their directly employed labour in the early-1980s, they scarcely have any Spanish site operatives to send abroad. Rather they rely, as in Spain, on local sub-contractors to carry out the actual production. As a result, migration is not a relevant strategy or reality for Spanish construction workers.

There is just one numerically relatively significant exception to this rule, formed by the Spaniards working in the Swiss construction industry. As noted above, since the late 1970s this has been the most important destination for the many thousands of Spanish male labour migrants to Switzerland: in 1970, 17,500 Spanish men (or some 25% of all male migrants- 30% of the economically active - with permanent residence (12 months or more) worked in construction. Since then, in the context of an overall decline in the Spanish population, diversification in employment of those in the country, and major increase in proportion of economically inactive migrants, the number of Spaniards working in the construction sector has dropped to just over 4,000 in 2000. They still represent 27% of the economically active male Spaniards with permanent residency, but just 1.6% of the industry's workforce of almost a quarter a million in 2003, some 30% of whom are foreigners.¹

While further research would reveal more about the situation of these Spanish migrants in the Swiss construction industry, many of whom are seasonal, migrating mainly from the Atlantic region of Galicia in

¹ I would like to express my gratitude to Sandra Siegenthaler and Elena Grisafi Favre at Swiss Federal Statistical Office for providing me with this data, taken from the Swiss census and Labour Market Survey for the relevant years, and to Mariano Pacheco of the Swiss Gewerkschaft Bau und Industrie (GBI) for his valuable insights.

Northwest Spain, some points can be made about the direction and scale of this movement of migrants. First, it predates Spain's integration into the EU in 1986 and has in fact declined substantially since then, in line with the overall decline in Spanish labour migration. Second, this shift appears to be supply-side driven, fundamentally determined by rising levels of prosperity and education, and the expansion of the sector in Spain, making it unlikely that the progressive liberalization of the movement of labour under the terms of the bilateral Agreement on the Free Movement of Persons, signed in Luxembourg on 21 June 1999, will have a significant impact on the flows of Spanish migrants, at least into construction. However, third, on the demand side, the decline in Spanish migrant labour has also been related to their involvement in Swiss union organization and action, bolstered by collaborative relations established with their Spanish counterparts in areas such as training, joint information campaigns, and most recently, the Swiss union's successful campaign for early retirement, when meetings were held in Galicia.² This might help explain Swiss employers' strategy of substituting Spaniards with less combative migrants from less developed economies, within the EU particularly from Portugal, and increasingly from the candidate countries of the former Yugoslavia and the Balkans.³

The very limited presence of construction workers from other EU member states working on Spanish sites also reflects similar supply and demand factors. On the supply side, wage rates, working and employment conditions are unlikely to draw workers from other most European countries to Spain. On the demand side, even after integration, foreign companies have only had a very limited presence in Spain, whether as principal or sub-contractors. Large companies tend to follow their Spanish counterparts in employing local subcontractors and labour to carry out the actual physical production, and bringing only their senior personnel.

The only reported instances of EU construction workers in Spain refer to Portuguese nationals employed either by Spanish companies or by Portuguese companies operating as sub-contractors for Spanish principal constructors. (EIRO 1999). Although no quantitative data are available, anecdotal evidence indicates that the former are concentrated in border regions with long-standing transnational migration, whether permanent, or increasingly temporary. In

² The GBI is now advising the Spanish unions on their recently launched campaign for early retirement.

³ Unlike Spain, Portugal is therefore both a source and destination of migrant construction labour, Portuguese migrants working in large numbers in Switzerland at the same time as mainly African migrants work in the industry in Portugal. MACAISTA MALHEIROS 1998.

contrast, the Spanish unions refer to the presence of Portuguese subcontractors employing posted Portuguese labour operating further afield, particularly on larger scale construction projects such as the enlargement of the Madrid metro system.⁴

Since 1999, when the EU Directive 96/71/EC on the posting of workers was incorporated into Spanish legislation through Law 45/1999, such workers are legally covered and subject to Spanish labour law and the binding collective agreements in the sector. Representatives of Spanish unions have expressed concern over social dumping, reporting incidences of Portuguese companies operating less beneficial Portuguese rather than Spanish labour collective agreements. However, this it is not a prominent concern or issue on their agenda; they have enough to worry about enforcing the established terms among Spanish workers and employers. Significantly, like its predecessor, the current framework collective agreement in the industry makes no reference to posting as defined in the EU Directive. (FECOMA 2003b).

For the construction industry as a whole, therefore, European integration contributed very rapidly to fuel the boom in the industry from 1986-to 1992, as well as the sustained expansion of the industry since the second half of 1990s. Integration has also stimulated and facilitated the consolidation of Spain's major international construction companies, which now operate extensively in Europe. But the consolidation of the Europe of capital has outstripped the Europe of labour. This implies, for example, that the full impact of stricter EU health and safety measures has been mitigated by ineffective enforcement, but more particularly for what concerns us here, that EU integration has only a very limited impact on the mobility of migrant construction workers into and out of Spain. Now a member of the exclusive club of economically more advanced European nations, Spain neither exports construction labour (except to Switzerland) nor, with the limited exception of the Portuguese, offers sufficiently attractive wages and conditions to make it an attractive destination for European construction workers or companies from other EU member states. Rather, like other members of the club that previously employed migrant Spaniards, the main source of cheap, flexible labour comes not from poorer EU member states, from but outside the EU.

EXTRACOMMUNITY MIGRATION INTO SPAIN

Expanding particularly fast since the mid-1990s, the number of extra-community immigrants with work permits in construction rose by almost 42% (up from 50,000 to 119,000) between December 2000 and August 2002, when construction accounted for some 14% of all

⁴ Interview with Alberto Trigo, Secretary for Immigration, FECOMA-CCOO.

new non-European beneficiaries of the Social Security system, and immigrants accounted for some 9% of all legal employees in the sector. (FECOMA, 2003a: 24). The real figure is certainly much higher, as all the evidence suggests that extra-community migrants (both legal and irregular) are over-represented in the informal economy; in 1997, nearly 20% of the Moroccans and over 60% of the Poles (compared to just 1.4% of the Spaniards) surveyed by the Colectivo Ioé had no employment contract. (Colectivo Ioé 1997, 162). In this respect, it should also be noted that over 15% of the immigrants who legalised their residence and work situation in the first major extraordinary regulation process in 1991 presented job contracts in construction (Sole: 2001: 23). Extrapolating from this and working with recent estimates of up to 1 million irregular immigrants in Spain (El País, 9 December 2003), we could speculate a figure of around 130-000-150,000 irregular migrants working in construction, taking the regular and irregular total to some 250-270,000, or 12-15% of the industry's workforce.

Non-EU citizens working in construction have tended to come largely from the EU periphery and more recently from Latin America. In chronological order, they have come first from Morocco (around 30% of all regular immigrants in the sector in 2002) and Eastern Europe, especially Poland (1.98%, but many undocumented) but increasingly from Romania (7%), Bulgaria (2.4%) and the Ukraine (2.19%) and other countries in the region. Above all in Madrid, the sector also now employs a large number of more recent Latin American arrivals, from Ecuador (19%) Colombia (8%) and Peru (2.6%). Mirroring the residential distribution by country of origin of the entire immigrant population, Latin Americans, and Ecuadorians in particular predominate in Madrid, and Moroccans in Catalonia (FECOMA 2003a: 24-27).

National differences also exist in terms of immigrant workers' legal status and place and conditions of employment. It is possible to identify various groups, ordered here in terms of their order of arrival. First, the Moroccans, who despite the popular image of irregularity are now more likely to have acquired more permanent residency and legal status. They tend to work with small to medium-size sub-contractors working on large construction projects. Second, the Poles, and perhaps the more recently arrived other East Europeans, among whom illegal residence and working is more common. This would appear to be explained by various factors. First, Poles' less permanent plans for working in Spain, and the possibility of temporary migration to and from Spain; second, the greater opportunities to find work in small building and maintenance companies, often owned by conationals; and perhaps third, the

prospect of Poland's imminent integration into the EU, and the corresponding liberty of movement and employment within the EU. Finally, there are the more recent arrivals from Eastern Europe and Latin America. Like the Moroccans, they work predominantly in medium to large contractors, although our recent survey suggests that they find it easier the Moroccans to get work with small refurbishment and maintenance companies. (Colectivo Ioe 1998; Marginalization. 2003)

If, as suggested above, most jobs in the Spanish construction can be considered to form part of the secondary labour market, research carried out both in the early 1990s (Colectivo Ioe 1998) and a decade later (Marginalization 2003), show, intense vertical segmentation even within this. Overwhelmingly employed as site operatives, immigrants are over-represented in the lowest positions in the occupational hierarchy, that of un- or semi-skilled labourers, and working as bricklayers rather than in other trades. There are also, however, significant variations within this pattern in function of country of origin; in the early 1990s Colectivo Ioé's survey of Moroccans in Barcelona and Poles in Madrid showed that while the majority of the former (58%) were employed as labourers, Poles were more likely to work as craftsmen, and to be found in a variety of trades. It should be noted that the two national groups work in different types of building firm- the Poles in small, sometimes Polish-owned small building and maintenance companies, the Moroccans in medium to large subcontractors (Colectivo Ioé 1998: 155-160). This is also where most Ecuadorians, and other national groups, are now found.

More recent research of a cross-section of building companies employing bricklayers casts further light on the pattern of labour segmentation. (Marginalization 2003). In terms of individual firms, immigrants do tend to account for a slightly higher proportion of the employees in the lower rungs of the trade hierarchy (labourers, bricklayers assistants, and junior craftsman) than among senior craftsmen. Similarly, in no cases were immigrants employed as supervisory workers (foremen or site foremen). However, in all firms, we find immigrants employed at all levels of the trade hierarchy (except foreman). Given that many immigrants are relatively new entrants into the sector, and have possibly not had sufficient time to acquire the skills and experience required for promotion, it is not clear how far this finding itself constitutes evidence of vertical segmentation within firms.

However, the main and very interesting finding regards not the existence of segmentation within individual firms, but vertical segmentation among firms. Although we found immigrants working in firms of all types (and types of employment and wage relations), they are employed above all, but by no means exclusively, in companies

with a number of common features: they were all subcontractors supplying labour to larger contractors on major building and civil engineering projects; they all employ a high proportion of unskilled labour, with fewer opportunities for on-the-job training and promotion; virtually all workers (both immigrant and Spanish) are employed on temporary (for the duration of the job or task) as opposed to indefinite contracts; they pay at officially established wage rates as opposed to the other companies which systematically pay above official rates; and they were also companies in which overtime is expected (if not actually demanded) of workers. In other words, we found evidence for intensive labour market segmentation between firms, with immigrants concentrated in those companies in which all or most employees have low paid, long hours, low skill, and insecure jobs.

Everything would suggest that the conditions of the very large numbers of often irregular migrants working in the underground economy are even worse.

THE CHALLENGES OF IMMIGRATION

As in many other areas (education, housing, social services), rather than posing a problem in itself, the recent influx of extra-community immigration into Spain has primarily exacerbated or highlighted existing failings that currently beset the Spanish construction industry. It is these structural characteristics of the industry that largely explain the current demand for extra-community migrant labour, and the conditions in which this labour is employed. And it is this which makes the challenges posed, or highlighted, by migration, so important, but also so difficult to resolve. Three closely interrelated challenges are highlighted here.

Overcoming segmentation

The first challenge is to overcome the intense segmentation by ethnicity or legal status that has been found by all recent research into the Spanish construction industry. This research has identified a number of key mechanisms operating to exclude migrant workers from more secure, more skilled and better-paid work.

First, there is the importance of informal, often kin-based social networks in the operation of the labour market. Employers of all types, rely almost exclusively on such informal networks to recruit workers of all nationalities. Moreover, gripped in a highly competitive and insecure market, and adopting a short-term perspective, companies feel obliged to "poach" skilled or productive workers rather than assume the costs of training workers themselves, and rely on the intensified division of labour, and informal training in a very limited range of skills passed on through family or personal networks.

This makes all workers heavily dependent on personal, often kin-based relations in order to find work and acquire skills. Immigrants certainly have and use social national and kin-based social networks when seeking work; in a few cases these may provide opportunities for on-the-job training (for example, in mono-ethnic immigrant work groups or companies owned by conationals). However, in most cases such networks enable immigrants to follow their family and compatriots into low-skilled positions, mainly as labourers. In contrast, with the partial exception of the Poles, most do not have the contacts needed to get into, and get training in, "good" jobs (Martínez Veiga, 107-09 and Colectivo Ioé 1998: 151-52).⁵ Spaniards already in these posts have no interest in opening up access to these desirable posts to immigrants who would then compete with them for work, especially when the growing presence of immigrants is often seen with reticence if not hostility both in and beyond the workplace (FECOMA 2003a).

Second, the almost exclusive use of informal network recruitment goes hand in hand with the total absence of formalized, objective selection and promotion procedures or criteria, which makes both processes subject to the decisions of individual foremen or employers and hence to their personal attitudes. Research carried out in the 1990s indicated less overt discrimination in recruitment in construction than in other industries (Cachón 1999: 93), the lack of objective recruitment criteria would nonetheless appear to operate against the employment and promotion of immigrants given the pervasive, if often contradictory, cultural/ethnic stereotyping found in the sector, and society at large with respect to the attitudes and specific aptitudes of different ethnic and national groups (although such stereotypes which may operate to the benefit of Eastern Europeans). In the case of Moroccans, overt discrimination does now appear to operate in hiring and promotion processes. Employers explain, or justify by this by referring to the real or alleged opposition of private clients, main contractors or fellow workers. It should also be noted that some employers' self-declared rejection of Moroccans might not derive from irrational prejudice, but from more rational calculations. As the longest-standing national group of labour migrants, Moroccans have longer work and residency permits and are more aware of their rights, and therefore may prove more compliant

⁵ A very interesting example of the importance of ethnic-based social networks niches in the labour market is that of the estimated 1,000 sub-Saharan Africans from various countries employed as ferrallistas (steelfixers) on the prolongation of the Madrid metro. This is treated by the media as a curiosity, rather than as a revealing and significant manifestation of global labour migration and the relatively new, for Spain at least, use of cheap Third World labour to supplement, or substitute- the local supply. See El País, 6 February 2004.

than more recent arrivals (Colectivo Ioe, 2001; Marginalization 2003).

This brings us to the third, and probably the single most important mechanism of segmentation, namely Spain's immigration regime. Since the first immigration law (known as the *La Ley de Extranjería*) was passed in 1985 in response to European concerns that the new southern European members would become the "soft underbelly of Europe", Spain's immigration regime has been reformed on various occasions (1996, 2000 twice and 2003). The overall tendency of the law has been restrictive. Spain's immigration regimes is now characterised by: annual quotas (*contingentes*) of temporary residence and work permits for workers recruited in their country of origin; the principle of national employment needs, whereby work permits are only granted in sectors and occupations in which there is deemed to exist a labour shortage; the short duration of residency and work permits, renewal of which is dependent on the applicant being in work; and since the last regularization process (2001), the impossibility for "irregular" immigrants – including those who have previously been working legally- to apply for work permits from within Spain. Incapable of preventing immigrants from entering Spain but without channels for irregular arrivals to legalise their situation, Spain's immigration regime has recently attracted criticism from both the Organization for Economic Development and Cooperation (OECD) and the United Nations (UN) (*El País*, 4 February and 25 February 2002).

This "institutional discrimination" (Soles 2001: 13) is crucial for understanding segmentation in the industry. It is not just that Spain's immigration regime channels workers towards jobs and sectors that the domestic population do not fill, because they are below native workers' "level of acceptability" at least at the terms offered. But within these jobs and sectors, it is migrants' legally constructed precariousness, when not illegality which goes a long way towards explaining why immigrants are prepared to take the worst jobs in the worst conditions in the least attractive industries, have short-term perspectives which operate against their self-investment in training and, particularly for the undocumented, often work in conditions below the legally-established standards.⁶ Spain's immigration regime, in turn, also goes a long way to explaining why these sub-standards jobs can exist: because there is a legally-constructed supply of undocumented migrants (who in 2000 lost their rights to organize, strike or join unions) to fill them.

⁶ In this respect, it should be noted that even in these conditions, recently published research suggests that many immigrants see a job in construction as referable to the most obvious alternatives in other even less attractive sectors (agriculture, hotel and catering) see FECOMA 2003: 69.

Maintaining standards

slowly acquire the necessary skills, they may begin to compete more widely and directly with natives, especially if they are prepared to work in worse conditions. Particularly in any downturn in the sector, employers could find the temptation to cut their labour costs irresistible. More generally, and even without direct competition between Spaniards and natives, there is the risk that employers will take advantage of the available supply of cheap, vulnerable, labour formed by immigrants to lower employment standards and wages in the more It is the construction industry that has generated the demand for migrant labour. Migrants constitute, particularly in the case of the more recent arrivals, and undocumented migrants in particular, a vulnerable, docile, and highly flexible reserve army of labour to fill the types of jobs that the Spanish construction industry has created in abundance in recent years, and which young Spaniards are not prepared to take. Consistently high unemployment has not been able to persuade more protected native workers to enter the Spanish construction industry, firmly ensconced as it is, down the low wage, low skill, path of development, which at least in the short-term, has brought soaring business and profits for firms in the industry. In this sense, migrants, because of their nationality and legal status, are functional to the dysfunctional Spanish construction industry.

