

Changing employment patterns and collective bargaining

The case of construction

Jan Cremers

Coordinator, European Institute for Construction Labour Research (www.clr-news.org), and researcher, Amsterdam Institute for Advanced Labour Studies (University of Amsterdam, www.uva-aias.net).

Also, Member of the European Parliament (MEP) in the PES group

Introduction

Labour-intensive industries in Europe are going through a stage that can be characterized by a process of outsourcing and downsizing. This general trend is driving companies to replace direct employees with all kinds of “new” employment relations. Work is executed by “employers” pretending to belong to other branches (circumventing compliance with contracts, collective agreements, sector regulations, etc.), by specialized subcontractors, temporary work agencies, and/or self-employed. Workers in non-standard employment relationships are in general non-unionized. In this, the main trends and developments in the European construction industry are analysed. Construction has traditionally been a sector with a high share of subcontracting and there is evidence that this share is further increasing. The possible impact on collective bargaining of the process of “externalization” (of the recruitment of labour), resulting in non-standard employment patterns, is examined. The article ends with recommendations to revitalize the sectoral industry-wide bargaining tradition. Corporate social responsibility and liability throughout the production chain have to be part of a joint strategy to promote continuity and fair competition; and the industry has to (re)install provisions that are meant to keep the sector stable, clean and professional.

Characteristics of the construction industry

Market strategies

The production process and the conduct of business in construction have undergone structural adaptations since the 1980s. The market strategy of most top contractors has changed. Before the internal market concept was introduced in Europe and globalization accelerated, the ambition of larger firms was to be among the top companies that controlled the sector, with the result that in certain branches a de facto cartel existed in those days. This had several effects on the construction labour market. To give just one example, the procurement of public works became subject to bribery and corrupt pricing practices.

The introduction of free market principles (both in the European Union and within the World Trade Organization) brought a remarkable change, although formal national implementation of the European Union (EU) procurement rules was and still is poor and incomplete. Since the early 1990s, company management of the main contractors started to define territorial ambitions in European terms. The aim was and is to become a European leader and to compete at European scale. This created a new wave of mergers and takeover. At the same time the traditional subcontracting, through a stable and cooperative division of labour in the production process, changed

to a type of outsourcing that was much more cost-driven. Due to this competitive subcontracting the average size of firms became smaller.

The process of diversification, combined with a Europeanization of the territory in the late 1980s, led to the emergence of giant conglomerates in a broad field of economic sectors (energy, water, public works, waste management, etc.) and with a range of activities (production, concessions, operations and facility management, maintenance etc.). At the same time a clear divergence developed on the operational side, with, at the top of the production chain, a concentration on core business and externalization of the execution to dependent subcontractors.

The industry

Construction has certain characteristics that distinguish the sector from others. For example:

- The construction production takes place on temporary and mobile work-sites with normally unique projects and a relatively non-standardized immobile final product. Execution and completion on site. The industry is exposed to weather vicissitudes and to seasonal cycles and disruption.
- The negotiation power of construction firms, especially those of small and medium-size, is weak compared to their main clients and large materials suppliers. Construction is very materials-intensive and location-dependent. The end price is demand-driven, and the costs are supply driven.
- The sector is characterized by a widespread variety of small and medium-sized companies and a limited, but dominant group of large general contractors. Competencies are not equally distributed over the production chain and the organization of skills is divided and fragmented. Market orientation can be local, rural, regional, national and global.
- The production system is very heterogeneous. It demands cooperation under varying circumstances in one-off complex projects. Large numbers of subcontractors with various specializations and competencies are involved throughout the project cycle from conception to execution and completion.

