

Undeclared labour: don't blame the migrants

In their notes to contributors to this issue of *Transfer*, the coordinators, Ambrosini, Cella, and Artiles, assert that ‘Today we know that irregular immigration contributes to the expansion of the underground (black) economy and informal work’.¹ Looking back at our research on ‘undeclared labour’² carried out in 2006, we must contest their assertion. Had the coordinators included emigration, no matter whether regular or irregular, in their perspective, they might have discovered the same coincidence with ‘irregular work’. Based on our evidence, we cannot detect any causal relationship between migration and the decline in traditional employment relationships, giving rise to various forms of what they refer to as ‘irregular work’. If a causal relationship is at work, we would rather suggest a reverse one, in that undeclared labour (‘informal work’) provides the preconditions for increased labour migration – including ‘irregular immigration’. This assessment is equally based on our research on the free movement of workers four years ago (Cremers and Donders 2004), on industrial relations in the construction industry of six former accession central and eastern European (CEE) States (Clarke *et al.* 2003) six years ago, and on our project on ‘Undeclared labour in construction’ in the Czech Republic, Belgium, Denmark, Finland, France, Germany,

The Netherlands, Poland, Spain and the United Kingdom.

Given the need for brevity in this note, we shall focus here on the results of the latter project and in particular on those findings which relate to the subject of this issue of *Transfer* and which pertain to our argument that ‘the underground (black) economy and informal work’ do not stem from ‘irregular immigration’. The title of the book publication stemming from this research, ‘Shifting Employment’ (Cremers and Janssen 2006), indicates our interpretation of the dynamic underlying the rise in ‘undeclared labour’.

The economic background

The construction industry is an exemplary case to demonstrate that it is not migrants who contribute to ‘informal work’. It is a sector in which employment relations have been unstable from time immemorial because of the nature of production and in which, for instance, ‘moonlighting’, has been an integral part long before and independent of immigration. Moonlighting is equally well established in CEE countries with a high level of emigration and even survived under the planned socialist economy. As a result of this instability – shared with, for instance, agriculture,

1 See ‘Main Focus’, note for the orientation of contributors.

2 *Undeclared labour in the construction industry*, commissioned by the European Social Partners in construction FIEC and EFBWW, financed by the European Commission, research carried out March–October 2006.

catering, and domestic work, the migration of labour and the employment of migrants is and has always been far above average in construction.

The free movement of workers in the European Union (EU) and the fall of the wall with subsequent EU enlargement coincided with a trend towards less direct employment on the part of the main contractor. A relatively small and specialised staff is now responsible for procurement and management on site; in the execution of the work, a chain of specialised contractors is engaged.

Social responsibility on site, in some countries safeguarded by liability regulations, can no longer be guaranteed if national regulation is not free-market proof. Other national measures no longer work adequately. The supply of cheap, unskilled labour has become an integral part of lower level subcontracting. Vulnerable and fraudulent labour-only subcontracting has to varying degrees become a permanent feature of most industrial sectors.

It is in the very nature of illegal or semi-legal employment that it is unrecorded. That is why no first hand data about the extent of 'undeclared labour' can be provided. Yet, not only occasional raids, but, more importantly, the notorious increase in agency labour and labour-only subcontracting are an unmistakable testimony to persistently changing employment relations, in particular to the decline in 'direct employment'.

Summary of the research

In our research we distinguished four basic patterns of 'undeclared labour' (p. 16):

- a. Informal individual, own account (e.g. bogus self-employment);
- b. Moonlighting (irregular, 'black' work in addition to regular employment);
- c. Informal undertakings (legal and illegal labour agents);
- d. Pyramids of subcontracting.

Perhaps because of the actual political climate, we were confronted with a selective perception of who were the main actors. The registered unemployed (committing social benefit fraud), were, for instance, not prominently represented although they are the main target group in the majority of national measures developed. We found enough evidence to conclude that in most countries:

- The highest occurrence of undeclared labour relates to work carried out by workers in combination with a regular job (temporary irregular moonlighting, under-registered, for their employer or as handyman on their own account).
- National citizens, as well as foreign 'independent' workers entering the market through labour-only subcontracting, abuse the status of self-employment, with bogus practices. As far as work is registered, this is limited to the minimum necessary to comply with regulatory obligations; the rest remains undeclared.
- Dubious agencies and labour traffickers supplying cheap illegal labour mainly from abroad have increased their share. Accommodation and food is often provided by the agency (sometimes with deductions that would pay for 'Hilton' treatment). The position of the workers is vulnerable in many aspects (dangerous work, entirely in the hands of the trafficker, language problems):

‘illegals never complain and work hard’ and only a little ‘persuasion’ is needed because of their illegal status.

The nature of undeclared labour can be described as non- or under-registered work. Payment is cash-in-hand, added to a regular wage. There is an upward mobility going on in this segment; the domestic self-employed have nowadays to compete more and more with the foreign self-employed. With a few exceptions (Czech Republic, Poland, the Mediterranean area), the general picture is that unemployed or economically inactive persons are not prominently present in the undeclared construction labour sector. The unemployed lose access to potential customers very quickly and do not have the advantage of borrowing equipment or tools from their regular employer.

