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AT RISK: Building Workers' Health

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Contents

Note from the Editor	4
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Subject articles	7
-------------------------------	---

- John Calvert, *Canada's Asbestos Policy: An Ongoing Threat to Building Workers' Health in Canada and Around the Globe*.....7
- Rolf Gehring, *OSH in Europe: Demolition work on a promising approach*..... 26
- Bernd Eisenbach/Rolf Gehring, *Working conditions for migrant workers*42
- Fleur van Broekhuizen/Pieter van Broekhuizen, *Nanotechnology in construction: new products and occupational exposure*.....53
- Fabio Strambi, *Prevention and Standardisation: the Added Value of Worker Participation*.....61
- Emmanuelle Brun, *Emerging risks at work in the EU – an expert forecast* 70

Discussion	78
-------------------------	----

- Jörn Janssen, 'The Crisis this Time', Leo Panitch, Greg Albo and Vivek Chibber (eds.). 78

Reports	88
----------------------	----

- *Combating wage dumping in Europe*, 27 August 2010, Berlin 88
- *Migrant Workers' Rights in the Global Economy*, 2 September, Liverpool 91
- *Promoting Paritarian Social Funds in the Construction Industry*, 19-20 October 2010, Bucharest. 96

Reviews	104
----------------------	-----

- Martin Ruhs and Brigit Anderson (eds.), *Who Needs Migrant Workers?*..... 104

Calendar of events	108
---------------------------------	-----

- BUIRA, 25 February 2011, *Posted Workers in Europe*..... 108
- CLR-Annual General Meeting 15 April 2011, Brussels. 109
- Seminar: *The Crises Challenging Labour Relations*, 15 April 2011, Brussels..... 109

Note

from the editor

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Worries about workers' rights and decent workplaces have no borders. As a result, the contributors to our quarterly come from all over the globe. However, in certain areas national or regional borders still do matter.

As the European construction trade unions began to campaign for a ban on asbestos in the late 1980s, we had to face fierce opposition not only from producers in and outside Europe but also from workers in the factories producing asbestos. And the harshest opposition came in the international federations. I remember very unfruitful and unpleasant debates in the Geneva meetings of the International Federation of Building and Woodworkers with our Canadian comrades who feared dismissals and unemployment in the asbestos plants. In the negotiations with producers we tried to convince them on a policy of substitution and the search for alternatives and, for those that refused, the ban on asbestos was the stick to hit - first in some individual countries, later on all over Europe.

In this issue of CLR-News we have a contribution that sheds light on this debate: John Calvert describes the complicated political situation in one of the most prominent producing countries left, Canada.

During my stay at the European Parliament, I was one of the authors of a report on nanotechnology (the Report on regulatory aspects of nanomaterials) in 2009. The EP asked for inclusion of the societal dimension of the use of nanotechnology and for the protection of the health and safety of the workers involved and the consumers exposed from the cradle to the grave, at all stages of the lifecycle of these materials. The ETUC brought out a resolution on 'nanoparticles' in December 2010. The issue of nanomaterials has the potential to become the new asbestos-debate as there are important and related economic interests. In this issue we have the 'state of the art' from one of the most experienced research institutes; the IVAM has cooperated with the building trade unions in several research initiatives and

their report is a reflection of this cooperation.

As the European legislation, formulated in the framework Directive on health and safety at the workplace (Directive 89/391/EEC) and several specific directives, was concluded (in the meantime more than 20 years ago) the trade union movement in Europe played a crucial role in the debate. And, with anti-regression clauses included in the legislation we thought that we were on the 'safe' side of the deregulation agenda. Fabio Strambi reports on the challenges and what it brings when worker participation is sought-after.

In recent years our optimism has been tempered. The basic idea for the framework directive and related initiatives, as the underlying principles were formulated, was an idea of social progress. With general rules, minimum prescriptions for countries lagging behind and an anti-regression clause for advanced countries we thought that a strong footing was constructed for an innovative and upward-oriented strategy. We believed that this frame for a sound integration of a health and safety strategy at the workplace, combined with technological improvements in future, would guarantee workers'

safety. Rolf Gehring reports on the simplification and deregulation debate that is actually going on and that easily could undermine this strategy. The deregulation agenda has not only led to inertia instead of progress, but has even put pressure on the minimum achievements that were reached in the early days of the creation of a decent health and safety policy.

The rise of non-standard employment relations has created a segment of workers that is not visible, not represented and no longer covered by labour standards or by legislation. In a research project that is almost finalised on the working and living conditions of posted workers, health and safety aspects were just a side issue in the survey. Nevertheless, there was some indication found of a serious problem. Just to say it in one sentence, too often posted workers were confronted with an inferior work environment. We found evidence of higher risks as a result of fatigue, a result of long working hours, no training provided, no translation of health and safety rules and a lack of the necessary protective equipment. In one of the subject articles Bernd Eisenbach picks up this item based on an ongoing project.

Note from the editor

The Bilbao Agency is an institute that works closely with the social partners. In this issue a presentation of the work of what is officially called the European Risk Observatory of the European Agency for Safety and Health at Work (EU-OSHA). EU-OSHA took the initiative towards supporting policy-makers in dealing with the new challenges by organising seminars involving high-level representatives from the OSH community and from other disciplines concerned, as well as EU policy-makers and social partners.

Jörn Janssen contributes with a critical review essay on the crisis debate inspired by the book *The Crisis this Time*. In the essay he has listed at least four obvious links between the construction and financial sectors that justify why CLR readers should bother about an economic crisis book whose centre of gravitation is in the financial sector. Without a fundamental transformation of our labour relations he sees no worldwide perspective for a structural and sustainable long-term recovery 'the financial crisis is essentially a crisis of labour relations, which have allowed an unprecedented form of capital accumulation at the expense of wages for labour'.

We have included three reports. One is on a European debate organised by our Swiss and German friends on the consequences of the ECJ-cases. We can already announce that we will come up with more ammunition for this debate in another issue of CLR-News. Here we restrict ourselves to the theses formulated in Berlin. The two other reports deal with seminars that were dedicated to labour migration and cross border work (and to the important role industry-wide paritarian funds can play).

Finally, we have taken on board our reviews and announcements: the launch of a new book on Posting (CLR-Studies 6 In Search of Cheap Labour in Europe) during a BUIRA-meeting in London and the Annual General Meeting of CLR (AGM). Again in Brussels on the 15th April we will combine the AGM with a session of the planned EFBWW/CLR seminar series. You will find the booking form soon on the website. We look forward to new projects and initiatives and, as ever to your critical remarks and feedback.

Canada's Asbestos Policy: An Ongoing Threat to Building Workers' Health in Canada and Around the Globe

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Canada is the only Western democracy to have consistently opposed international efforts to regulate the global trade in asbestos. And the government of Canada has done so with shameful political manipulation of science (Canadian Medical Association Journal, 2008).

1. Introduction

One of the most significant hazards facing building workers is asbestos. Its extensive use in a wide variety of building materials has resulted in a heavy toll of premature deaths from asbestosis, mesothelioma and related cancers among workers exposed to it¹. Its use has been dramatically reduced - or in some cases eliminated - in most developed (and some developing) countries. But the legacy of asbestos in the environment remains. Building workers continue to be exposed to it when they work on older buildings or carry out demolitions. In recognition of its health hazards and the evidence that there is no safe exposure level, building workers and their unions have campaigned in many countries for a total ban on its use in new construction and strict safeguards for dealing existing asbestos at older construction sites.

Consequently, the position of Canada - and Canada's labour movement - on asbestos mining and asbestos exports has been an ongoing source of puzzlement and frustration for occupational health advocates around the globe. It has also been a significant concern of Canadian building trades workers, many of whom continue to have to deal with the consequences of its widespread use in the construction industry in the past. Deaths from asbestosis, mesothelioma and related cancers have taken a heavy toll on this workforce. Asbestos exposure is now the leading cause of deaths from occupational diseases in Canada. Despite its

known hazards, domestic politics have resulted in policy deadlock on the issue of banning asbestos mining and exports. While the Federal and provincial governments have put in place guidelines for handling it, they have been unwilling to impose a total ban largely due to pressure from the asbestos industry in Quebec.

Within the labour movement a similar paralysis has also been evident. For many years, the debate about banning asbestos use was hamstrung by conflict between unions that wished to eliminate its use and unions that claimed that it could be used safely if appropriate protective measures were in place. Faced with strong opposition from its Quebec affiliates to any policy statement demanding an end to asbestos mining, Canada's largest union federation, the Canadian Labour Congress (CLC), repeatedly found ways to avoid taking a clear position on the issue.

2. Canadian Labour's Policy Shift

But in the past two years the ground has been shifting. At the 2008 Convention, CLC delegates, with the endorsement of the CLC's Executive Council, passed a resolution calling for a phasing out of the use of asbestos production in Canada and an end to its export, subject to a viable labour adjustment and transition strategy for workers in the industry². While not as strong as some health and safety experts might have preferred, it nevertheless constituted a step in the right direction. At the CLC's national Congress in May 2010, the elected officials were prepared to advocate further restrictions on asbestos production and use³. Their stronger position was endorsed in the CLC's August 2010 response to the ILO's request for a progress report on Convention 162 (which deals with asbestos). This change is not accidental. Occupational health activists both inside and outside the labour movement have been working overtime on the issue and their efforts are reflected in these policy changes.

Regrettably, the CLC's stronger public position on the issue in English speaking Canada has not been paralleled by a

concerted campaign in Quebec calling for an end to asbestos mining. Rather, Canada's largest labour central continues to try to balance the health and safety demands of unions outside Quebec with its desire to avoid provoking a confrontation with its major affiliates within that province who remain committed to supporting the industry.

In contrast, Canada's building trades unions have become much more vocal in their demand to ban asbestos. At the May 2010 convention of the Canadian Building Trades Congress, which represents construction workers from across the nation, a group of more than 100 building trades union officials and members carried black coffins to Parliament Hill in Ottawa. Their procession was intended to protest the government's continued support for the asbestos industry⁴. The coffins highlighted the tragic and unnecessary deaths of building workers from asbestosis and mesothelioma. Significantly, the procession included elected representatives from some building trades unions in Quebec, as well as English Canada. The procession also included members of a broadly based advocacy group, Ban Asbestos Canada that has been campaigning for a number of years to end the use of asbestos and has the support of many unions and occupational health advocates⁵.

In addition to the contingent from the building trades, led by Wayne Peppard, Executive Director of the BC and Yukon Territory Building and Construction Trades Council, the protest included representatives of a number of US based international construction unions who have been campaigning for a ban on the use of asbestos on building sites. At the AFL-CIO Building Trades Department Convention in Minneapolis in August 2010, delegates passed a resolution calling for 'a complete ban on the importation, manufacturing, processing and commercial distribution of asbestos containing products in the United States and Canada.'⁶

Nevertheless, Quebec's main labour federations continue to support the industry⁷. Consequently, despite the strong position taken by building trades and other unions elsewhere

in the country - and the criticism now being voiced by Quebec's entire medical establishment – the official position of Quebec's labour movement remains one of supporting the industry⁸.

3. Federal and Provincial Governments Continue to Promote the Industry

While labour's position has clearly shifted outside Quebec and may be softening within the province, the Quebec and Canadian governments remain stubbornly committed to mining and exporting this mineral, despite the overwhelming medical evidence of its harmful effects on all who handle it⁹.

To understand why banning asbestos has been a major challenge for Canadian unions, it is necessary to examine the broader relationship between Quebec and Canada. The issue of sovereignty (*maitre chez nous*) has been a central concern of a large part of Quebec society since the 'Quiet Revolution' in Quebec's politics began in the 1960s¹⁰.

Much of politics is about how issues are 'framed'. In recent years, the issue of asbestos has been successfully 'framed' by proponents of the industry in Quebec, rather than its critics. Demands to end asbestos mining have been labelled by the industry as attempts by outsiders to interfere in Quebec's internal affairs. This 'framing' has meant that pressure from unions and health advocates from the rest of Canada has been defined not primarily as an occupational health and safety issue, or a broader public health issue, but rather as an attack on Quebec's right to manage its own affairs.

Such framing also has provided an argument within Quebec to justify maintaining asbestos production. Opponents of asbestos mining within the province have been characterised as failing to stand up for Quebec's sovereignty and, in effect, supporting those from outside the province attempting to interfere in its internal affairs. While the effectiveness of this framing may now be weakening somewhat, it remains a factor influencing the debate within the province.

4. Union Competition in Quebec a Major Factor in Asbestos Debate

Quebec has several labour federations (labour centrals). The largest is the Federation des Travailleurs du Quebec (FTQ). It includes unions affiliated to the Canadian Labour Congress as well as national and international (US-headquartered) unions. The second largest, the Confederation des Syndicats Nationaux (CSN) is provincially based, exclusively representing Quebec workers. A third is the Centrale des Syndicats du Quebec (CEQ) which also is Quebec based. The fourth major labour central, the Conseil provincial du Quebec des métiers de la construction – Internationale is composed of the building trades affiliated with the US-based international construction unions who are not part of the CLC. This complex mix of Quebec-based, national and international unions is the context in which the issue of asbestos has been addressed within the province.

Quebec's construction industry is more highly unionised than in any other province in Canada. Its labour legislation (Act R-20) establishes a framework for province-wide bargaining. The industry is divided into four major sub sectors. Every three years, workers in each sub sector must vote to determine which union will represent them in the next round of collective bargaining. This is a 'pluralistic' system of worker representation in which union membership can shift from one union to another¹¹. It is a system in which unions must constantly compete with each other for members.

Thus the major building trades unions have been caught in a dilemma. In this competition for the votes of building trades workers, every vote counts. The appearance of not defending Quebec's right to make its own decisions on the asbestos issue can be a factor in determining a union's success in this competition. As a result, the building trades, who in other parts of Canada and the US, have come out strongly in favour of a ban on the production and use of asbestos, have been reluctant to take on the issue in a major way inside Quebec.

But it is not just construction workers who face this dilemma. Historically, asbestos miners in Quebec have been

represented by the United Steelworkers of America (USWA). It is an international union and a CLC affiliate. Both its national and international offices recognise the hazards of asbestos and have taken positions opposing its continued use in the workplace. Some of its locals, such as the one in Trail, British Columbia, have carried out major campaigns demanding a complete ban on asbestos use in construction as well as full compensation for its numerous victims. But in Quebec, the local union has maintained a position supporting the 'safe use' of asbestos, while opposing proposals for a ban on mining, or exports, unless the government implements a viable transition strategy to protect the livelihoods of its members. The USWA also lobbied the Federal Government to oppose the listing of asbestos as a notifiable hazardous substance under the terms of the Rotterdam Convention two years ago.

The internal politics of the USWA union local have been influenced also by the reliance of its members on mining as a source of livelihood in an area of rural Quebec where there are very few other employment opportunities. The failure of federal or provincial governments to provide alternative training and employment options for asbestos miners has reinforced dependency on the industry. This dependency has been further strengthened as a result of the decision of the local union to accept an equity stake in the mine in lieu of wages when the Jeffrey Mine faced bankruptcy a number of years ago. Complete closure of the mine will preclude the workers from getting any payout from their minority ownership share. Hence, despite the health hazards, they have continued to lobby for government support for the industry in order to maintain their incomes and future pensions.

Respect for the views of local unions on matters directly involving their members has been - and remains - a strong principle of the labour movement in Canada and Quebec. This has resulted in a major dilemma for the USWA. To meet the demands of members outside Quebec for an end to asbestos mining, it would have to override the views of the

union local with members directly involved in the industry. It has been reluctant to do this. Moreover, in the context of Quebec's nationalist culture, overriding the position of its asbestos local would potentially expose it to the charge by other non-CLC unions of failing to respect or to represent the views and interests of its Quebec members.

These various factors have resulted in enormous tensions within the Canadian and Quebec labour movement over an issue that, from the outside, would appear to be a straightforward matter of occupational health. They have also led, as noted, to a difficult process within individual unions and within labour federations as their conception of asbestos as the 'magic mineral' has been replaced - to paraphrase Geoffrey Tweedale - with that of 'killer dust' (Indeed, outside Quebec, there is virtually no labour support either for the continuation of the asbestos industry, or for its export to developing countries)¹².

While not explicitly stated, one of the factors that may also have influenced the Quebec labour movement's support for the industry - and the tepid campaign of the CLC at the national level - has been the view that asbestos mining was unlikely to survive in any event, given Quebec's relatively high cost structure compared with that of other international asbestos exporting countries like Russia, Brazil, Zimbabwe and Kazakhstan. Exhaustion of the easily accessible mineral deposits and an aging workforce pointed to the sunset of the industry in the province, even without a formal ban on asbestos mining.

The Jeffrey Mine has been in bankruptcy protection even after Quebec taxpayers provided approximately \$50 million for its upgrade. The number of workers in the industry had declined to about 250 at one point in recent years and, depending on whether to count workers who only work a month or two a year at the one remaining mine, the maximum size of the workforce is about 350 to 400. The view that the industry would simply disappear has presented an easy way out for some in the Quebec labour movement. For it would mean that asbestos mining would end without a

controversial campaign to stop its production. The closure of the industry in Quebec would end the fractious debate. But unfortunately, recent developments suggest that this optimistic scenario may not prove correct.

5. The Irresponsible Role of the Quebec Asbestos Industry

The position of the USWA union local and the broader labour movement in Quebec has not been formed in isolation from the industry that employs asbestos workers. Over the years, the Chrysotile Institute (formerly the Asbestos Institute) has successfully fostered the view that efforts to end mining were being promoted by 'outsiders' who were disrespectful of Quebec's right to control its own affairs. As part of its strategy to keep the industry working (and keep subsidies flowing) over the years, the Institute has actively recruited a number of well-known trade union officials to sit on its governing body with the understanding that they would promote the position of the Institute both within the labour movement and in the broader Quebec society. This approach has been very successful as evidenced by the presence on the Institute's board of directors of union leaders such as Clement Godbout, former president of the Quebec Federation of Labour (1993-1999) who has played an active role, both within Quebec and internationally in promoting the industry.

The Institute's well-financed campaign, which still benefits from a \$250,000 annual Federal Government subsidy, has promoted the misleading view that chrysotile asbestos is safer than other types of asbestos. Handled properly, the Institute argues, asbestos is not a major hazard either to workers or the wider public¹³. In a manner with parallels to the claims made earlier by the tobacco industry, it has maintained that the health risks of the mineral have been grossly exaggerated and that its fire retardant benefits justify its continuous use. It also argues that workers in developing countries can handle asbestos safely if they are properly trained, follow the recommended procedures and

use the appropriate safety equipment. This view has not only been targeted at the workers within the industry: it has been a key factor in providing a justification for the position of both the Federal and Quebec governments.

Part of the Federal Government's rationale for financing the Institute has been that it provides educational programs to workers in countries importing the mineral. While the Institute claims that the industry closely monitors workplace practices in the countries receiving its exports, there is overwhelming evidence from a wide range of reputable sources - including Canada's own Canadian Broadcasting Corporation - that this does not happen¹⁴. Workers in developing countries routinely are exposed to volumes of asbestos fibres that will lead many of them to die prematurely of asbestosis or mesothelioma.

