Twenty years in hindsight

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Construction in the year 2020
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Early September we mailed some of our dedicated authors and stakeholders this request:
‘Dear friends, at the end of 1992 the European Institute for Construction Labour Research started with the publication of CLR-News. The first issues of our quarterly contained several articles on the future of the construction industry, mainly in reaction to a study that had been commissioned by the European Commission to the WS Atkins consultancy. 20 years later we want to do something similar. The EC has just published a vision on the future of the construction industry, construction as “a driver for sustainable growth” (attached). We want to dedicate a special issue of CLR-News to the vision of some of the academicians, trade unionists and other readers who we have worked with in the past or who know about our work. Our deadline is 3 December 2012. Imagine that you have to write a contribution that starts with: “1 January 2020, in three days I have to contribute to a conference on the present situation in the construction industry. This is my rough out-line...” Thus, our request: would you be willing to write a short contribution (an essay, a scenario, a vision paper - up to 1200 words) about the future of the building industry?’

In fact, we requested the potential authors to gaze into the crystal ball. It didn’t take long before we received reactions, ranging from ‘I will enjoy doing this’ to ‘a tantalizing invitation’. In this issue of CLR-News you will find the contributions of those who took up the gauntlet. Some authors try to give the European Institutions a helping hand with regard to the future policy that is needed to keep the construction industry healthy and competitive, based on qualifications and investment in people, skills and quality. On the other hand we also have sceptical contributions that can be read as warnings.

In the opening ‘Twenty years in hindsight’ I have picked up two items that have been prominent on our agenda. The first is about EC-policy related to the future perspectives of the construction industry. Over the years, several
authors have criticised the EC-approach that has often solely focussed on low cost and competitiveness. The second item is the clash between economic freedoms and workers’ rights, notably in the temporary cross-border posting of workers. With the enforcement Directive of posting rules on the agenda, this is a topical item, as also demonstrated by the EFBWW-leaflet included.

Gerhard Bosch comes up with scenarios for the industry that can be read as an update of his book ‘Building Chaos’, written in 2003. According to Bosch, construction is very much at the crossroad between a model that is driven by fragmentation and cost reduction and a model that is based on cooperation and quality. The specific nature of the construction industry and the failure of the market to provide the necessary skills make it necessary to regulate the construction industry more highly than most other sectors of the economy. In his opinion only a cooperative model is qualified for producing high quality.

EFBWW general secretary Sam Hägglund has listed the lacunae of rights in the EU. Starting with the Atkins-study from 1993 that concluded that exceptionally low labour costs are counterproductive, he observes a growing precarisation. In the end, social dumping practices deprive workers of wages and social rights, expose them to health and safety hazards and are distorting the market since serious bona fide companies have to compete with mala fide companies. They deprive Member States of tax income and employ authorities in legal proceedings targeting companies which have often ceased to exist.

Colin Williams contributes with an outlook on undeclared work in construction. The proportion of all undeclared work in construction has increased over the last decennia. However, according to him, there is a positive way out. First, given that undeclared labour is used to circumvent the shortcomings of formal sector suppliers, solid improvements are required in the availability, speed and quality of formal sector supply, such as by widely introducing accreditation of craftspeople and the use of ‘kite marks’. Secondly, and to tackle the social and redistributive reasons for using undeclared labour, a ‘softer’ approach is required that indirectly tackles this phenomenon by encouraging a greater commitment to tax morality.

A rather pessimistic view or better said realistic if you look at the experiences that he refers to, is...
sketched out by Charles Woolfson. He calls his description of the radical recalibrating of labour rights across the European space, in the name of restoring flexibility in the labour market and competitive dynamism to the European economy, a ‘warning parable’. There is a lot of work to do to out-argue his scepticism.

Under the Discussion heading, we have included an article from Lutz Luithlen that fits very well in this issue. We have had several other contributions in the recent past that dealt with sustainability and, even without looking at 2020, his hope that environmental issues will rise to the top of the political agenda can be endorsed.

Finally, we have our reports, in this case one report on the ProBE-exclusion seminar, and two reviews on recent labour migration publications. The report and the reviews fit in the priorities that we have formulated in recent years: free movement of workers, decent work and the rights of workers with vulnerable labour market perspectives.

These items not only fit in the CLR-agenda of the past, related activities will certainly be part of our future work. As ever, input and feedback are welcome.
TWENTY YEARS IN HINDSIGHT

At the start

With this issue CLR-News completes 20 years. In November 1992, the executive committee of the European Federation of Building and Woodworkers (EFBWW) gave the green light for the installation of what was called ‘a contact point’ of researchers and trade unionists, the Construction Labour Research-network, later to become the European Institute for Construction Labour Research – or CLR. Early in 1993, CLR launched its quarterly with a ‘dummy’, our number 0, still called ‘a circular’. With just four pages, it was mainly dedicated to introducing the initiative. The official number 1 already contained several sections that sound familiar (Note from the editor, subject articles and reviews). However, even the dummy brought some content, namely a critical commentary on a study, commissioned by DG Industry of the European Commission (EC). This so-called Atkins-study had to contribute to a new strategy for the construction industry.

A few of the comments formulated are still worth memorising:

- The building trade unions were not involved at the beginning.
- The objectives of the project, as formulated by the EC, were ‘not very clear’ and above all the large-scale project ‘was extremely expensive’.
- The Atkins work was reviewed as ‘extremely variable in quality’, with some national reports being ‘definitely poor’.

A few issues later (CLR-News 2-1994) the verdict on Atkins was clear: ‘But to say that we now know where the European construction industry stands in the competitive battle, what will happen as regards employment or the way in which European construction policy can contribute towards improving industry’s prospects, seems to be going too far’. Among the shortcomings listed, we can find: notions about the competitiveness of construction without discussing at least the key con-
cept of productivity’; differences between countries not addressed; and the lack of a serious ‘analysis of the sector’s structure’ and of the relationship between large companies, SMEs and the operational end of the industry noted. Social issues relevant to the construction industry were not ‘dealt with in-depth’ and ‘many myths and predictions about growing mobility and internal migration’ were given with poor or no evidence.

The quarterly CLR-News has tried to close these gaps. It has brought a broad spectrum of articles - on the disparity of wage relations in Europe, on labour migration and cross-border posting of workers, on women in construction, on wage costs and collective bargaining, on workers’ health, on skills and vocational training and the relationship with quality and productivity - all in a ‘open source’ manner, even before this was fashionable.

The current picture
Twenty years have passed and the EC in the meantime has produced several series of strategy papers. One of the last was the strategy as formulated in EUROPE 2020 - A strategy for smart, sustainable and inclusive growth in 2010. But, the attention paid to construction in that document was extremely poor with a sole reference to the need ‘to invest in energy efficiency in public buildings and in more efficient recycling’ (page 16). In July 2012 the EC came up with a document that tried to make this phrase operational (Strategy for the sustainable competitiveness of the construction sector and its enterprises {SWD(2012) 236 final}). And, surprise, surprise, a High Level Forum was announced with the task to oversee implementation and to make recommendations on any necessary adjustments or new initiatives to be launched.