In this current context of boom and labour shortages in the sector, the intense labour market segmentation of the industry means that migrant labour largely appears to have a complementary role in the labour market, constituting, especially in the case of the irregulars, a separate ('tertiary'?) segment. This complementary function would imply two things. First, that there is relatively little direct competition for jobs between native and migrant labour, and second, that labour and employment standards in the primary, and even the secondary sectors of the labour market, would be in some way immune from what is going on at the bottom of the productive hierarchy of the industry. Research does tend to confirm that natives and migrants rarely compete for the same jobs, and also the operation of quite different employment and wage relations in different sectors of the labour market, with far better conditions, at least in terms of wages, in companies further up the productive hierarchy, where immigrants are rarely found (FECOMA 2003a; Marginalization 2003).

This does not mean, however, that the mass influx of workers in the sector does not pose risks for employment standards in the industry or of direct competition between natives and migrants for jobs. This already appears to exist in certain sub-sectors of the industry. Among small building and refurbishment companies in and around the large cities, for example, there is largely anecdotal evidence of competition

between Spanish companies and immigrant-owned and manned firms, the latter systematically undercutting the former. (Colectivo Ioe 2001: 55-56). More, generally, in a sector in which employment and production is so fragmented, the dividing line between the different segments of the labour and product market are anything but watertight. This means, firstly, that as immigrants generally. In this respect, research recently published by CCOO has highlighted that between 1996 and 2000 average real wages dropped more in construction than in any other industry, a finding associated here with the strong presence of immigrants (CCOO 2003).⁷

While on the supply side it is not the existence of immigrants, but their legally-constructed vulnerability and irregularity of immigrants that explains why they are working in the worst, often sub-standard jobs, on the demand side it is the deregulation of the sector that explains why such jobs can exist. Accordingly, defending employment and labour standards across the industry is crucial not just to overcome ethnic segmentation, but also to defend the conditions of all those working in construction, both Spanish and immigrant, as well as to avoid the threat of tensions between the two.

Averting working-class fragmentation

The main Spanish trade union confederations (CCOO and UGT), and their respective building federations (FECOMA and MCA-UGT) have consistently maintained an inclusive position on immigration. They have called for the reform of Spain's increasingly restrictive immigration regime, defending amongst other proposals the reopening of channels to regularize the vast numbers of immigrants illegally working in the country, and union participation in the definition of the quotas to be established each year. Slowly, in the late 1990s, they also began to take an active role in providing services and advice to immigrants to facilitate their insertion into the labour market. Led by FECOMA, the unions also devote increasing resources to informing immigrants of their rights (for example by producing leaflets, and more recently, translating the collective agreements into different languages), and encouraging immigrants to take instances of abusive conditions to court. Reflecting this relatively recent interest in migrant workers, in FECOMA has created the post of Secretary for Immigration on its National Executive. Particularly at the regional level in Madrid, Catalonia and Valencia, both union federations, have also more recently targeted organizational drives at immigrants, and seek to have immigrants elected to works committees and as union officials.

⁷ Nonetheless, this study does not explain why real wages have fallen more in the industry, where relatively few migrants are employed, than in hotel and catering and the retail trades, with a larger presence of migrants.

There can be no doubt that, albeit perhaps with some delay, the Spanish construction unions are now beginning to take immigration seriously, and can report a steady stream of successes in their implementation of their policy of defending and organizing immigrant workers. However, neither should the progress made be over-emphasized (no figures are available for the number of immigrant members, or works' council delegates or union representatives) nor the outstanding challenges ignored. A recent study published by FECOMA highlights a number of issues. First, not all the union's delegates, and still less the industry's workforce in general, identify with their organization's inclusive position on immigration. Discussion groups revealed that some union representatives and Spanish workers blame immigrant workers for the degradation of working conditions in the sector, and show racist attitudes towards immigrant groups (who are held responsible for their own social isolation in the workplace). While recognizing that at present, immigrants occupy a complementary rather than the competitive position in the labour market with respect to native workers, they also expressed the fear that in any future recession immigrants could represent a threat to their jobs (even if, significantly, others remained confident that immigrants would be the first out when the recession comes). Even the publishable summary of the results of this research provides alarming evidence of the potential for tension and conflict between native and immigrant workers, and the working-class fragmentation.

From the immigrants' side, this same research revealed an equally ambiguous attitude towards both native workers and the union. While relations with workmates were considered to be generally acceptable, immigrants consistently drew a distinction between them (natives) and us, in some cases based on their perception of the competition between the two groups for jobs. The study also found widespread ignorance about the real function of the unions, some seeing them as semi-official providers of services, but not realizing their role in interest representation. The report also found indications of a utilitarian attitude towards the union, seen as insurance in case of need, rather than as a vehicle for participation. In this respect, it is also interesting to note two further points. First, the positive or negative image of the unions in migrants' home countries affects their view of unions more generally, giving rise to distrust among Eastern European in particular of unions and union representatives. And second, and perhaps more worryingly, there is the finding that the migrants who are most critical of the unions are those who have most contact with or participation in them; their reasons are not explained.

These attitudes and behaviour all present challenges to the unions. They clearly need to intensify their work in raising native workers' consciousness of the underlying causes of the degradation of working

conditions in the sector, and the benefits of an inclusive policy towards immigration. They also need to continue to reach out to and organise migrant workers, who in all certainty will constitute an increasingly large proportion of the workforce in the years to come. In this respect the unions also face the challenge of ensuring cooperative rather than competitive relations with existing ethnically-based migrant organizations (for example, of Moroccan and Ecuadorian migrants). However, the key issue for the unions is almost certainly their capacity to ensure compliance of working and employment conditions, as this will determine their ability to continue representing the workforce of the industry, both native and migrant.

CONCLUSIONS

Flows of migrant labour into and out of the Spanish construction industry are determined by the intersection of two dynamics of re-regulation, one operating on the supply side, the other on the demand-side. On the one hand, Spain's increasingly exclusive immigration regime generates a ready supply of cheap, because vulnerable, extra-community migrant workers, many of who can only work in the irregular economy. On the other, structural change, labour market flexibilization and lack of effective enforcement of contractual and labour legislation by the State or the social partners have sent the Spanish construction industry down the low-track, generating large numbers of low skill, low pay, dangerous and insecure jobs, which native Spaniards are unwilling to take and "old" Europe construction workers are uninterested in migrating to do; hence the demand for migrant labour.

The relations between supply and demand are highly complex; the supply of immigrants allowing, for example, the substandard and irregular sector of the industry to flourish, at the same as the existence of work opportunities in this increases the pull of Spain for irregular migrants. Similarly, there are indications that construction could become labelled "an immigrant industry", thereby reinforcing the reticence of natives to enter the industry and increasing the industry's labour-supply problems (FECOMA 2003a; Baganha and Reyneri: 2005).

Resolving the three interrelated challenges identified here - to overcome segmentation, maintain labour and employment standards, and to avoid ethnic fragmentation of the workers in the industry requires action on both the supply and demand side. The changes in the immigration law of the type proposed by the unions would reduce the vulnerability of regular and above all, irregular migrants. On the demand side, the solution must lie in the effective enforcement of the collective agreements, labour, tax, and social security legislation, but

also the re-regulation of productive and employment relations in order to ease the industry off the low track path of development- it is this which makes it so dependent on cheap flexible labour. Unfortunately there is appears little likelihood of any of this happening. As their recent rejection of the unions' Popular Legislative Initiative to regulate subcontracting in the industry shows (Byrne 2000), neither the government nor employers, - the latter the principal beneficiaries of the present situation- seem interested in remedying a situation which they have largely created and which brings apparent short-term benefits. And in present circumstances the unions are too weak to bring the required changes.

Spanish unions are, however, moving in the right direction, adopting an inclusive discourse based on the rights of all workers, and making increasingly intensive efforts to defend and organize migrants. They need to do so, as the predicable ongoing increase in the number of migrants working in the sector means that the future of the unions may well depend on their capacity to organize these workers, and thereby to acquire the critical mass required for effective collective action in defence of all.

REFERENCES

BAGANHA, M. and REYNERI, E (2001) "La inmigración en los Países del sur de Europa y su inserción en la economía informal", en SOLÉ, C. ed. *El impacto de la emigración en la economía y en la sociedad receptora*. Barcelona. Antropos: 53-211.

BOSCH G. and PHILIPS, P. eds.. (2003) *Building Chaos. An International comparison of deregulation in the construction industry*. London: Routledge.

BABIANO, J. and FARRE S. (2002) "La emigración española a Europa durante los años sesenta: Francia y Suiza como países de acogida". *Historia Social* 42, pp. 81-89

BYRNE, J. (2000) "'Nos va la vida': La Iniciativa Legislativa Popular para una ley reguladora de la subcontratación en el sector de la construcción," *Sociología del Trabajo* 45 (Autumn 2000): 93-107.

BYRNE, J. and VAN DER MEER, M. (2003) "Spain down the low track" in BOSCH, G. and PHILIPS, P. eds.. *Building Chaos. An International comparison of deregulation in the construction industry*. London: Routledge. 139-160.

CHACON, L. (1999) *Prevenir el racismo en el trabajo en España*. Madrid: Ministerio de Trabajo y Asuntos Sociales.

COLECTIVO IOE (1998) *Inmigración y trabajo. Trabajadores inmigrantes en el sector de la construcción*. Madrid: Ministerio de Trabajo y Asuntos Sociales.

COLECTIVO IOE. (2001) *¡No quieren ser menos! Exploración sobre la discriminación laboral de los inmigrantes en España*. Madrid: Unión General de Trabajadores.

COMISIONES OBRERAS (CCOO). 2003. *Trabajadores extranjeros y acción sindical*. Madrid. CCOO, Cuadernos de Información Sindical.

EUROPEAN INDUSTRIAL RELATIONS OBSERVATORY ON-LINE (EIRO) (1999) *Posted workers and the implementation of the Directive*. Dublin EIRO www.eiro.euroworld.eu.int/1999/09/study/index.html

EIRO (2003) *Posted workers*.
<http://www.eiro.euroworld.eu.int/thematicfeature2.html>

FECOMA-CCOO (2003a) La construcción y los trabajadores extranjeros. Madrid. FECOMA-

FECOMA-CCOO (2003b) III Convenio general de la construcción 2002-2006. Madrid: FECOMA-CCOO.

FERNÁNDEZ ASPERILLA, A.F. (1998) "La emigración como exportación de mano de obra: del fenómeno migratorio a Europa durante el franquismo" *Historia Social* 30, pp. 63-82.

IFBWW (2004) *Exploitation of construction, forestry and wood workers in connection with migrant and cross border work*. Geneva: IFBWW.

Ley 45/1999: *Ley sobre el desplazamiento de trabajadores en el marco de una prestación de servicios transnacionales*.

MARTINEZ VIEGA, U. (1999) "Immigrants in the Spanish Labour Market". *South European Politics and Society*, 3 (3)

MINISTERIO DE TRABAJO Y SEGURIDAD SOCIAL (1993-2002) Anuario de Migraciones. Madrid: MTSS.

MARGINALIZATION (2003) Spanish National Report of the EU Project 'Overcoming marginalisation – structural obstacles and openings in strongly segregated sectors' (HPSE-CT2001-00073).

MINISTERIO DEL INTERIOR (2002) *Anuario de la Extranjería*. 2002: Madrid: Ministerio del Interior.

MINISTERIO DEL INTERIOR (2003) *Extranjeros con tarjeta o permiso de residencia en vigor a 31 de diciembre de 2003*. http://dgei.mir.es/es/general/comentario_diciembre_2003.pdf

MINISTERIO DE TRABAJO Y SEGURIDAD (MTSS) Anuario de Migraciones . Madrid. MTSS. 1993.

SOLÉ, C. and PARELLA, S. (2001) "La inserción de los inmigrantes en el mercado de trabajo. El caso de España" in SOLÉ, C. ed. *El impacto de la emigración en la economía y en la sociedad receptora*: Barcelona: Antropos. 11-51.

Chapter 3

The German construction industry in the aftermath of the re-unification

By Gerhard Bosch

Introduction

There is a lengthy tradition of using foreign workers in the German construction industry. In 1970, almost 20% of employees subject to social security contributions in the building trades were foreign workers, this percentage being more than twice that found in the economy as a whole. Today, 9% of employees in the building trades in Germany still have a foreign passport. These foreign workers are integrated into the German social security system, as they are employed by companies here and work in accordance with the collective bargaining terms in force. This equality of status has helped to ensure that this labour migration exerted no direct pressure on our wage standards.

Figure 1: Form and regulation of activities of foreign workers

Form of migration	Regulation of working conditions
Individual migration	Principle of territoriality; inclusion in the full German system of collective agreements and the systems of social welfare legislation; equality of status for all workers employed by German companies.
Posting by companies based outside Germany	In principle, no integration into German labour and social law. Integration occurs only via special laws or generally binding collective agreements.

Source: Bosch/Zühlke-Robinet 2000: 215.

Today, this individual migration has become less significant and is increasingly replaced by posting of workers by companies based outside Germany within or out of the EU. In Section 2 we begin by describing the various legal bases of posting. In Section 3 data on quantitative trends in recorded postings will be presented. Section 4 will deal with the legislative responses in Germany to postings. Subject of Section 5 is the increasing illegal employment. Finally the impact of legal and illegal postings on the German construction labour market is analyzed.

Legal bases of posting

Even before the collapse of the socialist economic system, the German government had concluded the first bilateral agreements with Hungary and Yugoslavia, under international law, on the posting of contract workers. Further agreements followed once the borders of the Central and Eastern European countries had been opened up. These "agreements on the posting of workers on the basis of contracts for services" were aimed at, among other things, promoting a closer relationship between the Central and Eastern European countries and Western Europe, stimulating commercial relationships, transmitting know-how, and preventing uncontrolled immigration into Germany (Heyden 1997: 29 ff.; Faist et al. 1999: 30 f.).

The agreements on contracts for services lay down terms and conditions for the posting of workers. For example, contract workers must have a residence permit and a work permit in order to be able to work in Germany for a limited period (usually two years, and three years at most). Under the agreements, they are to be paid a net wage (including travel allowances, holiday pay and other emoluments), as provided for under German collective agreements for comparable activities. Furthermore, the number of contract workers is subject to a quota. A standard quota, i.e. a maximum number of posted workers (as an annual mean number), was agreed for each country. Some agreements also include additional quotas, by which the number of contract workers may be increased for certain reasons (cf. Table 1).

Table 1: Extent of overall, standard and additional quotas 1991 to 2001 by agreements on contracts for services with Central and Eastern European countries (CEEC)

	1991	1992	1993	1994	1995	1996	1997*	1998	1999	2000	2001
Overall quota	89 340	83 264	79 690	61 920	56 850	54 100	34 638	52 340	53 700	57 630	58 310
of which											
Standard quota incl. ministerial agreements	79 590	74 144	71 030	53 620	48 400	46 320	29 056	44 770	45 950	49 480	50 070
SMEs quota, German firm	7 000	6 500	6 140	5 860	5 970	5 380	3 897	5 210	5 350	5 660	5 730
SMEs quota, foreign firm	1000	930	880	840	860	820	780	800	820	870	880
Additional quota for Romanian Germans	1000	930	880	840	860	820	390	800	820	870	880
Restaurateurs	750	760	760	760	760	760	515	760	760	750	750
Sub-quotas											
Construction	16 340	15 180	14 390	13 930	14 000	12 210	9 355	9 730	10 360	10 020	8 870
Insulation construction	1770	1660	1600	1550	1530	1330	877	1110	1210	1000	910
Usable in construction sector as a whole	64 840	60 310	58 140	41 630	35 560	32 440	19 612	29 320	30 460	31 280	30 390

* Quotas not used in full owing to EU infringement proceedings on the grounds of infringement of Art. 59 EC Treaty.

Source: German Federal Ministry of Labour and Social Affairs, Federal Employment Service, miscellaneous documents.

Owing to rising unemployment among German construction workers in particular, the quotas were steadily reduced (cf. Table 1) by amending the agreements on contracts for services (Bosch/Worthmann/Zühlke-Robinet 2000: 47).

Posting of workers from one European Union Member State to another is based on freedom to provide services within the EU, which allows companies based within the EU to provide a service in another Member State temporarily and for a short time without having a branch there. Under the EC Treaty, freedom to provide services has enabled companies to execute orders in another country since as long ago as 1970 (Eichhorst 2000: 123 f.). Judgments of the Court of Justice of the European Communities (CJEC) in 1982 and 1990 gave concrete form to the possibilities of posting within the EU.⁸ However, these possibilities have been exploited on a larger scale only since the Maastricht Treaty was concluded in 1992, giving shape to the single European market, although this Treaty made no changes to the freedom to provide services.

Since 1993 posting companies in EU Member States have also been used. While the standard number of posted workers from the CEEC could be controlled via bilateral agreements on contracts for services, under the Maastricht Treaty and earlier European agreements it is not possible to limit the number of postings within the framework of freedom to provide services in the EU. Until the German regulations on posting came into force, many posting companies in the EU were able to offer their services even more cheaply than companies in the CEEC, since the latter were obliged to pay their workers a wage equivalent to the collectively agreed German wage. At first this obligation did not apply to posting companies within the EU. They were able to pay their posted workers in accordance with the country-of-origin principle and in case they came from a low wage country they had a competitive advantage over German and even Central and Eastern European companies (Worthmann/Zühlke-Robinet 2002).