More recently, the Institute's work has been supported by the appearance of a relatively new lobby group, the Pro-Chrysotile Movement (Movement Pro-Chrysotile). It is based in the municipalities in the mining region and claims to represent the views of the community members, who, it says, strongly support the expansion of the industry as a vehicle for regional development in one of the poorest areas of the province. The Pro-Chrysotile Movement has managed to attract numerous 'partners', including the Federal and Quebec governments, various local chambers of commerce and other community and citizen's organisations in the region¹⁵.

6. Governments Continue to Promote Asbestos

However, the continued mining and export of asbestos would not be possible without the support and subsidies of the Quebec and Federal governments. As noted, the Quebec government wrote off over \$50 million in its earlier effort to rebuild the Jeffrey Mine before it went bankrupt. In addition to its direct subsidy to the Chrysotile Institute, it has used its international trade missions and foreign embassies to promote exports to developing countries and to offer "education" and "training" programs from the Chrysotile

Institute to potential manufacturers in developing countries. These ostensibly are designed to ensure the safe processing and manufacture of asbestos products.

Canada used its influence in various international agencies to try to stop the adoption of new global restrictions on the asbestos trade. In the mid 1990s, it filed a trade challenge with the World Trade Organisation to overturn France's ban on the importation of asbestos. Initiating a formal trade challenge is not cheap. Much of the Federal government's costs for this action are buried in the overall budget of the Department of Foreign Affairs and International Trade. But the cost of the trade challenge likely amounted to hundreds of thousands of dollars in legal fees - perhaps more - and significant amounts of the time of the trade policy staff of the Department¹⁶.

Fortunately, this trade challenge failed.

The Federal Government has successfully used its international influence to frustrate efforts to have asbestos added to the list of hazardous materials that must be reported to the importing country under the terms of the Rotterdam Convention. While this designation would not ban the export of asbestos, it would flag its dangers every time a shipment was made and thus provide importing countries with at least some warning that they were dealing with a carcinogenic substance.

According to Martin Mittelstaedt, environment reporter of the *Toronto Globe and Mail*, Canada views its international support for the asbestos industry as a bargaining chip with Quebec's foreign competitors. His analysis is based on the release of confidential Federal Government documents confirming that the Federal Natural Resources Minister is aware of Canada's role as the principal international apologist for the industry. As long as Canada continues to promote the use of asbestos by developing countries, foreign producers will not undercut Quebec's prices, which they could easily do. But the quid pro quo for keeping prices sufficiently high for Quebec to sell its chrysotile is that Canada continues to use its status and reputation to

promote the industry¹⁷. The Federal Government has also tried to hide evidence provided by its science advisors on the hazards of asbestos. According to a Canadian Press article of December 15th, 2010, staff of Natural Resources Minister Christian Paradis intervened to block release of major parts of a “damming report “commissioned by the Federal government on the issue.

But perhaps the most worrisome recent development is the Quebec government’s announcement several months ago that it was willing to provide a \$58 million loan guarantee to re-start the Jeffrey Mine. The government made this subsidy offer contingent on the bankrupt mine attracting new foreign investors committed to a long-term plan for its continued operation. To keep this option open, in August 2010 the government announced a \$3.5 million subsidy to cover a month’s trial operation¹⁸. The purpose was to re-start the mine on a temporary basis so that potential investors could examine its operations and determine if they were interested in taking it over. At the time of writing, the outcome of this trial run is not clear but it would appear that the investors are very serious about re-starting the mine.

In early October Baljit Singh Chadra, a Montreal businessman, and a group of investors from India, indicated that they were in discussions with the majority owner of the Jeffrey mine and the Quebec Government to negotiate its purchase. Subject to a positive assessment of its financial viability, they would put up the additional \$15 million to begin operations. According to Dr T K Joshi, Fellow of the Collegium Ramazzini and an international health expert, India has witnessed a dramatic increase in its use of asbestos over the past 5 years, from 90,000 tonnes to 350,000 tonnes. Proponents of expanded consumption of asbestos in India point to the publications of the Chrysotile Institute in support of their claim that it can be safely handled.

For its part, the Quebec government has indicated that its decision about the loan guarantee will be based on the recommendations of the local government. However, it knows that the sentiment in the region is very supportive of

re-opening the mine. Hugues Grimard, mayor of Asbestos was quoted, as saying that re-opening the mine would be the 'light at the end of the tunnel' for economic development in the region. Local health officials - to the dismay of health professionals across Quebec - have stated that asbestos can be mined safely. While the new investors would still have to meet certain other government conditions for the loan guarantee, for those concerned about the health impacts of asbestos exports, this is a deeply worrisome development¹⁹.

The Jeffrey Mine has the potential to produce a very large quantity of asbestos. According to one estimate, it could deliver up to 260,000 tonnes, annually, for a period of 20 to 25 years if the company's proposal comes to fruition²⁰. This would add significantly to the existing global asbestos market and might lead to a reduction in the international price of the mineral, making it even more attractive to some potential purchasers.

Re-opening the mine would also preclude the implementation of a transition strategy that would use provincial and federal subsidies to provide financial support to its aging workforce while simultaneously offering alternative regional development options for the communities affected in the Thetford Mines region. As noted above, neither level of government has shown much interest in the development of such a transition plan despite the fact that its direct financial costs would probably be far less than continuing to subsidise the industry. Such a transition strategy would save countless thousands of lives in the developing world as well as ending the exposure of Canadian miners and other workers handling the shipments of this deadly mineral.

Ironically, despite the extensive public subsidies for the industry, the terms and conditions of employment for asbestos miners have deteriorated significantly in recent years. In addition to having to take part of their wages as ownership shares in the company, they have accepted a major pay cut. The workers who may end up being

employed in a re-opened mine will receive lower rates of pay than in the past due to concessions the union gave to keep the industry afloat. In this context it is not clear how much economic stimulus a relatively low wage mining operation will provide to this depressed region in Quebec.

7. Subsidies to the Industry: But Not to the Workers

From the perspective of the bigger picture of provincial and federal budgets, the cost of providing a generous transition strategy as an alternative would be virtually a drop in the bucket. Considering the ongoing subsidies that governments may end up providing over the coming decades and considering the costs to the public medical care system of dealing with the health impacts of asbestos in Canada, it is hard to make an economic case for continuing support for the industry. Indeed, giving the current workforce decent pensions so they could retire early would be far less costly, given the average age of the asbestos miners. Moreover, the adverse health effects of asbestos are not going to go away. And Canada will not be able to avoid facing international opposition to the export of asbestos; opposition that will continue to grow in the coming years in parallel to the rising number of deaths.

But Prime Minister Stephen Harper's Conservative government, which could readily afford a generous transitional package, is not inclined to provide money to workers for labour adjustment. This policy may stem partly from his overall anti-labour philosophy and partly a result of his desire to avoid establishing a precedent that could be followed by other industries facing closure. However, there is no reason for the winding down of this specific industry to be seen as any sort of precedent, given its unique health impacts and the consequences for Canada's reputation internationally. Indeed, other industries, such as forestry, have had such programs put in place without setting precedents for the entire economy. Nevertheless, it is unlikely that the Harper Government will move on this issue in the near future.

The current Quebec government of Premier Jean Charest seems equally reluctant to consider funding a transition strategy. Thus far, it appears far more interested in finding a solution that keeps the industry operating and in the process, is willing to risk a large amount of taxpayers' money to implement this objective. The main opposition party in Quebec - the Parti Quebecois - has not challenged the Charest government's policy, nor for that matter, has the Bloc Quebecois, the party that currently represents Quebec's interests in the Federal Parliament. The failure of governments to propose any alternative other than support for the industry arguably pressures the union and its members to continue to support asbestos mining as their only future source of employment.

Change to Canada's current policy may now have to wait on a change in government at the Federal level. And here there is some hope. The New Democratic Party - Canada's social democrats - has gradually shifted its position to one of demanding a total ban on both mining and exporting asbestos. The NDP is not a major player, federally, in Quebec politics, having only one Member of Parliament in the province. Nevertheless, its advocacy of ending asbestos mining may open up additional space for a more productive dialogue on the issue at the national level.

Even more significant is the change in the position of the Federal Liberal Party, currently the Official Opposition and the most likely party to form a government if Stephen Harper's Conservatives lose the next federal election. The Liberals, when in office before 2006, were supporters of the asbestos industry. But the new leader, Michael Ignatieff, appears willing to contemplate a basic change in policy. He has made several public statements to this effect²¹.

This represents a sea change in the Liberals' approach. Ignatieff has met on a number of occasions with health advocates and labour leaders from English Canada. He has indicated clearly that he would, if elected, take measures to wind down the industry. From all accounts, he seems to understand the issue and to recognise the enormous damage

to the health of workers both in Canada and in developing countries flowing from continued production and exporting of asbestos. He also seems to recognise the negative international consequences of Canada's efforts to export asbestos to developing countries. The real issues he will face, if elected, are whether he will be prepared to challenge the Quebec government and whether he will be prepared to put in place an effective transition strategy to provide protection for workers and economic opportunities for communities that currently have few other options.

Another indication of change in Quebec is the recent bill introduced into the Quebec National Assembly calling for a ban on asbestos exports by 2016. The bill's author, Amir Khadir of Quebec Solidaire, has become an increasingly popular politician in recent years. In current opinion polls, he now enjoys a substantial lead in popularity over Quebec Premier, Jean Charest. While he is the only representative of his party in the Assembly, the very fact he was willing to do this may signal that it is finally possible to put asbestos on the political agenda in Quebec. Additionally, the scientific community and the medical community, both in Quebec, and nationally, have become much more vocal in their opposition to the re-opening of the Jeffrey Mine as evidenced by numerous editorials and letters to government officials²². To cite one of many examples, scientists and physicians from 28 countries sent a 13-page letter to Quebec Premier Jean Charest on January 10, 2010 calling for an end to the continued mining and export of Canadian asbestos.

International pressure to stop Canadian asbestos exports has also been building, with labour organisations taking much of the lead. On December 7, 2010, anti-asbestos campaigners from Japan, India and Indonesia met government officials in Quebec to press their case against exports. Anup Srivastava, an Indian trade unionist and representative of the Building and Woodworkers International, along with other members of the delegation, held news conferences at both the Quebec Assembly and the Canadian House of Commons. The purpose was to inform Canadians of the damage asbestos exports

were inflicting on the health of workers in many parts of the developing world. Sugio Furuya, Secretary General of the Japan Occupational Safety and Health Resource Centre, which is part of the Ban Asbestos Network of Japan, headed the Japanese contingent. Kazumi Yoshizaki, from Japan noted that his father had died of asbestosis after only 2 years of working with the mineral. And a Korean delegate with mesothelioma, Jeong-rim Lee told reporters how her disease originated as a result of living near the second largest asbestos manufacturing in her country. Unfortunately, two of the key union centrals in Quebec, the FTQ and the CSN declined to meet the international delegation. And, while another union central, the CSD did agree to meet the delegation, it also invited a supporter of the Chrysotile Institute to the meeting as well²³.

8. The Future of Canada's Asbestos Industry Remains Uncertain

At the time of writing, it is unclear what direction Canada's asbestos industry will take in the near future. There are contradictory developments. On the one hand, labour unions in English Canada - and particularly the building trades - have become much more vocal and active in their demands for an end to asbestos mining. They have pushed the Canadian Labour Congress into taking a clear position on the issue, even if it has not demonstrated much commitment thus far in promoting its position either to the Federal Government or within Quebec. As noted above, both the NDP and the Liberal Party, federally, have recognised the need to bring an end to asbestos mining and asbestos exports. And Quebec health advocates have become much more vocal in their criticism of Federal and Provincial government policy on the issue.

At the same time, the industry has repeatedly demonstrated a remarkable ability to maintain support for its objectives. Subsidies continue to flow and government policies remain supportive of the industry at both federal and provincial levels. If it succeeds in getting new investors to put up the

cash to re-start the Jeffrey Mine, which is certainly quite possible, there is a distinct prospect that Canada will continue to mine and export this dangerous mineral for many years into the future. Moreover, if the mine does resume production, both Federal and Quebec governments will have a major stake in continuing to support asbestos exports and to promote the myth that asbestos can be handled safely, with all that this entails for workers in the developing world.

The policy direction Canada adopts on this issue will also have a major impact on building workers both in Canada and internationally. Continued mining will result in pressure not to tighten existing regulations on the handling and use of asbestos. It will be very difficult to implement a ban on asbestos, domestically, while Canada continues to export it. For building workers in other parts of the world, the outcome will be even more worrisome. Canada will continue to export large quantities of asbestos. Workers in many countries will end up handling it without even the most basic safeguards. The toll of new cases of asbestosis and mesothelioma, as well as other cancers will be appalling.

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1. The scientific consensus on the serious health hazards of asbestos is overwhelming. The *Lancet*, the *Annals of Occupational Hygiene*, *Nature* and numerous other peer reviewed journals have documented the enormous damage this mineral is causing to the lives of hundreds of thousands of its victims around the world. The Canadian Medical Association, the Quebec Medical Association, the Quebec Cancer Society, the Association des médecins spécialistes en santé communautaire, the Canadian Public Health Association and international bodies such as the World Health Organisation and the International Labour Organisation have highlighted the looming health disaster that will result from continued export of asbestos to the third world.
2. For reasons of space, it is not possible to include the full text of the CLC Executive Statement, Convention Resolution or the other policy statements by various organisations cited in this article. However, readers interested in reviewing them can obtain copies at CLR's website or directly from the author at: jrc@sfu.ca.
3. The full text of this response to the ILO is available at the CLR website, or from the author.
4. BC and Yukon Territory Building Trades Council (2010) *Trade Talk*. Summer, p. 3.
5. This organisation has provided considerable information on the campaign to end asbestos use on its web site. See: <http://www.bacanada.org/main.html>
6. The document referenced is available at the CLR website or from the author.
7. There are rumours that one of the main labour centrals within the province (the CSN) may be considering shifting its position in the near future, due to its efforts to get the Quebec government to provide much more information on the location and hazards of asbestos in public buildings. But no official change in policy has taken place.
8. Quebec currently has two asbestos mines: LAB Chrysotile, which is in Thetford Mines and the Jeffrey Mine in the town of Asbestos, which is adjacent to Thetford Mines.
9. The adverse health impacts of asbestos have been extensively documented. See a number of the articles in the bibliography for supportive references on this issue.
10. See, for example, the book co-authored by Canada's former Prime Minister. Pierre Trudeau, ed. (1974) *the Asbestos Strike*, trans. James Boake. Toronto: James Lewis & Samuel. (originally published in French, 1956).
11. There are five main unions in the construction sector: Centrale des syndicats démocratiques (CSD Construction), Confédération des syndicats nationaux (CSN-Construction), Conseil provincial du Québec des métiers de la construction – International, Fédération des travailleurs du Québec (FTQ-Construction) and the Syndicat québécois de la construction (SQC).
12. Tweedale, Geoffrey (2001) *Magic Mineral to Killer Dust: Turner & Newall and the Asbestos Hazard: Turner and Newall and the Asbestos Hazard*. Oxford: Oxford University Press.
13. See, for example, various contributions on the website of the Chrysotile Institute, which repeatedly questions the scientific research on the hazards of asbestos. <http://www.chrysotile.com/en/index.aspx> See also: Daniel Drolet, "Medical scientists dispute geologists' claims about safety of asbestos: It's a hot issue in Quebec, where the mineral is a major export product, despite efforts to ban it." Ottawa: *University Affairs*. Oct. 12, 2010. <http://www.cbc.ca/canada/story/2009/06/10/f-asbestos-safety.html>
14. CBC, "Asbestos: The Magic Mineral that Once Was Canada's Gold" Wed. June 10, 2009.
15. <http://www.mesothelioma-cancer.ca/featured-articles/pro-chrysotile-movement-questions-study%E2%80%99s-validity>

16. For a good discussion of this trade challenge, see: House, Robert and Elizabeth Tuerk, (2002) "The WTO Impact on Internal Regulations - A Case Study of the Canada - EC Asbestos Dispute" In Gráinne de Búrca and Joanne Scott, eds. *The EU and the WTO: Legal and Constitutional Issues* Hart Publishing, pp. 283-328.
17. Mittelstaedt, Martin (2006). "Document Contradicts Ottawa on Asbestos" *Toronto Globe and Mail*, Nov. 27.
18. Picard, Andre. (2010) "Government investment in asbestos is morally bankrupt." *Globe and Mail*, Sep. 09.
19. This development also provoked a sharp reply from building workers in other parts of Canada. See: The British Columbia and Yukon Territory Building and Construction Trades Council. (2010) News Release: "BC Construction unions urge Quebec Premier Jean Charest to permanently close Jeffery Asbestos Mine, end mining and export of deadly asbestos products as mesothelioma fatalities rise" Tuesday, November 9. The BC Building Trades sent a letter dated Nov. 8, 2010 to Quebec Premier Jean Charest asking him to re-consider the \$58 million subsidy. <http://www.bcbuildingtrades.org/pages/pressreleases.asp?Action=View&ID=129>
20. Kathleen Ruff (2010) "Quebec Offers Lifeline to a Deadly Industry" *Toronto Star*. Sept. 2; Simon, Bernard (2010) "Quebec Asbestos Project Prompts Safety Protests" *Financial Times*. Nov. 24,
21. For example, on March 31, 2009, Mr. Ignatieff was quoted on the issue as follows: "There is a double standard. Canada is spending millions of dollars to remove asbestos from the Parliament buildings, but it promotes the export of asbestos to developing countries. If asbestos is harmful to the point that it is being removed from Parliament, it must be harmful for other countries. This has to stop." His statement was immediately criticised by Christian Paradis, Minister of Public Works in the Conservative Government of Stephen Harper for his 'ignorance' of the issue of chrysotile asbestos. Significantly, Paradis chose Thetford Mines as the location for his press conference denouncing Ignatieff. <http://www.christianparadis.com/EN/6992/86421>
22. The list of concerned individuals and organisations is very lengthy, for example: Paradis, Giles (editor) "Ban All Production and Export of Chrysotile Asbestos." *Canadian Journal of Public Health*, 101-5. Sept./Oct. 2010; Canadian Cancer Society, asbestos position <http://www.cancer.ca/Canadawide/>; *Nature: International Weekly Journal of Science*. "Asbestos Scandal: Irresponsible Policies Could Cause an Epidemic of Malignant Lung Disease" Editorial. Dec. 15, 2010. <http://www.nature.com/nature/journal/v468/n7326/full/468868a.html>; Editorial. "Asbestos Mortality: A Canadian Export." *Canadian Medical Association Journal* Oct. 21, 2008. World Health Organisation, *Elimination of Asbestos-Related Diseases*, http://www.who.int/occupational_health/publications/asbestosrelateddiseases.pdf
23. The Solidarity Delegation from Asia to Quebec: "No to financing the Jeffrey asbestos mine" Press Kit, Dec. 7, 2010. In an article published in French in *La Press*, one of Quebec's leading daily newspapers, Professor David Mandel, noted the reluctance of Quebec unions to host the international delegation. The article was reprinted in English. David Mandel, "Working Class Solidarity or Colonial Complicity? Quebec Unions and Asbestos" *The Bullet*, Dec. 29, 2010.