In its 2012 document, the EC signals ‘the construction sector is confronted by a number of structural problems, such as a shortfall of skilled workers in many companies, low attractiveness to young people due to the working conditions, limited capacity for innovation and the phenomenon of undeclared
work’ (page 2). And, what is more a complete paragraph, entitled *Improving the human-capital basis of the construction sector* (par. 3.2, page 10-12), looks at training provisions, at the conditions for a better working environment and career management, for a greater mobility of construction workers and for wider provision of cross-border services, and at the role of social partners. And, it has to be said, at least on paper the approach of the EC looks much more in balance than 20 years ago, although one can question the prescriptive and top-down approach of the European Commission in several files. The EC ‘will support a feasibility study by the European social partners on the establishment of a European Sector Skills Council. European Sector Skills Councils are networks of national observatories on labour-market and skills analysis at a sectoral level, which, under the steering of sectors' representatives, European social partners, and with the participation of representatives of education and training providers, exchange information and good practices in order to draw recommendations on the evolution of skills and jobs’ (page 11). Having in mind the difficult fight that the building unions had for a social clause in public procurement, it is pleasant to read that the EC is of the opinion that Member States should ensure that EU companies and non-EU companies compete for public contracts on an equal footing without jeopardising EU social and environmental achievements (page 5).

We do not want to comment in detail on the different aspects of the strategy formulated. But it is remarkable that the social partners (and notably the stakeholder ‘workers’) do not show up in the four other paragraphs of the strategy paper, with important issues like improvement of investment strategies, environmental performance, the functioning of the internal market and the global outlook. In fact these are all issues that do matter for both sides of the industry. Social partnership must not solely be ordered to human resource management.
**Equal pay for equal work**

In the meantime, the EC is likewise still struggling with another heritage of the last two decennia. In the paper there is only one reference to the problematic European Court of Justice (ECJ)-decisions with regard to the working conditions of posted workers where it is said that ‘the enforcement of the Posting of Workers Directive is to be improved’, in order to avoid any abuse and circumvention of rules, and to avoid ‘social dumping’ whereby non-host Member State service providers can undercut local service providers because their labour standards are lower (page12).

However, if we examine the proposals that have been formulated for an Enforcement Directive in this area (Proposal for a Directive of the European Parliament (EP) and of the Council of Ministers on the enforcement of Directive 96/71/EC, COM[2012] 131 final, serious criticism can be formulated. For the EC, the norm is the ECJ. Therefore, the EC is not coming up with any improvements. Everything stays soft – improved information, cross border cooperation of the authorities, one contact point – and there is hardly any positive change from the point of view of workers. However, Europe is not living in a judicial context of only case law. The enforcement Directive was (and is) necessary to clarify the legislators’ aims and objectives. Thus, the legislator has to act and the ECJ has to work in the legal frame that is created by the legislator. Improvement to enforcement should first and foremost mean that the European legislator clarifies what can be enforced.

In other words, the rules and provisions that fall under the scope of Directive 96/71/EC have to be clarified, notably what is meant by public policy provisions in the case of freedom of cross border services with the use of posted workers. The notion of public policy provisions (related to this crucial part of the internal market) was formulated by the Council in a declaration (Declaration number 10) in the slipstream of the adoption of Directive 96/71/EC. This declaration, formulated when the Directive was concluded and recorded in the minutes of
the Council, was not discussed with the EP and was not published until 2003. It says: ‘The expression “public policy provisions” should be construed as covering those mandatory rules from where there can be no derogation and which, by their nature and objective, meet the imperative requirements of the public interest’. The ECJ has further elaborated this notion in a very narrow way, thus limiting the possibility for the Member States to act according to the Directive’s objectives. Enforcement of these objectives with regard to the mandatory rules that can be formulated by Member States (according to article 3.10 of Directive 96/71/EC) has to be solved with a reconfirmation of this competence. And this must go beyond the ECJ-positions that limit this competence with the argument that these mandatory rules are a barrier for the free provision of services as soon as these rules contain more than the items of the list with minimum standards.

Secondly, and based on the same logic, inspection methods and mechanism that aim to control the rules laid down in Directive 96/71 and to detect breaches of the posting rules or the abuse for other purposes than the free provision of services, should be regarded as belonging to the core part of the public policy provisions, as formulated in declaration 10 of the Council. Mandatory rules of the Member States to fight against undeclared labour and to avoid social dumping, related to cross border labour recruitment, cannot be restricted solely because these rules could hinder the free provision of services.

Tackling the abuse of the posting status and acting effectively against breaches of the posting rules cannot be done without decent registration and prior notification; without such measures, any control will be hampered. Contract compliance is an important characteristic of genuine entrepreneurship. Therefore, notification and registration cannot be seen as an administrative burden, but simply a crucial part of a company’s administrative obligations prior to the start of the service supply.
Another important aspect of enforcement is the problematic control of the labour relationship. The competence of the host country to define whether there is a labour relationship is confirmed by the EC (in footnote 43 of the proposal) and has to be made operational in the proposed Directive. The enforcement Directive relates to another Directive that prescribes that every worker must have written proof of a labour relation. Given the fact that Directive 91/533/EEC on an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship is a European legal act, the competence to control compliance with related obligations must lie in the hands of the authorities in the home and the host country. In the case of differing interpretations, the law of the Member State to whose territory the worker is posted should prevail (in line with footnote 43).

The European Federation of Building and Woodworkers organises a demonstration on the 23rd January 2013. According to the leaflet (see next pages): ‘The future EU enforcement directive must include concrete measures that help to eliminate all forms of social fraud, gang masters, bogus self-employment and letterbox companies. The cheats and swindlers must be stopped’. And indeed, the European legislator still has a chance to improve the necessary tools by a thorough review of the proposals tabled.
Stop social dumping!
Stop exploitation!

EQUAL PAY AND EQUAL RIGHTS
FOR EQUAL WORK

The European Federation of Building and Woodworkers calls on the EU to take firm action to combat SOCIAL DUMPING in the form of pay and employment conditions and social protection. We demand APPROPRIATE HEALTH AND SAFETY MEASURES, PROPER INSPECTION and EFFECTIVE SANCTIONS. The future EU enforcement directive must include concrete measures that help to eliminate all forms of social fraud, gang masters, bogus self-employment and letterbox companies. The cheats and swindlers must be stopped.