The production process takes the form of a fragmented multiple chain of production that has lengthened and broadened. This chain constitutes a logistical chain (both horizontal and vertical), as well as a value chain of an economic and productive nature: “from conception to completion”. Single specialities or tasks are often “externalized” to small firms or self-employed workers. Because of this process of subcontracting and outsourcing and because of the role of supplying industries and of the resulting thinning out of

the workforce, new enterprises emerge and existing enterprises size down. At the same time, subcontracting and outsourcing to de jure independent firms does not lead to independence. Companies at a lower level in the value chain, with the exception of specialized subcontractors with high-tech or other sophisticated activity, are not in a position to act on equal footing with a main contractor.

The labour force

The industry as a whole can be seen as a sector with activities of a labour-intensive nature (up to one-quarter of operating costs) with physically demanding jobs. The skill level of construction professions differs; it ranges from repetitive low-skilled work to highly operational and technological specialization. In recent years labour shortages in the lower echelons of the construction labour market have increased in almost every EU Member State.

Since the beginning of the 1990s the overall trend has been for less direct employment on the part of the main contractor or leading company. Relatively few and increasingly specialized staff are now responsible for development, procurement, supervision and management. Labour has been effectively “externalized” by the use of subcontractors and agencies (Jounin, 2006). A chain of specialized contractors/undertakings/suppliers is engaged in the execution phase. The very low-margin subcontractors do not take on more labour than they are certain of utilizing, and investment in human capital or incentives to train are absent.

The general features of externalization become manifest in a recruitment strategy characterized by a replacement of direct employees with many different types of “new” employment relations. The supply of cheap, unskilled labour has become an integral part of lower level subcontracting with no legal relationship between the user-undertaking and the workers concerned. By doing so, companies aim to cut labour costs and to attain a greater independence from the traditional labour market. The effect in the companies’ accounts is a substitution of direct labour costs by subcontracting, services or supplier costs based on invoices and “commercial contracts for services”. Also, although the growing use of subcontracting for the labour-intensive segments of execution does not necessarily have to lead to a deterioration of working conditions, it certainly has created a decrease of the direct social responsibility of the main contractor. This is also because of the rapid increase in self-employment in the sector (Cremers and Janssen, 2006).

The chain of dependence

The decision to subcontract can be motivated by different arguments: the search for expertise and know-how not belonging to the core activity; labour shortages; efficiency seeking; a traditionally grown division of labour; with partners based on mutual trust, routine, or other historical factors. In the positive sense a chain is based on, or results in, stable relationships between a main contractor who “delegates” part of the work to specialized and preferred subcontractors. Nevertheless, the results on site are activities, carried out simultaneously or in several subsequent phases, consisting of different parts of an overall project, executed by various contractors and subcontractors with all the problems related to coordination and efficiency (Fellini, Ferro and Fullin, 2007).

The chain can be seen as a hierarchical socio-economic dependence network or triangle, based on a linked series of contracts and connections. On top of this triangle, there are regular and completely legal undertakings. Large construction firms can even integrate backwards into building materials and a certain “mechanization” to manufactured supply is possible and advantageous. The structure of the production chain is complicated and contract compliance difficult to organize. Imbalanced power in the chain leads to questionable contracts that define the market transactions between the different levels. A chain can end up in a grey zone, with the result that compliance is no longer guaranteed. This is especially the case when large companies transfer recruitment to small subcontractors that multiply this transmission of recruitment and drive it even further down by the use of agencies, gang masters and other intermediaries. A strategy based on the use of labour-only subcontracting with the aim of fixing reduced prices carries the risk that sooner or later undeclared labour and illegal foreign work enter the market. Groups of undeclared workers are recruited via post-box companies, advertising and informal networking. The lower stratum is then an irregular supply of cheap labour via agents or gang masters and distortion of the labour market is substantial.

Collective bargaining in construction

Collective agreements have long served in the construction industry as the answer to a constantly changing workplace and to contracts that permanently shifted from one employer to another. Industrial relations in construction in most of the “old” EU Member States could be characterized by mutual concerns that served as fields for cooperation as well as potential issues of conflict. This is one of the reasons why the industry has a long tradition of bargaining and why almost “similar”, national industry-wide collective answers (for interruption of careers, holiday pay, weather vicissitudes and

vocational training) were formulated in European countries at a time when cross-border exchanges of good practices were still underdeveloped. Both sides of the industry endorsed the necessity of conventional and regulatory arrangements, the underlying basis for collective bargaining.