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OSH in Europe: Demolition work on a promising approach

For the trade union movement, harmonizing working conditions upwards is an essential requirement of social justice and equality. Moreover, shaping working conditions in a comprehensive way, i.e. influencing the use of technology, work organisation or the division of labour is also shaping the general character of work for tomorrow and will have a decisive impact on active participation and the level of influence of the workforce. In this sense, work protection and job design are elements that help in shaping labour relations and, therefore, influence the process of democratisation in companies and society. However, occupational safety and health (OSH) remains one of the core issues to protect workers' interests, which is why union

actions seek to create linkages between national and common European Union (EU) prevention strategies. In most circumstances an effective policy requires combined action at various levels: workplace, company, sector, country and European. In this interaction, every level can initiate and give an impulse to new developments. One could say that within the last 20 years the international levels, i.e. EU policies and the policies of multinational companies, gained more and more influence also at national level.

This article intends to look at EU policy on OSH and to assess the current situation and problems, not seeking to give a comprehensive overview of the whole issue, but rather to focus on a few aspects. As a first step we will consider whether EU policy has influenced the national level and see how working conditions have developed. In a second step the current political discussion shall be analysed, also taking into account the differentiation in EU policy. A third part will discuss the more concrete work and outcome of the so-called High Level Group. The last part will consider options for a trade union strategy.

Short look back - European OSH as a success story

One can safely say that EU policy on OSH was a success story until 2007. The first health and safety directives date back to the 1970s when the so-called Framework Directive (Directive 89/391) introduced a systematic approach. For many member states the basic aspects of this approach meant a significant improvement:

- The employers' obligation to provide risk assessment with documentation;
- The duty to reduce the risks as much as possible;
- The hierarchy of prevention measures;
- The substitution principle;
- Minimum requirements regarding the information, consultation and training of workers, respectively their representatives.

Article 16 of Directive 89/391 also allows single directives to be issued, dealing with specific hazards or aspects of OSH. At this moment, 20 separate directives have been launched, some of them with specific importance for the construction industry, i.e. first and foremost the so-called Construction Site Directive (92/57), introducing the function of the health and safety co-ordinator, which did not exist before. The system of European minimum requirements has proved to be highly effective and allows for the finding of compromises.

Parallel to the upgrading of the legal framework, a network of actors and institutions has developed. It involves not only EU Institutions, such as the Dublin foundation or the Bilbao Agency, but also Trade Union structures and other institutional players as well as scientific institutes, victim organisations and others. Also in the various European Social Dialogues the issue is often of high importance. All the above actors are constantly providing an input into the European debate, running campaigns and contributing to the better application of the legal requirements.

Besides the original OSH Directives, the statutory sources for the participation of workers are also essential for any OSH policy. The legal basis for worker participation has improved at EU-level. Minimum standards have been established regarding information and participation at different levels in the Framework Directive on OSH and therefore also in all the 20 daughter directives (based on Article 16 of the Framework Directive), such as the directive on European Works Councils (EU-Directive 2008/39), the Directive on the statute for a European Company (EU-Regulation 2157/2001 and EU-Directive 2001/86) and others. Many research results underline the importance and also effectiveness of worker representation combined with participation rights¹. It is estimated that there are over 1 million safety representatives currently acting in Europe. However, appropriate knowledge (based on specific training) and

structures for their work (Committees; meetings; time) are essential for successful action².

Old and New Risks

Undeniably there remains, however, a gap between the quality of the legal framework and real conditions at work. In fact, though the number of accidents has been reduced, overall working conditions have not improved. It is more or less undisputed that, even though industries marked by high physical strain have disappeared or considerably shrunk, traditional stress factors are still at a high level (repetitive hand or arm movements and painful and tiring positions)³.

But even more worrying are the so-called “new” risks, sometimes also called “soft” factors. Besides the ever-growing risks coming from chemical substances (it is estimated that at least ten times as many workers die annually because of work-related diseases than because of accidents; and these diseases are largely caused by dangerous substances), mainly the broader and also external factors are of growing concern. Some aspects are:

- The internationalisation of the whole economy and resultant intensified competition,
- Atypical employment relationships and forms of contract,
- Intensification of work,
- Excessive demands,
- The “marketisation” of employment relations⁴.

It is important to stress that the construction sector is especially affected by more or less all of the above factors. For example, all forms of employment are used in the sector. Whether one is exposed to risks or not, independent of whether it concerns old or new risks, varies very much according to social status. “Figures from different European countries show that social inequalities of health are growing and working conditions are a big causative factor in this. Some types of cancer-related mortality, for example, show marked occupational group differentials, and reflect high

levels of exposure to chemical hazards at the workplace. There are also wide cardiovascular mortality gaps between occupational groups, much of which can be explained by both the workers' lack of autonomy in their work organisation and stress, but other factors – such as job insecurity, and working in firms that have made mass layoffs – are also contributory.”⁵

The new risks mainly result in “psycho-social” problems. The risks are harder to identify and are often a consequence of the employment relationship. They have longer latency periods and frequently lead to chronic and irreversible illnesses, such as cardiovascular diseases or musculoskeletal disorders. Reflecting on the current situation, today's view in occupational medicine circles is that the stress factors with which workers are confronted at the workplace have become more complex. This not only entails greater risks for the workers concerned, but also makes good health protection measures more difficult.

In recent years, European occupational health and safety provisions have not reacted adequately to this development or at least not adequately enough. However, we are witnessing a move away from conventional accident prevention towards broad health protection measures. This approach is designed to take into account as many aspects of work-related hazards as possible, including the so-called “soft” factors such as psychosocial stress, well-being, job satisfaction or work autonomy. It could be said that there is a move from conventional occupational safety via prevention and health promotion to a broader approach of job design, keeping the workers' interests in mind.

Tendency: Deregulation instead of simplification and better regulation

After the European Commission published a new Social Policy Agenda in early 2005, focussing on two priority areas i.e. full employment and equal opportunities, a new health

and safety at work strategy (COM(2007)62 final) followed in 2007, covering the period from 2007 to 2012. This document correctly describes the current reality, but has no ambitious targets and is rather dominated by the tendency towards deregulation.

On the one hand, the document provides accurate information about the gap between the legal framework for OSH policies and the reality, as well as realistic information on more general developments and aspects deteriorating working conditions, such as:

- The precarisation of employment
- Working conditions in SMEs
- High risk sectors
- Worse conditions for migrant workers
- Growing psycho-social stress
- Subcontracting and bogus self-employment.

The Commission's analysis also includes the statement that the respective application of EU-law is insufficient and inappropriate. Consequently, the Commission is very much focussing on measures for better implementation.

On the other hand, the document is written in the spirit of deregulation. Based on the repeated demands of SMEs (statistically, this means more or less all companies), simplification of the legislative framework was put at the top of the agenda. The existing regulation was considered as comprehensive and therefore no specific new legislative initiatives were proposed. This (non-)strategy was not backed by financial means and the only precise target was the aspiration to reduce accidents by 25%. The ETUC described this strategy as the weakest ever presented.

When elaborating and publishing the strategy, the Directorate General (DG) for Employment and Social Affairs was acting in a hostile environment⁶. There had been onslaughts on the standards of the European Working Time

Directive from 1992, the transition to more flexible labour markets (COM[2006]708 - GREEN PAPER Modernising labour law to meet the challenges of the 21st century) had begun, the deregulation of the existing legal framework dominated the discussion and an ever stronger liberalisation of the common market was the only guide for many actors. Against this background, the statement of the New strategy, to integrate OSH-thinking into other EU-policies, appears a bit naive. The general defensiveness of concepts for social regulation at EU level and the weak position of DG Employment resulted rather in a colonisation of OSH policies by other driving forces. In the main, DG internal market dominated the debate. New initiatives (for example the approach of a holistic MSD Directive) or revisions envisaged to existing Directives (Carcinogenic Directive – 2004/37) came regularly under pressure from (some specific) member states and other DGs.

Besides the ideologically-driven tendency towards deregulation, another development has been decisive for current and future policies in the area of OSH. Because of the complexity of the "acquis communautaire" and also because of political resistance (from different political orientations) to stronger harmonisation, soft regulation and the subsidiarity principle have found more favour. Why this aspect is of high importance for trade union strategies, will be discussed in the last chapter of this article

The High Level Group

The European Commission launched an action programme for the reduction of administrative burdens (COM[2007]23 final) in 2007. In August of that same year the first mandate for the High Level Group (HLG) of "independent stakeholders" was published (C[2007]4063). The task was to identify superfluous administrative burdens, to estimate their costs and to propose reduction measures, including the quantification of potential savings for 13 policy areas, including "Working environment/employment relations".

On 28th May 2009 the HLG adopted an opinion on the policy area working environment⁷. They proposed among other things:

- To allow derogation from the obligation to draft a safety and health plan for low risk-sites;
- To allow derogation from the obligation to draft a health and safety file for low-risk sites;
- To exempt very small firms with low risk activities from having to produce a written risk assessment;
- To make a distinction between risks levels for different sizes of firms, maintaining that the smaller the firm the lower the risk.

The tone of the report was quite polemic and reiterated again and again the mantra of the need for a more SME friendly administration. Actually, the call for lower standards for SMEs is a call for generally lower standards, since the European SME concept (for most of the economic sectors) covers some 98% of all companies. In line with some other players at EU-level, the HLG was strongly against so-called “gold plaiting”, i.e. the fact that some national governments lay down stronger provisions than those formulated in EU Directives. The HLG opinion clearly undermines the meaning of the Treaty and the basic meaning of the concept of minimum standards, which allows states to ensure better protection for workers. Giving today’s minimum standards the character of maximum standards would be a first step towards substantial deregulation.

Another criticism, shared by different stakeholders, is the fact that the savings based on proper health and safety action both at company and societal level has been underestimated. The ETUC (but also other stakeholders such as DG Employment) harshly criticised the methodology used by the HLG and especially how administrative burdens were calculated. “This was done using a Standard Cost Model (SCM) devised in the Netherlands (in 1994 – rog), taken up by various European countries and promoted by the OECD. The

model was never subjected to independent scientific validation.”⁸

Despite sharp criticism regarding the outcome of the HLG, the Commission took over the proposals regarding workplace safety in its action plan for 2009 (COM(2009)544 final). This document contains eight labour law measures, seven of which relate to OSH.

All in all, the whole action can be considered as an onslaught on European OSH standards under the guise of “better regulation”. The EFBWW, in its own position paper, wrote: “The proposed exemptions would in our view be a flagrant violation of the European Treaties considering that the protection of the citizen at work and the endeavour to attain a high standard of social security are regarded as binding objectives and minimum conditions.”⁹

The solid opposition against any deregulation of the EU legislative framework of health and safety at work is justified because “The approach taken by Community health and safety at work legislation is relatively uncomplicated, and implementing it is essential to protecting workers’ life and health. The management demands it places on employers and very much less so on public authorities are absolutely justified and proportionate to the objectives pursued.”¹⁰ Recently, this view was also confirmed by a report from the Bilbao Agency¹¹. The real problem is more to provide proper advice and support in all aspects with regard to the contents of OSH as well as an improved co-operation between the different stakeholders.

In this connection, it is worth mentioning that some employers have a more realistic view and do not follow the simplistic ideology of deregulation. In its joint position paper dated 8th June 2010, the European Social Partners for the construction sector concluded: “EFBWW and FIEC believe that it is the duty and the responsibility of each company, independently of its size, to take care about the

health and safety of its workers and therefore there should not be any distinction between the levels of risk for different sizes of firms: in the construction industry firms of different sizes are generally working together on the same construction sites and in cooperation with one another. Furthermore, the risk in small firms is by no means lower (as proven by official statistics). In addition, such a distinction would in practice create different categories of workers, putting at risk the fundamental right of every person to physical integrity.”¹² Another paragraph states: “The European Social Partners of the construction industry remind that the ‘Community strategy 2007 – 2012 on health and safety at work’ (COM[2007]62) is stressing that better regulation shall by no means lead to diminishing of the level of protection. In the light of the arguments developed here above, they therefore warn the Commission against a premature adoption of the recommendations put forward by the HLG regarding the ‘Framework’ Directive (89/391/EC) and the ‘Construction sites’ Directive (92/57/EC).”

Currently, the European Commission is starting to develop its next Community Strategy on OSH. It will cover the period from 2013 to 2020. Some documents from the European Commission, related to the EU 2020 strategy, already give a foretaste of the possible character of this strategy. It seems that Occupational Safety and Health is no longer an “independent” policy area, as it was in the founding years. But alliances are possible and for Trade Unions it becomes more and more important to improve the connectivity of their policies to other stakeholders and into other policy areas.

Points for shaping a trade union strategy

The European policy on occupational health and safety has facilitated progress. It has also contributed significantly to the development of industrial relations at European level. But today the whole area has become more controversial than in the past, and the current level of protection could be

eroded under the banner of "better regulation". This development coincides with a markedly greater need for health and safety/workplace design measures. Work-related stress factors are more complex and must be addressed by means of work design methods. People are also increasingly demanding "safe and healthy jobs". Some in the employers' camp also see that good working conditions bring productivity and competitive advantages in the medium term. But a growing number of their colleagues take the opposite view, whereby the profits from the most blatant exploitation flow into private hands while society is left to pick up the pieces -- and the bill -- for the damage done to workers' health. The fragmentation of employment relationships is one of the key problems in this respect. Drawing a line in the sand is a central pillar of trade union policy, essentially by laying down minimum requirements for all basic working conditions below which standards must not fall.

Clearly, the discussion being held under the motto "better regulation" is ostensibly taking place in the political arena and therefore calls for a capacity to intervene at this level of society. But the way in which the trade unions' capacity to intervene is organised encompasses a whole gamut of different areas. At the most general level, this could be said to be 'public opinion'. The form this takes is determined by the prospects of success in our positions and objectives. The extent to which we can influence research topics in turn influences, for example, what the research institutions contribute to the debate on controversial matters. Without having the space here to unravel the web of relevant social subsystems, we shall focus on four aspects of particular relevance to the formulation of trade union strategy.

From occupational health and safety to workplace design:
The most recent research on changing work-related stress factors sheds light on the interactions between a wide range of aspects concerning everyday working life. In

particular, the studies by the Dublin Foundation regularly demonstrate the increasing complexity of factors adversely affecting health in the workplace. The time is long past when the focus was on accident prevention and, therefore, on technical protective measures. The current consensus is that prevention must be designed according to a holistic approach. Work-related diseases are currently killing at least ten times as many people each year as accidents at work. Mental stresses in many countries already represent the most costly category for the sickness insurance funds. And the number of people with latent problems not yet showing up as recorded diseases is likely to be very much greater.

It is no longer enough to erect a safety guard or to fit a hood on a noisy machine (and of course this never was sufficient, but the aim here is to highlight the general tendencies). Today the chemical industry has to be controlled. Knowledge of sociology and industrial psychology is necessary in order to understand burnout and the scientific disciplines referred to must also be involved in finding approaches to a solution. We know that excessive or insufficient demands on workers in the long run lead in most cases to chronic diseases, so that prevention strategies must also take workplace design and the organisation of working time as well as vocational training into account. Whether or not a new technology turns out to be backbreaking for a worker, figuratively speaking, is determined at the design stage – we therefore need to be involved in the process of introducing new technologies. Accordingly, the design of work requires cooperation between very different fields of knowledge, between different social subsystems and their actors. This would pave the way for trade union positions which lend themselves to hooking up with other policy areas and for creating alliances to achieve good work design.

Ability to hook up with other policy areas

The key points for this aspect have already been outlined in the previous paragraph. What the trade unions need to do is

to make occupational health and safety an issue in areas other than health and safety alone. At European level, the most important areas concerned are labour market policy, new technologies and vocational training, but also, more generally, internal market policy and environmental policy. As well as these areas, general employment law as relating to democratic participation has a key role. The structural make-up of industrial relations, that is to say the ability to participate available to workers and their representatives, determines whether it is possible to choose topics for consideration as well as the effectiveness of prevention work in the firm.

But there is another point to be considered here as well. The announcement by the European Commission that occupational health and safety would also be taken into account in other policy areas has come to nothing. Instead, the Directorate-General for Employment and Social Affairs has been taken over by internal market ideologies. It is at the very least on the defensive now. The trade unions must endeavour to find a way around this defensive stance. This could be achieved by, first, pursuing an active alliance policy within the different political groups represented in the European Parliament and, secondly, by assigning the appropriate importance to workplace design in their own organisations. For the fact is that, even in the trade unions, the growing pressure for action and the differentiation of knowledge and work have led to different areas of responsibility often operating in isolation from one another.

Accepting the relevance of different levels of action

The skill and the task of the trade unions will in future consist of more closely linking together the very different levels of action involved in designing the workplace, and to a certain extent making them equal players. The phrase 'level of action' has two aspects in this respect.

In the first place, it is the level at which action is taken: the workplace – plant – company – sector and general campaign. In the case of the workplace, for various reasons direct worker participation can be practised here more easily today than in the past. That said, there must also be enforceable rights available to the workers for this purpose. In the example of the company, multinationals today are pursuing group-wide strategies for conditions of employment applying in some cases to tens of thousands of workers – often accompanied by agreements with the European Works Councils. For this purpose, trade unions need intervention routes and simply cannot close their eyes to these procedures.

The second aspect concerns the levels of legal action, or rather legal instruments. At national level and even more so at EU level, a wide array of legal instruments is currently available which are negotiated in very different fora. At the two ends of the spectrum we have here the law and the (individual or collective) agreement. These have evolved on the basis of different and still effective legal traditions¹³ in the European legal system. Among such disparate instruments today we find the law, social partner agreements (different types with differing scope), best practices, implementing regulations, plant agreements or simply plant practices. This juxtaposition has its reasons, as is immediately apparent. A law, which is plainly not suitable for applying in practice on the shop floor, will not win any prizes for effectiveness. And the workplace environment is too complex and dynamic for regulatory requirements to be met in full by general legislation. A good plant agreement has value, but can only remain a one-off and so becomes nothing more than a bad joke for all other groups of workers. Perhaps the correlation can be described thus: good plant agreements are the product of general enforceable rights. Effective enforceable rights stem from the sensitive perception of change and conflict and their solutions in an individual case which is then extended into general application. The skill of

the trade unions at this point will consist in linking together and utilising these different levels in practice, mobilising the actors at each level and also modifying their own structures in this regard.

Emancipation of the members

Earlier I spoke about the problem of differentiation of knowledge, areas of knowledge and social subsystems which represent this knowledge. This differentiation trend is equally true of activities, work processes and work content. There is a tendency for them to become ever more complex and flexible. Judging what is right in every specific situation calls for special know-how. Two problems arise concerning this development. On the one hand, this means that one size does not fit all. On the other hand, individual trade union secretaries, or even the trade union concerned as a whole, are becoming increasingly unable to represent all the knowledge needed to make the "right" decision and gain an overall view of the situation. This is already the case now as the trade unions, with their already inadequate resources, are a) simply not able to get a handle on (comprehend) the whole dynamic of the changing work environment and b) even with support from the political arena, the right solutions are not easy to conjure up.