WE WANT EQUAL RIGHTS
AND EQUAL PAY
FOR EQUAL WORK

That’s why we are organising a European DEMONSTRATION for the construction industry in Brussels on Wednesday, 23 January 2013 (11:00 a.m.). We look forward to seeing you there!
Gang masters (contractors who deliberately employ staff illegally) are organised at European level and operate using complex chains of subcontracting, posting and temporary agency work. They offer very cheap foreign construction labour on a massive scale, they also do not pay social security. Workers work far too many hours, usually 6 or 7 days a week. They are not paid properly for wages and overtime, if at all. The workers who dare to stand up for their rights, are threatened or sent back to their home country. Among other things, they have to work in unsafe conditions and live in large numbers in bungalows or in barracks on the site in inhuman conditions.

The low standard of living in many eastern and southeastern European countries has made it easy for gang masters to hire workers. Initially many appealing promises are made, such as good wages, safe worksites, decent housing and a pension. In practice though, these workers are totally fleeced and if they complain they have to leave.

Companies that make use of the cheap foreign workers, are engaged in a "race-to-the-bottom" competition at the expense of the workers.

Not only the construction workers suffer as a result, but also the many honest companies.

The European Union is making this disgrace and this exploitation possible. The “freedoms” provided by the EU are leading to the increasing erosion of existing labour relations legislation and social protection. Existing systems that are meant to protect workers in the construction industry and combat fraud have been abolished in recent years or had to be restricted. For the EU, social protection and the rules associated with it equal protectionism. We don’t want that kind of EU! An internal market without rules regarding social protection and taxation is leading to social dumping. The EU must impose on companies the rules they must comply with.
Not every country manufactures automobiles. Not every country mines coal. But every country has a construction industry. Unlike other activities, construction cannot be relocated to other countries, at least not in its end stages. The construction cluster, that is the construction industry including all the inputs from other industries, represents one of the most important economic clusters in all countries. Its economic impact goes far beyond its purely statistical representation. For example, an input-output analysis showed that in 2004 around 6% of the German labour force was employed in the core construction industry (including architects and building engineers) but that the construction cluster (including also building materials, leasing of machines, services, especially financial services etc.) employed no less than 12% of the labour force (Lichtblau 2008:9). By supporting infrastructure, the construction sector helps to improve both the delivery of public services and business productivity. Many future needs, such as reducing pollution, saving energy or restructuring the urban environment for an ageing society, cannot be met without a competent construction industry.

Buildings and infrastructures are constructed in a specific space and are to some extent unique products. In terms of labour, this means that workers are constantly on the move in search of work and that activity levels are constantly fluctuating, thereby reinforcing the already turbulent nature of employment in the sector. Analyses of industrial processes tend to focus on the impact that globalisation and economic integration have on each territory’s industrial specialisation; in the case of construction, on the other hand, the object of study is their impact on the labour movements they generate (Bosch and Philips 2003a).
Because of its local nature, the construction sector plays a major role in all national economies. Because of the importance of its products for society, both the production process and the product market have been subject to strict regulation. As far as the production process is concerned, there are an enormous variety of standards aimed at guaranteeing the quality of the product and avoiding problems that are often detected only in the long term. However, due to the variety of elements and services included in the products of construction (buildings and infrastructures), information on quality is often incomplete and unnoticed defects are common. As previous studies (Bosch and Philips 2003b) have shown, the very nature of building activity gives rise to forms of work organisation that must satisfy conflicting needs. First, product quality often depends on the professionalism of the workers, because the tasks are not highly mechanised and the spatial characteristics make it impossible to apply the forms of control that are habitual in other sectors. Secondly, the structural turbulence discourages stable labour relationships. Inter-company mobility is common and there are recurrent episodes of unemployment or inactivity. Because of workers’ low job tenure, companies are reluctant to invest in skills that can be easily transferred to other companies. In the absence of regulations, construction tends to be dominated by small firms with limited fixed capital and unskilled workers with limited human capital. Ultimately, the customized nature of most construction, the dangers of construction work and the difficulty and expense of assuring the quality of the construction product after completion of a project all combine to create irreducible needs for skills within the construction labour force that cannot be circumvented through the market solution of articulated subcontracting.

Even in liberal market economies characterised in general by loosely regulated labour markets and weak and fragmented collective bargaining, the specific nature of the construction industry and the failure of the market to provide the necessary skills make it necessary to regulate the construction in-
The construction industry has a similar structure in almost all countries. A small number of large national construction companies specialise in public works, though not to the exclusion of other activities (EFILWC 2005). They often operate in the world market for major public works, offering a wide range of services. They act as financial enterprises and are able to mobilise the resources required by large infrastructure projects and to finance the public sector. This activity has grown as governments have discovered that borrowing can be camouflaged through long-term contracts (shadow tolls, leasing of buildings, etc.). They also manage complex projects in
which they deal with the design and coordinate the subcontracted firms that carry out the work. In some countries, they combine construction with other types of service, often associated with other types of public contracts (cleaning and sanitation, management of infrastructure and facilities etc.). A second layer is made up of medium-sized companies which often act as general contractors in regional markets or specialise in certain segments of the market. In all the countries, the rest of the sector is composed of many small enterprises, some specialising in specific stages of the production process, others only active in local markets with relatively little capital and relatively few employees compared to other goods producing industries. Small size limits the capital put at risk in the face of unusual turbulence and uncertainty (EFILWC 2006). While national subcontracting has a long tradition, cross-border subcontracting is a relatively new phenomenon. It has been facilitated by the freedom to provide services in all EU member states and has been used increasingly since the beginning of 1990s.

Obviously, there are two contrasting types of cross-border subcontracting. On the one hand postings from low-wage countries to high-wage countries are intended mainly to reduce costs by employing lower paid foreign workers; postings between countries with similar wage levels, on the other hand, are based mainly on considerations of quality and short-term availability. These contrasting types are found at national as well as cross-national level. Harvey characterized them as cooperative and competitive subcontracting (Harvey 2003:195-6). The cooperative model is based on specialisation and professional knowledge. Each agent carries out one stage of the production process and must cooperate with the other agents to achieve a satisfactory result. It is a model compatible with an organisation based on professional qualification, good working conditions (pay, etc.) and the application of specialised skills to assemble the elements that form part of the construction. It is also based on horizontal relations between companies. The mechanisms put in place to protect
working conditions reinforce the model because they make it possible to retain specialised manpower and facilitate inter-company mobility to meet the changing needs of the production process. Competitive subcontracting, in contrast, is based on lowering costs by exploiting the differences in market power of the agents participating in the process. The main companies tend to outsource most activities to smaller companies, which are contracted on the basis of price. A common practice in this model is the successive subcontracting of the same task, which is typical of the ‘hollowed-out firm’ (Harvey 2003: 197). The middle units in this process are often mere intermediaries that coordinate the activity of smaller units. The greater the wage differences between construction companies, the more competitive subcontracting contributes to the fragmentation of an already highly fragmented industry and a loss of competencies of many actors in the industry which leads to quality problems, lack of coordination, reworking, scheduling delays and unplanned cost increases i.e. the daily building chaos in many countries.