In countries where construction was highly regulated (with industry-wide collective agreements, often made generally binding by the legislator) the resulting coverage rate was substantial, and union density often beyond national averages (the Nordic countries, Belgium, Germany, Austria and the Netherlands to mention a few). In these countries joint provisions and social funds existed that were managed and even administrated by the unions. In some, seemingly less regulated countries (such as Italy), both sides of the industry had established strong partnership and a similar system of sectoral industrial relations with industry-wide social funds. There again, the rate of unionization was relatively high. In less regulated countries that lacked this tradition of joint industry-wide provisions (the United Kingdom, Portugal), implementation of agreements and contract compliance were never self-evident and union density was normally low.

Collective bargaining stabilizes the industry and contributes to the necessary continuity. Social dialogue can be seen as an important instrument for the improvement of decision-making and as a platform for all stakeholders. Training, safe working conditions, insurance and social benefits are, for instance, all items subject to collective bargaining at the sector level. Industry-wide regulation then is not in place for the sake of regulation, but as the choice of partners aiming to promote continuity, quality and fair competition.

The development described earlier, however, renders representation and bargaining procedures more and more ineffective. The traditional employer-employee relationship is becoming more rare. Part of the work is executed by a workforce supplied by employers or specialized subcontractors that pretend to belong to other branches (circumventing compliance with contracts, collective agreements, sector regulations etc.), or by labour agencies or self-employed that do not have to comply with (part of) the agreements. Compliance with generally binding agreements is evaded by segments in the chain that call themselves “service suppliers” or another (less regulated) profession or branch (cleaning, facility management), that claim to belong to a different sector. In most countries self-employment is another important means to avoid binding agreements.

The effect on industrial relations is that the representativeness of both sides of the industry during collective bargaining comes under pressure as the workforce of subcontractors is in general non-unionized or characterized by low union density. The bargaining power of workers contracted on an individual basis or recruited via agencies is weaker than that of a mandated collective negotiator. On the employers’ side, the representative basis becomes questionable when parts of the production chain are executed by non-affiliated external subcontractors.

Outsourcing in the form of an intensified appeal to subcontractors, temporary agencies or self-employed for the execution of operations leads to bargaining situations that can only partly handle the range of “employers” and workforces involved. The trade unions are confronted with the challenge of representing the unorganized and vulnerable worker (Pollert, 2007). Employers associations, confronted by outflow and bypasses in their own ranks, lose their grip on processes that are meant to keep the industry stable and professional. And finally, the financial foundation for joint provisions, social funds and facilities deteriorates.

Trends at national level

France

The massive use of subcontracting has led to a small, but powerful group of general contractors that win tenders, manage the sites and have their logos visibly attached to each project. Professions and activities with high added value are incorporated (conception, finance, concessions) on top of the chain. On site, these contractors are no longer visible to their workforce. They have externalized the discontinuity and uncertainty of temporary labour intensive activities and all the simple and repetitive work is handed over to subcontractors and agency workers. Subcontracting of labour by intermediaries in the form of temporary agencies was long forbidden in French construction. After this ban was abolished and the use of temporary agencies was legally introduced, outsourcing in construction took the form of subcontracting of labour only (the return of the *marchandage*, a stable supply of precarious labour). Construction is strongly over-represented in the agency work sector with a (still growing) share of 20.6 per cent of the overall temporary workforce in 2006. It is calculated that temporary agency workers occupy 120,000 full-time jobs in construction (IRNS, 2007). An analysis of employment according to trades sectors shows that, since the beginning of the 1970s, the proportion of employees in the main construction industry (*gros œuvre*) has fallen from about 55 per cent to just 39 per cent (Kahmann, 2006).