Alongside the above-mentioned necessity to link up with and form alliances in other social subsystems, there is also a need to consider the question of the relationship between individual trade union members and the organisation. Designing the workplace presents itself as an area of action in which the right to participation and democracy in the plant could coincide with exerting a direct influence and participating in their own trade union. Individual trade union members could also represent their trade union in the plant in this area. And trade unions could actively harness the expertise of their members; trade union members with similar experiences or the same problems could directly communicate while bypassing the formal trade union

structure. However, the organisational facilities for this must also obviously be made available. And training must be provided. For even the expert knowledge of the individual members has its limits and requires the experience built up by the trade unions – not in a superintendent capacity but rather in the sense of a "learning organisation".

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1. See also ETUI 2009: The impact of safety representatives on occupational health; Report 107
 2. „On health outcomes, a consistently positive association has been found between the level of committee reps training and knowledge and perceived committee effectiveness with lower injury rates.” (ETUI 2009, p. 25)
 3. Dublin Foundation: Fourth European Working Conditions Survey; 2007
 4. See also the EFBWW action programme 2002 – 2012; p. 18 f.
 5. ETUI-RESH 2006: New scope for the Community health and safety at work strategy 2007 – 2012; p. 6
 6. See also Rolf Gehring: Die Europäische Arbeits- und Gesundheitsschutzpolitik: Lage und Perspektiven. In: Lothar Schröder / Hans-Jürgen Urban (Hrsg.): Gute Arbeit; 2010 (P. 87 -99)
 7. http://ec.europa.eu/enterprise/policies/better-regulation/files/hlg_opinion_working_environment_09052009_en.pdf
 8. ETUI 2010: better Regulation: a critical assessment; Report 113
 9. <http://www.efbww.org/pdfs/Position%20paper%20Stoiber%20gb-final.pdf>
 10. ETUI/RESH: New scope for the Community health and safety at work strategy 2007-2012; Discussion paper 2006; p. 5-6
 11. European Agency for Safety and Health at Work: European Survey of Enterprises on new and Emerging Risks – Managing safety and health at work; 2010
 12. <http://www.efbww.org/default.asp?Index=777&Language=EN>
 13. Grossi, Paolo: Das Recht in der Europäischen Geschichte; München 2010. Original: L'Europa del diritto; Rom - Bari 2007. He explains the difference between common law as it has developed after the fall of the Roman Empire and the Code Napoleon. The common law, that was dominating the occident till the 13th century was sensitive against the specific practical situation but therefore, also very particular. The Code Napoleon was appropriate for the arising Nations but general and with little sense for the particularities.

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Health and safety of migrant workers on European construction sites

This article reports on the project 'Occupational safety and health of migrant workers on European construction sites'. The project consists of several work-phases. The first step being a consultation procedure, initiated in summer 2010 by distributing a questionnaire. This article explains the goals, first results and further considerations of the project. But let us start with the main reasons for this project.

a. Increasing importance of health and safety for migrant workers

It is our impression that recently the use of migrant workers (workers who are working for a temporary period in other EU-countries than their home country - not being cross-border workers)¹, has increased on construction sites. Furthermore, we suppose that, based on the ongoing liberalisation of labour markets, this use will continue to increase. The Irish construction sector, for example, is marked by an increase from 5% (2004) to 35% (2008) of non-Irish workforce (Krings, 2009). In correlation with increased migration flows on European labour markets, the importance of all appropriate health and safety provisions at the workplaces for this part of the workforce is growing. Of course the situation very much depends on various parameters, such as the overall economic situation, structural changes in the sector or whether people stay for longer periods in the host country².

b. Language and socio-cultural differences

Requirements regarding the quality of workplaces for migrants need to be oriented towards their specific socio-economic situation. In this respect, the most important factors are that migrants speak another language than native workers and that they collected their living and working experiences against another socio-cultural

background, i.e. especially the specific health and safety conditions and laws in their home countries. These linguistic and cultural backgrounds as a specific problem for migrant workers are also dealt with in literature (Breulheid et al., Sippola et al., Shields and Price). As far as these peculiarities are concerned, the question has to be answered whether the migrant worker will meet a harmonised health and safety legislation in Europe or whether he/she has to be prepared to face different conditions and systems. How homogeneous are the European systems of occupational health and safety? At first glance, the European occupational health and safety systems seem highly homogeneous, based on two framework directives. Health and safety requirements related to machinery and equipment are regulated by the Machinery Directive (EC, 2006) – in accordance with the Treaties and rules for the internal market – and have a direct legal effect in the member states. Regarding the structure, the organisation and the proceedings for occupational health and safety at company level, the EU formulated minimum requirements for employers and worker representatives. These requirements are laid down in the Framework Directive for Occupational Health and Safety at the workplace (EC, 1989). The general conditions of this Directive have to be transposed into national law and member states can implement higher standards. Based on national peculiarities and traditions one will find a variety of solutions and different practices respectively. One of the main reasons why national implementations differ so much is that some member states strictly abide by the European minimum standards whereas others implemented (again different) higher levels of protection.

And what is more, the formulations used in the European health and safety directives are highly abstract and only define general aims, not giving concrete advice on how to meet these. When implementing EU Directives into national law, the member states formulated their rules taking into consideration their own national conditions. Therefore, legal

requirements regarding a company's health and safety organisation are (partly extremely) different from one member state to another. This also concerns, not in the least, worker participation. Appropriate information and training units should train cross-borders workers including migrants to cope with these legal and practical differences.

c. Discrimination

Besides the socio-cultural differences, the individual position on the labour market plays an important role for most of the migrant workers. Numerous migrant workers are employed in low skilled occupations and are therefore confronted with low wages, strenuous and unhealthy working conditions (Shields and Price, European Foundation, Hallsten et al., Hoffmann-Richter, Salminen et al., Antonietti et al., Döös et al., Redmond and Verhoeven). In English literature this kind of work is denoted as 'DDD-occupations' (dirty, dangerous and demanding, International Labour Conference). Eusebio Rial Gonzáles has evaluated the available literature for the European Agency for Safety and Health at Work³ and concludes:

'Working conditions of migrant workers are often more unfavourable than those of native workers: work is more often physically demanding and monotonous, working hours are longer, wages lower and migrant workers tend to do more of a shift work and their native workers.' (EU-OSH Literature-Study, P. 29) *It had to be taken into account that the higher level of accident risks of migrant workers results from the effect that they work on more riskful workplaces. Because results on occupational accidents are somewhat contradictory many studies suggest that migrants' jobs entail higher risks for accidents and that migrants are more often involved in occupational accidents. In those studies, where migrants and natives worked in the same jobs and at the same organisations, no differences in occupational accidents were found.'* (EU-OSH Literature-Study, *ibid.*).

Those conditions are obviously a result of the economic effect of price-reduction of the workforce. The use of the workforce is more cost effective not only if wages are reduced, but also if the necessary health and safety provisions are neglected, work is more intensive and done in paid or unpaid overtime. Workers are discriminated against if their workplaces are on average less safe and/or harder than comparable workplaces for local workers. According to daily experience these unfavourable conditions are found where migrant workers are employed on European constructions sites. In this regard, enforceable rights to protect migrant workers against disadvantage / discrimination play an important role. If states have ratified ILO convention no° 97 they are obliged to put migrant workers on an equal footing with domestic citizens and not to discriminate against them. ILO Convention 97 stipulates:

Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters...

Article 7 of the same Convention expressly regards occupational health and safety as one aspect of equal treatment:

1. *Each Member for which this Convention is in force undertakes that its employment service and other services connected with migration will co-operate in appropriate cases with the corresponding services of other Members.*
2. *Each Member for which this Convention is in force undertakes to ensure that the services rendered by its public employment service to migrants for employment are rendered free.*

ILO Convention 143 demands that states have to control whether discrimination takes place:

Each Member for which this Convention is in force shall systematically seek to determine whether there are

illegally employed migrant workers on its territory and whether there depart from, pass through or arrive in its territory any movements of migrants for employment in which the migrants are subjected during their journey, on arrival or during their period of residence and employment to conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations.

Both Conventions have only been ratified by a few EU member states⁴. Also at EU level discrimination is banned: 'persons resident in the territory of one of the Member States to whom this Regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State' (EEC 1408/71).

Our own experience as well as numerous scientific research results have proved a number of aspects of direct discrimination against migrant workers on European construction sites. Against this background it is the main goal of our project to discover whether this discrimination is of systematic nature and in which forms it takes place. This could be a first step to develop trade union strategies to counteract this evolution. To this end, we drafted a first questionnaire (pre-analysis) distributed to the EFBWW affiliated organisations.

Our questions to the EFBWW affiliated organisations

Based on our working hypothesis that migrant workers suffer from significant and structural disadvantage in terms of health and safety on construction sites, the questionnaire focuses on various aspects of the organisation of health and safety at enterprise and industry-wide level.

The wording of the specific questions was guided by the basic assumption that there is a growing requirement for appropriate occupational health and safety systems for the

different groups of migrant workers:

- Migrant workers can only work safely on European construction sites if the health and safety system of the host country takes their linguistic and socio-cultural differences as well as their experiences of work and health and safety into account.
- Disadvantages experienced by migrant workers compared to domestic workers must not be tolerated.

What action is required as a consequence now and in the future? A key concern of our project is to obtain the knowledge needed to answer this question and to make it available to the trade union bodies. The method we have opted in our preliminary study is to survey the EFBWW affiliated organisations by distributing a questionnaire; at a later stage in the project, discussions can be held in the EFBWW bodies. In the table below we have set out the questions broken down by subject area:

Subject area / interest to survey	Questions to the EFBWW affiliated organisations
I) Concerning migration flows	<ul style="list-style-type: none"> • <i>From which countries of origin do the migrant workers in your country come?</i>
II) Preparation for employing migrant workers at the place of work	<ul style="list-style-type: none"> • <i>Are migrant workers registered on entry by the authorities of your country?</i> • <i>Do migrant workers undergo an occupational health check-up on entering the country?</i> • <i>Do migrant workers receive instruction for healthy and safe working in their own language on entering the country?</i>
III) Employment at the place of work and working conditions	<ul style="list-style-type: none"> • <i>Do the occupational health and safety authorities in your country know of the existence of migrant workers on construction sites?</i> • <i>Are the occupational health and safety authorities in your country monitoring health and safety of migrant workers?</i> • <i>Do the occupational health and safety authorities in your country compile statistics for accidents at work involving migrant workers on your construction sites?</i>

<p>IV) Disadvantages / discrimination</p>	<ul style="list-style-type: none"> • <i>Are migrant workers more frequently than domestic workers victims of accidents on construction sites?</i> • <i>Do migrant workers receive the same protective equipment as domestic workers?</i> • <i>Do migrant workers receive the same information and instructions concerning health and safety as domestic workers?</i> • <i>Following an accident at work, do migrant workers receive all the necessary medical help?</i> • <i>Following an accident at work, do migrant workers have the same insurance cover as domestic workers?</i> • <i>Do migrant workers receive the same wage for the same work as domestic workers?</i>
<p>V) Further trade union policy discussion</p>	<ul style="list-style-type: none"> • <i>Should the European Union improve protection for migrant workers?</i>

Interim findings and summary

The questionnaire was sent out to a total of 53 affiliated organisations. The current situation can be illustrated by the following. First the returns and individual observations:

- 12 affiliated organisations from 11 EU member states participated in our survey, i.e. Belgium, Germany, Finland, France, Italy, Latvia, Netherlands, Switzerland, Slovakia, Spain (2 organisations), Czech Republic, Hungary, and the U.K.
- The picture of the flows of migrant workers reported (replies to our Question 6) is not uniform. A large proportion of the migrant workers employed on domestic construction sites come from other EU member states. These figures include the short-distance flow of cross-border commuters. The countries of origin reported in this connection are Poland, Estonia, Latvia, Lithuania, Spain, Portugal, Romania, Bulgaria, Hungary, Germany, Austria and Slovakia. But third countries known for their extremely low wages are also mentioned. Links that still exist with former colonial dependencies are also discernible here to some extent. These include Brazil, the

sub-Saharan (Mali, the Congo, etc.), Russia, White Russia, Moldavia, India, and China.

- As to the question whether migrant workers receive the same wage for the same work, only France and Switzerland replied with 'Yes'. (Question 4.6). The organisations from the other countries either replied with 'No' (Belgium, Germany, Finland, Spain) or with 'partly yes, partly no' (the Netherlands, Czech Republic, Hungary and the U.K.). These replies would suggest that migrant workers are to an (large?) extent used as cheap labour. As the study proceeds it will be clarified whether this group of workers also has to work in riskier conditions.
- The affiliated organisations also report that it is not uncommon for the countries of origin of the migrant workers found on their construction sites to change from year to year. The reasons for this change may be the reaction of migrant workers to changes in supply and demand on the labour markets concerned as well as to the income situation. The combination of purchasing power, wages and non-wage costs already gives rise to knock-on effects for the flows of migrant workers (Swiss Federal Office). If one of these factors - such as currency exchange-rates - changes, then sometimes the host country chosen by migrant workers also changes very rapidly. The differing wage situation in the European construction sector with reference to this phenomenon has been outlined in a recent study by Ernst-Ludwig Laux (Laux, 2010).
- The majority of the organisations were overwhelmingly critical in their remarks about the state of working conditions for migrant workers (replies to our Question 4). According to them, in most countries migrant workers are more frequently victims of accidents on construction sites than domestic workers. (Exceptions: Latvia, Spain (?), Czech Republic).
- At any rate the provision of the necessary protective equipment is frequently reported as being satisfactory. Support provided by the national or local prevention

bodies is, by contrast, clearly deficient in most cases (replies to Question 1 and Question 4,3). Upon entering the host country, migrant workers are not or rarely notified to the (occupational health and safety) authorities and do not receive any medical check-ups. Not one affiliated organisation reported that migrant workers, on entering the country, receive instructions on working safely and healthily in their own language.

- Our affiliated organisations are also critical about the interest shown by domestic occupational health and safety authorities in taking measures to combat the high health and safety risks experienced by migrant workers. Only in a very few countries it was reported that the national authorities compile statistics on accidents at work suffered by migrant workers (Spain, Hungary, U.K.). In the case of the U.K. there a strong trade union initiative was launched in the wake of serious accidents involving migrant workers, leading to the introduction of accident statistics specifically concerning migrant workers (Donaghy; Donaghy and Mitchel; Eisenbach). According to the overwhelming majority of all respondents, following an occupational accident migrant workers are provided with the necessary medical assistance (France, Latvia, the U.K., Switzerland, Spain and the Czech Republic). However, the negative replies from Belgium, Germany and Finland to the question *'do migrant workers receive all the necessary medical help?'* ('No' they do not) call for further in-depth investigation. The replies from the organisations in the Netherlands and Hungary ('partly yes, partly no') also warrant closer study.
- At a later stage in our work, we clearly also need to pay special attention to the insurance cover provided against accidents at work. Whereas the organisations from a total of four countries referred to insurance for migrant workers (France, Latvia, Spain, Czech Republic), organisations from the same number of countries replied with a 'No' (Belgium, Germany, Finland, Spain). These replies should also be considered in more depth at a later

stage of our project. It needs to be seen whether the system of bogus self-employment is the reason why migrant workers do not have adequate insurance cover.

While it is not possible to make any conclusive judgment concerning the data obtained or the consequent need for trade union action, the overall picture does already highlight the, in some respects, serious health and safety problems as well as the considerable need for action by the national occupational health authorities, national legislators as well as the European Community. Moreover, the need for further studies was also apparent. The organisations taking part in this survey called for more specific measures to promote health and safety of migrant workers (replies to Question 5).

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1. The European Agency for Safety and Health at Work: 'Migrant workers are those EU-citizens who are staying in any other EU-country than their home country.' 'Against this, those citizens who are coming from a third country, are immigrants.' (EU-OSH literature survey)
 2. According to Krings: In spite of incidents of underpayment, immigration appeared as a 'win-win' situation for both employers and migrants during the boom years. As the former were keen to fill skill and labour shortages, the latter found employment with relative ease.' (P. 26 – 27)
 3. The available scientific literature on safety and health at work is not comprehensive and not without gaps. According to the documentation of the European Agency for Safety and Health at Work this scientific field is showing a heterogeneous picture. The number of scientific research projects is remarkably high. One could say that each time a specific aspect is examined, but summarising descriptions are very rare. A comprehensive description of the occupational health and safety conditions on European construction sites does not exist. In the existing literature we only found bits and pieces, respectively specific aspects, about the (current) situation of migrant workers at European construction sites. Against this background it is currently not possible to draw final conclusions about the situation.
 4. ILO Convention 97 is ratified by: [Albania](#), [Algeria](#), [Armenia](#), [Bahamas](#), [Barbados](#), [Belgium](#), [Belize](#), [Bosnia and Herzegovina](#), [Brazil](#), [Burkina Faso](#), [Cameroon](#), [Cuba](#), [Cyprus](#), [Dominica](#), [Ecuador](#), [France](#), [Germany](#), [Grenada](#), [Guatemala](#), [Guyana](#), [Israel](#), [Italy](#), [Jamaica](#), [Kenya](#), [Kyrgyzstan](#), [The former Yugoslav Republic of Macedonia](#), [Madagascar](#), [Malawi](#), [Malaysia Sabah](#), [Mauritius](#), [Republic of Moldova](#), [Montenegro](#), [Netherlands](#), [New Zealand](#), [Nigeria](#), [Norway](#), [Philippines](#), [Portugal](#), [Saint Lucia](#), [Serbia](#), [Slovenia](#), [Spain](#), [Tajikistan](#), [Tanzania Zanzibar](#), [Trinidad and Tobago](#), [United Kingdom](#), [Uruguay](#), [Bolivarian Republic of Venezuela](#), [Zambia](#). ILO Convention 143 is ratified by: Country [Albania](#), [Armenia](#), [Benin](#), [Bosnia and Herzegovina](#), [Burkina Faso](#), [Cameroon](#), [Cyprus](#), [Guinea](#), [Italy](#), [Kenya](#), [The former Yugoslav Republic of Macedonia](#), [Montenegro](#), [Norway](#), [Philippines](#), [Portugal](#), [San Marino](#), [Serbia](#), [Slovenia](#), [Sweden](#), [Tajikistan](#), [Togo](#), [Uganda](#), [Bolivarian Republic of Venezuela](#). (International Labour Standards Department).

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Nanotechnology in construction: new products and occupational exposure

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Nanotechnology: the expectation is high, also for applications in the construction industry. Nanotechnology could provide the opportunity to innovate and improve existing products and develop new ones that are better and, at the same time, more sustainable and environmental friendly than the currently available products by, for example, doping traditional materials like concrete or coatings with engineered nanoparticles¹ to add specific, highly desired characteristics.

Within the European Social Dialogue, FIEC (European Construction Industry Federation) and the EFBWW (European Federation of Building and Wood Workers) investigated the current awareness amongst stakeholders on the availability of nanoproducts for the construction industry and made an overview of actual nanoproducts used on-site. This resulted in an extensive report, *Nanotechnology in the European Construction Industry, state-of-the-art 2009*, describing the availability, use and health and safety aspects of nanoproducts.