Table 1: Cooperation or Fragmentation – Two scenarios of the future development of the construction industry

<table>
<thead>
<tr>
<th>Dominant factor of competition</th>
<th>Fragmentation</th>
<th>Cooperation</th>
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<tbody>
<tr>
<td>Dominant firm strategies</td>
<td>Costs</td>
<td>Quality and Costs</td>
</tr>
<tr>
<td>Structure of value added chain</td>
<td>General contractors with fragmented chain of subcontractors</td>
<td>Cooperation of SME’s, general contractors, specialists</td>
</tr>
<tr>
<td>Size of firms</td>
<td>Polarisation between big and small firms</td>
<td>Sound mix of small, medium and big firms</td>
</tr>
<tr>
<td>Innovation</td>
<td>Mainly upstream (machine producers, suppliers, engineers)</td>
<td>Upstream and within construction firms and networks</td>
</tr>
<tr>
<td>Skill formation</td>
<td>Low investments and low job security, permanent, skill shortages, industry unattractive for young people</td>
<td>High investments and job security, industry attractive for young people</td>
</tr>
</tbody>
</table>

Both models have substantial implications for firm strategies, the structure of the value added chain, the size of firms, the
innovation patterns and the skill formation. Table 1 summarizes these impacts in two contrasting models which can also serve as scenarios for the future development of the construction industry in different countries (Bosch/Rehfeld 2006). Which of the two models will predominate within a country or across countries depends very much on the national and cross-national regulation of the construction labour market. Obviously only the cooperative model is qualified for producing high quality.

1. In government contracting, a prevailing wage is defined as the hourly wage, usual benefits and overtime, paid to the majority of workers, labourers and mechanics within a particular area. The intention is to prevent the public sector’s large expenditures and strict competitive bidding requirements from destabilising local and regional construction markets. Article 2 of the ILO convention 94 stipulates: ‘1. Contracts to which this Convention applies shall include clauses ensuring to the workers concerned wages (including allowances), hours of work and other conditions of labor which are not less favorable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on (a) by collective agreement or other recognized machinery of negotiation between organizations of employers and workers representative respectively of substantial proportions of the employers and workers in the trade or industry concerned; or (b) by arbitration award; or (c) by national laws or regulations’ (www.ilo.org/ilolex/cgi-lex/convde.pl?C094).

References
CHEAP LABOUR AS BUSINESS MODEL IN THE EU – THE LACUNAE OF RIGHTS AND THE SPREAD OF PRECARISATION

In the well-known study of the European construction industry from 1993, WS Atkins, *Strategies for the European Construction Sector*, some interesting conclusions concerning the relationship between the price of labour and productivity were put forward. Taking the United Kingdom (UK) as an example, the report concluded that ‘exceptionally low labour costs are counterproductive and lead to higher overall costs’. The report continued with reasoning about why the industry will only attract the least skilled workers: ‘The turnover of labour will be high and the more skilled workers will move to regions and industries with higher wages which means that the incentives for education disappear (...) quality and productivity suffer’ (5.16-5.17).

All this seems to be forgotten today in the wake of the economic crisis, when the search for cheap labour has been elevated to a major business model of the European construction sector. The contradictions between the migration policy of the European Union (EU) and the framework of rights have never been more obvious. Big European contractors and European-wide temporary works agencies are inventing new ways of creating cheap labour in the construction, often by using foreign workers under precarious conditions. And the European Commission is in different ways supporting this development, by creating a regulatory framework that makes it possible to deprive workers of rights. There are different modes of how this precarisation takes place.

The first mode is about the *circumvention* of the existing framework of rights in order to lower the price of labour. Normally the actual circumstances under which work is performed should determine whether a worker is to be classified – in terms of rights – as an employee or as a self-employed.
However, the European Court of Justice has in a couple of judgments - notably the ‘Banks’ case (C-178/97) and the ‘Herbosch Kiere’ case (C-2/05) - ruled that the employment status can be determined by the form E 101 when a self-employed worker crosses a border. The implication of these judgments is that false self-employment can be ‘exported’, meaning that false self-employment as a ‘business model’ in the construction sector, can be spread from countries such as the UK to other EU countries.

The second mode of precarisation is when workers temporarily working in another country fall outside of the traditional categorisation of workers, and thereby outside the frameworks of rights connected to these categories. One example is when a worker is temporarily working in another country but does not qualify for the definition of ‘posted worker’. This worker is thereby technically not a posted worker, and neither a migrant worker nor a resident worker, and will instead fall under the Rome I Regulation, which bases the assessment on where the worker ‘habitually works’. A consequence of this may be that the worker loses the rights to the minimum conditions of the country of work.

The third mode of precarisation for mobile EU workers arises through the European regulations which prohibit Member States – national authorities and/or social partners – from enforcing rights for mobile workers. One example of this was the reinterpretation of the Posting of Workers Directive that was made by the European Court of Justice by rulings in 2007 and 2008, which meant that equal treatment could not be enforced for foreign posted workers. Another example is the current draft Enforcement Directive, which – despite its name – is as much dealing with situations where a host Member State cannot enforce checks and controls that a foreign worker is given the minimum conditions that he or she is entitled to.
The fourth and most serious mode of creating precariousness among migrant workers is when European building contractors and temporary works agencies are making use of lacunae in the European framework of rights to deprive mobile workers of wages, social contributions, health and safety requirements and other working conditions to which they are entitled. There are no limits to the inventiveness of companies to create ‘cheap labour’ in this way, and most methods are based upon the fact that different European legal regimes are involved and that the communication between these regimes is insufficient to detect fraud, undeclared work or other forms of misconduct.

Some examples of the latter have been revealed through the campaign Stop Social Dumping, run by the European Federation of Building and Woodworkers, which will organise a demonstration in Brussels on 23 January 2013. A key player in the provision of ‘cheap foreign labour’ in Europe working under social dumping conditions is an Irish based temporary works agency which has subsidiaries in more than 20 Member States. This company is closely collaborating with some of the major contractors in Europe and has been involved in social dumping scandals in a number of EU countries.

One of the methods used is the continuous creation of new subsidiaries and letterbox companies through which the workers are supposedly employed. In 2011 it was estimated that 87 subsidiaries of the Irish mother company existed in Europe and it was often impossible to detect which one of these subsidiaries was the real employer of the workers concerned. When the host country authorities discover that no taxes or social contributions have been paid for the workers involved, the Irish mother company claims to have no knowledge of these workers and refers to, for instance, its Cypriot subsidiary. However, when the authorities try to contact the Cypriot company, it is often not possible to locate. The working conditions of workers provided through this temporary works agency have often been scandalous and
been called ‘modern slavery’ by Members of European Parliament in relation to cases in France, Finland and the Netherlands. Workers are pressed to exceed maximum working hours per week and many fatal accidents have occurred. The company has made deductions from the workers’ wages that not corresponded to services provided. Social contributions have not been paid, either in the host country or the home country or where the letterbox company has been registered, although taxes and social contribution costs have been deducted from workers’ wages. All in all, the activities of the temporary work agency and its building contractor client can be classified as fraudulent, involving undeclared work, tax evasion and withholding wages and social contributions that their workers are entitled to.