Enlargement of the EU to the east involves introducing the four basic freedoms (free movement of goods, persons, services and capital) in the new Member States. The pay differential between the new and existing Member States is markedly larger than that within the EU as

⁸ Judgment of 3 February 1982 in Case "Seco v. EVI" (Joined Cases 62/81 and 63/81, ECR 1982, p. 223) and Judgment of 27 March 1990 in Case "Rush Portuguesa" (Case C-113/89, ECR 1990, p. I-1417). For European case law on posting, see Eichhorst 2000: 123-131.

it is now. Consequently, as the destinations of choice hitherto for workers migrating from Central and Eastern Europe, Germany and Austria in particular feared a sharp increase in postings and individual labour migration. According to estimates by the German Institute of Economic Research (DIW), the number of immigrants in the first year after accession is likely to total between 340,000 (DIW 1997) and 1.1 million (DIW 2000). To this must be added postings in the construction industry in particular under freedom to provide services which are not included in all estimations on migration.

For this reason, on the insistence of several Member States, including Germany, transitional periods have been agreed for freedom of movement for workers and freedom to provide services. The transitional periods for freedom of movement for workers are divided into three phases and are based on a 2+3+2 model. In phase 1, which will last two years, freedom of movement for workers in all current Member States will be suspended, although they will still be able to open up their labour markets. Germany will permit this within the framework of the existing rules for cross-border commuters, "guest workers" and seasonal workers. Before phase 2 begins, EU Member States will announce whether they will be retaining the phase 1 rules for another three years or amending them and, if so, in what way. Phase 3 would extend the transitional period for freedom of movement for workers to a total of seven years. The Member State must formally notify the Commission if it is utilising phase 3. At the end of the seventh year after accession, full freedom of movement for workers will be applicable in all Member States.

Freedom to provide services will also be suspended for two years, and the transitional period can be extended to up to seven years. In Germany, this transitional period will apply to the construction industry, interior works and commercial cleaning. Accordingly postings from the accession countries will be prohibited for a transition period, except within the framework of agreements on contracts for services.

Quantitative trend in recorded postings – figures

As Table 2 shows, postings by companies in the CEEC predominated only for a short period, up to and including 1993. The increasing unemployment in the building trades, particularly in the new *Länder*, led the German government markedly to reduce the national quotas for the CEEC as from 1992, so that the standard demand for postings from these countries was cut back. Postings from EU Member States more than compensated for this decline. The number of recorded postings rapidly increased, peaking in 1996 with a total of 188,000

postings – almost 90% of them from EU Member States. This meant that in the mid-1990s, one in five construction workers in Germany was employed by a company based outside Germany.

Table 2: Posted workers and German workers, 1992-2002 (annual averages, in 1000s)

Year	Posted workers*			Employees in building trades subject to social security contributions (total)**	Employees in building trades subject to social security contributions (blue-collar workers)**	Posted workers as a percentage of workers employed in building trades
	from Central and Eastern Europe**	from the European Union	Total			
1992	103	13	116	1 301	989	10.5
1993	70	20	90	1 343	1 016	8.1
1994	31	106	137	1 405	1 057	11.5
1995	29	132	161	1 411	1 046	13.3
1996	23	165	188	1 311	950	16.5
1997	16	165	181	1 221	869	17.2
1998	19	150	169	1 156	815	17.2
1999	19	139	158	1 110	783	16.8
2000	17	121	138	1 050	736	15.8
2001	16	111	127	954	662	16.1
2002	15	103	118	870	603	16.4

* Estimates by the German Construction Industry Association, annual averages.

** Including commuters.

*** Data from the Federal Statistical Office, annual averages; 2002 estimates by the German Construction Industry Association.

Source: *German Construction Industry Association 2002: 24.*

The number of postings has been falling since 1997, particularly as regards postings from EU Member States. The causes range from the continuing downturn in the construction industry, via the effects of the Law on the posting of workers and the shift to illegal employment, to the favourable economic trends in some of the posting countries.

Legislative responses to postings

The 1996 EC Directive on the posting of workers left it to Member States to lay down the definitive minimum terms and conditions for posted workers and also allowed them until the end of 1999 to

transpose the Directive into national law (Eichhorst 2000). In Germany, regulation of posting was a controversial issue – more so than in other EU Member States with high labour and social welfare standards. While critics spoke of a “protective duty on work” (Straubhaar 1996), others supported regulation on the grounds that the same wage should be paid for the same work in the same place (Gross 1999). The Law on the posting of workers (AEntG) has been in force in Germany since 1997. Under the AEntG, all employers who supply construction services in Germany are obliged to apply, as from the first day on which a service is supplied, the rules in the collective agreements on minimum wages and holidays applicable in the German construction industry and declared to be generally binding. This applies to all construction enterprises irrespective of whether they are bound by a collective agreement or whether their registered office is within or outside Germany.

The regulatory content of the AEntG is currently as follows:

- Registration obligations of posting companies: employers without a registered office in Germany must register all posted workers with the relevant *Land* employment office prior to execution of every order. They must also indicate the place where the documents required for monitoring of standard posting (in particular, level of [minimum] wage, working hours, etc.) are kept available, together with the name and address of the person responsible and the authorised recipient.
- *Sanctions*: Infringement of the AEntG (i.e. of the provisions on minimum wages, holidays and holiday pay, and registration and cooperation obligations) is treated as an administrative offence, punishable with fines and exclusion from the award of public building contracts. Priority is given to punishing the company committing the offence, but the client of a company committing an administrative offence can also be punished if it knows, or is negligent in not knowing, that a subcontractor employed by it is not complying with the minimum working conditions. Fines of up to 500,000 euro may be imposed.
- *Monitoring*: The principal customs offices are responsible for monitoring compliance with the AEntG. These authorities are entitled to see employment contracts, records and other business documentation. Employers must keep these documents available within Germany and submit them when required.
- *General-contractor liability*: The aim of the general-contractor liability in the AEntG is to increase the involvement of (German) clients (general contractors) in responsibility for the actions of their subcontractors. Under this liability, clients are directly liable if their subcontractors (and also the latter’s own subcontractors) do not pay their employees the minimum wage or do not pay the

construction industry's holiday fund the contribution to which it is entitled. The general contractor should fulfil its duty of care in selecting subcontractors, oblige them to comply with statutory provisions, and monitor them in its own interests.

- *Statutory-instrument authorisation:* The embargo mentality of the employers' associations represented in the collective bargaining committee led to amendment of the procedure for declaration of general validity.⁹ In order to make it possible for the parties to collective agreements in the construction industry to decide on them autonomously in future procedures for declaration of general validity, since 1999 the Federal Minister of Labour has been able to declare a collective agreement to be generally valid via a statutory instrument, without the consent of the collective bargaining committee.

In order to avoid infringing the prohibition on discrimination, only collective agreements that are also binding on German companies can be extended to posting companies. These include the collective agreements declared to be generally valid. Only posting companies, that transfer contributions to a "social security fund" in their country of origin comparable to the holiday fund, are exempted from participation in these agreements.

Very soon after the change of government in 1998, further statutory instruments were adopted in connection with the national regulations on posting, relating specifically to combating of illegal employment. A very common form of illegal employment is tax evasion by the employer. In September 2001, the Law on controlling illegal employment in the construction industry entered into force. It provides for a tax deduction procedure that covers both German and posting companies. Under this Law, every company providing construction services in Germany must transfer 15% of the order total direct to the tax office. Under certain circumstances, exemption from the tax deduction procedure is possible, for example when the order total is very small (less than 15,000 euro) or for posting companies that produce evidence of tax domicile with a foreign tax authority.

⁹ Owing to its ability to impose a veto in the collective bargaining committee, the German Federation of Employers' Associations, the employers' umbrella organisation, was able to prevent a declaration of general validity for the collective agreement on a minimum wage for months. Only the threat by the then Minister of Labour, Herr Blüm, to issue a declaration of general validity without the consent of the collective bargaining committee if necessary made the Federation of Employers' Associations give way (Worthmann 2001: 224 ff.).

Other legislation comprises laws on the award of contracts, aimed at harmonising the competition conditions of German construction companies and posting companies. They have already been adopted in some *Länder* (e.g. North Rhine-Westphalia, Bavaria and Saxony-Anhalt). They provide for all companies participating in a tender procedure for public construction projects to undertake to carry out the work, if awarded the contract, with due regard for the local collective agreements in force. The aim is to ensure that non-German companies do not undercut and potentially supersede local construction companies.

The first collective agreement on minimum wages was declared to be generally valid at the beginning of 1997, and since then the wage level involved has been raised several times (Table 3). For the first time, the collective agreement concluded in 2002 contained a second minimum wage level for skilled construction workers. The holiday regulations provide for posting companies to transfer holiday fund contributions to the construction industry's holiday and wage equalisation fund for employees working in Germany. This means that the collectively agreed holiday regulations valid in Germany (duration of annual holidays and level of holiday pay) are also applied to posted workers.

Table 3: Minimum wage levels in Western and Eastern Germany, 1997-2004

Date concluded	Declared generally valid by	Term	Minimum wage level (TCAHW)*			
			for unskilled workers (occ. group VII 2)		for skilled workers (occ. group III)	
			West	East	West	East
2.9.1996	CBC**	1.1.1997-31.8.1997	17.00	15.64	-	-
17.7.1997	CBC	1.9.1997-31.8.1999	16.00	15.14	-	-
26.5.1999	Statutory instr.	1.9.1999-31.8.2000	18.50	16.28	-	-
2.6.2000	Statutory instrument	1.9.2000-31.8.2001	18.87	16.60	-	-
		1.9.2001-31.8.2002	19.17	16.87	-	-
4.7.2002	Statutory instrument	1.9.2002-31.8.2003	10.12	8.75	-	-
		1.9.2003-31.8.2004	10.36	8.95	12.47	10.01

TCAHW: Total collectively agreed hourly wage

* Minimum wage level in DM up to August 2002, in euros as from September 2002.

** Collective bargaining committee.

Source: 1996: German Construction Industry Association 1997: 464-466; 1997, 1999: German Construction Industry Association 1999: 48-54; 2000-2004: IGBauen-Agrar-Umwelt 2000: 5, Federal Law Gazette Part I, various references, compiled by author.

Only when a company obtains a contract for a public construction project can it be compelled to comply with all the locally applicable collective agreements on wage rates when fulfilling the contract. The entire wage scale is applied via laws on compliance with wage rates, and not simply the minimum wage. In addition, in some cases laws on compliance with wage rates may not be applied in certain areas of construction in which the public sector has a monopoly (e.g. road construction or civil engineering), where they discriminate against employers who are not bound by collective agreements. At least, this has been shown to be the case in Berlin, where the Federal Cartel Office prohibited application of a declaration of compliance with wage rates for road construction contracts with the *Land* of Berlin. The Federal Court of Justice had to rule on an appeal on points of law,

and shared the Federal Cartel Office’s opinion that Berlin’s Law on the award of contracts discriminated against employers not bound by collective agreements and contravened “negative” freedom of association. This means that in all probability, even a law on compliance with wage rates with national validity could be applied only to structural engineering contracts. However, public structural engineering works account for only a very small percentage of the overall construction volume, with a total of just over 6% (Table 4).

Table 4: Percentage of construction volume by areas of construction in Germany, 2001, 2010 and 2020

Year	Housing construction, total	Service construction, total	Public construction	
			Road construction, other civil eng.	Structural eng.
2001	54.76	29.15	9.65	6.45
2010	55.18	29.86	8.97	5.99
2020	54.61	31.53	8.13	5.73

Shaded section = probable field of application of laws on compliance with wage rates.

Source: *Institute of urban research and structural policy, Berlin/DIW Berlin 2003: study on future prospects for the construction industry in North Rhine-Westphalia, work unit 1: 67, unpublished manuscript, author’s calculations.*

Illegal employment

Many employers fail to comply with the provisions of the Law on the posting of workers and the regulations on compliance with wage rates. For many years the construction industry has been one of the sectors in which illegal employment is very widespread, and this includes a wide range of “traditional” infringements. For example, the various forms of clandestine work (such as benefit fraud, non-compliance with the craft trades ordinance or illicit “neighbourhood assistance”) are found in the construction sector in particular. In contrast, offences against the instruments newly created to structure the internationalised construction labour market constitute relatively new forms of illegal employment. In addition, offences committed in the context of postings include illegal supplying of workers by temporary employment agencies, illegal employment of foreigners, or evasion of social security contributions and tax evasion by German clients and German and foreign subcontractors. Offences of this kind are not new, but for some years now they have been occurring on a much larger scale than hitherto.

It is in the nature of things for illegal practices to evade official records, and so it is impossible systematically to research illegal employment relationships. Consequently any comments on the scale of illegal employment can only be speculative. Various methods are used in an attempt to assess its extent (and in some cases also the associated effects on the national economy) (cf. inter alia Schneider and Enste 2000, Trockel 1987, Cassel and Caspers 1984, Graß 1984, Paasch 1989). However, the figures arrived at for the clandestine economy as a whole vary widely depending on the approach adopted, namely between 3.4% and 27% (Gretschmann and Mettelsiepen 1984: 29) or between 11.3% and 31.4% (Schneider and Enste 2000: 38) of the official GNP. Moreover, even surveys using the same method are barely comparable, since they are based on different reference points (restriction to regions or sectors, inclusion of the legal informal economy, e.g. DIY, different timescales, etc.).

Only one thing seems certain, namely that according to the surveys available, illegal employment is relatively common in the construction industry, which accounts for over 40% of the clandestine economy as a whole, a relatively high proportion (see, for example, Schneider 2001). A 1993 survey of illegal supplying of workers by temporary employment agencies (two years after the ban on temporary workers in the construction industry) showed that in the Lower Saxony/Bremen Employment Service Region, 60-65% of all recorded offences against the Law on the supply of workers by temporary employment agencies (AÜG) related to the construction industry (Mayer and Paasch 1986: 17). Another offence common in the construction industry is corruption.

Information from the supervisory authorities shows the extent to which labour market regulations are infringed in the construction industry. Since the Law on the posting of workers came into force, between some 14,000 and 21,000 cases a year have been brought in relation to offences against this Law alone, leading to fines totalling almost 43 million euro in 2001 (Table 5). In the same year, in some 281,000 cases in the context of combating illegal employment and benefit fraud, fines totalling over 100 million euro were imposed. Bearing in mind how difficult it is for the authorities even to establish that an offence has been committed, this gives some idea of the extent to which forms of illegal employment must actually occur.

Table 5: Number of summary and criminal proceedings in the context of combating illegal employment and benefit fraud, 1997-2001*

Year	Benefit fraud	Illegal supply of temporary workers		Law on the posting of workers
		by employees and employers	by companies supplying and accepting temp. workers	
1996	321 835	86 792	8 520	**
1997	344 012	78 551	9 754	18 979
1998	290 818	75 390	11 009	21 044
1999	253 298	76 475	6 713	19 358
2000	230 189	64 051	5 971	18 236
2001	189 837	50 743	3 482	14 165

* Cases initiated and taken up.

** Offences not recorded, as minimum-wage regulation not yet in force.

Source: *Data from the Federal Employment Service.*

Consequences for the German construction labour market

Owing to the particular working and production conditions in the construction industry, this sector is intensively regulated in many European countries (Bosch/Philips 2003). This regulation has been accompanied by the development of markets for skilled workers. These skilled workers are tied to the sector by inter-company social security benefits, so that investment in (continuing) training is worthwhile for both companies and employees. In order for these regulatory systems to function effectively, all construction companies and construction workers need to be integrated into them, to prevent "free ride" strategies. Furthermore, the national-level social partners and the legislator must be able to structure working and employment conditions autonomously (Worthmann 2001).

These preconditions for effective functioning had already become vulnerable with the conclusion of bilateral agreements on the posting of contract workers, and they were then further undermined by the increased utilisation of freedom to provide services within the single market. Construction services are now provided transnationally, which means that it is increasingly possible to talk of a European construction labour market. At the same time, to a great extent the mobility flows in this European labour market go in one direction only, namely from low-wage countries to high-wage countries. The high-wage countries are attempting to create fair competition conditions by adopting national legislation on posting and statutory or

collectively agreed minimum wages. This is designed not only to protect the country's own workers against competitors whose lives are not based in Germany and who can therefore offer their workers at lower wages, but also to preserve a construction industry that is geared to skilled workers and focuses on quality products, and which also invests in training and innovation. Experience in the USA and the UK has shown that vocational training in this highly flexible sector collapses if tenders can be won by ceasing to make provision for future needs (Bosch/Philips 2003). Thus binding minimum levels must be laid down via working and social security conditions for national and foreign construction companies, in order to concentrate competition on the search for the best products and production processes. The construction sector's specific regulatory system is a key element of this, in that only the combination of labour-market regulation with product-market regulation ensures that skills chains and quality chains ensue. An unregulated juxtaposition of various pay systems, combined with a high level of illegal unemployment, destroys all institutionalised order in the labour market. Companies that pay the statutory wages are "penalised" in the market, as they have little chance when competing against rivals who are not bound by the local rules.

Owing to its proximity to the accession countries and its relatively high wage levels, the German construction industry is particularly affected by enlargement of the EU to the east. Against this background, the transitional periods decided on for freedom of movement for workers and freedom to provide services are essential.

It is apparent that the many small and medium-sized enterprises that form the backbone of the German construction sector have not so far responded adequately to the changing market constellations. This has been the outcome of recent studies on the future of the German construction industry (Bosch/Rehfeld 2003, RKW-Bau 2001; UBS 2000). They are still finding it difficult to survive in a climate of intensified competition without going down the road of putting pressure on wages and reducing collectively agreed standards. It is important for construction companies to implement a variety of in-house process innovations, in order to be able to offer cheaper construction services. One way of doing this is to be proactive in exploiting the new room for manoeuvre in inter-works cooperation agreements in order to offer "one-stop" services and, increasingly, extra construction-based services. There is also a need for innovation on the part of the product market, facilitating, for example, more efficient, cheaper construction that is less dependent on the weather. Even after all the transitional periods expire, however, it will still be necessary to lay down generally binding minimum standards. In

deregulated construction labour markets, the incentives for “free ride” strategies at the expense of long-term investment are simply too great. This chronic failure on the part of the market means that we need a regulatory framework for social and economic policy that sets out to preserve an innovative construction industry.