Nanotechnology is one of the newest technologies used in product innovation. It simply means the ability to observe, monitor and influence materials (and their behaviour) down to the nanometer (nm) detail (e.g. a size range about 10.000x smaller than the thickness of a human hair). This involves advanced imaging techniques to study and improve material behaviour, but also the design and production of very fine powders, liquids or solids containing particles of a size between 1 and 100nm, so-called nanoparticles. Companies make use of nanoparticles to give their products new or improved properties. Examples of these are transparent infrared reflective window coatings to support a better indoor climate management, ultra strong concrete material to allow for thinner and lighter constructs and self-cleaning coatings that also support the reduction of organic air pollution.

IVAM UvA BV of the University of Amsterdam identified nearly a hundred different nanoproducts (products produced with nanotechnology) used on construction sites in Europe in the year 2009. Expert interviews with industry and a survey among employers and employees lead to the conclusion that the product group coatings dominates the nano market with 68%, including also top-coatings for road pavement or concrete products (see table 1 for a summary of product types). A wide variety of decorative paints, high performance construction coatings and coatings with specific nano-modified properties were identified: anti-bacterial coatings, photo-catalytic *self cleaning* coatings, UV- and IR-reflecting or absorbing coatings, fire retardant coatings, scratch resistant coatings and transparent coatings for glass or wood. Concrete and cement products, photocatalytic cement and UHPC concrete, and insulation materials (including nanoholes, not –particles) made up for another 12% and 7% of the identified products.

The nanoproducts found at the market all use quite similar nanoparticles: nanosized titanium dioxide (TiO₂), zinc oxide (ZnO), aluminium oxide, silver (Ag) or silica fume (SiO₂) were

the engineered nanoparticles mostly seen. No evidence was found for the use of carbon nanotubes (CNT) despite intensive ongoing research and the high potential claimed of positively influencing the specific performance of products, for example high electric conductivity and crack resistance.

However, even though a hundred nanoproducts is quite a number, this is only a small fraction of all nanoproducts for the construction industry described in (scientific) journals and offered on the internet. The reality today is that only a limited amount of nanoproducts make it to the construction site simply because the techniques and nano-ingredients are still too expensive to produce products that can compete with those already existing. Interviewees state that high costs and uncertainties about long-term technical material performance are the most important barriers for large-scale acceptance of nanoproducts. According to some large players in the field: *in this respect construction industry falls about 10 years behind industry at large, because of the costs involved and because of the technical and safety standards required for the materials used.*

Nevertheless, this situation will change and it is expected that nanoproducts will become more abundant in the years to come. Transparent communication through the user-chain about the nano-specific product characteristic and about their nano-related health and safety aspects will be an essential element for success - if in the first place only to raise awareness of their availability. At present, the information presented to downstream users is scarce and communication is largely failing. About 70% of the employers and 80% of the employees are neither aware of the availability nor of the use of nanoproducts for the construction industry. This ignorance is illustrated by various comments by worker representatives and employers in reaction to the survey by FIEC and the EFBWW, stating:

- I have spoken to a number of companies regarding this subject and no one is aware of any materials containing these products. I have also spoken to a number of people

from the Health and Safety Executive and they are also not aware of the existence of these products (UK)

- we tried to get information from several construction sub sectors, but until today we didn't receive useful indications. The problem (and we are not very surprised) is still unknown (CH)

- the subject is simply too abstract and too unfamiliar to respond to the survey at all (NL)

Those that were aware and worked with nanoproducts were only scarcely informed on their product-details, especially with respect to the nano-content and the possible health and safety issues involved. A company advising on health and safety in the plumbing and electricity industry in Denmark, indicated that they '*...have no information on any nanoproduct used in these sectors but they are very certain that some of the products they encounter are in fact nanoproducts*'. 37% of the respondents of the survey stated that general hazard information was provided to them: via the Material Safety Data Sheet (MSDS), the primary source of hazard information, or the product label, but that very limited, if any, information was supplied on the nano-additive in the product.

This is a worrying situation, even though, technically speaking, product manufacturers are not obliged to include any nano-specific details on the Material Safety Data Sheet or technical data sheets. It is particularly worrying in the light of the current uncertainty about the health and safety aspects. Interviewees identify this uncertainty as the third most important barrier for nanoproducts to be overcome prior to market application. Persistent, non-biodegradable and non water-soluble engineered nanoparticles are an important topic for discussion today due to their possibility to evoke unexpected and yet uncertain adverse health effects upon exposure. Since these nanoparticles can be ingredients of nanoproducts there is a consequent possibility that adverse health effects might occur from

working with some of the nanoproducts offered for the construction industry as well. Exactly when, how, under which conditions and with what health effects is yet largely unknown and end-users are said to be reluctant to use them, if not postpone using them altogether until more is known about their implications on human health and the environment. The reality is though, that a number of nanoproducts is in fact highly desirable for use. How should one therefore deal with this uncertainty?

Based on what is known today, many different tools have been published to help design a safe nano-workplace, including the use of control banding tools. The large ignorance about possible risks and the lack of essential health & safety information of the downstream user might be argued to call for a precautionary approach in risk assessment and risk management. Building blocks for a precautionary approach were adopted by the construction employers' organization and the trade unions. The first building block states *no data à no exposure* as a general principle for situations with insufficient health risk knowledge on nanoproducts. However, since a zero-exposure is an illusion a reference level is required for comparison. The question, which arises in this context, is *what is an acceptable precautionary exposure level?* As for engineered nanoparticles HBR-OELs (Health-Based Recommended Occupational Exposure Limit, this is the maximum permissible concentration of a given gas, vapour, fibre or dust in the air at the workplace) or DNELs (Derived No-Effect Level, the level above which humans should not be exposed) are not available, temporarily precautionary reference values are being developed in the Netherlands, called Nano Reference Values (NRV). These values are defined as warning levels that refer to a certain engineered nanoparticle-concentration in the workplace atmosphere, corrected for the background concentration of nanoparticles. It is intended to be a warning level to trigger a thorough assessment of nanoparticles at the workplace. When exceeding this level the source of the

nanoparticle emission(s) should be thoroughly identified and possibilities to reduce the emission of nanoparticles must be assessed. The values are based on the benchmark levels as proposed by IFA (2009) and quantified as 8-hr TWA (time weighted average).

To get a better feeling for possible exposure risks on the construction site when working with nanoproducts, IVAM conducted several exposure measurements at different interior and exterior workplaces. Among these were the spraying of a window coating, preparing a cement mortar, preparing a coating, drilling in UHPC concrete and abrading various coated dry surfaces. Results show elevated (though not alarming when compared to the NRVs proposed) exposures to nano-sized aerosols (spraying) and nano-sized dust particles (mixing, drilling and abrading) from the nanoproduct and nano-emissions from the electric machining equipment.

From what is known, direct exposure to the engineered nanoparticles of the nanoproducts from working or machining these products is unlikely. This is different when one handles dry nanopowders or dusty nanomaterials, for example while preparing a cement mortar or formulating a coating. In those cases, one does expect exposure to the "pure" engineered nanoparticles. In all other cases exposure to a mix of coarse dust containing nanoparticles is more likely. This mix may as well contain engine-generated nanoparticles. Exposure to engineered nanoparticles ingredients, however, will occur from inhaling these products' dust or aerosols.

It is encouraging that the 8h-TWA workers' exposures observed for the activities investigated by IVAM were low compared to the Nano Reference Values proposed and did not exceed this warning level. This suggests that for these specific workplaces no extra measures would have been necessary additional to the measures that were already required based

on the risk assessment of the other (bulk and molecular) materials used. A similar conclusion might hold for other construction sites especially when they are in open air and when there is enough ventilation. However, the same results do also indicate that short-term peak exposures characterize the workplaces investigated, suggesting that a 15min-TWA is more appropriate to assess the necessity for additional measures. The measured exposures were of the same order of magnitude as the NRV on a 15min-TWA basis. This would argue for an assessment on nanoparticles at the workplace as in fact advisable for some worksites, especially where the work involves the machining or spraying of nanoproducts or handling dusty nanomaterials. Other typical activities with possible high risks of exposure to nanoparticles are the cleaning or maintenance of materials and the equipment used on nanoproducts. It is during this type of work that one should be extra alert of any possible exposure to nanoparticles and should follow a precautionary approach in assessing and managing the risks involved in order to fully enjoy the pleasures that nanotechnology can bring.

-
1. Industrially designed and produced balls, rods/tubes or plates with respectively 3, 2 or 1 dimensions in the nanodomain; between 1-100nm

Table 1: Nanomaterials actually applied at European construction sites in 2009

Material	Functionality introduced	Nanoparticle	Type of introduction
Concrete	Self-cleaning, photo-catalytic Increased durability	TiO ₂	Surface layer
	High strength and corrosion reduction	SiO ₂ (silica fume)	Mixed in matrix, filler
Insulation material	Improved insulation against heat, cold and fire	Nanoporous material	Aerogel, often SiO ₂ or carbon based
Coatings #	Improved surface penetration, coverage Reduced layer thickness		Nano-sized dispersions
	Transparent coatings		Nano-sized ingredients
	Photo-catalytic, self-cleaning, hydro phobic	TiO ₂ , ZnO, SiO ₂	Additive
	Anti-bacterial	TiO ₂ , ZnO and Ag	Additive
	Scratch resistance	SiO ₂ , Aluminium oxide	Additive
	Easy-to-clean surfaces	Carbon-fluoride polymers, Ag, SiO ₂	Additive
	Fire retarding	TiO ₂ , SiO ₂ and nano-clays	Additive
	UV-protection	TiO ₂ , ZnO, CeO ₂ ,	Additive
	Decolourisation of wood by tannin	Nano-clays	Additive
Glass	IR-reflection	Tungsten oxide	Coating
	Anti visible light refrection	Nano-porous surface SiO ₂	Surface structure Coating
	Fire or heat protection	Metal oxides SiO ₂	Coating Transparent silica gel inter layer between glass panels
Infrastructure	Photo-catalytic air pollution reduction	TiO ₂	Coating on road pavement, sound barriers and tunnels

Coatings with similar functionalities are developed for many different material surfaces like wood, plastic, metal, concrete, glass, ceramics and natural stone.

Prevention and Standardisation; the Added Value of Worker Participation

Special meetings of top levels of economic and political integration among the various Member States of the European Union have been held repeatedly over the past few years. The creation of the Single Market for the free circulation of goods satisfying the highest possible safety standards was a cornerstone of European integration, representing the culmination of a long process. Since that time, cooperation between the Member States has also been promoted within the framework of the same process, for the purpose of guaranteeing certain minimum health and safety social protection rights for citizens generally, and workers in particular, in all Member States.

The European system of worker health and safety risk prevention and improvement on the worksite is based upon application of the so-called "Social Directives" (89/391 EEC and subsequent or related directives,) as well as the "Product Directives" (such as, for example, the "Machinery Directives" - 89/392/EEC...2006/42/EC), intended to ensure the free circulation of products, machinery and equipment within the European Community while ensuring high standards of intrinsic safety. For the purpose of permitting machine constructors, including very small undertakings, to comply with the regulations while facilitating the application of the principles of safety contained in the Directives, the European Commission issued a mandate to external bodies, such as the CEN and CENELEC, for the definition of reference standards. The technical regulations are structured as follows:

- Type-A standards relate to general indications applicable to all products;
- Type-B or transversal standards identify methods and systems of general risk prevention (noise, vibrations, microclimate, etc.) potentially applicable to a wide range of very different products;

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- Type-C standards relate to protection characteristics and devices to be adopted for specific machines or families of similar machines.

Products designed in conformity with Type-C standards may nevertheless benefit from a presumption of conformity to the corresponding essential requirements dictated by the “parent” Directive, and may therefore access to simplified forms of the complex procedure of machine certification in preparation for their placement on the market. Periodic revision of each standard is required every 5 years, for the purpose of ensuring the updating necessary for adaptation to the advance of technology.

The standards are defined in technical committees organised into working parties, in which the parties make their own expert contributions on behalf of the various national technical bodies. In addition to the essential contributions from machine builders measures are taken to ensure the standardisation process, the participation of end users (consumers, workers, etc.). Nevertheless, despite objective improvements in levels of safety, many accidents within the European Union are still caused by the use of machinery, including machinery built in compliance with criteria defined according to current technical standards. Type-C technical standards relating to the more dangerous types of machinery do not always give adequate consideration to the essential worker health and safety requirements contained in the European “Product” and “Social” directives.

The current systems of market supervision entrusted to the individual Member States do not, in themselves, appear capable of supplying the information required for a proper understanding of the real effects - both past and present - produced by the standards, in terms of worker health and safety. To ensure that the periodic mandatory revision of all Type-C standards represents a real improvement in terms of levels of worker protection requires the gathering of specific, detailed information on all possible events occurring during

the actual use of each type of machinery bearing the EC logo.

This is all the more important in view of the widespread existence, in all Member States of the European Union, of medium-, small-sized and micro enterprises with limited human, financial and cognitive resources, in which market competition in compliance with social worker protection is more difficult; here, more than elsewhere, there is a need for improved levels of intrinsic safety of machinery already produced or in circulation.

The European Trade Union Confederation - via its own structure, the ETUI (European Trade Union Institute) - has long given consideration to the problems involved in the correct representation of worker interests in the standardisation process, implementing and supporting research studies and campaigns intended to gather the experiences of machine users for informational purposes and for the compilation of suggestions related to the improvement of technical standards for presentation before the various CEN committees in their periodic revision of the same standards, or with a view to application for amendments to the same.

In this context, the ETUI REHS in 1997 commissioned a research study for the creation of an optimum method of compiling the experiences of actual machine users - in this specific case, the users of secondary wood working machinery. Workers and employer-users of the machinery in question represent, in effect, the final component of the market, able to evaluate "correct machine design" from the point of view of usability, productivity, and not last, workplace safety and hygiene. It is obvious that employers purchasing new machinery are interested in improved standards, since it is advantageous to acquire safer products at all times.

The essential elements of definition of the so-called “Feedback Method”, described in detail in the volume “Ergonomics and Technical Safety Standards: User Contributions. Machine Safety for Wood Working”, were drawn up and tested over the course of safety studies and campaigns financed by the European Coal and Steel Commission in the 1980s. They were published by Franco Angeli – Turin in 2001. More precisely, the objective of the study commissioned by the ETUI REHS was to identify, and, in particular, field-test, methods permitting the compilation, in reasonable time, with limited resources, but using validated and verifiable instruments, of the experience and knowledge of users, workers and/or company technicians or employers/artisans, ergonomists, and experts, related to the safety of their machinery and their actual working methods. Studies on a European level were planned later as a result of the positive results obtained by the application of the method to woodworking machines and routers, as well as circular saws.

The “Feedback Method” was subsequently used (and is now also being successfully applied) in other European countries, in the compilation of user experiences relating to other machinery, particularly fork-lift trucks and angle sanders, used in the construction and iron and steel industries, as well as in stone working, and, later, of telehandlers and combined harvesters. The “Feedback Method” consists of the working phases summarily described in Fig. 1:

1) Gathering of documentation on the machine (machine file)

The researchers and safety experts gather the technical documentation referred to in the study.

The objective of this preliminary phase is to obtain information on the machine, its design and construction limitations, permitted and prohibited uses, and possible residual risks. Information on the dissemination of the machine in a variety of production environments of the territory is also useful with reference to the various models

and/or set-ups in circulation. The final step consists of collating the “Machine File” containing the information required by researchers to acquire sufficient knowledge of all problems related to safety in particular.

2) Identification of the undertakings concerned

At this point, the researchers and safety experts are considered to possess the information required for the exact identification of the productive territory and districts in which to carry on the research. In the selection of undertakings in which to conduct on-the-spot inspections and the recruitment of experts on the use of the machine, consultation with Trade Union Organisations and Employers’ Associations is useful, if not indispensable.

3) On-the-spot worksite inspections

On-the-spot worksite inspections permit the gathering of information providing technicians with a better understanding of the methods and context of machine use, for study by the working party, in a reconstruction, together with users, of normal worksite activities.

4) The working parties

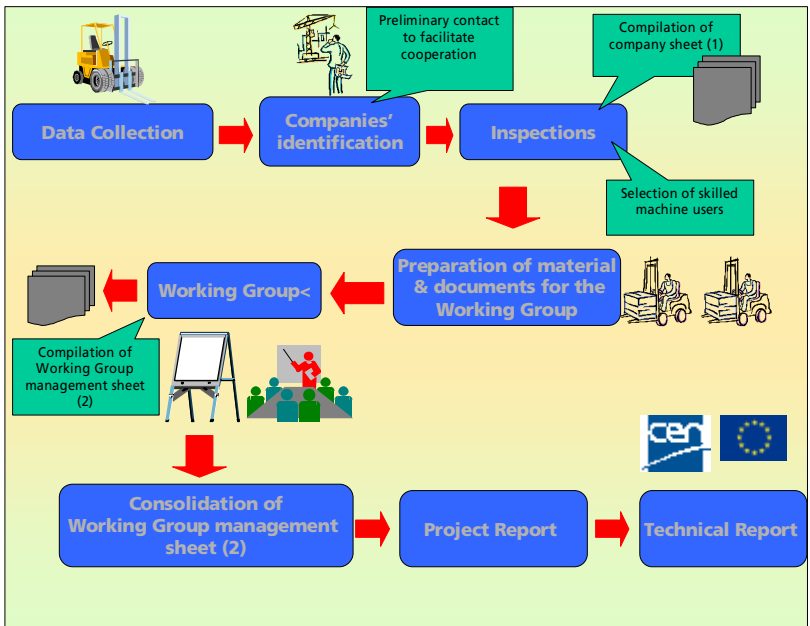
Apart from researchers, working parties generally consist of a minimum of 5-9 machine users, recruited from various companies with the possible participation of workers, artisans, entrepreneurs and employers who are nevertheless experts in machine use (actually using them in normal productive activities). The number of participants in every group must be limited to encourage dialogue and comparison, permitting all persons to contribute to the working party in an active way.

The participants should come from a variety of working environments to minimise, insofar as possible, the inevitable specificities related to individual companies, while providing the most highly detailed possible reconstruction of working environment, both shared and specific, but of general value, based on a comparison of various contexts.

Based on a comparison of the participant contributions according to the schema reproduced in Fig. 2, the experts then proceed with a reconstruction of the working phases, discussing and describing the following aspects of each task:

- the individual operations and methods of carrying out for execution of the task;
- the skills required to perform competent work;
- situations of risk or discomfort arising during the performance of the various operations and any other critical aspects of the work;
- suggestions related to preventive safety and/or other possible safety procedures to be adopted to avoid accidents.

FIG. 1 – “Feedback Method” Flow Chart





The final report thus forms the essence of the entire study, representing a technical summary of the contributions of all

users, in both on-the-spot inspections and discussions held within the context of the working party. The report represents a summary of all suggestions, and is intended for all persons concerned, for various reasons, with problems relating to machine safety, such as regulators, designers, employers, worker representatives, control bodies, etc.