Externalization of recruitment leads to precarious work sites and the basic solidarity stemming from the direct link between the (ownership of the) workplace and the employment relation is vanishing (Jounin, 2006). The lowest echelon of temporary agency workers, mainly immigrants, does not figure in official construction workers’ statistics: they are seen as “service providers”, or simply ignored because of the irregular character of their work. These workers are not represented at all. Labour inspection has more and more tasks to fulfil and the interests of workers in vulnerable situations have no priority, as the exploitation of illegal immigrants becomes the central

focus. Labour law is only applied for a hard core of regular workers. Workers' representation in the centre ignores the interests of those in the periphery and representation in small subcontracting firms and agencies is under-developed. The basis for public and collective action is therefore vanishing. The defence of direct labour and campaigns against outsourcing so far have dominated trade union action. Little has been done in favour of those that stand outside. The result is individual flight from poor conditions: absenteeism, sabotage, loss of know-how, departure and high labour turnover.

Germany

Until the early 1990s, German contractors worked with a large group of directly employed workers. This tradition began to erode and, when this erosion combined with a process of mergers and enterprise takeovers, the number of workers on the payrolls decreased. Main contractors started to shift from production to management contracting and development. With central tendering and planning on the one hand and outsourcing of the execution on the other, part of the chain of production and supply was externalized. The search for cheap labour has contributed to the so-called *Tarifflicht*, an evasion of the general applicable collective agreement for the construction sector. Subcontractors, and sometimes even construction companies, left their employers' organizations and moved to other sectors with more flexible and cheaper arrangements and agreements. As a result many workers are now included in the statistics of the services industry. Employment of construction workers in building and finishing trades decreased enormously in the period 1998–2004 (–32 per cent). Employment in construction related services increased (+6 per cent), and especially the category of managerial staff at central level exploded (+70 per cent). Taking into account the workforce throughout the production chain (supplying industries, building and finishing trades and construction-related services) the transformation in the period 1998–2004 is remarkable: the share of building and finishing trades decreased from 55 per cent in 1998 to 46 per cent in 2004, the share of services increased in the same period from 29 per cent to 38 per cent (calculations based on Bosch, 2007).

In these figures the (increased) share of self-employed is not included. In the early 1990s the share of self-employment in construction stayed well below 10 per cent. In 1995 this rate had gone up to 12.3 per cent. Although reliable figures are not available there is some evidence that a further rise in self-employment in Germany in recent years has taken place due to the long period of mass unemployment and lack of opportunities in direct labour relations. The increase was also due to policy measures to simplify the entrance of small businesses, to lower educational impediments for trades and the simplification of trade licensing and start-ups. These changes have resulted in a

higher degree of fluctuation in and out of self-employment (Cremers, 2007). The sector has become fragmented and dispersed, with unequal and unbalanced dependence relations based on tough, cost-driven competition.

Hungary

As a consequence of the rapid fragmentation and decentralization of companies after the demise of the centrally planned economy, the construction industry in Hungary is characterized by a company size well below the European average: an average of four employees against six in the EU-15 in 2000 (Neumann and Toth, 2006). The industry is dominated on the one hand by a few major contractors, often owned by foreign investors and mainly active in civil engineering and road building, and on the other by small domestic companies working mainly in house-building. Partly this was the result of government policy to create an environment favouring foreign investments, in particular in infrastructure (e.g. construction of motorways).

Here also, the trend has been for larger companies to reduce the share of blue-collar workers by outsourcing and subcontracting. As a result, fragmentation is ongoing. Large firms are becoming “general contractors” and tend to maintain only white-collar staff and highly skilled manual labour on the company payroll. The result is a downward spiral of corporate restructuring and primary labour force shrinkage.

Companies have increasingly used outsourcing to spin off certain units (i.e. those with a low-tech manual work profile) and replace them with a network of small and medium-sized enterprises (SMEs) through subcontracts. This trend includes the increasing use of “bogus” work contracts. Instead of an employment contract in line with the regulation of the Labour Code, commercial work contracts are concluded or contracts for the provision of certain services are arranged, allowing for a flexible and less regulated work relationship, tax evasion and bypasses of obligatory social contributions.