References

Bosch, Gerhard / Philips, Peter (Ed.) (2003): Building chaos: an international comparison of deregulation in the construction industry. London: Routledge. Routledge research studies in business organization.

Bosch, Gerhard / Rehfeld, Dieter, (2003) Zukunftsstudie Baugewerbe Nordrhein-Westfalen: Endbericht. Mai 2003. Gelsenkirchen: Inst. Arbeit und Technik

http://www.zib.nrw.de/fachinfo/pdf_doc/GGTSPU-iat-gate.iatge.de-255-2712-DAT/einzelgutachten_%20endbericht_bosch_kurz.pdf

Bosch, Gerhard/Worthmann, Georg/Zühlke-Robinet, Klaus (2000): Verschärfte Konkurrenz zwischen deutschen und ausländischen gewerblichen Bauarbeitern. In: Mayrzedt, Hans (Ed.) (2000), Arbeitsmarkt und erfolgsorientiertes Personalmanagement im Bau, Düsseldorf: Werner Verlag, pp. 43-76.

Bosch, Gerhard/Zühlke-Robinet, Klaus (2000): Der Bauarbeitsmarkt. Soziologie und Ökonomie einer Branche, Frankfurt am Main: Campus.

Cassel, Dieter/Caspers, Albert (1984): "Was ist Schattenwirtschaft? Begriff und Erscheinungsformen der Second Economy", Zeitschrift für Ausbildung und Hochschulkontakt N°13, pp. 1-7.

DIW (1997): Europäische Union: Osterweiterung und Arbeitskräftemigration, In: DIW Wochenbericht, Vol.64, N° 5, pp. 89-96.

DIW (2000): EU-Osterweiterung: Keine massive Zuwanderung zu erwarten. In: DIW Wochenbericht, Vol. 67, N°. 21, pp. 315-326.

Eichhorst, Werner (2000): Europäische Sozialpolitik zwischen nationaler Autonomie und Marktfreiheit. Die Entsendung von Arbeitnehmern in der EU, Frankfurt am Main: Campus.

Faist, Thomas/Sieveking, Klaus/Reim, Uwe/Sandbrink, Stefan (1999): Ausland im Inland. Die Beschäftigung von Werkvertragsarbeitnehmern in der Bundesrepublik Deutschland. Rechtliche Regulierung und politische Konflikte", Baden-Baden: Nomos.

Graß, R.-D. (1984): "Schattenwirtschaft. Teil II: Über die Verfahren, Schattenwirtschaft in der Bundesrepublik Deutschland zu schätzen",

Mitteilungen aus der Arbeitsmarkt- und Berufsforschung 17 (3), pp.382-387.

Gretschmann, Klaus/ Mettelsiepen, Bernd (1984): "Die Schattenwirtschaft - eine Retrospektive", in: Klaus Gretschmann; Rolf G. Heinze und Bernd Mettelsiepen (Ed.), Schattenwirtschaft. Wirtschafts- und sozialwissenschaftliche Aspekte, internationale Erfahrungen, Göttingen: Vandenhoeck&Ruprecht, pp.11-42.

Gross, Edith (1999): Gleicher Lohn für gleiche Arbeit am gleichen Ort? In: Honegger, Claudia/Hradil, Stefan/Traxler, Franz (Eds.) (1999): Grenzenlose Gesellschaft? Part 2, pp.. 539-557, Opladen, Leske&Budrich.

IG Bauen-Agrar-Umwelt 2000: "Tarifrunde 2000 brachte Erfolg", Grundstein 51 (4), pp. 4-5.

Hauptverband der Deutschen Bauindustrie 1997 (Ed.): "Tarifsammlung für die Bauwirtschaft 1997/1998", Dieburg: Otto Elsner Verlagsgesellschaft.

Hauptverband der Deutschen Bauindustrie 1999 (Ed.): "Tarifsammlung für die Bauwirtschaft 1999/2000", Dieburg: Otto Elsner Verlagsgesellschaft.

Hauptverband der Deutschen Bauindustrie 2002 (Ed.): "Baukonjunktur. Stand und Prognose, Frühjahr 2002", Berlin.

Heyden, Helmut (1997): Entwicklungs- und außenpolitische Herausforderung: Zur Beschäftigung von Arbeitnehmern aus Mittel- und Osteuropa. In: Gesprächskreis Arbeit und Soziales Friedrich-Ebert-Stiftung (1997) (Ed.), Neue Formen der Arbeitskräftezuwanderung und illegale Beschäftigung, Bonn, pp. 29-37.

Mayer, Udo/ Paasch, Ulrich (1986): "Arbeitnehmer 2. Klasse. Leiharbeit und Beschäftigungspraxis im Baugewerbe", Düsseldorf: Praktikerreihe der Hans-Böckler-Stiftung.

Paasch, Ulrich (1989): "Illegale Beschäftigung in der Bundesrepublik Deutschland", Mehrwert (31), pp.133-156.

RKW-Bau (2001): Szenarien und Strategien deutscher mittelständischer Bauunternehmen in Europa.

Managementzusammenfassung. Rationalisierungs-Gemeinschaft
„Bauwesen“ (RG-Bau), Eschborn.

Schneider, Friedrich (2001): "Erste Schätzungen der Größe der Schattenwirtschaft im allgemeinen und im Baubereich für die Bundesländer Berlin und Brandenburg über die Periode 1996-1999", Studie im Auftrag der Sozialkassen des Berliner Baugewerbes, unpublished manuscript.

Schneider, Friedrich/ Enste, Dominik (2000): "Schattenwirtschaft und Schwarzarbeit. Umfang, Ursachen, Wirkung und wirtschaftspolitische Empfehlungen", München: Oldenbourg.

Straubhaar, Thomas (1996): Schutzzoll auf Arbeit - das neue Gesicht des Protektionismus. In: List Forum für Wirtschafts- und Finanzpolitik, Vol 2., N° 3, p. 210-221.

UBS (2000): Outlook Bauwirtschaft. UBS AG, Zürich.

Worthmann, Georg (2001): Industrielle Beziehungen und politische Steuerung in der deutschen Bauwirtschaft. Eine empirische Untersuchung zur Normgenese der deutschen Entsenderegulierung, Dissertation, Universität Duisburg, unpublished manuscript

Worthmann, Georg/Zühlke-Robinet, Klaus (2002): Neue Arbeitsmigration im Baugewerbe und ihre Regulierung – Das Arbeitnehmer-Entsendegesetz als Instrument zur Re-Regulierung des Bauarbeitsmarktes. In: Hunger, Uwe/ Santel, Bernhard (Eds.) (2002): Migration im Wettbewerbsstaat, erscheint bei Leske&Budrich, Opladen.

Chapter 4

EU enlargement and migration: a problem or a challenge?

By Jan Cremers

Introduction.

The EU is on the eve of one of the biggest challenges in European history in the last 60 years.

The EU enlargement to include another 10 countries again means a huge task in the unification process of the European market that started in the eighties. A new group of countries including the three Baltic States, Poland, Hungary, the Czech Republic, Slovenia, Slovak Republic, Cyprus, and Malta will enter this market. For those that read carefully I explicitly wrote the unification of the European market, not the unification of our nation states.

The European Commission started soon after the collapse of the planned economies in Central and Eastern Europe with the first deliberations with the emerging free market economies in the former Comecon states.

The official negotiations about EU membership started with a few 'soft' items (statistics, science and research and so on) from 1998 on, then immediately followed by economic and monetary issues (company law, competition, industrial policy, economic and monetary union, free movement of goods, services and capital). As a result of pressure by the European trade union movement and the European Parliament the chapter social policy came relatively early on the agenda (from the end of 1999 on).

Several parts of the EU legislation (the "acquis communautaire") have to be applied from (at the latest) on the day of accession; in other areas (for instance with regard to the free movement of workers or the health and safety) transitional measures or periods are tolerated.

In this article I would like to come up with some observations linked to the free movement principle in the "new" EU.

I will do that first by looking back at the developments in Europe since the start of the internal market project (from the middle of the eighties on) and the fall of the Berlin wall. Important for my reasoning is what happened in the CEE states as a consequence of

European and American pressure to open up their markets (via "shock therapy" as for instance in Poland).¹⁰

This is important because of the impact that it has for the future developments and the socio-economic outlook of the CEE countries at present. After that I will concentrate on the principles of free movement in general and the consequences of the free movement of workers for the years to come.

European unification before the fall of the wall

In the eighties far-reaching thoughts about the creation of a continental free zone in Europe were developed inside what was then still named the European Community.

Some *captains of industry* gave the first impulse to the so-called *internal market* programme; a project based on the liberalisation of the national markets that was put on the rails and firmly pushed forward by Jacques Delors, the energetic president of the European Commission. The way the programme found broad support in politics made it not very easy to criticise this European ambition.¹¹

For this process of European unification the thoughts were, until the fall of the Berlin wall, exclusively dedicated to the Western parts of Europe. The older generation politicians that made a start with the first European cooperation had had an important political argument for stronger socio-economic and political cooperation: no more war. The purpose was at the very beginning socio-economic cooperation between national economies on the European continent and between neighbouring countries that had lived for centuries in armed infighting. The hope was to establish higher social justice all over Europe. Added to this came the political will to improve welfare all over Europe also in regions socio-economically seen as backward. Finally there was political consensus over the need to strengthen democratic and civil rights in some European countries that had just recently come from a long period of dictatorial regimes.

All this made it relatively easy to find public support for the European case until late in the eighties.

The new aims with the internal market programme therefore were welcomed without serious opposition.

All the important architects of the internal market concentrated in their thoughts on the creation of a free zone on the Western side of

¹⁰ See also: EU enlargement, construction industrial relations as a pilot – L. Clarke, J. Cremers, J. Janssen, Reed Business Information, CLR-Studies nr 1, The Hague, 2003.

¹¹ I remember how criticism in the late eighties against the dominance of economic reasoning was played off inside the European Institutions with the argument "that the train had passed that station".

the *Iron Curtain*. Going eastwards was perhaps possible by improving bilateral contacts and economic relations, but that was it.¹²

The internal market programme, based on the principles of free movement (of capital, services, people, products and workers), was strongly dominated by thoughts of liberalisation of the market.

Large companies with international operations were increasingly coming up against national barriers, partly as a consequence of which their growth was being hindered and they needed a larger home market. The dismantlement of what were then still called the internal borders of the European Community was intended to make it possible henceforward no longer to define the home market in national terms but in European terms (North Western Europe, the Mediterranean seaboard, etc.). The so-called Cecchini report, named after the Italian chairman of a European project group which during those years laid the foundations for the internal market programme, promised that everything would come up roses in the European garden if this liberalisation process were to be firmly taken in hand.

Not only would economic growth be secured for the future, but Europe would also be better able to hold its own in the competitive struggle with America and Japan, and proof against economic crises.¹³ Follow-up studies on the competitiveness of European industry, employability and labour market flexibility fitted in with this pattern.

Europe was not alone in this policy, as various international institutions such as the World Bank and the IMF, and the United States put free-market principles on a high pedestal.

It is striking to note that in Europe this free-market concept was initially taken up and implemented by politicians of a Christian-democratic and social democratic complexion. Furthermore, these politicians were to some extent open to the social dimension of the new Europe and, partly as a consequence of that, a *flanking* social policy came into being (hesitantly) from the early 1990s.

In the wake of the programme aimed at improving the "operation of the market" by dismantling borders, critics of the growing collective sector, large swathes of industry who were watching the growth in

¹² This was to a certain extent the view in Europe after the introduction of German Chancellor Willy Brandt's *Ostpolitik*, a rapprochement policy that was not really welcomed by the United States.

¹³ Even when evaluating the internal market programme in the late 1990s, a period during which Europe was benefiting from a revival of the world economy, the European Commission pronounced with great bravura that this was wholly attributable to the liberalisation process. The fact that many internal market measures had not yet been transposed into national law in the member states was conveniently ignored.

public services with mounting concern, as well as conservative politicians and free-market thinkers, saw the opportunity to link the liberalisation of the European internal market with privatising large parts of public life.¹⁴

In recent years, this has resulted in important basic social amenities (energy, postal service, water, healthcare and public transport) being privatised, allegedly *under pressure from Brussels*. Scarcely any real political debate took place in the national parliaments concerning this sweeping privatisation, which in practice usually led to a State monopoly being converted into a cartel of a small number of large international companies. The question as to which basic needs in our welfare society can and must be guaranteed and regulated by the State, and therefore must be provided at least under political control, was brushed aside with references to the creaking bureaucracy and public institutions that were not functioning properly because not operated according to market principles. Less successful examples of privatisation, causing chaos in the privatised British railway system, lack of accessibility to rural areas in France following the privatisation of local transport services or higher consumer prices for deregulated water services, were explained away by being due to inadequate liberalisation or seen as a logical consequence of insufficient profitability or poor management in the past. The fact that such basic provision also has (or can have) a social function and that a political choice can therefore be made for a society in which such provision is safeguarded from rigid market thinking, had almost no part to play in the European debate. Partly owing to the lack of opposition in the national and European political institutions, the policy of economic liberalisation turned increasingly into a policy of privatisation (and deregulation). In the Netherlands for instance, only very recently has a political debate started up on this question following a number of high-profile examples of failed privatisations elsewhere.

A clash of economic systems and the wild east

In recent years, many studies have been published on trends in the socio-economic situation in the countries of the former Warsaw pact. Partly dependent on the political views of the authors, in some cases the emphasis was on (the absence of) growth in GDP, and in others on the *Americanisation* of industrial relations in the countries of

¹⁴ From my own experience, I know that the main so-called *independent (!)* advisory bodies to the European Commission in this area consisted of representatives from companies which were by no means disinterested, researchers and former politicians of conservative leanings (often recruited as lobbyists by industrial interests).

Central and Eastern Europe and on the consequences of liberalisation for the European social model.

The studies conducted from 1998 onwards by or on behalf of the European Commission were also overshadowed by the negotiations on accession to the European Union. This led to reports focusing on economic and monetary questions and which concerned the introduction of the principles leading to the "liberalisation" of the market.

In various workshops, studies and publications a group of CLR-researchers has always sought to argue the case for a closer analysis of the socio-economic process set in motion by the collapse of the centrally-planned economies and the subsequent market liberalisation in these countries.¹⁵

Such an analysis would require more than just a macro study based on official statistics and State communiqués, but instead a study that goes into the consequences of this development for relations between both sides of industry.

Partly on the basis of the CLR research, I want to describe what influence the breaking open of the market in Central and Eastern Europe has had on employer-employee relations in the sectors and enterprises as well as on the general socio-economic outlook.

The collapse of the German wall was the end of a long process.

At the time when the seeds were being sown for the internal market in Western Europe, the Eastern bloc countries were heading for economic collapse; a process that, after the relatively peaceful period of post-war construction in the 1950s and 1960s, could no longer be put off by even the most fervent advocates of the Communist ideal State.

The development of the centrally-planned economy in the former Warsaw pact countries after the Second World War could no longer be viewed in isolation from developments in world trade. This is not the place to dwell on this matter, but from the late 1960s onwards the countries of Eastern Europe were increasingly dependent on imports of high-value investment and consumer goods to meet the growing needs of the population.¹⁶

¹⁵ Regularly published in CLR News and in the detailed study mentioned in footnote 1.

¹⁶ The rhetoric used in this connection could no longer conceal that productivity was falling, investment not being made and the infrastructure falling into rack and ruin (concerning the GDR: see for example *Der Plan als Fiktion und Befehl. Wirtschaftsführung in der DDR* – Pirker et al. 1996, Opladen or H.H. Hertle various publications, 1989-2000). Partly due to poor economic results at home from the mid 1970s, Russia was no longer able to supply the oil and loans needed by the other countries.

The regimes were prepared to pay no small political price to the people in order to maintain a degree of economic stability. Unemployment officially did not exist, there were ambitious house building programmes, many basic amenities were free and there was sufficient money in circulation. Production, even after it was no longer strictly necessary, focused on meeting the essentials of life and, with the exception of the Prague Spring, various popular uprisings during that time were bought off with wage increases, low rents, pension adjustments and improvements in material conditions and cultural life.

In the early 1980s, a number of East bloc countries were economically bankrupt. Increasingly, loans had to be raised from Western banks in order to alleviate old debts and finance imports of modern machinery, new technology and other production goods. The debt burden was large and prompted a change in policy. Moves to raise prices in order to moderate consumption and pave the way for investment came to nothing, however, due to fear of its own people and an awareness that this would involve the regime having to admit its own failure.

In theory, enterprises were owned by the workers. In practice, the politburo of the Communist unity parties assumed the leading role within the State apparatus. The party constituted (or controlled) both the government and the planning authority for the whole economy. In this sense, the State was the only employer.

The senior echelons of large State enterprises and sectors were an integral part of the State institutions and/or so-called planning committees within the ministries. These committees set production norms and economic targets, took investment decisions and set the margins for employment conditions.

At enterprise level (the production units) production managers were appointed by the State. These production units were linked at regional or national level to the central planning authority of the respective ministry in a cooperative relationship that was responsible for distributing resources and manpower and for determining revenues and results.

Within this system, the trade unions had a dual role:

- as representatives of the workers they in theory represented the owners of the enterprise, but in practice the unions formed an extension of the ruling party and were evidently controlled to a large extent by the party. Frequently the organisations therefore served as a mouthpiece for decisions taken at central level on production and planning.
- in addition, the organisations were expected to represent interests, decide working conditions and address shop-floor

related matters. This last area was usually dealt with by the system of plant-level representatives. This created some room for manoeuvre at enterprise level.