Another major element of the method is the working party, involving the participation of expert users, highlighting the problems arising in each working task based on a reconstruction of actual working situations involving the machine, together with related suggestions for preventive safety and possible recommendations for improvement. For the report containing the recommendations of the working party, the sheet reproduced in Fig. 2) should be used for every working phase.

Fig. 2: Sheet used in the working party with expert users.

Workgroups management sheet

Work phase: _____

Order of tasks	Procedure	Competence	Hazards/Risks	Suggestions for prevention
	Description of the procedure for carrying out the tasks listed with information on the equipment used, safety devices and personal protective equipment (PPE) .	Information about the competence required for optimum execution of task (use of equipment, materials, procedure etc. and information about the instruction handbook).	Factors that represent a hazard as regards the machinery itself, equipment, safety devices, surrounding conditions (e.g. microclimate, dust, lighting or layout), fatigue and organisational factors (frequency, shifts etc.).	Notes on how to prevent the hazards identified and information on training, the instruction handbook, safety devices, procedure, PPE , etc.

Experience acquired in relation to the various machines, based on a reconstruction of the working methods involved

Subject articles

in the various working phases, is useful in highlighting the various problems correlated to machine use and suggestions based on actual worker experiences.

Fig 3 is a reproduction of an actual woodworking machine-cleaning chart.

Fig. 3 – Summary report of the circular saw user working party on machine cleaning activities

	Operating Procedure	Knowledge Base	Risk Factors	Suggestion for Injury Prevention
Maintenance and cleaning Regular cleaning of all working surfaces and surrounding area	... Familiarity with the best cleaning systems Risk of undue exposure to minute projections of materials (use of compressed air for cleaning) and excessive dust	Equip the machine with aspiration equipment, designed so as to be able to reach all points susceptible to dust accumulation. Provide instructions on the methods of checking the efficiency and effectiveness of the aspiration equipment. Prohibit the use of compressed air for cleaning

For this working phase, the suggestions compiled using the "Feedback Method" are as follows:

Suggestion	Intended for:
<ul style="list-style-type: none"> • Type-C standards should provide for the design of suitable systems for cleaning and the aspiration of accumulated dusts. • Instructions should be provided on the methods of checking the efficiency and effectiveness of the aspiration system. • All machinery should be equipped with warning systems relating to the possible inadequacy of any aspiration system installed. 	Standards, designers and constructors

<ul style="list-style-type: none"> • All machinery should be equipped with the aspiration systems recommended by the manufacturer. • Te effectiveness of all aspiration systems should be ensured through regular maintenance. • Workers should be informed/trained on correct procedures to be adopted in machine use and cleaning. 	<p>Employers and users</p>
<ul style="list-style-type: none"> • All workers and users should follow the procedures and use all recommended cleaning methods. • Workers and users should keep their employers informed of any possible damage or malfunction (for example, accumulation of dust or dirty parts). 	<p>Workers</p>

As may easily be seen, the “Feedback Method” enables the compilation of sufficiently detailed information and suggestions for both informational use and training in user machine safety, as well as for the preparation of safety procedures and improvements in new machine design and the identification of any aspects of machine construction standards in need of improvement with reference to the machines under examination. The use of an adequate method involving worker participation enables the compilation and study of the various problems involved in machine use and the identification of any improvements required to reduce risks and improve working discomfort. The body of information gathered within the working party may be extremely useful to worker representatives participating in the standardisation of individual machines, providing convincing arguments for discussion within the various technical committees related to real problems present in the working environment and in correct work performance. At the same time, the information may be utilised within the individual workplaces to improve worker awareness of risks and the procedures to be utilised to contain these risks. Worker participation therefore becomes the real and effective element of improvement of the workplace health and safety conditions.

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Emerging risks at work in the EU – an expert forecast

As our society evolves under the influence of new technology and shifting economic and social conditions, so our workplaces are constantly changing. These new situations bring with them new risks and challenges for workers and employers. The European Risk Observatory of the European Agency for Safety and Health at Work (EU-OSHA) took a first step to anticipate these new challenges by producing four expert forecasts of emerging chemical, biological, physical and psychosocial risks related to occupational safety and health (OSH). Together, the four reports collate the work of over 180 experts throughout Europe.

Emerging chemical risks

It is estimated that about 74,000 work-related deaths may be linked to hazardous substances at work each year in the EU - about 10 times more than workplace accidents. In EU-OSHA's forecast, the expert put **nanoparticles** at the top of the list of emerging risks. Nanoparticles are already used in many products such as cosmetics, textile and, in construction, concrete products, coatings, insulation or flame retardant materials. They can have very different properties from the same materials at the macro scale, mainly due to their small size. There is evidence that they can enter the human body and reach, for example, the lungs, liver, nervous system and even brain, and that they can cause e.g. oxidative stress of cells, modification of protein structures, cardiopulmonary effects and possibly cancers. Producers currently provide very little or no information on the presence of nanomaterials in their products, which makes workplace exposure prevention difficult further down the user chain (when using, processing or recycling such products). The forecast also mentioned **non-engineered ultrafine particles, dust and aerosols**, in particular: crystalline silica (3rd most common workplace carcinogen after solar radiation and environmental tobacco

smoke); diesel exhaust (4th most common carcinogen); asbestos - although its use is banned in the EU, about 600,000 construction workers are still exposed each year¹; wood dusts, also one of the main carcinogens in Europe; and some man-made mineral fibres (MMMFs).

A second group of substances highlighted are **carcinogenic, mutagenic and reprotoxic substances** - substances that can damage reproductive health, such as some organic solvents (e.g. toluene), heavy metals (lead, mercury), phthalates (used e.g. in flexible PVC, adhesives, paints). No fewer than 32 million people in the EU are exposed to carcinogens at levels considered unsafe². With 8.4% of all cancer deaths attributable to work³, cancer belongs to the main occupational causes of death in the EU. As to reprotoxicants, the level of awareness is still very scarce. Reprotoxicants can cause a variety of effects on the reproductive health in *both men and women*, sometimes with long latency periods or first appearing in their offspring, making it difficult to assess and correlate the health effects to the occupational exposures. Various national studies indicate that a significant percentage of workers are exposed to reprotoxicants, in particular in the chemical industry, construction, cleaning, waste treatment and health care⁴.

A third group of emerging risks is **the increasing use of allergenic and sensitising substances** such as epoxy resins, isocyanates and detergents. The skin is the largest organ of the body exposed to chemical agents. Skin disorders are the 2nd most common occupational diseases in the EU, and chemicals are responsible for 80-90% of these cases. In construction, chromate, epoxy resins and cobalt are the main allergens.

Last but not least, there is a growing concern for **combined exposures** to several dangerous substances – which is the rule rather than exception in workplaces - as well as to other types of risks accentuating the chemical risk, for example

exposure to ototoxic substances⁵ and noise; chemicals and heavy physical work which increases the substance intake; and trends of the labour market such as the increasing number of workers in outsourced jobs, in small and medium-sized enterprises (SMEs) and migrant workers, as these groups are generally less well-protected against (chemical) risks.

Emerging biological risks

Despite the obligation to assess biological risks⁶, knowledge of those risks is still relatively scant and the risks are **not yet adequately managed in the workplace** - especially in SMEs, and in jobs where their presence is an unintentional consequence of the work, for instance in waste management. Biological risks may be very harmful for EU workers in literally any sector. **Airborne moulds**, for example, are ubiquitous indoors, and even more in wet buildings or where air-conditioning systems are poorly maintained. Moulds can lead for example to respiratory diseases, asthma, flu-like symptoms, allergies, and contribute to the sick building syndrome.

Two further major concerns - the OSH risks linked to **pandemics and to drug-resistant organisms** in the workplace - illustrate how important it is that biological risks are dealt with in a global manner in cooperation of experts and authorities from many disciplines. SARS in health care staff or Dutch poultry-workers infected with the avian virus A/H7N7 in 2003 were only few of the examples of how epidemics do not stop outside the workplace. While workers often are at the front line of the risk of contamination with emerging pathogens, at the same time, if adequate prevention measures are implemented, they are in a position to act as a bulwark against the spreading of epidemics.

Emerging physical risks

Again, many of the risks identified in this forecast reflect a growing concern for multi-factorial issues: one of the main

risks identified is the **combined exposure to musculoskeletal disorders (MSD) and psychosocial risk⁷ factors**. Too high or too low job demand, high time pressure, low job control, poor support from colleagues, poor job satisfaction, job insecurity and bullying are some of the psychosocial risk factors seen to accentuate the effects of physical risk factors - such as poor ergonomics, physical load, including repetitive movements, but also static work - and contribute to MSDs. Increasing **sitting and lack of physical activity** in the workplace, linked to the growing use of computer and display screen equipment based work and automated systems, is also mentioned as an emerging risk of MSDs, varicose veins and deep-vein thrombosis, and contributing to obesity. The experts also point out the poor ergonomics of some new, **complex human-machine interfaces** (e.g. multipurpose control joysticks in heavy trucks and earth moving machinery, complex automated systems and cobots in some manufacturing processes) as another emerging risk of stress and MSDs, as well as human errors and accidents.

Another recurrent issue through the forecasts is the **insufficient protection of high-risk groups against long-standing risks**. The experts identified workers – more particularly in the agriculture and construction sectors - with low employment status and poor working conditions, who paradoxically are the subject of fewer training and awareness-raising measures, as particularly at risk, among others to two further emerging risks highlighted in the forecast: ultraviolet radiation (UVR) and vibration. **Vibration**, although considered a more 'traditional' risk, has gained more attention with the European Directive 2002/44/EC. Though the risks associated with vibration are not new, vibration can be a by-product of new types of machinery, and of efforts to reduce noise levels in existing equipment. The experts also strongly acknowledge **ultraviolet radiation (UVR)** as an emerging risk. Excessive UVR exposure can cause adverse photochemical reactions, DNA lesions,

damages of the skin and the eyes and affect the immune system. A direct effect of climate change, the depletion of stratospheric ozone, will result in increased UVR exposure⁸ of outdoor workers if not adequately protected. Occupational exposure to natural UVR is currently not well documented but some estimation is available. In the EU-15, in 1993, 9.1 million workers were exposed at least 75% of their working time to solar radiation⁹. As UVR exposure is cumulative, the more workers are exposed during but also outside their working time, the more UVR sensitive they are at work. Hence a potentially growing need for prevention measures at the workplace. The risk to health from artificial UVR sources (intentionally used in medicine (medical treatment or sterilization), printing industry, semi-conductor industry, food industry (food hygiene), research and tanning-centres; or unintended by-product of working processes like welding) can be much higher than solar UVR because levels of UV may be higher and may include specific wavelengths particularly harmful (from UVB and UVC region), normally filtered by the Earth's atmosphere. While the European schedule of occupational diseases includes "conjunctival ailments following exposure to UVR", many EU Member States have no UVR related diseases on their list of occupational diseases.

Emerging psychosocial risks

According to the experts who participated in the forecast, **new, more precarious forms of employment contracts**, (e.g. temporary or on-call contracts), together with the trend towards 'lean' production (producing goods and services with less waste) and outsourcing can affect workers' health and safety. Workers on precarious contracts tend to carry out the most hazardous jobs, work in poorer conditions and receive less OSH training. The experts also highlighted the risk of marginalisation as a result of successive short-term contracts and the resulting discontinuity in careers. In unstable labour markets, these trends increase workers' feelings of **job insecurity**, which augments work-related stress and may have a negative impact on workers' health. The 4th European

Working Condition Survey¹⁰ showed that – among those who reported that work significantly affected their health – stress was experienced on average by 22% of respondents – making it the second work-related problem most frequently reported by workers, after MSDs. It has been estimated that work-related stress has some link to 50-60% of all lost working days, and it is related to the yearly cost of EUR 20,000 million in the EU-15¹¹. Absence related to psychosocial issues is of particular concern, as it tends to be longer than for other factors¹².

The experts also acknowledge **work intensification** related to the reduction of workplaces and job insecurity, as well as the growing amount of information that workers must handle because of the growth of Information and Communication Technologies (ICT). As a result, many workers have to cope with higher workloads and greater pressure at work. Work intensification has been a significant feature among the many changes that have happened in companies in most developed countries since the 1980s and is associated with deterioration in working conditions, whether this is assessed in terms of physical or psychological discomfort, nuisance or occupational risk. The forecast stresses that all of the changes in work organisation mentioned above may lead to higher pressure on workers and could spill over into private life. The result is a **poor work-life balance**, which has a detrimental effect on a worker's well-being.

High emotional demands on workers are also a matter of great concern, particularly in the growing and increasingly competitive healthcare and service sectors. **Violence and harassment at work** were identified as contributing factors to the increased emotional demands being made on workers. Last but not least, **ageing workers** are thought to be more vulnerable to the hazards resulting from poor working conditions than their younger colleagues. However, general conclusions cannot be drawn as there are individual differences in relation to decreasing and increasing abilities

linked to age. In order to promote healthy and safe work during a prolonged working life, good working conditions have to be provided and need to be tailored to the needs of each employee, including ageing workers.

Conclusion

These forecasts establish the state of knowledge in these fast-changing areas and highlight particular subjects that need to be the focus of further research. They should be seen as a basis for discussion among stakeholders to set priorities for further research and actions. EU-OSHA took the first steps towards supporting policy-makers in dealing with the new challenges by organising seminars involving high-level representatives from the OSH community and from other disciplines concerned, as well as EU policy-makers and social partners.

The four expert forecast reports, the seminar conclusions as well as literature reviews and in-depth reports exploring the top risks identified in the forecasts are available at <http://osha.europa.eu/en/riskobservatory>. To follow-up on this work, EU-OSHA also started last year a larger-scale foresight of the OSH emerging risks from new technologies in green jobs.

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Discussion

Jörn Janssen,
review essay,
London,
17.12.2010

Socialist Register 2011: The Crisis this Time, ed. by Leo Panitch, Greg Albo, Vivek Chibber, Merlin Press, Pontypool 2010.

The present global financial crisis has unleashed a surge of literature aiming to digest this secular experience. Suddenly the world looks different and for orientation in this environment new instruments are needed. These are offered by the literature in virtually unlimited variety whilst we are faced with a choice regarding the instruments we trust. 'Socialist Register' has a distinguished pedigree. Two well-known and respected Marxist social historians, Ralph Milliband and John Saville, founded it as an annual review in 1964¹. An impressive transnational network of associate, assistant, contributing, and corresponding editors that spans the world and commands a solid interdisciplinary critical socialist scholarship supports the present editorial team. The 15 essays of the 2011 issue are written by 26 authors from across the five continents and a wide disciplinary spectrum. Special essays deal with Japan (R. Taggart Murphy) and South Africa (Sam Ashman, Ben Fine, Susan Newman).

Why, though, should Construction Labour Research bother to review a book about an economic crisis whose centre of gravitation is in the financial sector? There are four obvious links between the construction and financial sectors:

First, construction products are long-term investments, both as means of production and of consumption. They are usually expected to last for more than a hundred years and, as a result, are typically financed by credit. Secondly, building and building land are the most important collateral to finance capital or its most important 'real' asset. Therefore the expansion of financial capital engenders rising prices of 'property' or 'landed estate'. Thirdly, construction is the sector which takes by far the largest share in the production

of the most long-term investments: roads, railways, canals, harbours, sewers, power stations, pipelines etc. In this capacity the construction industry also serves as anti-cyclical state investment in periods of economic investment crises. Fourthly, as the production of housing heavily depends on mortgage lending, the financial market has a major impact on this segment of the construction industry as apparent, for instance, in the boom and bust in Spain and Ireland as well as the heavy decline in the United States and Britain in, before and during the present great financial crisis, which was triggered by the 2007 sub-prime mortgage crisis in the United States.

These particular links between the construction and financial markets, in turn, constitute special conditions for the respective occupational labour markets and forms of employment. Construction occupations are notorious for unsteady employment, migrant labour, labour-only subcontracting and bogus self-employment. Labour policies for this sector ought to take account of these conditions and, possibly, develop strategies encompassing the financial sector. This review essay will try, therefore, to evaluate the analyses of the present crisis with regard to such policies.

In a number of ways the 2011 issue of the Socialist Register suits the purpose of understanding the present crisis, though it does not focus on construction except where this sector plays a special role in the financial crisis, such as e.g. with sub-prime mortgages in the first stage of its unfolding. Most importantly, the fifteen essays of the 323-page volume not only cover the whole globe highlighting the central role of the Anglo-Saxon countries in the economy. The collection of contributions is also widely informative as virtually every single essay takes a different approach or sets a special focus, for instance: how working class families are affected (Johanna Brenner), how sovereign competition impacts on the crisis (Ricardo Bellofiori, Francesco Garibaldi, Joseph Halevi), the importance of pension funds in financial

securitisation (Susanne Soederberg), the fundamentally socio-political history of this crisis (Noam Chomsky), to mention just a few examples. Finally, all contributions use a wider historical perspective as a means to understand this crisis as an indicator of changing capitalist relations, whether they look at the development since early industrial capitalism in the nineteenth century, the period since the 1929 Wall Street Crash, or beginning in the 1970s with the rise of the neoliberal doctrine and its assault on the working class.

There is no chance to summarise the whole reader in a short essay. This review will, therefore, restrict itself to highlight a selected number of items with a view to exploit the diverse and wide ranging analyses of 'The Crisis this Time' for the purpose of extracting conclusions for labour policy in the construction sector, always keeping in mind that sectoral specificities are relatively marginal. The economic development bringing about the financial crisis was even instrumental in blurring sectoral boundaries.

The most significant and outstanding transformation in the social and economic fabric, which took place under the domination of neoliberal policies in the past three decades, is the reversal in the distribution of the social product. Whereas since the 1930s and in particular after the Second World War wage earners improved their share in the social product, from the 1980s we witnessed a "dramatic fall in real wages relative to productivity (rise in the rate of exploitation), which ... greatly raised the rate of profit-of-enterprise." (Anwar Shaik, p. 54) This statement based on figures of the United States is equally valid for most West European states. In other words, over the last 30 years earnings based on labour dropped in relation to earnings on capital and society in the classical capitalist countries became "highly unequal in terms of income and wealth distribution" (Riccardo Bellofiore et al., p. 126).

Not only has capital grown out of proportion, it also has changed its substance. It has become “financialised ... over the last three decades.”(Dough Henwood, p. 90) It consists of securities rather than real assets such as manufacturing equipment, buildings and infrastructure. Globally, financial capital expansion has far outstripped the growth of gross domestic product (GDP). Between 1980 and 2007 “the ratio of global financial assets to global GDP has risen threefold from 1.5 to 4.5.”(Sam Ashman et al., p. 175) Finally this astronomical divergence between ownership and labour has also penetrated the scales of wage differentials at all levels. The figures are well known and vary only according to the method of accounting, whether the top 10, 1 or 0.1 percent are compared with the average or the bottom 10 or 1 percent receiving income. Within the same country some top earners’ daily income may be equal to an annual or even lifetime earning of a typical ‘skilled worker’, shop assistant or security guard. Referring to the global level the same disparity has to be multiplied. Social disparities are beyond any political, ethical and economic rationality, hence the crisis.