This reorganization drive hit union representation hard and further reduced the impact of collective bargaining on terms and conditions of employment in the industry. Although the major trade unions have been arguing for a renewal of collective bargaining processes since the early 1990s, the last voluntary framework agreement in the sector was terminated by the employers’ organizations in 1994. In the following years, unions and employers’ associations prepared statements and common petitions for an effective regulation of the industry. A study on the impact of vocational training (Forde and Mackenzie, 2005) highlighted that the construction industry, whilst experiencing a high growth rate, was frequently facing a shortage of skilled workers, causing increasing difficulties for the industry in the forthcoming decade. The study called for an improvement of the attractiveness of working in the industry and it brought collective bargaining back on the agenda.

Employers and unions shared the concern about bad working conditions, contingent work contracts, widespread use of undocumented labour and low wages. They jointly concluded that the trend of a downward spiral in working conditions should be turned around and the attractiveness of the industry (to potential workers) restored. A sectoral collective agreement was seen as an option for a re-regulation of the increasingly chaotic situation and the social partners finally agreed to conclude a voluntary multi-employer agreement. The result was submitted to the Ministry of Labour for extension and as of 1 July 2006 the collective agreement was extended for the whole construction sector.

Spain

Construction activity in Spain boomed from the middle of the 1990s to 2005, with only occasional annual contractions in output. Spain's construction sector ranked high with regard to number of persons employed, value added and share of national non-financial business. The proportion of enterprise birth in construction in Spain, at 20 per cent, was several percentage points higher than in almost all other EU Member States in the period 1995–2005 (Eurostat, 2006).

The structure of the industry is segmented with many regional specificities, a large section of small and medium-sized companies and a market divided between infrastructure, residential and non-residential building. Fragmentation is also a result of increasing diversification. Employees at small and medium-sized enterprises form part of long subcontracting chains. Indeed, subcontracting is the most typical form of work organization. However, several large construction enterprises are developing stronger regulatory mechanisms to keep control of the fragmented subcontracting chain. These mechanisms include a series of conditions that each employee and company have to fulfil (e.g. presenting certain documents such as work contracts, invoices, etc.). Workers who have fulfilled these conditions have to wear a card or sticker on their helmet so that the contractor can carry out visual inspections and remove workers not duly identified from the building site. This prevents workers from exchanging jobs without control.

Also, the laws on subcontracting address the problem of fragmentation by stating that the principal enterprise that enters into contracts and subcontracts for works or services that form part of its own activities, shall be jointly liable for any non-payment of wages and social security contributions, and shall have subsidiary liability in social security obligations and responsibilities in the event of insolvency. The collective agreement is made generally binding for all construction companies, so that around 2.2 million workers are covered.

Moreover, in 2007 a new law on subcontracting in the construction industry was introduced, aiming to reduce temporary contracts and accidents,

and promote compliance with all types of regulation. The new law limits the number of subcontractors in a chain to three and as a result the number of long subcontracting chains is expected to diminish (Vargas et al., 2006). Four points deserve particular mention:

- a third subcontractor will not be able to pass the task that has been entrusted to him to a fourth one;
- moreover, subcontractors will not be able to further subcontract those activities, which basically involve manual labour work with no specialization;
- the obligation to set up a “subcontracting book” has been established in order to register subcontracting chains, deadlines and health and safety plans;
- workers’ representatives of the different companies operating at a given construction site must be informed about the contracts and subcontracts in force at that location.

United Kingdom

The British construction industry is characterized by extensive subcontracting, large numbers of self-employed workers and a strong pressure to drive prices ever lower. The fragmented, casual and insecure character of the employment structure in the construction industry is a critical problem (Clarke, 2006). The industry often continues to operate on a “hire and fire” basis whereby workers are only retained if required. Labour provisions regulated by labour law were scarce in the United Kingdom until the middle of the 1990s. However, since then the implementation of some of the EU Directives (especially those on health and safety) introduced important notions of labour legislation.