Generally speaking, it can be said that the trade unions were dictated to from the central level as to how the national plans and targets had to be implemented and how to harness the full capacity of the working population for this purpose.¹⁷ Independent trade union activities in the plant, other than propaganda and activities based on decisions by the central committee, were few and far between, and chiefly involved such matters as cheap holiday accommodation and other leisure, social and cultural amenities as well as health and safety questions. The Leninist model for the organisation of labour was founded on the primacy of politics.¹⁸

The negotiations on employment conditions at both sectoral and plant level usually led to detailed copies of the centrally-established norms. In fact, this system of labour relations and the actors participating in it (trade unions and production management) worked from top to bottom in accord with the central management. In a number of important areas of sectoral policy, intermediate State structures were set up in this connection, for example for vocational training, regulation of the labour market or mobility. Some important matters were often given shape at that level despite the directives sent down from above.

This whole system hung in the balance when the centrally-planned economy collapsed. The situation in enterprises in Central and Eastern Europe had nothing or very little in common with industrial relations in North Western Europe. As we have seen, there were no

¹⁷ A number of interesting studies have been published on the 'limited autonomy' which applied to the implementation of the national plans and the scope that this gave union officers now and again. The picture was therefore not as clear-cut as this summary would suggest; but it would be going too far to go into details here.

¹⁸ It is striking to note in this connection that the Polish opposition trade union Solidarnosc best-known in the West has to date in practice never distanced itself from the guiding principle and primacy of politics (and therefore from the Leninist model). The dual role between political party and autonomously operating trade union, active in a politically hostile and politically friendly climate, has never really been carried through properly by Solidarnosc. The organisation has very few activities in the sectors and focuses all attention on labour legislation and on supporting the (conservative) political movement. During the period in which Solidarnosc formed part of the coalition government, the union followed the conservative policy slavishly, whereby the leader of the political movement also held the union leadership. In our study it appeared once again that the significance of this course adopted by Solidarnosc reached far beyond the Polish border. In Hungary and, to a lesser extent, in Bulgaria, the new trade union organisations, certainly during the early years, copied the apparently successful Solidarnosc approach.

independent or autonomous workers' organisations or works councils under the previous regime. Bargaining was ruled out from the outset by the diktat of the ruling party. During the times when there was autonomous opposition from the workers, for example against imposed production norms, as in East Germany during the construction workers' revolt in June 1953 and in the Sixties, Seventies and Eighties in Poland and Czechoslovakia, harsh repression took place or the regime bought off the opposition with concessions.

The old structures consequently were strongly discredited after 1989. The trade union movement which in many countries operated as an extension of the ruling Communist Party quickly lost ground. The traditional workplace representatives who in the old days often carried out some useful work going against the official line, simply disappeared.

The new labour relations situation therefore came about partly in a vacuum. There were and are (too) few bases for new forms of worker representation or social dialogue. The ownership relationships have for a long time been unclear. The old nomenclature to some extent found a place in the upper echelons of the privatised enterprises. In some countries, until recently, there were no or only weak employers' organisations; partly under the influence of Western sponsor organisations there was also great rivalry among a great number of powerless unions. The strength or weakness of the unions ranges from the frankly moribund in countries such as Lithuania and Estonia, to situations on a par with the West in the Czech Republic and Slovakia.

The collapse of the Soviet Union and the reform of society in the Central and Eastern European countries have had a huge impact on the mobility of workers of these countries.

In the old days state owned companies from the CEE countries went to Russia or neighbouring countries to build bridges, houses, roads, and there was vigorous East-East mobility.

After 1989 the landscape changed completely.

The construction industry became privatised, important parts of the industry went into foreign (Western) hands, the sector as a whole shrunk and it took quite some time before a national segment of small and medium sized companies emerged.

A new mobility started with individual workers moving legally or illegally to Western Europe; first of all to Germany where a system of bilateral agreements (Werkverträge) regulated to a certain extent the posting of workers from the CEE countries. The illegal part of the mobility of workers was organised by all kind of agencies and post-box companies.

Free movement of workers is and has always been one of the fundamental characteristics of construction work. For economic reasons construction companies and individual workers were motivated to work abroad, for economic and demographic reasons countries, clients and contractors engaged workers coming from elsewhere. The reasons why there was a sharp decrease in the volume of construction works carried out abroad but inside the CEE was, according to most observers, obviously due to:

- The economic and political collapse and the instability in CEE countries and even more importantly the Russian Federation and the CIS countries.
- The problem of finding credible and solvent partners.
- The competition with the cheap labour of other foreign suppliers, the increase of illegal work and social dumping practices.
- The uncertain legal and political environment.
- The privatisation and the liberalisation of the sector created a giant fall in the size of the construction companies. Only a few big companies could stay afloat. On the other hand there was and is still no stable (national) group of small and medium sized companies.
- The sector lost all the possibilities for more capital intense production and investment.

Finally the reduction of the work permits based on the bilateral agreements with Germany had an impact for almost all the CEE countries.

The absence of a social safety net

Fairly rapidly after the fall of the Berlin Wall a number of countries adopted the course of liberalising their market by means of shock therapy. This was the case in particular in Poland and Hungary. Large state enterprises were broken up and sold at top speed. Among the consequences was, for example, the fact that in the raw materials industry, the cake was shared out among Western investors. The utility companies (energy and water) and the banks and other financial institutions shared the same fate. Rationalisation of these enterprises ushered in mass unemployment on an unprecedented scale, the disappearance of women at the workplace and complete fragmentation of production.¹⁹

¹⁹ The same development also occurred, incidentally, at the time of German reunification. The State body set up by the Kohl government to oversee privatisation, continued operation where applicable and sale of the (obsolete) East German industry (the so-called Treuhand institution) comprised representatives of interested West German companies, with one exception: the Belgian industrialist

To give only one example; as a result of the strong liberalisation of the economy starting from 1989, ten years later 60 % of the added value in the Polish economy was produced by completely new companies. These companies were mainly one man companies active in services.²⁰

In the CLR-study (see footnote 1) we have come across examples of the disappearance of important know-how as a consequence of the fragmentation of production and domestic enterprises which were completely unequipped to stand up to Western competition owing to their small scale and poor initial financial situation.

The launch of negotiations with the European Union on accession to the Union directly after the collapse of the central-planned economy, and the associated requirements imposed with respect to market liberalisation led in the CEE countries to liberalisation without any social safety net. There is a huge divide with Western Europe in this area. It is true that when the first moves were made to dismantle borders in the mid-1980s, no social dimension policy was developed at European level in the European Community at the time either. However, this safety net of social protection existed at national level in almost every country and relatively strong organisations representing interests ensured that the standard of social protection, the interests of workers and the like could be reasonably safeguarded or at least defended.

In Central and Eastern Europe, the deregulation of the market was introduced at a time when central planning had collapsed taking along in its fall the discredited organisations and institutions which normally were responsible for allocating social services. As a result there were (and are) no fully fledged organisations in a position to take responsibility for various parts of public life.

Andre Leysen from Agfa-Gevaert, a company that had every interest in the successful dismantlement of the photography and film industry. The haste with which the raw materials industry was privatised (and shared out among Western competitors), whereby enterprises were declared to be unprofitable and the rapid dismantlement carried out with German efficiency made it virtually impossible for firms producing for a local or regional market to develop. The overcapacity of West German industry ensured that the custom of 16 million consumers from the former GDR was easy to harness. However, unemployment contributed to a large-scale flight to the "new federal states". The German historian H. H. Hertle predicted in an interview with the author shortly after the German reunification that all that would remain for the former GDR was "a mountain of rubbish and a little tourism".

²⁰ See: Philippe Rusin – La privatisation de l'économie par création d'entreprises: une nouvelle approche de la transition. Le cas de Pologne, 2002, Paris, cité dans Confrontations Europe, dossier spécial, septembre 2003.

In the sphere of labour relations, this is particularly true of the trade union organisations which did not seem able to clearly put across to (potential) members the advantages of acting together. But this is also true of provision in areas established originally by the State, for example vocational training or regulation of the labour market.

The existing 'reformed' trade union movement and the new union initiatives had to operate in an environment without a monopoly, without protection from a ruling party and in the situation of a free market developing at breakneck speed. The new agenda involved mass dismissals with redundancy programmes, takeovers by transnational companies, carving out positions in the plant and sector. And all of this in a situation in which permanent employment contracts were no longer the rule, job security had vanished and collective agreements no longer had the same significance.

To a much greater extent than in Western Europe, this liberalisation, as already mentioned, was coupled with sweeping privatisation of public life.²¹ Besides the mass redundancies, consequences included large parts of the economy disappearing into Western hands and the total fragmentation of the economy. At the same time as this total restructuring of economic life, investment by the State plummeted. The erosion in State investment led everywhere to a sharp rise in unemployment figures.²²

Many Western observers see the emergence of a veritable galaxy of small enterprises and self-employed workers as a sign of vigour for the new democracies in Central and Eastern Europe. However, in all respects it is rather an indication of weakness and pure necessity. Unemployment is so extensive and the discredited trade unions so weakened that the pressure is on workers above all not to join a union from the outset. The social pressure (and economic ratio) for collectively regulated employment conditions is not present and all solidarity-based services have almost no chance. In such a situation, it is relatively simple as regards the relationship between employers and workers for the employer to *have his workers adopt self-employed status*, so shifting part of the business risk onto the individual worker.²³

The new enterprises and the large number of self-employed workers have little scope and no tradition of setting up collective services or

²¹ To give an example from outside the sphere of industrial relations: it is not for nothing that in the negotiations with the EU many countries insisted on transition periods for the acquisition of immovable goods and land.

²² In the Polish construction industry, the erosion of unemployment between 1989 and 1992 was 25% and by 2000 another 25%, in Romania, Bulgaria and Slovakia the percentages exceeded 50% in ten years.

²³ Quote from conversations with individual employers during work in the field.

funds. This has repercussions both for social provision and pensions as well as for arrangements made (often to counter cyclical trends) to secure the continuity, competitiveness and productivity of a sector. In our study we have only found a few examples of services extending outside the individual plant or plant-level arrangements concerning conditions of employment, social security or social protection. And at plant level, agreements concluded at this level tend to be less rather than more significant.

In many respects, the Polish market, for example, is more 'Anglo-Saxon' than the American market in this area.²⁴

The iron law of privatisation

For a long time after the disappearance of the iron curtain it was thought that the former East bloc countries would have to go down a similar industrial relations path as that followed by Western Europe after the Second World War. It has since become clear that this is a completely mistaken view of the reality. What is happening in Central and Eastern Europe is not a rerun of our past; but it could very well be our future. In this connection I have come up with the phrase "the iron law of privatisation".

I would like to go further into this description by giving an overview of some earlier findings based on the fact finding missions and other data of the CLR study on EU-Enlargement.

From the perspective of the representation and championing of workers' interests, the privatisation process initiated in Eastern Europe in a situation without a social safety net has major consequences. The consequences of this development for society go much further, however.²⁵

The consequences of privatisation can be summed up as follows:

- Rapid privatisation in a situation in which fully fledged industrial relations do not exist leads to a weakening in the position of the trade unions (and employers' organisations) at central but above all at sectoral level.²⁶ This leads to a decline in the

²⁴ Guglielmo Meardi speaks in this connection about "The Trojan horse for the Americanisation of Europe", in *European Journal of Industrial Relations*, 8.1, 2002.

²⁵ A number of studies published recently demonstrate that the welfare of the population and economic performance in a society are strongly linked to the quality of socio-economic dialogue and the strength of the trade union movement and developed collective instruments. Even the *Financial Times* has discovered this; I shall not go further into this matter here.

²⁶ Based on the data of the EU Enlargement study it is possible to demonstrate that, depending on the pace at which privatisation is introduced, this trend will or will not be accelerated. In Poland and Hungary (and to a lesser extent in the Baltic

organisation rate, an undermining of the mandate, a weakening in the capacity to implement agreements and in some cases the complete evaporation of the trade unions.

- Collective agreements, services provided by both sides of industry and solidarity-based arrangements or assessment insurance come under pressure or are abolished. In many Central and East European countries, collective agreements are no longer generally binding or have completely disappeared.
- Privatisation involving a foreign takeover in many cases leads to a further erosion in the sectoral, supra-plant level coordination of employment conditions and so far has not led to a strengthening of national "social dialogue" above the individual plant level.
- Consequently, the outlook for what is already an inadequately developed institutional system of labour relations in the former East bloc countries looks set to worsen. The individual employment contract in the form of a diktat by the employer is the dominant form of employment relationship.
- Labour relations are, as a consequence, increasingly characterised by a lopsided structural trend in the balance of power. The central organisations are not strong enough to exert influence at individual level and have no position at plant level.
- The plant-level unions, the form of representation established by law in many countries chiefly by and in the footsteps of Solidarnosc, do not operate outside the individual plant and in many cases amount to glorified staff associations. Finally, the absence of a coherent allocation of responsibilities among the organisations at central, sectoral and plant level has led to a weakening in the overall edifice of labour relations.²⁷ Partly in

countries) the shock therapy used has completely undermined the significance of workers' representation and the trade union movement for dialogue in the plant or the sectors. Poland, Hungary, Lithuania and Estonia (no longer) have any collective bargaining for the construction sector, and the prospects seem even less positive in other sectors. In those countries that started the privatisation process later on, in this case Bulgaria or Romania, matters have not gone so far but it is expected that this will happen as privatisation advances. Hence the phrase "iron law".

²⁷ In an earlier publication I characterised the analytical framework for a system of industrial relations as employed by CLR in the study (CLR News, 1/2001, Brussels):

consequence of this, the plant-level unions are losing ground in terms of both size and significance.²⁸

The privatisation and breaking up of the large State enterprises put an end to the automatic procedures and paper 100% unionisation rate of former times. No one should shed any tears over that.

A 'dialogue partner' has emerged on the other side who is no longer embedded in a centrally-directed and controlled system as was previously the case. However, no collective set of instruments has been developed for this process. What we see is that the new social partners at central level are seeking their salvation in the government and the State as lawmaker. This is not happening by virtue of their own autonomy and strength but is dictated by their weak position and the absence of their own agenda and instruments. In this sense, it would seem that despite everything there is still a strong yearning

Framework for systems of industrial relations

LEVEL	ACTORS	PLAYING FIELD	INSTRUMENT
National economy	-Central organisations of employers and employees	- Labour legislation - Socio-Economic policy - Overall policy for collective bargaining	- (Tripartite) National advisory committees - Social Dialogue - Framework agreements, social pacts.
Sectoral level or branches	-Unions and employers; -Organisations in the branches	- Specific labour legislation - Sectoral socio-economic policy - Industry policy - Collective bargaining	- Ad hoc or permanent advisory bodies - Social Dialogue - Sectoral agreements - Collective agreements
Company level	-Management -Workers representatives -(Local) Unions	- Company strategy and HRM policy - Working conditions - General policy	- Co decision, information and consultation - Company agreements - Codes of conduct

In the event that the agreements between individual employers and workers constitute the predominant employment contract, we have to ask ourselves whether it is possible to say that a system exists. In our study, this does seem to be the dominant form in the countries surveyed, with the exception of Slovakia and Romania.

²⁸ Regan Scott, a former British trade unionist, spelled out a number of ideas for the possible course to be adopted, for example supporting an "annual" Parliament of plant-level unions (in CLR News 2/2003).

for the central control of the old days on the labour relations front. Championing the interests of workers in a market economy does, however, call for different skills and new forms of cooperation, dialogue and confrontation. The belief in the merits of the free market and the further destruction of collective social provision and services, which this free market is helping bring about, is making few positive contributions to a soundly-based system of labour relations. The weakness (and steadily eroding significance) of the previously discredited organisations representing workers' interests, but also of the new union initiatives moot the question as to which foundations such a system can be built upon in the countries surveyed.

I began my contribution by sketching out the liberalisation of the European market and, partly drawing on several CLR studies, indicated what consequences this process (as part of the *acquis communautaire* imposed on the accession countries) has for the development of labour relations in Eastern Europe. The iron law phenomenon which I have formulated for Eastern Europe (weakening of the workers' position, undermining of social provision, primacy of the economy) evidently also holds true in Western Europe. Accordingly, the trade unions in, for example, the UK have never succeeded in achieving the powerful position previously occupied in State enterprises to even a small degree once these enterprises have been privatised. In other European countries too it is the case that the unionisation rate in the public sector is usually appreciably higher than in the private sector. However, this did not lead to the destruction of our social safety net. It is certainly true that to an increasing degree in our countries questions have been raised as to whether collective agreements declared to be generally binding or other collective provision are still relevant "these days". The need for the social "middle field", specific sectoral provisions, a high level of social protection, and good social provision and social security is regularly disputed by free market advocates. In these areas there is a growing hardening of the political debate in which a new robustness is setting the tone.

The ease with which the European social model (if any exists) ²⁹ was put out with the rubbish gives food for thought in this respect and demonstrates a lack of historical awareness.

²⁹ Concerning the unique character of the European dialogue model, I have from the outset endeavoured to put this in context to some extent. In the 1950s and 1960s, the German Wirtschaftswunder was seen as the model of social progress to strive for, later followed by the Swedish model and since the early 1990s the Netherlands has been held out as the example. What these models had in common in any case was that they incorporated a social safety net which was firmly anchored in society, a certain political consensus and safeguards against cyclical downturns.

The free movement.