These social dumping practices do not merely deprive workers of wages and social rights and expose them to health and safety hazards. They also deprive Member States of tax income and employ their authorities in legal proceedings that are targeting companies which have often ceased to exist. But such social dumping practices are also distorting the market since serious bona fide companies have to compete with these mala fide companies which are not paying the obligatory social contributions.

This precarisation of workers and the modes of creating cheap labour and depriving workers of rights and remunerations clearly illustrate the lacunae of the framework of rights in the EU. It should be a priority to stop up these lacunae and create an EU where all workers active in a Member State – irrespective of country-of-origin and forms of employment (including self-employment) – should at least be entitled to minimum rights connected to the condition of the host country where their work is being carried out.
UNDECLARED LABOUR IN THE EUROPEAN CONSTRUCTION INDUSTRY IN 2020 AND BEYOND

The aim of this paper is to look from the position of 2020 at the changes that have taken place over the past decade in undeclared work and how it has been tackled in the European construction industry, as well as forward to what needs to be done in future. To do this, first, the trends over the past decade or so in the extent and nature of the undeclared economy are reviewed, secondly, the shifts in how undeclared work has been tackled and third and finally, what needs to be done to tackle the undeclared economy. This will reveal that, despite the narrowing of undeclared work in the construction sector to the home repair, maintenance and improvement (RMI) realm, in part due to the construction industry itself developing policy measures to tackle the undeclared economy rather than waiting for government to intervene, much remains to be done. The paper will conclude by outlining how this might be achieved.

Throughout this paper, undeclared work refers to remunerated work that is not declared to the authorities for tax, social security and/or labour law purposes when it should be declared but which is licit in every other sense (European Commission 2007). This covers diverse activities ranging from providing undeclared RMI services to friends, neighbours and acquaintances, through undeclared self-employment to undeclared waged employment in both legitimate as well as wholly undeclared construction businesses.

Trends in undeclared work in the European construction industry
A baseline survey conducted well over a decade ago in 2007 revealed that 18% of all workers in the European construction sector reported participating in undeclared work over the year prior to the survey (Williams et al. 2011). Examining
the nature of this undeclared work, just 15% conducted waged employment and 15% undeclared self-employment. The remaining 70% was own-account work conducted for and by friends, kin, acquaintances and neighbours (Williams et al. 2011). Analysing consumer motives in the RMI sector, saving money was the rationale in just 38% of instances, one of several rationales in a further 38% of exchanges and not cited as a rationale in the remaining 24% of cases. Rather than solely to save money, undeclared work was conducted either for social or redistributive rationales, or to circumvent the shortcomings of the availability, speed and quality of formal sector suppliers (Williams et al. 2012).

Over the past decade or so since this survey, there has been an overall reduction in the prevalence of undeclared work in the construction sector, mostly due to the rapid decline in undeclared work in the non-domestic realm. The result is that the proportion of all undeclared work in the construction sector that is conducted as own-account work in the home RMI realm has increased. To understand this, the developments in policy need to be reviewed.

**Shifts in policy approach towards undeclared work**

Historically, governments took the lead in developing policy measures to tackle the undeclared economy in the construction industry. In the first two decades of the new millennium, however, the construction industry itself increasingly took a lead, resulting in a shift from a largely state-led policy to the emergence of industry-led policy alongside state-led policy measures. This perhaps commenced when construction industry employer and employee organisations in many countries introduced identity cards, following the ID06 initiative by the Swedish construction industry.

Such a replacement of state-led by industry-led policy started to really take-off, however, when industry began to provide social protection to workers, a realm conventionally seen as the state’s role. This commenced when attention started to be
paid to the Builders Social House (Casa Sociala Constructorilor, CSC) in Romania, a privately run welfare organisation to which trade unions and employer organisations in the construction sector contribute in equal measure, so as to provide welfare benefits during the cold season (1 November – 31 March) to construction workers in registered formal jobs. Corporate contributors pay 1.5% of their turnover into the CSC scheme, and employees contribute 1% of their gross base salary. In 2008, CSC had 573 member organisations accounting for 40% of the construction workforce and during the 2007-08 winter period, 102,387 benefited as welfare recipients (Williams and Renooy 2009). Later years have seen industry-led welfare benefits schemes expand out to other economic sectors and countries, and the slow but gradual replacement of the state as a welfare provider by private sector organisations. The intention in doing so has been to make declared work more attractive.

This is not to say, however, that public policy is becoming redundant. The state has continued in its traditional role of using repressive measures to increase the perceived or actual likelihood of detection and penalties for working undeclared, albeit recently complemented with measures to prevent undeclared work from happening in the first place, such as by introducing reverse charges for VAT whereby the buyer, not seller, files and pays the VAT owed.

The overall impact of this coupling together of industry- and state-led policy initiatives has been a marked decline in undeclared work in the non-domestic realm of the construction sector. The problem, however, is that the same has not happened in the home RMI realm. Undeclared work in this sphere remains stubbornly high, especially own-account undeclared work conducted for closer social relations. In major part, this is because many of the policy initiatives have assumed that undeclared suppliers and purchasers are rational economic actors seeking to maximize financial gain, despite most of the research displaying that other motives prevail (Williams and
For example, the use in many countries of tax deductions and service vouchers to reduce the cost of using declared labour when conducting domestic RMI, falsely assumed that saving money was the main reason for using undeclared labour. However, the fact that these closer social relations often do the home RMI work on an undeclared basis for reasons other than monetary gain, such as to give an unemployed member of kin some money in a manner that avoids any connotation of charity or from the supplier side to help somebody out who would otherwise be unable to afford to get the work done, means that these initiatives that simply change the cost/benefit ratio have had little effect. The outcome is that a rethinking of the current approach towards tackling undeclared work in the domestic RMI sector is required.

**Looking forward: what needs to be done to tackle the undeclared economy post-2020?**

Rather than simply use ‘hard’ penalties and incentives to alter the cost/benefit calculation confronting citizens, either by increasing the costs of operating in the undeclared economy or benefits of participating in the undeclared economy, an alternative approach is required. First, and given that undeclared labour is used to circumvent the shortcomings of formal sector suppliers, solid improvements are required in the availability, speed and quality of formal sector supply, such as by more widely introducing accreditation of craftspeople and the use of ‘kite marks’. Secondly, and to tackle the social and redistributive reasons for using undeclared labour, a ‘softer’ approach is required that indirectly tackles this phenomenon by encouraging a greater commitment to tax morality.