The crisis has passed already three stages and is now in its fourth stage. It started in 2007 as the notorious ‘subprime mortgage crisis’ which indicated the desperate living conditions of a rising part of the working population: “... stagnant or falling real wages led to working-class demand for borrowing in order to maintain living standards.” (Dick Bryan, Michael Rafferty, p. 20) “Homeowners who borrowed on their homes did so to pay off their [credit card] debts ... For those homeowners targeted by predatory lenders, refinancing was primarily through ultimately disastrous sub prime mortgages.” (Johanna Brenner, p. 68) As “the securitization of mortgages was central to the more general explosion of securitization” (Leo Panitch, Sam Ginden, p.12) the mortgage crisis prompted the general financial crisis culminating in the collapse of Lehmann Brothers and AIG in the United States, Northern Rock and Royal Bank of Scotland

in Britain, and Deutsche Kreditanstalt für Wiederaufbau in Germany. Both the mortgage and financial crises with the ensuing contraction of credit caused the global economic downturn or 'recession' of gross national products in 2009, hitting in particular the construction industry, associated with rising levels of unemployment. Faced with the prospect of a catastrophic implosion of the entire global financial and productive system, in a concerted effort governments used their budgets to back up the unprecedented levels of accumulated debt and 'toxic assets': buying shares of banks, issuing bonds, printing money. Having depleted their budgets, governments decided to reduce spending in public services which became "a question of permanently lowering workers' living standards" (Hugo Radice, p. 38). The first responses to this step were mass demonstrations in particular in Greece, Portugal, Spain, France, and Ireland.

None of the authors believes that this crisis is over or at least has passed its zenith. This assessment is strongly underlined by the contribution, which contends that "... this is a *systemic crisis in neoliberalism*, but it is *not a crisis of neoliberalism* because ... it is not currently threatened by a systemic alternative." (Alfredo Saad-Filho, p. 249) All other assets having been over-securitised, "Labour is now also ... an object of portfolio investment that sits alongside other asset classes" (Dick Bryan, Michael Rafferty, p. 216). The product of centuries of future labour is owned by "the new financial elites" (Julie Froud, Michael Moran, Adriana Nilsson, Karel Williams, p.102). At the moment of writing, an end to the use of labour as security of financial investors seems out of sight and labour conditions are under increasing pressure. As a consequence of credit reduction, the global economic recession is far from over and, for instance in the United States, unemployment is at a record level. As the sovereign debt crisis has only just begun, a significant proportion of public sector employees will be made redundant and swell the already raised levels of unemployment. Given the depression on the labour market,

wages are likely to stagnate or even decline. The share of open-ended contracts of employment will decline further and undermine job and social security.

Alfredo Saad-Filho summarises the dire situation in a rather pessimistic outlook: "If the global working class remains passive the crisis will be resolved through an increase in the rate of exploitation." (p. 255) This is indeed only the continuation of the development leading up to the present crisis. What will be different, though, is the role of the state: "... a steady rise in the debt of sovereign governments will be a defining characteristic of the unfolding of any long-term 21st century accumulation crisis." (Karl Beitel, p. 275) As a result "government budgets will be a critical terrain upon which social forces will seek to advance their opposing interests." (p. 276)

The shift of terrain from employer-employee bargaining to statutory regulation has inevitably exacerbated international disparities and enforced inter-state competition leading even to a "neo-mercantilist entente between capital and trade unions" (Ricardo Bellofiore et al., p. 136) These disparities take the form of trade imbalances and ensuing currency crises – especially in Europe – which are intrinsic concomitants of the present financial crisis. Greg Albo and Bryan Evans conclude: "There is indeed every reason to suggest a return to global imbalances that existed before the crisis, but in much more adverse, inferior conditions." (p. 289)

There is consensus between all contributors to this reader that workers and trade unions have failed to turn the near collapse of financial capital to their advantage. On the contrary, under the impact of austerity budgets in the classical industrial countries labour is under attack from both employers and governments. As a worst case scenario Noam Chomsky conjures up the rise of fascism in Germany in the wake of the 1929 Wall Street Crash (p. 317). Some authors, however, try to sketch strategies against the restoration of

neoliberal socioeconomic relations, doctrines and policies. Two contributions suggest the abolition of private banking and converting it into a "public utility" (Panitch et al., p. 17 and Bellofiori et al., p. 144). In the same vein Alfredo Saad-Filho believes that "Nationalisation ... will cut this Gordon knot." (p. 253) On a more pragmatic note "a struggle for public housing, public pensions and public education" will contribute to "decommodifying social relations". (Dick Bryan and Michael Rafferty, pp. 128 f.) Equally pragmatic, with emphasis on labour relations, is the proposal "to protect income security and increase direct employment ... linked to calls for reductions in military budgets and higher taxation on capitalist households." (Karl Beitel, p. 276) Hardly anybody will disagree that "social solidarity and participatory democracy" (Johanna Brenner, p. 26 f.) would be helpful antidotes against the disease of neoliberalism. It may, however, be questionable whether "low carbon technology" (Julie Froud et al., p. 116) is really incompatible with the exploitation of labour under financial capitalism. It needs reading till the very end of the volume to be reminded of the classical anarcho-sindicalist frontline against capitalism: "The factory could be taken over by the workforce with the support of the communities ... and converted to production of high speed rail facilities and other badly needed goods." (Noam Chomsky, p. 321)

It would be unfair to judge this book on the basis of this array of strategic and tactical options, which is not most inspiring. The strength of the essays lies rather in their analytical rigour as well as scope of information. It can only be within the ranks of the labour movement that successful strategies will eventually emerge. But these may well benefit from the more distanced examination of what has led up to this crisis which marks a new stage of history and for which the words are still in the making.

What are the specific lessons for the labour movement? First of all, a critical assessment of the present crisis reveals that

we are faced with a situation never experienced before. It is not a repeat in a cyclical movement – if such a picture of economic dynamics has ever made sense at all – but a profound failure of a new mode of economic regime. All the platitudes promising ‘return to growth’ as a ‘way out of the crisis’, putting the economy ‘back on track’ or preventing ‘excesses’ are utterly misleading. They conceal what has changed irrevocably in a process of historical transformation. They apply terms of a doctrine denoting a reality, which has ceased to exist. The competition between individual capitalists as the dynamo of productive development will never come back again. Hence, social partner collective agreements as a means to secure an equal share for labour in the social product – if it ever worked – cannot possibly be restored to their former function. The owners of financial capital who extract the profits have never been represented at the negotiating table, neither before nor after the crisis. The mode of distribution needs to be transformed.

It is commonplace in the media and public gossip to blame the bankers and their excessive bonuses, if not fraudsters such as Bernie Madoff and Allen Stanford, for the calamity of the financial system. The analyses of our reader, on the contrary, highlight the architecture of the economic regime creating astronomical levels of financial capital, on the one hand, and stalling wage levels where they were thirty years ago on the other. In fact the nature of the so-called neoliberal global economy, which creates excessive wealth side by side with utter poverty, was at the brink of collapse already in the autumn of 2008. Only the near depletion of state budgets has offered this bankrupt economy another lease of life. But the demise of the neoliberal doctrine and the socialisation of the foundations of capitalism have opened new opportunities for the labour movement.

The rising resistance against austerity programmes is implicitly a movement against the restoration of this capitalism and submission under its employment

relationships. Instead of dependency solely on individual capitalist employers, with statutory social security employees have been shifting towards becoming workers as a status entitled to a living wage irrespective of being hired or not. The 'standard' employment relationship has lost its very basis to the extent that the identity of the employer has become an ephemeral unit in production chains in a state of permanent transformation.

In this process of transformation the specific role of the construction industry attributes a front-line position to construction labour: 1) building production is one of the most variable processes as it moves from site to site producing individually designed buildings and infrastructural facilities; 2) Noam Chomsky typically pinpoints the 'high speed railway' for a socialised industry; 3) the need for social housing without debt obligations has become really desperate through the mortgage crisis that equally affects rented accommodation; 4) the fiscal crisis naturally affects living standards relying on public investment such as energy and water supply, transport, community premises, gardens, squares etc., all produced by the construction industry. Thus construction workers are in a particular way exposed to the experience of the effects of the financial crisis. This does not mean, however, that it is their remit to develop a strategy and take action for new ways to control the distribution of the social product. The extraction of capital from labour does not happen within sectoral or national boundaries and can only be stopped at transsectoral transnational level.

Socialist Register 2011 it no easy reading. It is written for an academic audience acquainted with economic terminology and with time for reading. This review, therefore, does not necessarily suggest reading these 15 essays. It tries instead to convey its core theses, which differ considerably from what we are being hammered in by the media. It shows that the financial crisis is essentially a crisis of labour relations,

which have allowed an unprecedented form of capital accumulation at the expense of wages for labour. The disproportional increase of profits has turned predominantly into bubbles of financial debt which labour is now pressed to pay for. Most of this accumulation happened within the scope of legal regulations. In a strict sense, this process is the offspring of a legal system which privileges ownership - since the fall of the Comecon states at global level - and which cannot be reversed without radical juridical intervention. In the last instance it is, like climate change, an issue for the United Nations. But the issue will never be raised to this level without initiatives taken wherever the need for a fundamental transformation of labour relations is perceived, whether at the workplace, within existing trade union organisations, special community campaign groups, regionally, nationally and internationally.

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1. Ralph Milliband's two sons made their recent careers in British politics, David as Foreign Secretary and Ed - Edward Samuel - as Secretary for Energy and Climate Change under the Gordon Brown premiership. After the demise of the Labour Party early 2010 Ed beat David in the contest about the leadership of the Labour Party. John Saville, according to Wikipedia "one of the most influential writers on British Labour History in the second half of the twentieth century", died 13 June 2009 at the age of 93.

Reports

Hans Baumann

Combating wage dumping in Europe

Conference, 27 August 2010, Berlin

A new, strong campaign by the European trade unions is needed in order to counter the rising tide of wage dumping and the undermining of collective agreements. This was the prevailing mood at a conference organised by the Swiss Trade Union Confederation in conjunction with the German trade union organisation Ver.di. However, the content and thrust of this campaign triggered some intense discussions.

The European Court of Justice turns the bargaining landscape upside down

Over 50 trade unionists from 13 countries in Europe met at the headquarters of the trade union Ver.di in Berlin. Also well represented were the construction unions, including the EFBWW representative, Sam Hägglund. About two years ago, the European Court of Justice handed down the infamous judgments in the "Laval", "Viking", "Rüffert" and "Luxembourg" cases, which called into question the principle of "equal pay for equal work at the same place" and furthermore undermined the right to strike as a basic trade union right. The participants at the conference took the unanimous view that these judgments were only a manifestation of a neoliberal political trend in Europe, which has infiltrated the EU authorities and is colouring the politics of almost every country.

Michael Sommer, president of the German trade union confederation even went as far as saying that, with respect to basic rights, these rulings could take Europe back to the "pre-French Revolution era". It was clear at the conference that virtually all countries are affected by the consequences of the ECJ rulings, although to differing degrees. Especially hard-hitting are the effects in Sweden, where labour laws have already been brought into line with the ECJ judgments. Henceforward, the trade unions are forbidden from negotiating a collective agreement with foreign firms

operating in Sweden with posted workers. Strikes in such firms have also been declared retrospectively to be illegal, so that the Swedish unions have to pay high contractual penalties and compensation payments. Another example is the UK, where the unions have in any case been out of favour in recent years: now a collective agreement signed by the major union Unison is being called into question retrospectively and certain articles have been declared null and void by reference to the ECJ judgment.

Pressure on wages and social security benefits

In southern Europe the debate about trade union rights and the consequences of the ECJ rulings is tangled up with the public budget crisis. The Spanish and Portuguese representatives pointed out that their governments had not learned any lessons from the financial crisis. Even the social-democratic government in Spain is resorting once again to neoliberal solutions and forcing the country to implement a tough austerity policy. Public sector jobs are being cut and social security benefits slashed. Wages and employment rights are also in the firing line: collective bargaining is to be shifted down to plant level.

In Central and Eastern Europe the fight continues for fair and decent wages. The crisis carries the risk that the gap with old Europe will widen again. The Vice-President of the Bulgarian trade union CITUB called for a European system of minimum wages. This should entail no country having a statutory minimum wage below 60% of the national average wage. In Hungary there is even a danger that the clock will be turned back 25 years as far as trade union rights are concerned: employers are putting pressure on the conservative government to massively restrict the right to strike.

Combating wage dumping – basic social rights take precedence over market freedoms!

The proposal by the Swiss Trade Union Confederation (SGB), which all participants were able to study beforehand,

includes a new ETUC campaign with a clear, unambiguous answer to the prevailing ideology of market liberalisation at the expense of workers' rights. The principle of "equal pay for equal work at the same place" must be maintained or restored in Europe. For this reason, the posting directive needs to be reworked. This directive, which came into force in 1996, upheld this principle, but the ECJ judgment today calls this into question. Many participants pointed out that these issues of trade union rights and wage dumping not only concern posted workers. The dominance of market freedoms is currently casting doubt over the provisions of collective agreements and labour law in many areas, such as the spread of temporary work and bogus self-employment. The SGB paper therefore also proposes a fundamental addition to the EU Treaties whereby a clause would be included stipulating that social progress is a primary objective of the EU and that basic social rights take precedence over internal market freedoms. The ETUC had formulated a corresponding proposal already back in 2008.

Two years after the ECJ rulings, however, the situation is still a stalemate. In order to push through the demand for basic social rights to have priority in Europe there needs to be a fresh attempt as the strategy until now, chiefly involving lobbying work, has achieved too little success. A long-term union strategy is needed coupled with a broadly-based movement: the support of colleagues in the plants and on the construction sites must be enlisted for the key issues championed by the European trade unions.

Mobilise support with the "European citizens' initiative"

Opinions were divided on how this should be achieved. Most agreed, however, that the opportunity of a citizens' initiative created in the Lisbon Treaties should be grasped. By this means, the European Commission can be called on to enshrine the priority character of basic social rights in the Treaties and to propose a revision of the posting directive.

At least one million signatures are needed from at least one third of the EU member states. The trade unions are the most important social movement in Europe, stressed the President of the Swiss Trade Union Confederation, Paul Rechsteiner, and the President of the German trade union organisation Ver.di, Franz Bsirske at the close of the conference, and they must use this new democratic means to give emphasis to their demands. This would also be an excellent way of mobilising people in the member states to support our cause. One difficulty here is that the citizens' initiative has not even been implemented as new EU law yet, and such details as the minimum number of signatures in the individual countries, time limits, etc. are not yet known. But the European Commission wants to submit a proposal to the European Parliament by the end of 2011.

All the participants agreed: such a campaign and the launch of a European citizens' initiative can only work with the full backing of all the ETUC affiliated unions and also clear obligations concerning deadlines, signature targets, etc. A working party will now discuss how to proceed further and a firm proposal can be presented next spring to the ETUC Congress. After years in which the social dimension has been eroded, now at last a new counter-movement to promote a social Europe is in sight.

Migrant Workers' Rights in the Global Economy - Research Seminar

Paul Chan,
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2 September 2010 at the International Slavery Museum in Liverpool

The research seminar – second in a four-part seminar series funded by the UK Economy and Social Research Council (ESRC) – aptly took place in the International Slavery Museum in Liverpool. Organisers, Professors Martin Upchurch and Miguel Martinez Lucio, opened the seminar

by raising concerns over increasing precariousness associated with migrant employment relations, which in turn highlights the need for a refocus on social and human rights. The seminar series is intended to be inter-disciplinary and international in nature, with a view to integrate economic, social, legal and historical perspectives. The context, as Miguel observed, is located in the contemporary trend of migration (and migrant employment) becoming ever more disorganised. This poses challenges to the way human rights can be regulated. This particular seminar sought to bring together academic researchers, policy makers, activists, field-workers and practitioners to explore, discuss and debate critical issues associated with securing migrant workers' rights in the global economy.

The seminar kicked off with presentations on academic and policy perspectives. Aidan McQuade, Director of Anti-Slavery International started by suggesting that the term *Slavery* is not used as a metaphor in today's context, as he stated a number of definitions framed in international law, such as the Slavery Convention of 1926, the Forced Labour Convention by the International Labour Office (ILO). Estimates of the number of workers subjected to forced labour range from 12.3m to 27m, with a majority of forced labour being child labour. Aidan noted that whilst human trafficking is the most prevalent form of forced labour in Europe, other forms include debt bondage, forced recruitment, and descent-based slavery. He stressed that the saddest aspect of forced labour is the exploitation of human beings by giving them a false sense of hope for a better life. Yet, there seems to be little political will to deal with the issue, exemplified by e.g. the immunity granted to diplomats for the enslavement of domestic workers. Aidan argued for a three-prong approach of tackling discrimination, sufficiency in government legislation on anti-slavery, and economic poverty is necessary. Where government intervention is concerned, transnational cooperation to address ever more complex international

supply chains is required. The questions that followed the presentation sparked a lively debate on the consistencies of immigration laws, the efficacy of transnational cooperation, the accuracy of statistical estimates of the problem, and the ability of trade unions to organise an increasingly unregulated labour market.

Professor Joshua Castellino from Middlesex University then offered a legal perspective to the problem of ensuring a rights-based approach to migration. Joshua pointed out that in spite of the fact that human rights is enshrined in the 1948 Universal Declaration of Human Rights, the law is not always unproblematic. To be clear, the law has always been used by the rich as an instrument to protect their self-interest (e.g. to safeguard ownership of property). He noted that legal arguments have often been deployed by policy-makers to fuel anti-migrant sentiments, such as the need to protect the boundaries of the domestic labour market (despite increasing globalisation), the need to protect national identity, and the need to curb the phenomenon of over-population. He argued that contemporary slavery is invisible, and that migrants tend to be excluded from legal protection because they often find it difficult to develop a sense of collected identity to help them organise socially and politically to access legal instruments. Joshua claimed that there is a lack of political will to rectify this, citing the international convention of migrant workers and their families, which is a comprehensive convention aimed at securing fundamental civil rights for migrants including living and working conditions. Yet, only 42 states have signed up to this convention, and virtually all signatories are from sending countries. He concluded by proposing a human rights approach to migration that considers the importance of individual migrants, the indivisibility of rights (including civil, political, economic, social and cultural), the provision of adequate remedies, opportunities for integration and respect for cultural values. The discussion that followed pointed to the significance and challenges faced in terms of

enforcement and the problems associated with legal pluralism where there is a proliferation (and confusion) of pseudo-regulations (e.g. codes of practice, guidelines etc.). Heather Connolly (University of Warwick) and Professor Miguel Martinez Lucio (University of Manchester) reported on a three-year Leverhulme Trust funded research project that examines trade union responses to migration. The study covered three countries, including the UK (voluntarist system), Spain (recent receiving country) and the Netherlands (coordinated/institutionalised form of the welfare state). They found differences across the three countries, including how despite the UK's voluntarist position on trade union organisation of migrant workers, there is the observable socio-legal context that serves to support equality, whereas countries like the Netherlands that have a more institutionally-coordinated system tended to paradoxically result in a lack of trade union response to migration on the ground. They also noted different emphases in organising activities across the three countries. So, learning and anti-racism campaigning form the thrust of the British trade union movement, whilst efforts to support regularisation of migrant workers remain an important aspect for Spanish trade unions. Their preliminary conclusions point to the symbolic nature of social partnership, and the difficulties of EU harmonisation given the divergence of institutional frameworks and traditions. Furthermore, trade unions are often complex (and contested) entities, with complex identities, democratic traditions and frameworks. Moreover, trade unions are increasingly trying to cope with ever fewer resources, thus hampering efforts in terms of organising migrants. Nonetheless, there is an observed 'ethical' turn in the way trade union movement is being manoeuvred. The language of 'social inclusion' equips trade unions with an ideology to take actions. At its heart, the discussion pointed to the need to ensure that discrimination is eradicated.