Those who depend on full-time undeclared construction employment (foreign, illegal workers or asylum-seekers) belong to the least protected categories on the construction labour market. They are more than willing to work hard and long hours. Their aim is to earn as much as possible over a bearable and limited period in anticipation of better days. Except for periods of extreme recession and slump, domestic citizens are hardly any more present in this part of the market. Many of these workers come from outside the EU. The gangmaster or agency is their (only) link to the outside world. The relationship between the agencies offering the job and the workers is anything but a free agreement and the employment status is peripheral and poorly paid. This type of hiring in and out has grown since EU enlargement. Once

there is a perspective for workers having entered through this channel for more stable working conditions elsewhere, they will leave the sector.

We concluded from our research on undeclared labour:

- An employment status needs to be defined for all workers. A policy to reduce undeclared activities has to distinguish between dependent and independent workers. To avoid circumvention through transnational contracting, a European definition of self-employment is needed.
- Transnational labour trafficking taking advantage of different national regulations must be eliminated through European law.
- The relationship between the different actors involved in undeclared labour (customers, employers, workers, institutions for labour supply, public authorities) must be integrated in a regulatory framework that determines the obligations of each actor. It implies liability in the chain of subcontracting, control over hiring in and out, and monitoring the employment of workers. Authorities have to establish effective control and enforcement of labour rights and employment conditions.
- Employer and employee organisations created by the industry for the social protection of workers (training facilities, health and safety, social funds) have to develop a strategy for the integration of workers in vulnerable positions. Workers’ rights have to be applicable irrespective of the employment contract conditions (Agency Workers Directive).

The present malaise

Trying to gauge developments since we carried out our research on ‘undeclared labour’, we are acutely aware of a change in the debate. Whereas at the beginning of our project in the autumn of 2005 the general discourse was more about how to eliminate ‘undeclared labour’ by restoring employment relations under existing labour law and collective agreements, it is now much more about how to accommodate it in a wider framework by deregulating ‘red tape’ with the plea for a lesser administrative burden.

‘Undeclared labour’ – informal, illicit, illegal, black etc, work – has continued to increase in all the countries in our sample and we have not found any relationship whatsoever with levels of immigration. ‘Bogus self-employment’ was already well established in Britain in the 1970s, when immigration was minimal. By contrast, despite an unprecedented influx of migrants, Germany maintained well-regulated employment relations in the 1960s particularly in the construction industry. Finally, ‘informal work’ was widespread in CEE countries after the collapse of the socialist state associated with emigration. Nothing can be more counterproductive than making immigrants the scapegoat of this development.

This process of change in employment relations corresponds with transformations in the whole production process and its structuring in companies and enterprises across all sectors. Most products are composites of various suppliers who may in turn have their sub-suppliers. With product innovation and productivity development the supply chains are in a constant process of reconfiguration. This

is the result of restructuring of companies, often – but not necessarily – under the temporary ownership of private equity companies. In other words, productive units are in an accelerated and permanent process of restructuring. In this process the workforce changes employers at shorter intervals and temporary or even casual employment becomes a standard form. The units of production are also more frequently relocated; they migrate like the workers.

As the production process has become mobile and variable, individual ownership of companies has become dysfunctional and is about to be universally replaced by a complex network of share or equity holding. This is only to highlight the background which was not a part of our research. We were, nevertheless, aware that there can be no return to a previous status. Since our research the mandate of trade unions as well as employers’ federations has been further eroded by a loss of membership in almost all EU countries. This development vindicates the last sentence of our ‘Concluding remarks’: ‘New administrative mechanisms that can facilitate an effective policy to develop and enforce social protection have to be introduced.’ (Cremers and Janssen 2006: 40)

That the construction industry is not isolated may be exemplified by the example of the liability of retailers, not to sell the products of child labour. The same concept is behind the demand for legal provisions to make main contractors liable for labour conditions in their subcontracting chains. ‘Shifting Employment’ is a challenge to trade unions, employers’ federations and governments. The organisations of the social partners have been pushed into a position of defence and neither

national governments nor the EU have yet developed a strategy to build a new legal framework of equal rights for migrants and domestic workers, covering the geographical scope of the labour and product markets.

The handling of the Posting of Workers Directive demonstrates the sheer cynicism of the European Commission with regard to the abuse of labour rights in the Member States. The implementation of the Directive is dominated by procedures aimed at the removal of every obligatory notification and registration of the service providers and the workers involved. As far as control is permitted, this has to be guaranteed by the country of origin (*Laval* case and the recent *European Commission versus Luxemburg* case). As a result, the control of contract compliance and respect for workers rights, basic elements in the fight against bogus agencies and other undeclared practices that the EU should promote, are frustrated and can no longer be maintained.

We may here summarise again the conclusions of our research, that a transnational legislative framework is urgently needed, one which defines the status of the dependent worker and provides social protection irrespective of specific employment conditions.

References

- Clarke, L., J. Cremers and J. Janssen (2003) *EU Enlargement, Construction Labour Relations as a Pilot*, Reed Business Information.
- Cremers, J. and P. Donders (2004) *The free movement of workers in the European Union*, CLR/Reed Business Information.
- Cremers, J. and J. Janssen (2006) *Shifting Employment: undeclared labour in construction*, CLR/International Books. Also in French (*Le travail décalé*, 2007) and German (*Beschäftigung in Bewegung*, 2007)

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