On the one hand, this can be pursued using campaigns that raise awareness about the costs of undeclared work and benefits of declared work. These can be run either by the state or by social partners either independently or in cooperation with the state. On the other hand, it is also important to enhance the perceived fairness and justice of the tax system. Fairness
refers to the extent to which businesses and workers believe that they are paying their fair share compared with others; justice refers to whether businesses and workers receive the goods and services they believe that they deserve, given the taxes that they pay and procedural justice - to the degree to which businesses and workers believe that the tax authority has treated them in a respectful, impartial and responsible manner. If these improvements in the availability, speed and quality of formal sector supply are made alongside enhancing the commitment of the population to tax morality, then the outcome will be that further headway can be made over the forthcoming decade on tackling undeclared work.

References


THE FUTURE OF THE CONSTRUCTION INDUSTRY: A BALTIC VIEW

“1 January 2020, in three days I have to contribute to a conference on the present situation in the construction industry. This is my rough outline...”

After ten years of global economic and financial crisis, in the last two years, we seem to have finally turned the corner. The economic doldrums in which Europe has languished for so long could now be over. If so, it is time to take stock of what the price of a decade of recession has been, not least for the European construction industry. Nowhere has this price been more severe than in the Baltic States of Estonia, Latvia and Lithuania. Here, an inflow of speculative finance accompanying European accession in the mid 2000s, and profligate lending policies by the Swedish banks to a naive population keen to embark on private home-ownership, stimulated an extraordinary property bubble. Prices and investment yields per square meter for property in Vilnius, capital of Lithuania, exceeded those of central Stockholm in 2007. Employees in the construction sector saw sharp increases in wages, intensified by labour shortages as prospects for greater mobility and work opportunities abroad opened up, especially in the burgeoning construction booms of Spain and Ireland. This was the first wave of construction labour migration which was mainly of single adult males and of a temporary nature.

When the crisis finally hit in late 2008, property prices plunged between 40% and 60% in the Baltics. For the construction industry, it was an almost overnight transformation from boom to bust. If the boom had been incredible in its intensity, the bust was even more so. In economic terms, GDP in the three Baltic States collapsed from a high in Latvia in mid-decade of over 12% growth per annum, to a drop within a space of little over a year of nearly 20% in GDP. This cataclysmic collapse is now happily being repaired, and output has
recently reached the pre-crisis levels, for the first time since 2008, after several false recoveries in the last decade. The onset of global crisis was accompanied by an accelerated ‘second wave’ of labour emigration, as tens of thousands of Balts simply left in search of better financial prospects abroad. Unlike the first wave, this time whole families departed and the majority have not returned, even as prospects have begun to improve. In both Latvia and Lithuania, estimates suggest that something approaching 10% of the working population departed within the space of a few years during the depth of the crisis in the period from 2008 to 2012. Estonia was something of an exception here, as although long-term unemployment also increased exponentially during the crisis, access to neighbouring Finland offered the possibility of shorter-term circular migration.

As a result, the common challenge facing all three Baltic States today in 2020, which is in large part the legacy of the economic crisis, is one of simple demographic (and social) sustainability. The population is aging, and this, together with negative population growth due to low levels of fertility, and combined with previous outward migration, have yielded projections for the most rapid population decline in the whole of Europe.

With so many working age families having left the Baltics during the ‘second great depression’, the demand for new housing is now at an all time low. Like Spain, there is a huge ‘overhang’ of unsold dwellings and those that are left, are generally too poor or too old to enter into the property market. The Swedish banks, which financed so much of the speculation in the boom years and subsequently got their fingers badly burned with mass mortgage defaults, are still reluctant to lend money to all but the safest customers. If you look in the windows of the major banks on the high street of Riga, capital city of Latvia, they are stuffed with adverts for property to rent but not to sell, since prices even of repossessed apartment properties make it uneconomic to sell them at to-
day’s market prices. Whole districts of new built high-rise apartments from those days – rushed up during ‘the fat years’ - still lie unoccupied. There is even talk, as in Ireland, of pulling down some of these ‘ghost estates’ on the outskirts of the main cities.

History is a tale of tangled ironies. When the new member states from Eastern Europe joined the European Union in 2004, sixteen years ago now, it was a great moment of celebration. At last the post-communist world had broken with their past and realigned itself within the democratic structures of the enlarged Union. It was the moment when East European labour began to freely migrate westwards to countries like the UK and Ireland. For the construction workers of the Baltic States, this meant the opportunity to earn wages five times greater than what they could obtain back home. Many took that opportunity.

We recall that the arrival of Baltic construction labour in Sweden was to lead to the historic confrontation outside the gates of the Vaxholm military school near Stockholm as Swedish trade unions sought to establish Swedish rates for Latvian posted workers. That dispute led, in turn, to the judgment of the then European Court of Justice in December 2007, the so-called Laval case. This historic judgment (and associated judgments) has since fundamentally altered the balance of the European project. It has shifted in favour of market-making at the expense of what many regarded as a ‘social Europe’, based on the legitimate right of national trade union movements to prevent ‘wage dumping’ through industrial action.

The Laval workforce was actually unionised – part of the employer strategy to be able to argue, ultimately successfully, that the workforce was already covered by a collective agreement and therefore, did not need to abide by a Swedish one. Yet these few dozen Baltic construction workers were almost unique in the sense that their employer had approached and
voluntarily offered to negotiate a collective agreement with the Latvian construction union. In the context of the Latvian construction industry, this was probably a first, and certainly so, in the context of trade unionism in the Latvia in general, where perhaps 15 per cent of the workers were in trade unions at that time (today less than 5 per cent), and employers almost universally hostile to any form of labour organisation.

But there is a much deeper historical irony. Almost at the very moment when European protective labour legislation was reconfigured in the declared interests of promoting the primacy of market forces (does anyone now remember the Post- ed Workers Directive?), its economy suffered a decade of financial turmoil. Of course, even dyed-in-the-wool Marxists will admit that every crisis of capitalism is eventually resolved. The question that lingers however is whether that crisis has been resolved at the expense of capital or of labour. It has to be one or the other.

But even from a ‘non-doctrinaire’ position, few would deny the radical recalibrating of labour rights across the European space, in the name of restoring flexibility in the labour market and competitive dynamism to the European economy. It has cost organised labour dearly. Rebuilding confidence and organisation among trade unions will take us many years from the low point that we now are at. For the construction industry, the rollercoaster ride of the short boom and an extended bust is a warning parable. This industry and its workforce, previously so intimately bound up with economic ‘success’ of Europe, and in the Baltics with the visible success of membership of the enlarged European Union, has become the bellwether of its ultimate longer-term failure. It is that labour force which has paid a high price in terms of economic dislocation, emigration and unemployment.
FROM RIO TO RIO – A DISMAL RECORD

Introduction
There are signs of diminishing returns in the effort of global environmental initiatives. You may have noticed how ‘sang und klanglos’ (without a song) the media coverage of the last UN climate summit, held in Rio de Janeiro, has evaporated. Just prior to the summit we were treated to a few not very hopeful comments on the unlikely success of the event. Despite the impressive number of participants and an ambitious agenda, the topic dropped off the global radar like a stone even before the doors had closed. At the end of the day there was nothing substantial to write home about.