As said before the internal market program was and is based on five principles of free movement. These principles are partly contradictory and so far (conservative) politicians have given priority to the monetary and financial union; officially there is no hierarchy but in practice there is.

a. Free movement of goods.

The guiding principle in the EU is that if a product can be legally sold on the market of one country in the EU, then it can be sold in all the countries of the union. The European Commission has worked in this field with the development of technical standards and with product certification. This principle has led in the past to certain problems, for instance with products containing asbestos, where some countries had already a complete ban on the use of asbestos. The national policy to close the market of countries for these products was under threat. Another example is the question of heavy loads, whilst it is forbidden or regulated to work with certain construction materials (cement, heavy bricks) in one country, it is not possible to completely close the market for these products as long as it is not forbidden or regulated for the whole EU.

b. Freedom to provide services.

This principle was at the beginning mainly meant for the banking, insurance and other financial services. The idea was to come to a harmonisation of the authorisation conditions and of the licences to provide services. In recent history we have seen abuse of this chapter of the internal market programme in the respect that "creative" contractors in construction (and cleaning) went with their workers over the border to provide construction services. This was a method to bypass the compliance with the posting directive or with national agreements and legislation in the country where the work was done. We have even seen some cases for the European Court where this abuse was discussed.

c. Free movement of capital

The aim is notably to liberalise the investment in companies, the transfer of ownership and the investment in real estate. A further aim was and is to facilitate the payment and transfer of money over the border. As a consequence the transfer of undertakings, already going on in the eighties, has accelerated in the nineties. In some sectors we have seen as a result a concentration of companies at European level (cement, construction materials, furniture, parts of civil engineering, road builders).

With regard to the free movement of capital almost all candidate countries have asked for transitional periods to avoid a sell out of

their real estate and the massive acquisition of secondary residences or agricultural and forestry land by foreign capital. This transition period is not applied for economic take-overs. The last decade state owned companies have been privatised at a very rapid pace (see for instance the country reports of the CLR industrial relations project).

d. Free movement of persons

The principles of free movement of persons contain issues that have a direct impact on peoples' and workers' lives in Europe.

Citizens' rights is all about the right to enter a country, voting rights during a permanent residence in another EU state and the possibility to participate actively in the political life of the Union. So far rights are limited to elections for the European Parliament and municipal elections (derogations still exist). Furthermore the right of residence is guaranteed and discrimination not tolerated.

Through a system of *mutual recognition* the EU seeks to eliminate obstacles for those persons that want to take up a regulated profession in another country.

Co-ordination of social security schemes is settled by regulations that have to be applied directly upon accession. It has been one of the battlefields in the construction sector, where even the European Court was involved. The issue remains a very complicated minefield with risks of social dumping and abuse. The problem starts with third parties or agencies coming from other countries than the country of origin or the country where the work is to be done. Another possibility to avoid the obligations to pay normal social security levies and benefits is to open (or acquire) subsidiaries in countries with low social security standards.

e. Free movement of workers.

During the negotiations between the EU and the CEE countries the free movement of workers has become the key issue. These debates have finally lead to transitional measures.

Main reasons for this transition period are the forecast movements of labour following accession and the resulting labour market effects in certain regions. Although the impact of free movement is expected to be limited there will be a concentration based on geographical proximity, income differentials, unemployment and propensity to migrate. The Council of Ministers was afraid of public opinion and of losing public support for enlargement.

For all the CEE countries (not for Malta and Cyprus!) a transition arrangement has been put forward, based on:

- a two year period where national provisions in this area still can be applied. In certain countries this can lead immediately to full labour market access,

- during these two years reviews will be held with regard to the full application of the *acquis*,
- the transition period has to come to an end at least five years after accession, except in those countries where serious disturbances of the labour market are still manifest. Especially Germany and Austria have the right to apply additional, flanking national measures.
- up to the end of the seventh year Member States may apply safeguards.

Part of the transition arrangement is a stand still clause; Member States may not develop a more restricted policy after the signature of the Accession Treaty. Finally workers from candidate countries must be given preference over non-EU labour.

Screenplay for the future

Now, less than one month before enlargement takes place it is clear that an overwhelming majority of the old member states will use the possibility to introduce a transitional arrangement.

The argument is to come up with a barrier against cheap labour coming from the East and against the risk of substitution on the labour market at the expense of the (many) unemployed in the Western European economies.

What is striking however is the fact that according to different national studies as well as studies from the ILO and the OECD there will not be a massive migration towards the old Europe.

Why is there such a difference between scientifically based forecasts, prediction and prognosis on the one hand and current policies on the other?

- One of the most important reasons for this difference is of course the fact that most studies were made at a time when Europe was economically seen still in a boom period. There was a shortage of skilled labour, the demographic developments in the old Europe made it necessary to start thinking about an influx from elsewhere. The labour market shortages for unskilled labour were even worse and every country had already a remarkable figure of (legal and illegal) workers from the CEE countries for the lower stratum of our workplaces. In the meantime we are in a situation of shrinking economies in most EU countries for the second or even third year running and economic growth of a substantial proportion is not predicted before next year. This means that for the short term it is no longer necessary to think of migration as a solution for labour market frictions.

- Secondly we have seen in many countries a public and political aversion against migrant workers, refugees and asylum seekers. In this debate questions of migration are, often without any reasonable ground, mixed up with questions of illegal work, criminal acts and other xenophobic reactions. In some of our democratic countries it is politically correct nowadays to stick to populist positions. As a result the debate on open borders and free movement is poisoned with public fear and defensive ideas about closed borders.
- Thirdly we have seen that already at this very moment it is not possible to fight against illegal practices. The abuse of cheap and undeclared labour by agencies and subcontractors in certain industries is undermining our social systems and our industrial relations. Compliance with labour legislation and collective agreements is difficult to guarantee. In such a situation the notion of only half open borders, exclusively for regulated and limited migration of the workers needed, seems logical.

The question is what this will mean for the future of the EU market of the 25 member states?

Illegality is expected to grow; illegal work was and is a general and widespread disease in construction. It contributes to a distortion of competition, a downward trend in prices, wages, productivity and quality and gives the industry a bad image.

If illegal work becomes dominant in a market it is difficult to develop industry wide arrangements, provisions and agreements that can strengthen the continuity of a sector, or to keep these provisions in place. As a result the majority of companies are no longer interested in having social regulations in place in the industry.

What we can see now in *the home market of the Central and Eastern European countries* is a decentralisation of the bargaining to the lowest level, the company level, on the one hand, and no strong feelings or arguments for any sectoral arrangements on the other.

A significant black economy is of short term assistance to those companies and workers that go for themselves, but is in the long run destructive for the construction sector. Illegal migration is not yet the dominant characteristic of the market for illegal work in the countries mentioned. However the share of migrant workers in the black economy seems to be growing in the CEE countries.

On the other hand there is evidence that *in the old Europe* the proportion of irregular or illegal employment is growing among non-EU immigrants³⁰. The existence of unauthorised immigrants is still

³⁰ The process of recruitment of immigrants in the construction sector. The cases of Italy and Portugal. – I.Fellini et al, Transfer, Brussels, 2003.

relevant but of a transitional nature. Their pattern of irregular work is less and less linked to an unauthorised stay but is more and more similar to the irregular type of employment of the workers of the country where the work is done. They are present in small and medium-sized companies and subcontractors and work as semi- or low-skilled workers. The objective is to reduce labour costs and in the long term the labour shortage for semi- and low-skilled work.

The policy needed has to concentrate on the recruitment strategy of construction firms and the developments in the chain of subcontracting. It is there that illegal and undeclared work is created. It must be clear that we have to put our energy in the application of legal regulations and of collective agreements of the territory where the work is done, or better said the application of equal treatment principles. Only this can eradicate the problems with migrating foreign workers all over Europe.

Final remarks.

There is no argument for closed borders in the new Union.

- a. First there is the question of political fairness. The collapse of the planned economy and the introduction of the free market was immediately followed by a dictate of the EU countries to further open up the CEE markets. We have not brought there prosperity and a glooming economic perspective but first of all sought for markets and raw materials. Unemployment went up and a social safety net was (and is) missing. It is hypocrisy to use the system of free movement principles as a supermarket that serves us.
- b. The result of closed borders will be a further growth of illegal practices. Nowadays it is already possible for CEE citizens to come to the EU with tourist visa for a few months. Many of them are already there and work in illegal circumstances with no compliance with labour legislation or collective agreements. This is a serious threat for legal and conventional provisions in the field of social security and protection. Social dumping via illegal practices is much more devastating for the European social model than open borders. We are better off by legalising and monitoring the labour market and migration process.
- c. The history of migration shows that it takes a lot to leave your home and soil. Programs for urban and rural development have to be set up in the country of origin to create a perspective for economic and social

development. The EU policy has to be based on a fair share of our wealth. Enlargement with Spain, Portugal and Greece made clear that the strongest motivation to leave a country is the believe in a perspective at home. For Spain the migration to the EU countries went down directly. Most migrant workers came in for economic reasons for a few years.

- d. A policy to accept only a selected group of skilled workers and other attractive parts of the labour population adds to the risk of a 'brain drain'. It certainly will not contribute to the development of the home country. In addition to this, one might expect that a fixed contingency of workers will stimulate a run to be on board. The question is whether that serves as well the migrant workers as the recipient country.
- e. Recent polls confirm the long term prediction; about 1 % of the working population has planned to move to a EU country. Of course the effect of this migration of workers added to those that are already there should not be underestimated. Earlier studies made clear that migration is mainly taken place in construction and in middle management. 1 % is not very much for the whole economy but too much if concentrated in one industry. But the answer should be contract compliance, a clear policy (and not a double hearted one) with regard to collective agreements that have to be applied and labour legislation that has to be respected.
- f. The labour market in the old EU asks for migrant workers. Our population is aging. In the long run even the enlargement doesn't really help us because with some slow down the same age pyramid is developing in the CEE³¹. In the long run we will have serious skill shortages on our labour markets. Construction has always been a key sector for immigrant's economic insertion. In several transnational studies construction is listed among the branches where discrimination at the workplace is relatively low. We should continue to see that as a challenge!

³¹ The average age of the working population in the acceding countries is already higher than the average in the EU as shown in *Working conditions in the acceding and candidate countries* – European Foundation for the improvement of living and working conditions, Dublin, 2003.

Chapter 5

The Danish Model of Labour Market Organisation: Will it cope with May 2004?

By Nikolaj Lubanski

1. Introduction – Much ado about nothing or challenges for the Danish model?

The 1st of May 2004 will be the historic day when Europe definitely waves goodbye to a divided past. Almost 50 years with an iron curtain hanging through the heart of Europe ended more than a decade ago. Nevertheless, an economical and development "curtain" has kept, and is still keeping Europe divided. The enlargement of the European Union (EU) with 10 new member states is a historic possibility for promoting peace, development, prosperity and welfare in a broader Europe. It must be seen as being of vital importance for stability and economic growth both in Denmark and in the rest of Europe.

The enlargement process is also one of the biggest challenges for the EU and its member states. Firstly, this relates to the number of people concerned and their general living standards. With the 10 new member states, the EU will cover some 75 million new EU citizens, many of whom have an income level approximately 1/4-1/3 of the present EU average. Secondly, the forms of regulation will be challenged. In the negotiations during the accession process, this was very visible in regard to agricultural subsidies. In other vital EU domains the forms of regulation will also be targeted, the most notable being the principle of free movement of labour.

Ever since the beginning of the EU, the free movement of goods, capital, services and labour within the European market has been a cornerstone of the co-operation. It has thus been of high priority to remove obstacles to the freedom of movement among the member states. The free movement of labour, in an open and flexible labour market, is considered to be of decisive importance toward ensuring economic development and the transfer of knowledge between the member states.

Since the fall of the wall in Berlin, Denmark has been a strong advocate for the enlargement of the EU with the countries in the eastern and central Europe. As a part of the Baltic Sea Region, there are significant potentials for trade and growth for Denmark in this

area. The fact, that the Danish government had the chairmanship of the EU, both in 1993 with the definition of the so-called Copenhagen Criteria starting the enlargement process, and in 2002 signing the enlargement agreement, means a lot for Danish self-image. But it can be a long way from political rhetoric to practical implementation.

Denmark can be said to have come down to earth again. In December 2003, the Danish government secured support for a political agreement, which will permit people from the new EU member states to seek and to take up work in Denmark from the first day of these countries membership. This is the good news, in accordance with the above mentioned advocacy for enlargement. The bad news in this context is, that the opening of the Danish labour market is subject to a number of relatively strict conditions.

This is just one of the agreements that is settled in order to regulate the conditions for the future immigrant workers. Several other arrangements have been put in place, e.g. regional contact groups to control working sites, tax task forces in order to check self-employed, etc. The interesting aspect is that all these arrangements are established in a situation where we still do not know whether there is a problem at all. Research shows, that there probably will be very little immigration of workers to Denmark as a consequence of the enlargement. Some even argue that the debate is putting the problem upside down (Vestergaard et al. 2004, Gurre-gruppen et al. 2002). Their argument is, that Danish society in a few years time, will need immigration in order to keep up welfare standards with an aging population.

On this background, there are reasons to ask whether the Danish debate is "much ado about nothing" or whether the enlargement actually will seriously affect the Danish labour market?

The main purpose of this article is to analyse and find answers to this question. Therefore, the second section will analyse how many migrant workers can be expected in Denmark as a result of the enlargement. This is followed, in the third section, by a description of the likely forms of migration and their possible consequences on the Danish labour market. In the fourth section, the challenges to the labour market model in construction are outlined and evaluated. Finally, the fifth and last section some conclusions are presented.

2. Prognosis for migration: Hordes of legal and illegal workers or what are we talking about?

Before it is possible to evaluate the challenges for the Danish labour market model it is necessary to have an idea of the size and the pattern of labour migration. The trouble is, that it is very difficult to get a clear picture of these aspects. Over the last decade, several studies of migration potentials have been conducted both from research institutes and on behalf of the European Commission. Even though these studies are frequently referred to in the present debate, their conclusions must be taken with some caution. These studies are trying to forecast a future development based on previous experiences, present differences in levels of income or individual attitudes towards migration (Vestergaard et al. 2004).

The studies of migration can be divided into three categories:

- Econometric studies
- Comparative studies, and
- Interview-based studies

The *econometric* studies construct models between migration and a measurable variable, e.g. wage differences. The variable is weighed in relations to its presumed influence on future migration, and based on this relation the number of migrants in a given situation is estimated. An example could be Poland where wages are maybe 1/3 of the present EU level, which could generate a certain amount of migrants after the opening of EU's labour markets. Most frequently the econometric models combine a number of variables such as levels of BNP, employment rates and wage differences in order to get a better background for the forecast. The uncertainty with these models is that they do not incorporate the social, political and psychological reasons for migration.

The *comparative* studies transfer experiences from earlier waves of migration to the present situation. An example could be the earlier enlargement process with Spain and Portugal in 1985. This example presents a "real" historic event where we are able to study the actual migration and the following consequences. It is beyond question that much can be learned from these historic patterns, but in using this method we are faced with the so-called problem of "double extrapolation". The question is whether it is at all possible to extrapolate (transfer experiences) from earlier waves of migration to the present situation, and whether this can be done from one geographic location to another?

The *interview-based* studies overcome some of the difficulties with the two other methods through the direct involvement of viewpoints from potential migrants. Through the use of interviews or questionnaires to Polish, Czech or Hungarian workers the researchers get more in-depth knowledge of the push and pull factors of migration, and there through knowledge of the potential amounts of workers actually being interested in applying for work in a EU member state. The uncertainty with these studies lies in for example inaccurate questions and lack of a representative interview group.

In spite of the uncertainty with and the differences between the studies there are a number of common tendencies in them. These tendencies can be summed up to following forecasts (Vestergaard et al. 2004; Ministry of Employment 2003):

- The number of potential migrants from the new member states is estimated to be relatively low. Approximately 140.000 – 240.000 migrants (including family members) from the new member states are expected to enter the EU member states per year.
- The highest number of migrants will probably go to Germany and Austria. At present almost 70% of all workers from the Central and Eastern European countries are located in these two member states, and this tendency is presumed to continue. UK will probably also attract a certain percentage, whereas Denmark and Sweden are relatively low on the priority list of potential migrants.
- The forecast is that the most migrants will be seen the first years after enlargement. Thereafter, the number will gradually fall to a approximately half the above mentioned figure.
- Migration is most likely to be temporary. The majority of the migrant workers will only stay in the host country for a short period of time. Generally, the migrant workers either stay a couple of months per year as part of the seasonal labour force or on a permanent basis for some years,
- The main reason to look for a job in an old EU member state is the higher wage level and thereby the possibility of an improved living standard. But also incentives like a limited distance to and an existing network in another member state will play a role.
- These factors also relates to which countries will be chosen. Germany and Austria are obvious targets due to their common borders with several of the new member states. But the political factor will also play a role. The fact, that both countries have made transitional arrangements that limit the movement of workers from the new member states up to seven years after

enlargement, means that countries without transitional arrangements will be attractive. The choice between the remaining countries will be related to sub factors like language, reputation of companies and the openness towards foreigners.

Following from these general forecasts, what will be the likely influx of workers to Denmark? The uncertainty from the above prognoses is replicated in the possible answers to this question. Most likely, Denmark will witness a relatively small influx of workers due to enlargement.

Well-founded research estimates the amount to be around 2.000 workers per year in the first years after enlargement (Vestergaard et al. 2004). In their view this is the maximum of what we can expect. At present approximately 18.000 people with heritage in the 10 new member states (including 2. generation immigrants) live in Denmark (Ministry of employment 2003).