Following the academic and policy presentations, practical case examples were showcased in the afternoon to explore possible interventions, including some of the following summarised here:

- Svetlana Boincean from the International Union of Food, Farm and Hotel Workers (IUF) gave a snapshot of how collaborations were being forged between the unions, companies (and their supply chains), and NGOs in organising migrant workers, and defending their fundamental civil rights, in the agricultural sector. She noted that child labour remains rife where adult poverty is high; yet, the continued exploitation of child labour serves only to further undermine the capacity for adult workers to negotiate a decent wage. Svetlana argued that more needs to be done to get to supply chain partners, since exploitation tends to happen at that level of the production chain. She also suggested that legal and policy frameworks need to take that into account.
- Nick McGeehan (Director of Mafiwasta) provided an overview of exploitation of workers in the Gulf Cooperation States (i.e. Bahrain, Kuwait, Oman, Kuwait, Saudi Arabia and the UAE). Highlighting examples from the construction industry, domestic service and camel jockeying, he noted that exploitative practices include debt bondage, passport confiscation, re-signing of employment contracts (often with worse terms and conditions), and the *Kafala* system (where a worker is bonded to a single employer and is often forced to leave as soon as employment is terminated). Furthermore, violence is commonplace in domestic work, and abuse of camel jockeys include malnutrition to maintain their small physical frame and sexual exploitation resulting in the occurrence of sexually-transmitted-infections. Nick firmly considered the situation in the Gulf Cooperation States to be similar to the *Apartheid* regime, and he presented examples of racism against the poorer South Asian migrants. This is also an example of a lack of political will, since many of the economic boom is fuelled by

government-primed projects, especially in the construction industry.

- Steve Craig from UCATT presented recent initiatives to deal with the issue of vulnerability in workers. Steve asserted that the development and implementation of the *Vulnerable workers* initiative achieved two things. First, the campaign on vulnerable workers helped to politicise members, and help bridge the inter-generational gap in the perception of the trade union movement between older and younger members. Secondly, the campaign enabled the trade unions to get access to migrant workers. The discussion that followed questioned the efficacy of such a campaign. One participant asked if this was actually union activism and organisation or simply the reduction of the union's role to one of service. Another participant pointed out that the framing of vulnerable work could be perceived to dodge the issue of migration, and instead promote covert, institutionalised racism within the trade union movement.

Ernst-Ludwig
Laux, CLR

Promoting Paritarian Social Funds in the Construction Industry

FIEC/EFBWW/AEIP Conference, Bucharest, 19-20 October 2010

Paritarian Social Funds for the construction industry play an important role in European countries because they enable a centralised processing of social tasks in a sector dominated by small companies. At the same time these social funds, regulated under collective agreements for the whole construction industry, are also places for the social dialogue as well as a lobby organisation vis-à-vis the respective national governments. In most of the West European states (EU 15) these institutions have already been established for decades. But, since EU enlargement in 2004, the social

partners became aware that such institutions did not exist in the new Member States. At a first conference on 7-8 March 2008 in Warsaw, the system of paritarian social funds was presented to employers' federations and trade unions of the new Member States. In a subsequent common declaration both partners suggested to all members to begin a national dialogue on the foundation of such common institutions.

On 19-20 October 2010 the first account of how these social funds and the common social dialogue have developed in the new Member States was given to about 130 participants from 25 countries. The conference, organised by EFBWW and FIEC with the support of the European Association of Paritarian Institutions (AEIP), was strongly funded by the European Commission, which is interested in the development of paritarian institutions in the new Member States as a means to promote the sectoral social dialogue. Oscar Vargas of the Dublin Foundation presented his study of the variety of social dialogues in individual sectors across Europe and explained that the construction industry in particular has produced many common declarations over the past 15 years. It is obvious that in this sector the social partners actively cooperate in developing and implementing sectoral regulations.

The conference was structured according to 3 themes:

- To what extent has the Warsaw conference had an impact on the national social dialogue?
- Presentation of various possibilities for Social Funds in the construction industry.
- Common conditions for the control of minimum working conditions in the individual EU countries.

Theme 1

In their introductory statements to the first theme, Luisa Todini/FIEC President, Domenico Pesenti/EFBWW President, and Bruno Gabellieri/AEIP General Secretary agreed that the aims of the common declaration of Warsaw ought also in the

future to serve as an orientation for activities. Paritarian institutions for the construction industry have to be established as well in Central and East Europe. In order to facilitate this task, all three organisations will keep cooperating within the framework of the European Social Dialogue.

However, during a first round of discussion, representatives of Slovakia, Hungary and Poland made it clear that the social dialogue is working very badly as often the state is not interested in supporting such sectoral structures. In the following more general discussion, it was reported similarly that often the employers' federations or individual employers of the sector are not interested in such social funds or that sometimes the trade unions are too weak or fragmented to underpin or initiate the foundation of such institutions. On the other hand, it is notable that for 10 years in Romania the social partners have been having a dialogue and that the social fund of the construction sector has been turning over 33m Euro.

Theme 2

For the second theme of the conference speakers from Romania, The Netherlands, Ireland, Belgium, and Switzerland first explained exemplary cases of Social Funds for construction workers' additional pensions and holiday pay. With regard to additional pensions covered by capital investment, the speakers described the negative effects of the 2008 financial crisis. But it was also obvious that individual countries had taken very different directions in terms of capital investments. The losses caused by the crisis differ according to whether investments were made in the form of shareholding, fixed-interest bonds, or property. The losses have an impact not only on the level of additional pensions but also on the age of entry to pension funds. In the discussion, all speakers emphasised that codetermination of the social partners has to be consolidated in some funds and that investment policies

have to be determined much more according to security so that financial crises cannot cause such huge damage.

“Pension at the age of sixty in Construction” was presented by speakers from Switzerland as a very positive example (see annex pest practice). It is the result of a typical sectoral agreement that was introduced about six years ago and had a very positive effect for employees. The controls on sites carried out by both collective partners as “*Parifonds*” were also discussed very positively because they may considerably reduce undeclared labour, cut-throat competition and social dumping.

The second part of this theme involved reporting and discussing health and safety on construction sites in the cases of France, Germany and Spain. All participants of the conference agreed that on this issue especially the social dialogue is effective and common procedures of the social partners including further education are working very well. Nevertheless, further initiatives will be necessary in order to reduce the high levels of risks, in particular of fatal accidents. This was strongly supported by all participants.

Theme 3

On the final and third theme possible control measures, largely organised on a paritarian basis in the individual states, were presented through examples from Sweden, Finland, Belgium, Italy, Bulgaria, Poland, and Hungary. In Central and East Europe control is carried out primarily through government offices, which focus on health, safety and hygienic issues on sites.

The contributions of the representatives from other EU Member States unmistakably show that the prevention of illegal employment and undeclared work as well as the registration of all employees on construction sites is the prime issue. In order to achieve these aims various initiatives have been taken which converge above all on the

identification of the employee on the site. This identification is linked with electronic checks of the respective status of the employee in the central electronic databases of the sectoral paritarian social funds, finance and tax authorities as well as social and unemployment insurance.

As a rule the identity pass with pass photo (as in industrial establishments and offices) has to be carried clearly visible as a badge on the work clothes. Controls are carried out through electronic chips on the badge or using code-numbers relating to social security status as well as through checks of the tax situation by the financial authorities. The organisation of these measures and control are regulated differently in individual European countries on a governmental, private or paritarian basis. As reported by the speakers, the results so far justify this procedure in all countries; they do not cause additional costs, because these are covered by claims on the companies and fines and/or punitive charges. In many countries the issuing of the pass is connected with health and safety training. Also posted workers first have to attend a health and safety course to identify dangers on site and avoid accidents.

Final statements and concluding assessments by representatives of FIEC, EFBWW and AEIP made it evident that in particular the collective paritarian Social Funds of the construction industry constitute a forum of social dialogue, through their organisational structure and frequent exchanges between the social partners as well as the common issues to be sorted out. This cannot possibly be overestimated with regard to satisfying the diverse interests of employers and employees in individual countries and Europe as a whole.

Examples of best practices:

DURC

After lengthy discussion the DURC system has been legally established. Thus a close exchange of information and data exchange has been set up between the financial authorities and the collective Social Funds in construction (*Cassa Edile*), which is intended above all to reduce undeclared work and illegal employment in Italy. Data exchange can be operated on paper or electronically. Five years of practical experience show that 99% is carried out electronically. In Italy overall 7,500 officers are employed in this procedure and a data base has been put together which covers legal as well as illegal establishments and facilitates future controls. The comparative results for the construction industry from 2005 to 2008 are:

- 32,000 establishments, plus 18%,
- 125,000 employees, plus 15%,
- 120 million working hours, plus 16%, and
- 1.56 billion Euros additional earning, plus 20% have been identified.

Calculating social contributions as well as tax payments in relation to this sum exhibits a classical win-win situation.

Parifonds

In Switzerland compliance with collective agreements and related control on sites are regulated by collective agreement. Employers and trade union representatives nominate control staff who check wages, working time, overtime, hard-work bonuses, and other components against generally binding collective agreements and commonly set respective additional payments to employees and fines. This control system has considerably reduced wage dumping and other offences against collective agreements.

Pension at 60

For the Swiss construction industry a retirement age of 60 for construction workers was agreed through collective

agreement in 2002. The costs are settled by collective agreement and amount to 4% of gross wages for employers and 1.3% for employees. This is voluntary for employees. They are free to continue working up to the age of 65. However, years of experience have shown that 85% take advantage of an early pension. This regulation is applicable to all site employees and linked to the condition that they have been employed for 15 years as construction workers during the last 20 years. This pension fund also contributes to the state pension fund to the effect that the employees have no disadvantage when retiring at the age of 65.

My general comments to the results of the conference:

- In most of the "new" EU Member States the social dialogue is working unsatisfactorily, except for common efforts in health and safety.
- Since 2008 only in Romania are attempts to set up or improve paritarian social funds successful.
- Regulation of working conditions through collective agreements for construction employees has hardly been improved since the 2008 Warsaw conference.
- In most of the "old" EU Member States the 7-year transition period for unrestricted freedom of movement in the construction industry has been used, above all, for the introduction of identity badges on work-clothes of construction employees, construction related passes (*Baucard*) and similar means.
- The network of work data between social insurance, finance and tax authorities, accident insurance and paritarian social funds for the construction sector has been improved considerably. Cut-throat competition and illegal employment have successfully been reduced.
- Generally binding collective agreements on working conditions and wages as well as controls have been extended considerably in most "old" EU Member States.

- Generally binding working conditions in these countries are better than e.g. in Germany. As a result well-qualified workers will not stay in or come to Germany.
- As in Germany no statutory – and in most sectors no collective minimum wages according to the posting directive – exist, so that many other sectors as well as agency labour will run into enormous problems with free movement after 1 May 2011. The level of wages will sink.
- As a result of liberal legislation in many “new” EU Member States (bogus) self-employment will increase considerably and the supply of services circumventing taxes and social insurance in the home and destination countries will rise.

To conclude, the discussions of the participants from 25 EU Member States show from my point of view that transnational and transsectoral measures will not be sufficient. Therefore trade union confederations, coordination sector unions and the European Trade Union Confederation as a coordinator of the respective national demands are called upon to take adequate action. Given the decline in trade union-friendly governments and the rise of radical right wing and anti-foreigner parties, there is not much time left. Meanwhile the pressure from employees on the one hand and companies and concerns from outside the EU is continually increasing.

Presentations and conference information are available at:
www.paritarian-funds-construction.eu

Reviews

Review by Jan
Druker/
University of
Westminster

Martin Ruhs and Brigit Anderson (eds.), **Who Needs Migrant Workers? Labour Shortages, Immigration and Public Policy**, Oxford University Press, Oxford 2010, 368 pp., £ 60.-, ISBN: 9780199580590

The regulation of migrant labour is a sensitive topic within public policy debates both in Europe and in the USA. Whilst labour migration was endorsed, even on occasion encouraged, by governments in years of economic prosperity it has been viewed more critically since the economic downturn. In some countries, including the UK, we have seen strengthened government controls over labour mobility and job access by workers from outside of the European Union. Controversy is not confined to immigration from beyond the EU frontiers however. Industrial conflict at the Lindsey Oil Refinery in England some two years ago highlighted both the exploitation of migrant workers and the strength of feeling at plant level when negotiated terms and conditions were by-passed.

Central to the debates about labour mobility has been the question of the qualifications and skills that migrant workers might bring to their host country - and on the economic contribution that they might make. *Who Needs Migrant Workers? Labour Shortages, Immigration and Public Policy* offers discussion, analyses and commentary on these issues. Edited by Martin Ruhs and Bridget Anderson the book grew out of a workshop on migration policy in 2009, supported by the ESRC Centre on Migration, Policy and Society at Oxford University. The volume begins with an introduction and opening chapter reviewing the framework for analysis of staff shortages by Martin Ruhs and Bridget Anderson, the editors. An analysis of sectoral changes in the UK then follows and subsequent chapters look at Health and Social Care, Hospitality, the Food Industry, Construction and Financial services. The volume concludes with a comparison between the UK and the USA.

The chapter on the construction industry, authored by Paul Chan, Linda Clarke and Andrew Dainty is of particular interest. Entitled 'The Dynamics of Migrant Employment in Construction: Can Supply of Skilled Labour ever Match Demand?' the chapter is founded on the view that migrant labour is a resource that is attractive to employers because the systemic failures to invest in training and development has led to a shortage of skilled labour. Of course the UK construction industry depended before EU membership upon a 'reserve army' of migrant workers many of them travelling from Ireland to find work on construction sites, sometimes joining the growing army of casual and self-employed workers, who were too often deprived of the most basic of employment rights within the UK. Welcome in periods of construction boom, they could be discarded fairly easily by employers in times of recession and in this way the construction industry accustomed itself to 'poaching' labour when it was needed in lieu of investing in training and development. This history is important to understanding both the dearth of commitment to vocational education and training and the more recent patterns of engagement - and sometimes exploitation - of migrant construction workers in the UK.

The chapter begins by setting out the key features of the UK construction sector. By comparison with other European countries it is more labour intensive and less productive; there is an absence of investment in education and training and employment is more likely to be short-term and to be sub-contracted. Project based, shifting geographically as sites are completed and prone to seasonal fluctuations in activity, it is a precarious industry in which to find employment. Labour engagement is often casual as workers may be placed on site through a system of bogus self-employment and the membership and impact of trade unions is relatively low.

Years of economic prosperity in Ireland deprived the UK construction industry of its traditional labour resource but

the expansion of the European Union provided access to an alternative labour supply. Official figures tell us that the use of foreign born labour increased from under five per cent of the workforce in 2002 to around eight per cent in 2008 but this is likely to be a significant underestimate given that many workers will be self-employed or undeclared. It is difficult with any precision to capture the number of migrant workers who are engaged in this way and this chapter explains the challenges of accessing reliable data that enable serious analysis. The majority of foreign-born workers are likely to be from Eastern Europe, particularly from Poland and it might be argued that the EU has replicated the historic relationship which sustained the UK construction industry through its relations with the Republic of Ireland.

If the choice is between investing in and borrowing labour, then UK based construction employers have a historic preference for borrowing. And this chapter sets out clearly the way in which this preference both derives from and has implications for vocational education and training. Work-based training depends upon employer goodwill and there are too few opportunities for College based trainees to gain experience on site. Vocational qualifications have limited credibility outside of particular sub-sectors such as mechanical, engineering and electrical contracting. Whilst a levy system to support training has been sustained, employers often avoid it and the consequence is an endemic skill shortage - which in turn encourages reliance on migrant workers.

As Howard Gospel, whose commentary is included in the volume, remarked, 'Migrant labour is not the cause of the low skills configuration in the sector.[...] the causes are longer term and lie deeper.' But the use of migrant workers in an unregulated industry where they are exposed to exploitation has provided an easy option for UK construction employers over many years and recent patterns

of labour usage suggest only that this is likely to continue. The research and debates that led to this volume took place whilst the Labour Government was still in office. Public policy initiatives on this question and on related matters since the General Election in 2010 have been set in a different context. There is little sign at present of an initiative or investment in training and development that might lead to grounds for optimism about a more regulated approach to labour engagement in the foreseeable future.

Calendar of Events

BRITISH UNIVERSITIES INDUSTRIAL RELATIONS ASSOCIATION

Central London BUIRA in conjunction with THE UNIVERSITY OF WESTMINSTER and the European Institute for Construction Labour Research CLR.

The Central London branch of BUIRA meets in the Westminster Business School of the **University of Westminster** at **35 Marylebone Road, London NW1 5LS** (nearest tube Baker Street). The meetings take the form of seminars and attract a lively mix of people, both BUIRA and non-BUIRA members, from a range of different disciplines and organisations. Every last Friday of the month at 10.30 in the HRM Suite, Room 215, with coffee available from 10.15 and a sandwich lunch provided from 12.30. The programme aims to give us fresh insights into key current issues, to present new approaches to the subject of industrial relations, and to discuss important research in the area - whether in Britain or farther afield, particularly on mainland Europe.

25th February 2011 room M215

Posted workers in Europe

with:

Jan Cremers (CLR & University of Amsterdam) - ***Introduction***; Line Eldring (Fafo, Norway) and Justin Byrne (CEACS, Madrid) - ***Comparative perspectives on the new realities of posting***; Kjell Skjærvø (Fellesforbundet TU, Norway) and Ian Fitzgerald (University of Northumbria) - ***Organising migrant workers locally***

Including the UK launch of **CLR-Studies 6: *In search of cheap labour in Europe - Working and living conditions of posted workers***

Contact: Prof. Linda Clarke, Westminster Business School, University of Westminster, 35 Marylebone Road, London NW1 5LS. Tel. 0207 911 5000 extn. 3158; email: clarkel@wmin.ac.uk

CLR Annual General Meeting

15 April 2011, 10.30 to 12.30h

Rue Royale 45/3rd floor

Brussels

- Presentation of participants
- Annual report 2010 on activities and finances
- Reports and planning
- CLR-News
- CLR-Studies
- Current projects and research priorities (please bring abstracts)
- European cooperation/networking
- Seminars and conferences

Seminar:

The Crises Challenging Labour Relations

15 April 2011, 13.30 to 16.30h

EFBWW

Rue Royale 45/3rd floor

Brussels

a detailed programme will be distributed by the beginning of March 2011

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