The record
The conference in Rio of 1992 was a first, and with hindsight, over-optimistic effort at galvanising world leaders into action and to bring the seriousness of the climate issue to the attention of the public. Broad pledges such as addressing greenhouse gas emissions, protecting ecosystems and biodiversity, were put up as signposts for where to go from here. But even in the early environmental euphoria, the conference abstained from concrete targets and measures of enforcing them. The Kyoto Protocol, five years later, went further, pronouncing on emission reductions of 50 per cent (80 to 90 per cent for developed countries) by 2050 so as to limit global warming to 20°C. However, as soon as stringent measures were proposed, notable abstentions appeared. The US did not ratify the protocol, while China refused to accept binding emission targets.

The Cancún Agreements of 2010 formulated a finance and technology support scheme to help developing countries to adapt to climate change (most probably caused by their affluent neighbours) and to pursue low emission targets. For this purpose a Green Climate Fund was agreed, which will dispense $100bn every year but will not start before 2020. Then
came the Durban meeting in December 2011, which agreed a road map toward a new legal framework, to be in place by 2015 and to take effect, again not before 2020 - long journeys eschewing any sense of urgency. Surprisingly, agriculture, one of the worst emitters of greenhouse gases, was exempt from the deal. Canada left the negotiation table early after announcing its withdrawal from the Kyoto protocol, while the US would not be moved to accept legally binding targets to be deferred to a second round of Kyoto negotiations. Emerging countries, including Brazil and China, said they would agree to concrete targets only if wealthy countries such as the US lead the way. So far nearly 90 countries have registered carbon-cutting plans with the UN. Even if all these countries kept their pledges, it would amount to only 60 per cent of what is needed to halt the rise of global temperatures above 2°C, the threshold beyond which scientists think humanity may face environmental disaster.

The last instalment in this saga of hapless global jamborees was the Rio+20 summit in June 2012. Once again the conference table groaned under the weight of the issues including contamination and industrial waste, alternative sources of energy, public transport systems, and water scarcity. The achievement? An agreement on a Climate Change Convention and some pious undertakings toward protecting biodiversity and the natural ecosystem. We seem to be going round in circles!

In this scenario the role of the US proved to be crucial. It has been noted already that the US felt unable to ratify the Kyoto Protocol of 1997. In Copenhagen in 2009 Barak Obama broke off negotiations with words to the effect that he and others had more important business to address. The result was no binding commitment to emission reductions replacing the Kyoto Protocol, which runs out at the end of this year. Prior to the Rio+20 summit US negotiators managed to remove a provision from the agenda aiming at the protection of parts of the oceans from mining. President Obama didn’t turn up at
all, leaving it to Secretary of State Hilary Clinton to announce, after paying lip service to the importance of the conference, that any effort addressing pollution and climate change would have to be subservient to the interests of the corporate elite – a warning particularly with the US in mind.

**On palliatives**

Professor Bill McGuire who specialises in the geological consequences of climate change, comments thus: ‘However impressive the figures are for various renewable energy sources and electric cars and so on, this is not making any impression on overall emission levels.’ (Financial Times, 19/20 November 2011) The same must be said about the sum total of current initiatives and programmes which purport to save the planet. How can ‘green buildings’ make a real difference if the single family dwelling house is the sacred cow in most housing programmes, if car-based personal transport remains unrestrained, if developments such as Port Ghalib on the shores of the Red Sea can only be reached by sea or air, prompting promoters to lure visitors with special flights from Paris, London, and New York? In a scheme in Freiburg (South Germany), based on ‘passive-house’ principles and boasting that 70 per cent of the resident population does not own a car, the use of wind turbines had to be restricted because of a danger to bats! Although we find some laudable if unimpressive programmes to reduce energy in buildings in particular new ones, there is barely any reference to the environmental impact of construction (including the production of cement and other building materials) and to the recycling opportunities when their life is considered spent.

Meanwhile, the global corporate sector indulges in shameless selling strategies cajoling people with seductive design gimmicks and spurious technical innovations. For instance, the car industry boasts battery-driven sports cars able to reach 60 mph in five seconds; Unilever markets a new washing powder for the Indian market that requires less rinsing thus saving water, while CocaCola and Pepsi make their seminal contribu-
tion by changing from glass bottles to lighter plastic ones. Airlines, one of the worst culprits in the environmental arena, limit their (not entirely altruistic) concessions to lighter aircrafts and more crammed seating arrangements, at the same time vehemently rejecting the introduction of a fuel tax.

There are no signs as yet that the rule of the global conglomerate, even within the environmental sector, will give way to the diversity of smaller, more locally oriented producers. Du-pond, the US chemical concern, and Shell have teamed up in a Brazilian joint venture to produce biofuels – a fusion of interests that would result in one of the world’s biggest ethanol companies. And finally, what can we expect from ‘green’ or ‘socially responsible’ investment? In autumn last year investment in ethical (including green) funds amounted to just £11bn in the UK against a total fund investment of £615bn. In Australia green investment is around 2 per cent of the country’s fund market while in France such funds account for less than one per cent. As they invest mostly in small and medium-sized enterprises (SMEs), green funds tend to be more risky than funds oriented on large corporates. Moreover, during crises, in particular when government subsidies are under review support of green causes tends to subside.

The UK is a striking case in point of governments switching the lights from green to amber when times are getting tough. In July Chancellor Osborne announced his intention to block a new regime in support of green energy. However, opposition from within the coalition government and in particular from his energy secretary, led to a compromise whereby concessions in emission targets are traded for less severe cuts in subsidies. Mr. Cameron’s ambition to head Britain’s ‘greenest government ever’ (whatever that means) is likely to face a few more haircuts. On a positive note, property investment managers in the UK are currently bracing themselves for stricter regulations on energy savings not only in new build but also in buildings in use by focusing on programmes of retrofit and upgrading of buildings. It does show that sensible
regulation can make a difference in influencing investor decisions.

**Latest from the scientific front**
Well timed, just ahead of the Rio+20 conference, a report by the United Nations Environment Programme (UNEP) warned: ‘If humanity does not urgently change its ways, several critical thresholds may be exceeded, beyond which abrupt and generally irreversible changes to the life-support functions of the planet could occur.’ (Financial Times, 7 June 2012) The report states that significant progress had been made in just four of 90 of the most important objectives. These were in the field of protecting the ozone layer (e.g. the ban on the use of CFC in the Montreal Protocol 1989), removing lead from fuel, increasing access to water supplies, and boosting marine water research. Some progress is reported in 40 other key objectives including efforts to limit deforestation and expanding national parks programmes. But little or no improvement has materialised in 24 of the 90 key goals on problems such as the decimation of fish stocks, climate change and droughts, while further deterioration has been noted in eight of these goals including the salvation of coral reefs. No advances have been made in halting the loss of vertebrate species with 20 per cent of fish, mammals and birds now being under threat of extinction.