If this figure is compared with a similar figure for EU as such (though including Rumania and Bulgaria), which adds up to approximately 1.000.000 people, an extrapolation – well aware of the limitations – could be that some 1.8% of the future migrants will go to Denmark. Compared with the general forecasts for EU, this would mean somewhere between 2500 and 4500 migrants (including family members) to Denmark per year.

Like the uncertainty with the migration forecasts is high, we also know very little of the immigrants educational backgrounds and skills. Nobody really knows, whether it will be predominantly low-skilled manual workers or well-educated professionals that will enter the Danish labour market? The answer to this question can be said to be rather important in relation to the judgement of consequences for the labour market model. The Danish labour market will react differently to receiving 2000 highly skilled IT professionals or 2000 unskilled agricultural or building workers even though some of the issues concerning wages and working conditions can be somewhat related. If both groups are invited to work at a lower wage level than the Danish average then the challenge can be said to be similar for both sectors.

Most migration takes place in the form of commuting or temporary emigration, and generally it is persons with limited professional skills who take up work as seasonal workers mostly in the building trades, agriculture or in the tourist sector (Vestergaard et al. 2004). The well-educated part of the labour force tends to stay home. Several examples have shown that the professional groups are not very

mobile. For a number of years Poland has had quota arrangements with France, Germany, Spain and Ireland but in spite of the rather limited numbers of workers that were given special possibilities of entry, the quotas were often not fully used, especially concerning the well-educated labourers.

Today most Polish migrant workers are unskilled, young persons from one of the bigger cities in Poland who travel to a EU member state for a number of months per year (Bauer et al. 1999). Often they return to the same employer and it is the employer who makes all the practical arrangements in relation to the migrant worker's stay.

The reasons for the relatively low mobility among the well educated have something to do with their generally better conditions and possibilities on the labour markets of their homeland. But also fear for losing foothold and relations within their professions plays a role (Gurre-gruppen et al. 2002). So in order to attract highly skilled professionals a combination of "push" and "pull" factors has to be present, e.g. attractive wages, professional challenges and work opportunities for a spouse combined with lack of jobs and prospects in the home country. If such a combination is not present the well educated will stay at home as it, for instance, was the case with the German "Green Card" for IT specialists some years ago: 8000 IT professionals were expected, but only 87 came (Vestergaard et al. 2004).

To sum up, migration to Denmark will presumably be limited as a consequence of the enlargement. Based on earlier experiences, those who will arrive will probably be younger persons with few formalised skills who will take up jobs on a temporary basis in specific sectors such as agriculture, tourism and construction. So in spite of the fact that the fear of an invasion of migrant workers from the new member states is quite exaggerated, it can have some consequences in specific areas and sectors if the immigration is concentrated there.

3. Forms of migration – consequences for Denmark

In the Danish debate focus has been on individual workers. The image reaching the front pages has been individuals or groups of migrants travelling from the harbours of Northern Poland to Copenhagen on a one-way ticket as a beginning of their search for work. But this will probably be only a minority that will enter this way. This form of migration can be considered as only one of several possible ways workers from the new member states can enter the Danish labour market.

When the consequences shall be evaluated it is important to separate the different forms of migration. Three main forms can be separated (Schjøtt-Pedersen et al. 2003; Dølvik 2004):

1. Individual workers
2. Posted workers in relation to tenders and deliverance of services
3. Self-employed who arrives to establish their own company

Transitional arrangements concern only the movement of individual workers whereas the free movement of companies and services will be a certain reality from the 1st of May 2004. Therefore, the latter two forms are equally important to be aware of. Especially in a situation where focus and transitional arrangements are made for the free movement of individual workers the interest of finding other forms of entering the Danish labour market can be increased.

3.1 Companies – free movement of services

The two above-mentioned forms of migration relating to enterprises and services can be seen as relating to the same regulatory framework, i.e. the free movement of companies and services. In the negotiations of the accession agreement only the free movement of individual workers was subject to limitations not the self-employed. The right for people from the new member states to establish companies in other member states is secured from the first day of membership. One could then fear that Eastern European craftsmen would travel to wealthier parts of EU and establish companies just as a cover for working on an individual basis. This kind of fake self-employment could seem to be an interesting way to avoid both the legislative and collective bargaining based regulations concerning pay, pensions and working hours.

In some countries as for example UK the number of self-employed actually has increased significantly over the last decades but this has not so much to do with migrant workers as it has something to do with the general deterioration of the British regulatory system. In Denmark, this practice of pro-forma self-employment is prohibited even though control can be difficult. If the self-employed only or mainly work for the same employer one year after another the tax authorities will impose sanctions and force the self-employed to change employment status if possible.

It is estimated that approximately 5.000 out of the 10.000 self-employed are in the grey zone between real self-employment and a wage-earner position (Ritzau 2003). Nobody knows whether any of

these self-employed "firms" are owned by people from the new member states but probably only very few if any.

Likewise, no statistics can tell us whether any temporary employment agencies with an Eastern European base are present in Denmark. Agencies for temporary work could be an alternative way to create access for cheap labour on the Danish labour market. This has been a concern of the trade unions but a recent arbitration award has stated that temporary replacement workers shall work under the same conditions as the other employees in the company, so generally this is not considered to pose a problem on the Danish labour market.

Besides self-employment and the temporary replacement workers, there is the issue of posted workers in relation to tenders and deliverance of services. Unrelated to the enlargement process there has been an increase in the use of tenders, outsourcing and sub-contracting in the Danish construction sector. In a competitive market the companies will seek to cut costs through outsourcing production processes to either the company's own subsidiaries or to suppliers. With the enlargement this practice will be even more interesting for companies in the old member states.

In the construction sector this practice mostly takes the form of sub-contracting where for instance a Danish company who holds the main contract would sub-contract a foreign company to carry out some specific part of the construction process. This has naturally taken place many times, for instance in relation to the construction of the Copenhagen Metro, the National Library, etc. The foreign sub-contractor has then brought in its labour force for a certain period of time in order to carry out the job. Until now, we have mainly seen this realised by companies from the old member states (Sweden, UK, Italy, France, etc.).

The practice of posting workers are regulated by EU directive 96/71/EC, which seeks to avoid 'social dumping' by ensuring that a minimum set of rights, is guaranteed for workers posted by their employer to work in another country. The basic principle is that the working conditions and pay in effect in a member state should be applicable both to workers from that state, and those from other EU countries posted to work there. The Directive covers undertakings established in a member state, which, in the framework of the trans-national provision of services, post workers to the territory of another member state. The Directive establishes a core of essential regulations aimed at ensuring employees' minimum protection in the country in which their work is performed (Jørgensen 2003a).

After one month in Denmark, the relevant provisions of the collective agreement, which applies to their employment, cover posted workers. All such agreements have implemented the minimum rules laid down in the EU Directive. Where no collective agreement applies, the Act on posted workers applies. Furthermore, a number of foreign companies have concluded "accession agreements", i.e. signed up to existing collective agreements - with Danish trade unions in the construction sector (Jørgensen 2003a). Other foreign companies have joined employers' organisation affiliated to the Danish Employers' Confederation, thereby receiving the full services of the organisation, including coverage by collective agreements.

The EU directive and its further implementation should in principle be a sufficient regulatory framework also in order to cope with the situation after the enlargement. In practice, though, it has shown to be more complicated to control whether the posted workers actually have the wage and working conditions there are entitled to. In some cases, the sector's trade unions have a hard time getting the necessary documentation from foreign companies. Several times, it has been impossible to track the contractual basis for some posted workers who, for instance, are from Portugal but posted by an Italian company, which turns out to be no more than a mailbox.

These forms of more or less deliberate attempts to find ways around regulations can be said to be even more tempting when the 10 new member states have joined the EU. Nevertheless, the threat in relation to Danish construction should not be overestimated. Earlier research has shown that there are several other hindrances for the entry of foreign companies (Lubanski 1999). The Danish construction activity is fairly small in comparison to most other European markets and the projects generally have a limited size. Furthermore, the language, the climate and the regulatory framework speak against easy penetration of the market.

3.2 Individual workers – free movement of labour

As indicated above, the likely influx of workers from the new member states will be limited. In spite of this, there has been a vivid debate about the possible consequences following from the further opening of the Danish borders. Concerning individual workers, the debate has focused on three forms of individual migration:

- Social tourism
- Legal migrant workers
- Illegal migrant workers

Social tourism can take the form of an eastern European worker finding a job on a Danish site. He brings his family to Denmark but becomes ill after a few weeks and returns to his home country with his family. Following from his employment in Denmark he should in principle be entitled to sickness and child benefit. This kind of exploitation of the welfare system could be a welcome possibility for low-income families in the new member states.

It is outside the scope of this article to cover the full range of issues in relation to social tourism but two aspects can be mentioned. Firstly, most evidence show that migrant workers will go to Denmark in order to work; not to speculate in welfare provisions. Secondly, the fear of exploitation has resulted in the government's initiative to change the regulatory framework in such a way that migrant workers from the new member states are neither given unemployment benefit nor supplementary benefit if they lose their job. In case of unemployment, they also lose their residence permit and are basically kicked out of the country.

This latter aspect is part of the Danish transitional regulatory framework established for workers from Central and Eastern Europe, i.e. the legal migrant workers. In December 2003, the Danish government secured support for a political agreement that will give workers from Central and Eastern Europe access to the Danish labour market from the first day of their EU membership. However, this permission is subject to a number of special conditions.

This so-called "East agreement" means that citizens from the new EU member states can seek work in Denmark on the same footing as other EU nationals from 1 May 2004. The difference is that they have no right to receive social benefits while searching for a job. If they find a job, they will 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 is unlike other EU-nationals and this also means that no permit will be granted for part-time work or work at a wage that is lower than laid down in collective agreements.

Workers from Poland or the Baltic states - the nationalities most likely to seek work in Denmark - 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, but may, in some cases, be granted financial assistance for the journey to their home country (Jørgensen 2003b). Furthermore, migrant workers will not have the right to childcare leave and their eventual need for sickness benefits is severely restricted.

The East agreement includes the possibility of tightening regulations if found necessary. The Danish government may thus halt the entry of labour from the new EU member states in specific sectors or in specific regions if the influx becomes so large that it will jeopardise the job opportunities of Danish workers. Transitional schemes in current member states, like that agreed in Denmark, are only allowed for up to seven years. After that, citizens from the new member states should have the same rights as any other EU citizen.

All in all, the Danish labour market is being opened and not opened at the same time. Put in another way, entry is permitted only with considerable limitations. The East agreement means that a worker from one of the 10 new member states may pay tax in Denmark for several years and then, in return, receive only financial support to buy a ticket back to his home country if he or she becomes unemployed during the seven-year transitional period (Jørgensen 2003b). Critics argue that the power that employers will have over workers from the new member states will mean a lack of legal rights for the latter, especially seen in the light of how easy it is to dismiss workers in Denmark.

The East agreement also contains initiatives towards the regulation of illegal workers. At the moment, only very little is known about the magnitude of the problem of illegal workers from the new member states. The difference in wage levels between, for instance, the Baltic States and Denmark makes sure that the temptation for companies or private persons is there. Much evidence is given that the construction sector is a frequent place to find use of illegal workers (BAT 2002).

A trade union initiated investigation conducted in 2002 showed that approximately 6-7.000 illegal workers of a total construction labour force of approximately 160.000 were engaged in the sector (BAT 2002). Unsurprisingly, these figures are very uncertain but they indicate that the problem of illegal workers from abroad is much smaller than the problem of Danish craftsmen carrying out work in the grey or black zone (not paying taxes and WAT).

Some even argue that through the present opening of the labour market for workers from Eastern Europe, the amount of illegal workers could be reduced (Vestergaard et al. 2004). The possible legalisation of one's working status will be attractive for some of those employed on illegal basis.

Even in few numbers, the spread of illegal workers in the Danish construction sector could start a process of undermining the sector's wage and working conditions. This is the reason why the East agreement also includes initiatives in order to meet this problem. The most important initiative in this context is the establishment of regional networks (contact groups) involving police, trade unions, employer associations and tax authorities. Their task is to detect and enforce the use of illegal workers. Furthermore, the police has established a specialised mobile unit who shall assist in the combat of illegal employment. So much is done in order to regulate a problem who's magnitude we know very little of.

4. Challenges for the Danish labour market model

The Danish construction industry can be characterised as highly regulated (Lubanski 2002). However, regulation in Denmark, unlike Germany for instance, comes primarily through collective bargaining and the related standards developed by employers' and workers' organizations. The role of the state is active in the sense of involving the social partners but passive in the sense that state authorities do not set specific rules and regulations. This is very much related both to the strong organisational background of the social partners who can present very high rates of organisation and to the centralised sectoral bargaining system. The overall picture is that Danish construction has followed the high road of competition, combining strong private or voluntary regulation with high labour costs and high productivity levels.

The Danish system of voluntary regulation has been quite successful in meeting the construction needs of the Danish economy, establishing and insuring product quality, training both professional and craft workers in construction, and providing unemployment and disability insurance. Industrial organisation has been relatively stable, despite the natural fluctuations in construction demand, and the wages of construction workers mainly remains attractive within the Danish context (Lubanski 2002).

Due to centralized collective bargaining, the wages across construction occupations are relatively even. The success of the Danish system is dramatized by the fact that it is common, customary, and accepted that Danish construction firms will guarantee their work for a significant amount of time after the completion of construction. The Danish model can therefore be seen as an example of construction stability through cooperation, with limited state involvement.

However, this system of centralized collective bargaining and cooperation among social partners is confronting new challenges. By committing itself to the high-wage, high-skill, high-quality road, even in the face of increased international competition, the Danish construction industry must also promote ever-growing productivity. This makes the sector vulnerable both to stagnation in innovation and to possibilities of cutting costs through the engagement of cheaper labour, for example in the form of migrant workers.

Even though migrant workers are the main focus in this context, it is important to see the challenges together. If the processes of innovation are not being pursued then the search for increases in productivity will be directed elsewhere in order to stay competitive. This connection was visible in the preliminary phases of 2004's collective bargaining where the employers presented migrant workers as a way to cut costs (Jørgensen 2003a).

In relation to the search for innovation, concerned parties – consumers of construction services, construction contractors, unions and the government – have addressed the issue of stagnating productivity by looking at potential reforms of work organization. Currently, work is organized along occupational lines with both workers and subcontractors forming themselves into occupational specialties (e.g., electricians and electrical contractors). Proposed reforms suggest reorganization of construction with a greater focus on product rather than occupation. Some proposals include partnerships – long-term cooperation between groups of specialized firms that present the consumer with the full range of building specialties. Thus, contractors would not come together simply by accident at a given building site, but would rather form a group with longstanding experience in cooperating with each other. Another potential reform is the creation of mixed-occupation contractors who bring to the job site, workers with a range of occupations. Both these reforms look to adopt aspects of workplace management from manufacturing. In addition, new forms of worker–management cooperation are being considered.

The success of these reforms will require stability and cooperation (Lubanski 2002). The tradition of private, voluntary self-regulation in Danish construction provides the baseline of stability and the tradition of cooperation that make these reforms possible. The government, trade unions, and employers' organizations are in the process of negotiating the implementation of these or similar reforms. Thereby, Danish construction seeks to remain competitive in a more globalised environment by emphasizing its traditional strength – not based on specific regulations but a tradition of developing mutually beneficial

regulations through voluntary self-organization and collective bargaining.

The success of reforms remains to be seen. Pressure to change is coming from processes of internationalisation. Until now, the main factor in this regard has been multi-national companies, primarily Swedish construction firms (Lubanski 1999). These firms are entering Danish markets primarily to maintain and exploit economies of scale rather than to compete based on low-wage, low-skilled labour. Consequently, it has been relatively easy to integrate Swedish construction workers into the matrix of unions and collective bargaining in Denmark. Responding to Swedish competition and the development of large projects that fall under EU rules for bid tenders, there has been a hollowing out of medium-sized construction contractors in Denmark. A handful of very large contractors have emerged alongside a very large number of small contractors. Thus far, Denmark's regulatory system has insulated the local construction economy from the sharpest competitive pressures from low-wage, low-skilled contractors from other parts of the EU.

Traditionally, the challenge of sustaining a high-wage, high-skilled, quality-driven construction industry has been met through a range of specific measures that have left the general structure of industrial relations relatively untouched by the winds of internationalisation. The present question is whether Denmark's system of voluntary self-regulation and centralized collective bargaining will prove sufficiently prescient and flexible to respond also to the possible consequences of enlargement?

To put it simple, the present answer is yes. This is both related to the limited amount of migrant workers that are likely to enter the sector after May 2004, and related to the common interest of the social partners (including the government) of maintaining a regulatory system where skills, quality and working conditions are following the high-track. Of course, the employers have an interest in reducing costs, for example in the form of lowering wages through the use of foreign workers, but they are at the same time well aware of the dangers in pursuing this aim too far. If they engage in a unilateral campaign, like in UK or to some extent in Germany, they put the regulatory framework at risk with more unserious companies on the market, less skill formation and deterioration of quality standards as possible consequences.

The common interest in avoiding social dumping and ensuring continuous innovation and development of skills motivate the social partners to find flexible solutions to the challenge of migrant workers.

Both sides have been supportive of the government's initiative with the East agreement and have followed up with several other initiatives, e.g. developing model contracts for easy accession to the collective agreements, joining the regional contact groups and informing their local branches about possible measures, etc.

To sum up, if the likely migration poses a challenge at all to the Danish model of labour market organisation, the regulatory system in the construction sector seems ready to meet it.