Collective bargaining is voluntary (“gentlemen’s agreements”) as opposed to legally binding and although there are collective agreements between employers and unions, these are not fully encompassing and their impact is limited. Coverage in construction (in the form of pay affected by collective agreements) is estimated at around 19 per cent of the workforce (DTI, 2007). A basic problem is found in instances where, even if the main contractor complies, subcontractors can easily circumvent the collective agreements. Other industry-wide benefit schemes for construction often cover only a minority of workers.

Since the 1980s, employing organizations in the United Kingdom have shifted employment practices in ways that have increased the numbers of people in the “contingent” workforce. Currently main contractors manage the projects and the finances, but usually do not employ labour; subcontractors, gang masters and agencies employ or supply labour. Large

Table 1. Employment in the United Kingdom construction industry, 1970–2005

	Total		Directly employed operatives		Self-employment		APTC		Trainees*	
	No. (000s)	Per cent of total	No. (000s)	Per cent of total	No. (000s)	Per cent of total	No. (000s)	Per cent of total	No. (000s)	Per cent of total
1970	1 802	65	11 70	22	405	18	333	18	84	4.5
1980	1 696	57	9 75	29	495	20	346	20	69	3.9
1985	1 492	49	7 25	32	470	20	297	20	49	3.2
1990	1 703	39	6 68	42	718	19	317	19	33	1.9
1995	1 375	37	5 15	45	621	17	238	17	26	1.9
2000	1 451	49	7 06	34	498	17	248	17	37	2.5
2005	1 800	43	7 77	39	707	18	316	18	42	2.3
Per cent change 1970–2002	-0.1%		-34%		+75%		-5%		-50%	

* Figures for trainees were discontinued by the Department of the Environment in 1989 and those for 1990 are therefore from 1989. The figures exclude those in public authority Direct Labour Organizations.

Source: Department of the Environment, Housing and Construction Statistics and Department of Trade and Industry (DTI), *Construction Statistics Annual*, London: HMSO, 2007.

numbers of subcontract arrangements enable companies or individuals to set up businesses and use agency labour almost at will, with as a consequence serious ambiguities in the employment relationship. Subcontracting has become so all-pervasive that it extends to subcontracting only for labour (labour-only subcontracting), with even those working for subcontractors having contracts for services as self-employed workers rather than contracts of employment. Labour-only subcontractors trade essentially on the difference between the price they pay labour and the price they sell labour, thus contributing to the labour-cost pressure in the industry (Clarke and Gribling, 2006). Although subcontracting allows for labour flexibility and swift response to fluctuating market demands, it passes social risks down through the subcontracting chains.

A wider use of self-employment was introduced in the 1970s in an attempt to regularize the use of casual and often undeclared labour employed specifically in the construction sector by labour-only subcontractors (Lean, 2005). The recognition of a “self-employed” status peculiar to construction represented a special tax status, giving construction employers in effect a subsidy to employ “bogus” self-employed at far less cost than employing labour directly. Since the 1970s this system has undergone an uncontrolled expansion combined with a rapid decline in direct employment and training (table 1). For many contractors and subcontractors it represents a strategy to evade labour regulations and other statutory obligations, including holiday pay and a guaranteed weekly wage. In the British deregulated economy, it has been possible to acquire this self-employed status – generously issued by the tax office – from one day to the next, including for newly arriving migrants. As a result, up to 60 per cent of workers employed on any one site might be, in effect, “bogus” self-employed under labour-only subcontractors.