5. Conclusion – too many or too few?

Seen on an international scale, the winds of change do not blow with the same strength in Denmark as in many other countries. To some extent the Danish construction sector has not been challenged the same way as in other countries. The Danish sector has experienced neither a re-unification process as in Germany nor a unilateral attack on the collective bargaining system as in the United Kingdom. Nevertheless, some lasting changes have occurred during the last few decades, leaving the sector with a number of challenges to overcome if the high road of competition is to be continued (Lubanski 2002).

The key terms in this regard are innovation and internationalisation. As described above these two terms and the processes they involve are inter-related. Continuous innovation is important because otherwise the small and medium-sized Danish companies are in danger of being taken over by foreign multi-nationals.

Likewise, the relatively high labour standards can be maintained only if productivity is rising. While these two processes represent genuine challenges of a newer date, the way they are met by the parties in the Danish construction sector seems more in line with earlier forms of adaptation. The joint efforts of the social partners to change the sector in line with the present challenges cannot be seen as a break with the past. Even in periods with severe economical downturns, the social partners have tried to find common ground for the solution of the problems in the sector.

There are all the reasons to believe that this also will be the case with the challenge from the enlargement. The studies of the potential for migration indicate that Denmark can expect a limited influx of workers from the new member states. It is difficult to see that approximately 2.000 new migrant workers to Denmark as a whole a year should pose a problem to the Danish labour market (Vestergaard et al. 2004). Even if the generally limited immigration should be concentrated in one or few sectors, e.g. construction, the

social partners have prepared themselves well in order to take up the challenge.

Why is Denmark then reacting so vividly to a threat that still remains to be seen? The answer is to be found in the political sphere. In a period characterised by an increase in unemployment figures and a xenophobic political climate, for example illustrated by the rhetoric of the Danish Folk Party, it would be political suicide publicly to state that all migrant workers are welcome. Nevertheless, this could within the next years turn out to be the path to have chosen. On the other hand, when almost all other EU member states make some kind of transitional arrangement then the risk of being the exception may turn out to be too big.

This is why we stick to “much ado about nothing” in Denmark; a small and expensive country in the northern part of Europe with a cold humid climate, a difficult language and with one of the highest tax levels in the World.

References

Bauer, T.K. and Zimmermann, K.F. (1999) *Assessment of Possible Migration Pressure and its Labour Market Impact Following EU Enlargement to Central and Eastern Europe*, IZA Research Report 3, Bonn.

BAT (2002) *Illegal arbejdskraft i Danmark*, Copenhagen: BAT-kartellet

Dølvik, J.E. (2004) *EU-utvidelsen og arbeidsinnvandring: Grenser for solidaritet?*, Oslo: DNB Nor

European Federation of Building and Wood Workers (EFBWW) (1995) *The Strategic Conduct of Multinational Companies – A Discussion Paper for European works councils in the Building and Woodworking Sector*, EFBWW Multiproject Booklet no. 2, Brussels: EFBWW.

Gurre-gruppen and Advice Analyse (2002) *Arbejdskraftens internationale mobilitet set ud fra danske interesser*, Erhvervsfremmestyrelsen, Copenhagen.

Jørgensen, C. (2003a) *Thematic feature – posted workers*, European Industrial Relations Observatory online dk0306103, Dublin: EIRO

Jørgensen, C. (2003b) *Transitional scheme agreed for workers from Central and Eastern Europe*, European Industrial Relations Observatory online dk0312103f, Dublin: EIRO.

Lubanski, N. (1999) *The Impact of Europeanisation on the Building and Construction Industry in Germany, Sweden and Denmark – a comparative analysis*, Mering: Rainer Hampp Verlag.

Lubanski, N. (2002) Denmark – searching for Innovation, in Phillip, P. and Bosch, G.: *Building Chaos. An international comparison of Deregulation in the Construction Industry*, London: Routledge.

Ministry of Employment (2003) *Agreement among Liberals, the Conservatives, the Social Democrats, the Social People's Party, the Social Liberals and the Christian Democrats concerning assess to the Danish labour market after the enlargement of the European Union on 1 May 2004*, Copenhagen: Ministry of Employment.

Ritzau (2003) *Fupfirmaer fra Østeuropa står klar med løndumping i 2004*, 4th of August, Copenhagen.

Schjøtt-Pedersen, K.E. et al. (2003) *Ja til arbeidsinnvandring – nei til sosial dumping. EØS-utvidelsen og arbeidsinnvandring*, Oslo: Arbeiderpartiet.

Vestergaard, A.M. and Sørensen, C. (2004) *Østudvidelsen og arbejdskraften: myter og realiteter*, Copenhagen: Danish Institute for International Studies.

Chapter 6

Perspectives in migration as seen from Danish social partners

Cooperation will be the key word

By Arne Johansen

Introduction

Throughout history people have moved from country to country and from region to region in search for a better life. Migration is not a modern phenomenon; in fact, it has taken place as long as mankind has existed.

It is not exceptional that people set out searching for different or better opportunities elsewhere. It would, however, be exceptional if they suddenly stopped doing it!

Consequently, the problem at stake with migrating workers is not the fact that they migrate. The problem is how we treat migrating workers in the receiving countries and regions.

In the Danish trade union movement, we are indifferent to where the building and construction workers come from and to their appearances, but we expect them to be employed on equal terms with the native Danish workers when it comes to pay, working hours, social benefits, trade union rights etc. The same goes for foreign companies settling in Denmark providing services in the building and construction industry. This is not an issue for debate in the Danish trade union movement.

The Building trade

The building trade is characterized by the necessity of the work being accomplished where the demand of the product is.

Consequently, the "performing artists" frequently have to move closer to where the demand is and therefore building workers always have migrated. Excellent examples of this phenomenon are to be seen in the cathedrals of Aalborg and Tallinn being built by the same gang of craftsmen.

We experience the mobility within the country as workers travel over great distances having to spend nights away from home as an unavoidable condition of their working life. But we also experience workers moving across frontiers. Formerly, Danish workers to a great

extent travelled to Germany where the assignments were, while nowadays, Norway is one of the countries employing some of the Danish building workers. This mobility creates a better link between supply and demand of the manpower to the benefit of the enterprises and to the wage earners in the trade.

As we in Denmark accept to "export" building workers - for whom the only alternative is to be unemployed - we also have to accept the immigrating labour force, and so we do. Thus some Swedish building workers have been working in the metropolitan area in periods with high activity and the low unemployment rate for the Danish workers. For that reason we should not put up barriers for foreign workers and companies, we only intend to prevent social dumping and unfair competition.

Having said this - we ought to remember the more than 100-year-old labour market system in Denmark, founded on our collective agreements and on the high percentage of organization, both for employers and workers. This collective system is vulnerable to "free-riders" setting the system aside for their own advantage.

Consequently, it is essential to secure that the foreign workers arriving here will observe the rules in the collective agreements as well as the laws and regulation existing on the Danish labour market. Until now this has been an important task - but when the EU enlargement becomes a reality it will be even more so.

How do the building and construction trade unions handle the EU enlargement in Denmark

The Danish trade union movement consider it an objective to create the frames for cross-border work with respect for the workers' national pay and working conditions. We do not intend to prevent EU-citizens from working in Denmark - provided they work on Danish terms.

That is why we in Denmark have taken a number of initiatives - to make us better prepared for receiving the foreign workers from the future EU- member countries. The main elements are:

Dialogue with workers and firms from the future member countries

In order to adapt workers and firms from the future member countries to the Danish labour market conditions, it is decisive for us to have a dialogue when they arrive in Denmark. This is a traditional job for the local Danish trade unions, and there is no difference between workers and firms with Danish origin and foreigners from a EU country. The objectives and tasks are the same - workers have to be organized and companies have to be covered by an agreement.

The difference is that the tools for the dialogue may vary - also because of the language.

Regional contact groups

Regional contact groups between the 8 Danish unions in the construction sector will be established so that the necessary support can be offered to the future trade union work. The local union offices may join these groups and be supported, in case they find non-union foreign labour or foreign firms not covered by a Danish agreement.

Such a contact group has the necessary competence to organize and make collective accession agreements, as the members are trained to solve such complicated problems.

Training

Courses will be offered to colleagues appointed to these "contact groups", and the training will qualify them to deal with the challenges. Furthermore, they will have nationwide knowledge of one another, which will be positive for exchanging experiences and ideas - as well as for coordination of activities reaching beyond the geographic area of the individual contact group.

Homepage and working groups

At the central level we will create a common homepage for the local/regional contact groups, where they can exchange experiences and find relevant information. In this homepage The Federation of Building-, Construction, and Woodworkers Union (BAT) will inform about agreements, legislation and other relevant labour market regulation.

Additionally, a central working group will be formed in order to supervise the process, and this group will be available for the contact groups, for instance in need of details about enterprises or of other information. Furthermore, the development of how rules and regulation in safety measures adopted by the Danish Parliament is being used in practice will be supervised.

Activation of the members on the building sites

It is essential that the members are involved in creating organized conditions for the foreign workers. For that purpose we will start an information campaign where BAT has produced a folder on the subject: Foreign workers and firms from the future EU-member countries, self employed, illegal workers and temporary workers. This folder will be distributed on the building sites.

Language

Language is one of the major problems in connection with the reaching-out work on the building sites. Many Eastern Europeans only speak their own language and perhaps a little Russian or German, which makes it very difficult to have a proper dialogue. Convincing them that they have to work accordingly to the collective agreement is easier if they have somebody to turn to, and several trade union offices use university students as interpreters - while other offices consider hiring a Polish or Baltic employee for a period.

Agreements with employer organisations

We attempt to make an agreement with employers in the construction sector about securing the possibility of taking industrial action towards those foreign enterprises that are not covered by the collective agreement - without the threat of being accused of breaking such agreements, which other enterprises on the same building site might have.

To make it easier for the organized employers and employees in the construction sector to prevent social dumping and unfair competition they are both engaged in developing a model for dealing with these issues.

Help to sister organizations in the new EU-countries

Finally, we consider our engagement in the Eastern European countries as very important and a good investment in the future.

Together with the trade unions in the construction sector from the countries around the Baltic Sea we had a conference in November 2000 in Vilnius. In this conference, the trade unions from the 3 Baltic countries and Poland made guidelines for their need for support. On this background EU has granted means for the accomplishment of a number of activities. In the start of the cooperation phase each trade union made a national action plan. The following activities focus on agitation for members, working environment, trade union courses and occupational education.

Many local trade union branches also have projects and co-operation with our sister unions on the other side of the Baltic Sea - we also welcome these initiatives very much.

Information of foreign embassies

Additionally, we are informing the relevant foreign authorities (embassies and chambers of commerce etc.) of which demands to

wage and agreements the foreign firms will meet when they undertake tasks in Denmark.

It is absurd if firms or private persons turning to their country's embassy in Denmark cannot get all necessary information about the Danish labour market. Obviously, the Danish building trades feel responsible and would like to contribute to making things go smoothly.

With these initiatives we hope that Denmark will be ready for welcoming the future workers from Eastern Europe – and that they will respect the rules of the Danish labour market, which at the same time will be accessible and understanding to foreign workers with different languages and traditions.

Quality in the social dialogue in the EU and nationally

As preparation for the enlarged EU there is - apart from the national effort in each country - an extensive work to be accomplished in the EU. Here the so-called social dialogue plays a decisive role. On industry level in the construction sector we have also started the discussions about the EU enlargement - in the EU social dialogue.

We have engaged our counterpart employer organization - FIEC - with a common working programme to seize the problems and together create the necessary framework for the social dialogue.

In this connection the social dialogue must be perceived as the dialogue - on European level - where the European parties meet the Commission and draw up the future policies. But on the other hand, there is also the dialogue between the parties - on a national level. The social dialogue is not equally well developed in all the future member countries. As sister organizations, seen from as well the employee as the employer aspect, we will be able to influence the parties so that nationally they will take up the future challenges in co-operation.

As much of the cross border activity is regulated in various EU-directives it is also decisive that we involve the future EU member countries as soon as possible. Consequently, they should be involved in our organizational work on the social dialogue.

In the future the parties of the labour market will play a decisive part in the European development, and as parties we are willing to take on this obligation.

Representatives from the future member countries are already taking part in the meetings in the EU social dialogue - in order to be well prepared for the 1st of May 2004.

In the building trade we are looking forward to getting new co-operation partners. Especially co-operation will be the key word, when we are going to unite so different countries in the economic and political union that is rapidly approaching.

The Danish model of cooperation - a good foundation

By Jens Klarskov

The model of cooperation in the Danish labour market *will* also function in an enlarged EU. The Danish model forms a good basis and the Danish labour market is one of the most stable in Europe. "Stable" in the sense that the social partners have a strong commitment to the flexible agreements based on a long tradition.

The Danish building and construction sector

Approximately 200.000 people are employed in the Danish building and construction sector. The Danish Construction Association ("Dansk Byggeri") is the main employers' organization organizing close to 6.000 companies with 70.000 employees.

Within the field of building and construction, the labour market is characterized by features indicating, that it will be under pressure after the enlargement:

- a high degree of manual labour
- a high rate of job changes (high mobility)
- a complex wage system, with a minimum wage and decentralised bargaining.

In other words: a labour market with very few natural barriers.

The new member states

It is not possible to conclude how the enlargement will influence on the Danish labour market without taking into account the development in the coming member states. Poland and the Baltic countries are qua geography and history the countries wherefrom we can expect the highest interest in migration to Denmark.

Statistics from these countries show a few of the potential push and pull factors.

	Unemployment in percent (2003)	Hourly wage and salary in EUR (2000)	Price levels EU15=100 (2002)	GDP growth in percent (2003)
Poland	19,2	3,4	57,4	3,5
Estonia	10,1	2,2	56,1	4,4
Latvia	10,5	1,9	50,4	6,0
Lithuania	12,7	2,0	51,1	6,6
Denmark	5,6	23,8	130,7	0,0
Germany	9,3	20,0	104,0	- 0,1
Sweden	5,6	19,0	117,3	1,6

Source: Eurostat and calculations made by Dansk Byggeri

This figure gives a good impression of the current state of the labour markets in a regional perspective and the basis for migration.

It is evident, that the high level of Danish wages and the moderate unemployment rates will attract workers from the new member states. But at the same time the high growth-rates in the new member countries may reduce the desire to leave, as high growth-rates will add to an optimistic atmosphere. The expected growth-rates for the current and the coming year are approximately 5% or more in the new member states.

Furthermore it is expected that foreign investments (including the structural funds of the EU) in the new member states will grow rapidly in the coming years. This will also most likely keep the desire to migrate at a low level.

And finally it must be taken into account that workers especially from Poland primarily will seek towards Germany due to the language barriers elsewhere.

The lessons to be learned from past enlargements

There are as stated differences between the current members of the EU and the 10 new member states, among others the wage level and social benefits.

Drawing some conclusions from the past enlargements, in terms of differences between old and new EU members in relation to economic development and income level, the present EU enlargement has most similarities with the enlargements in 1981 (Greece) and in 1986 (Spain and Portugal).

Before the enlargements in 1981 and 1986 there were great concern about the possibilities of massive migration. The member states were afraid of being "flooded" by cheap labour. However, the net migration was not a "flooding", rather a small tidal wave with small fluctuations in both directions. The economic growth and the substantial support from the structural funds to the new member states at that time resulted in an expanding market locally in the field of building and construction.

The Danish agreement for the transition period

A large majority of the Danish parliament agreed in December 2003 on the terms for opening up the Danish labour market. The agreement ensures that the new EU nationals seeking work in Denmark will have orderly conditions on the Danish labour market. Basically, they will be employed on the normal conditions that apply for the labour market.

The social partners also supported this agreement, and the Danish Construction Association finds, that the Danish government has prepared for the enlargement with a good and fair regulation for the enlargement.

The social partners i.e. the organised employees and the organised employers have a common interest in upholding this agreement, and to ensure that no one takes advantage of the employees from the new member states.

Conclusion

It is hard to predict the outcome of the enlargement, but Dansk Byggeri is confident, that the Danish labour market is geared to handle the situation.

The Danish labour market is well organised, and the legal framework is now in place. Our flexible agreements and our strong commitment combined with the new legal framework for the period of transition have put us in a favourable position.

I take it for granted, that in the case of unforeseen problems in the enlargement process, the social partners will act in the pragmatic and consensus-seeking way that we traditionally do.



CLRdenmark is a non-profit organization, which aims to bring together researchers, representatives for unions and employer's organisations, non-governmental organisations and authorities in the exchange of knowledge, research results and innovation of key importance for the construction industry.

CLRdenmark was established in the fall of 2003 through the initiative and cooperation between The Section of Construction Management; The Technical University of Denmark (BYG.DTU), Human Resources and Development at the National School Of Social Work in Copenhagen and representatives for the labour market organisations i.e. The Cartel of Unions in the Building-, Construction, and Wood Sectors (BAT).

CLRdenmark is affiliated with CLR-EFBWW, Construction Labour Research Institute under the European Federation of Building and Woodworkers Organisation (CLR-EFBWW) in Brussels.

For more than ten years CLR-EFBWW has been instrumental in working up and compiling analysis and results of interest to the European construction industry. This has been done through workshops, Newsletters, - and recently also by publishing books. (info@efbh.be)

Within the last year two offices more has been opened, respectively in London, United Kingdom and in Dortmund, Germany.

The key activities of CLRdenmark are to:

- establish a network of researchers, social partners, and practitioners with expertise in construction
- initiate and stimulate national and international research in order to increase existing knowledge of the conditions in the construction industry
- organize conferences, workshops and seminars on matters of current interest

- publish and disseminate articles and scientific publications of relevance to the construction industry
- link activities and research in the Danish construction industry with corresponding EU activities of relevance and specifically with other CLR networks

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