A major challenge in the United Kingdom is thus associated with the predominance of self-employment in the construction sector. With the rise of self-employment as a mechanism for evading the terms and conditions of collective arrangements, as well as a flourishing agency industry, the prospect of stable industry-wide provisions seems distant. In recent years, however, there are calls from the social partners in the British construction industry for better control of the way labour is employed, as well as for a properly regulated workforce in order to prevent exploitation. The position of the trade unions and the employers’ associations has been that such workers are first and foremost “employees”, engaged as “self-employed” for tax and social security reasons. It is for this reason that they have supported various campaigns to improve the situation, including the most recent – introduced in April 2007 (Clarke, Cremers and Janssen, 2007).

Summary

The primacy of the principle of free movement in the business environment and the consequences of the use of the management contracting principle have transformed the organization of the construction industry, have intensified the pressure on wage costs, and have modified the recruitment practices used. The traditional model of undertakings with skilled and unskilled workers contributing their labour under the supervision and disciplinary control of an employer is no longer the standard one. Cost reduction strategies have led to extensive outsourcing, downsizing, subcontracting, the use of agencies for the supply of labour, and the widespread practice of bogus self-employment. It created a new, Europe-wide playground for new types of contracts that do not fit the traditional model.

These developments have had a destabilizing effect on the industry. The increase of flexible contracts, agency work and self-employment affects stability since it undermines longer-term relationships. It also affects the future adjustment and upgrading of the sector through the associated negative effects on the provision of training (Forde and MacKenzie, 2005). These non-standard employment arrangements then offer no structural solution to the prevailing skills shortages.

They also have a very significant impact on the collective bargaining process, undermining the conclusion of and respect for industry-wide collective agreements. Outsourcing with the explicit aim to reduce the labour force blurs the regulatory capacity of trade unions and employers' associations. Like the irregular worker, the overwhelming majority of workers with non-standard employment relationships is unrepresented. The externalization of labour leads to a pricing and allocation of labour that is no longer governed by the industry's traditional regulatory framework, within which collective bargaining played a paramount role, providing rules and procedures for adequate earnings, legal protection and social security. In non-standard employment relationships, the rules and procedures defined by the partners in collective bargaining no longer apply. Instead, pricing and allocation become dependent on market forces.

This scenario is, for obvious reasons, not attractive to workers but, in the long term, also not appealing leading employers, which do not benefit from increased instability and skills shortages. As a result, as can be seen from the country cases discussed above, attempts are being made to re-regulate the sector through new initiatives in law and collective bargaining.

Recommendations

There are no easy or uniform answers available to address the industry's problems. Nevertheless, we would like to formulate a series of recommendations.

- In the long run there is no alternative for industry-wide customized regulation. This is a necessary condition for the fair redistribution of costs and benefits in a partitioned industry. This regulation should start with the settlement of minimum wage provisions that are generally applicable. In labour market segments with low trade union density this type of regulation is one of the few instruments against exploitation. At the same time it is a weapon against the race to the bottom that otherwise leads to a complete erosion of collectively agreed upon rules and standards.
- Partners in collective bargaining have to identify ways to reinforce the outcome of their negotiations. Debates in the EU linked to the free movement of workers have demonstrated the necessity to make agreements “internal market proof”. Implementation of agreements and supplementary site-related negotiations should go hand-in-hand, with contract compliance permanently on the agenda.
- Trade unions and employers' organizations share the crucial objective that they look after the interests of the industry's population. They cannot pretend that the unorganized and unrepresented are not there. In the long run that will ruin the industry, reintroduce archaic industrial relations and lead to a permanent distortion of competition. The organization of agency workers and self-employed and a broadening of labour market organizations are of the utmost importance. Unions must redefine their territory, scope and target groups.
- The difference between fraudulent practices and true civil and commercial business relationships has to be addressed, with the aim of effectively establishing a clear distinction between employed and genuinely self-employed workers.
- The industry should take the lead in the promotion of cooperative subcontracting for specific one-off tasks on the one hand, and for the restriction of the multiplication of subcontracting on the other. Framework agreements that define social responsibility and liability in the chain need to complement the necessary regulation.

References

- Baumann, H.; Cremers, J.; Janssen, J. 2003. "Hervorming of ondergang van de vakbeweging", in *Tijdschrift voor Arbeid en Participatie*, Vol. 25, No. 3/4, pp. 261–271.
- Bosch, G. 2007. *Konzeptstudie zur Entwicklung eines Leitbildes Bauwirtschaft der Bundesrepublik Deutschland* (Gelsenkirchen, Institut Arbeit und Kwalifikation).
- Buitelaar, W.; van der Meer, M. 2007. "Balancing roles – Bridging the divide between HRM, employee participation and learning in the Dutch knowledge economy" (Amsterdam, AIAS).
- CGT. 2004. *Travail illégal – Droits à faire respecter: Les propositions de la CGT* (Paris, Confédération Générale du Travail).
- Clarke, L. 2006. "Valuing Labour", in *Building Research & Information*, Vol. 34, No. 3, May–June.
- Clarke, L.; Gribling, M. 2006. *Undeclared labour in the construction industry, Country report-Great Britain* (Brussels, European Institute for Construction Labour Research), available at www.clr-news.org (accessed 20 Dec. 2007).
- Clarke, L.; Cremers, J.; Janssen, J. 2007. "The transformation of employment relations or 'undeclared labour', the case of the construction industry", paper presented at the IIRA Manchester, Sep.
- Cremers, J.; Janssen, J. 2006. *Shifting employment, Undeclared labour in construction*, CLR-Studies 5 (Utrecht, i-books).
- Cremers, J. 2007. "Self-employed and the free provision of services", in CLR-News 2-2007: *Poland's Construction Industry* (Brussels, European Institute for Construction Labour Research).
- DTI. 2007. *Trade Union Membership 2006, Employment Market Analysis and Research* (London, Department of Trade and Industry and National Statistics).
- European Building Confederation (EBC). 2007. *Draft declaration on undeclared work*, presented at the EBC General Assembly, Murcia, Oct.
- Eurostat. 2007. *European business – Facts and figures*, 2006 ed. (Brussels).
- . 2006. *Key figures on European business – With a special feature section on SMEs – Data 1995–2005* (Brussels).
- Fellini, I.; Ferro, A.; Fullin G. 2007. "Recruitment processes and labour mobility: The construction sector in Europe", in *Work, Employment and Society*, Vol. 21, No. 2 (Sage Publications, British Sociological Association).
- Forde, C.; MacKenzie, R. 2005. "Skills shortages and casualisation in construction: Evidence from two UK Surveys" in *Construction Industry Quarterly*, Vol. 7, No. 3 (Ascot, CIOB).
- IRNS. 2007. *Dossier Travail Temporaire*, at www.irns.fr (accessed 6 Jan. 2008).
- Jounin, N. 2007. "L'illégalité sous-traitée?", in *Droit social*, No. 1 (Paris, URMIS).
- . 2006. *Loyautés Incertaines – Les Travailleurs du Bâtiment entre Discrimination et Précarité*, Master thesis (University of Paris, Laboratoire URMIS).

- Kahmann, M. 2006. *Undeclared labour in the construction industry, Country report – France* (Brussels, European Institute for Construction Labour Research), available at: www.clr-news.org (accessed 20 Dec. 2007).
- Lean, G. 2005. “When does a contract for services become a contract of employment?” in *CLR-News 2-2005: Free Movement Revisited* (Brussels, European Institute for Construction Labour Research).
- Neumann, L.; Toth, A. 2006. “Undeclared labour in the construction industry, Draft report Hungary” (unpublished) (Brussels, European Institute for Construction Labour Research).
- Pollert, A. 2007. *The unorganized vulnerable worker: The case for union organising* (London, The Institute for Employment Rights).
- Vargas, O.; González, J.; Rodríguez, F.J. 2006. *Undeclared labour in the construction industry, Country report – Spain* (Brussels, European Institute for Construction Labour Research), available at: <http://www.clr-news.org/CLR-Studies/Spain%2003-OK.pdf> (accessed 18 December 2007).