**Prospects**
It has now become commonplace to blame the withdrawal from environmental policies on the current recession and in particular the financial crisis. Such argumentation suggests that, when the storm clouds have gone, governments will return to the climate table, dutiful but half hearted as before. However, given the rivalry between nations, the neurotic sensitivity of investors to prospects of economic stagnation, never mind recession, and the primacy of global corporate interests, there is little hope of real progress on the environmental front. I am not at all convinced that our royal defender of a green planet, Prince Charles, is right in advocating ‘a
“sustainability revolution” that would transform the world economy, so that growth does not come at the expense of nature’ (Financial Times, 28 November 2011). If the earth were an endless pitch, growth and sustainability might go together but since Eratosthenes (c. 276 – 194 BC) we know it is round. Professor Steve Emmott who has extensively studied ‘earth system models’ does not believe that science and technology can save the planet because our inventiveness and scientific cleverness got us into trouble in the first place. Radical behaviour change, in particular in our patterns of consumption, is needed more urgently than anything science and technology may have to offer, he says. However, less consumption means less production, and that is a premise competitive capitalism cannot cope with. It is these implications that put the brakes on a serious commitment to change.

National governments have failed to agree on radical environmental policies. Even the European Union (EU), which can boast ‘some of the world’s highest environmental standards’ and whose policies range from biodiversity to noise and from climate change to marine life, has to admit the verdict of marginal improvements. This in part explains why the non-governmental sector is increasingly taking the initiative in driving the environmental agenda. For instance, a number of conglomerates have acknowledged the resource and energy problems they are likely to face in future and spent billions of dollars on environmental projects such as wind farms, greening their own supply chains and adapting production methods. These initiatives, however laudable they appear, cannot be the salvation of the planet simply because these corporations are governed by the profit motive and will refrain from concessions which militate against their interest.

There are also many institutions such as universities, trusts, and environmental ‘fire brigades’, which promote a green agenda for the sake of the environment, the power of which is limited. The mandate for radical change is most likely to come from the grassroots, namely community-led organisa-
tions under the flag of the voluntary sector, operating on city, town, village, and community levels. Their work is based on concrete projects ranging from food, housing, and transport to the arts. What unites these organisations is a genuine concern about climate change, energy, limited supplies of raw materials, food, water, etc. Although acting locally, the outlook is long term and their perspective is global. These communities are increasingly networked throughout the world via the internet, enabling them to compare notes about projects and to learn from each other. For instance, the Transition initiative, originating in the UK in 2006, has since gained a foothold in Australia, New Zealand, and the US, and is now spreading to non-English speaking countries such as Brazil.

As the number of these communities grows and hopefully gains the dimension of a popular movement, environmental issues will rise to the top of the political agenda. Only then can we expect a change in the complexion of parliaments. But this still leaves the question of whether democracies can move fast enough to deliver before it’s too late. Top-down preaching from the environmental pulpit has failed. The future will be decided at the urn, provided we are still governed by democratic principles. If not, there is still the unlikely option of an enlightened despot.

1. This contribution may be read as a postscript to my review of the Günther Moewes’s book *Neither Palaces nor Huts* (reviewed in CLR News 1/2012), setting his debate in the recent historical context. As the book that addressed many important environmental issues in the context of construction, buildings and urban planning practice was published in 1995, three years after the first Rio summit, I thought it might be useful to write a brief account of the major stations in the Calvary of UN environmental policy making since Rio 92. The exercise shows that Moewes’ polemic has lost nothing of its relevance and urgency. The focus on building and construction allowed Moewes to come up with concrete proposals and to formulate practical guidelines, at the same time giving him ample ammunition for a searing critique of the then current make-shift initiatives.
EXCLUSION AND WORK-LIFE BALANCE IN THE CONSTRUCTION SECTOR.

There are significant challenges in the construction sector that deserve more attention. A seminar organised by the Centre for the Study of the Production of the Built environment (ProBE) at the University of Westminster (11 December 2012) highlighted particularly the problems of exclusion and also the absence of work-life balance. It was also the occasion to present the latest CLR News (3-2012) on Diversity and Exclusion in Construction. These issues should be more seriously addressed, said speakers.

Four very different papers were presented, each one of them touching important issues, relevant to every man and woman in the industry. The first half of the seminar was concerned particularly with well-being and safety.

Valerie Francis from the University of Melbourne, presented research on the interface between work and family experiences in Australian construction. Drawing on many years of research, Valerie, herself a civil engineer by background, highlighted the potential for conflict between work and family life. This can come from work overload, from long or irregular working hours that do not easily fit with family and caring responsibilities. Work-family conflict was identified as a particular issue in the construction industry, where a culture of care may be lacking. The consequences of conflicting demands may include stress-related outcomes for the worker – for example through burnout, depression and pressure on family relationships. The consequences may also be felt in poorer health and higher mortality rates. But it is not only the individual construction worker who suffers. The repercussions may be felt by the employing organisation, through reduced employee commitment, diminished job satisfaction and with it lower levels of performance at work. Supervisors play an important role and can offer practical support that buffers
individuals from the effects of work-life conflict and emotional exhaustion but this support was missing for many of the blue-collar respondents to this survey. These issues deserve more attention, both through research and through practical initiatives to meet the challenges they pose.

The second, speaker, Fred Sherratt, also addressed the problems of well-being and safety on site – in this case in the UK. Like Valerie, Fred has a background in the construction industry but she is now based at the University of Bolton, where her research focuses on safety and on safe working practices. Her paper offered important insights into the social construction of safety, illustrating how people position safety within their working lives. She presented a detailed analysis of cable strikes, a serious concern during excavations, estimating that 12 deaths and 600 serious injuries are sustained each year in the UK because of cable strikes alone. She emphasised the tension between productivity and safety and pointed particular to the negative role that can be played by an overemphasis on productivity and payment by results systems that lead to work being rushed. Too often method statements are bypassed as people look for quick solutions to work problems to ensure commercial success. What we need, she argued, is safety in action, rather than safety added to action.

The third speaker, Aletha Holborough a PhD student from the University of Westminster, shifted attention from safety and well-being to training and exclusion, talking about the ways in which young people find routes into training, apprenticeship and work as electricians. Her research is particularly concerned with the experience of black and minority ethnic (BAME) young people. She points to a number of factors that constrain their job options, making it less likely that they will achieve an apprenticeship and more likely that their training will be college based, not equipping them with the valuable site experience that they require. Her research points to the implications of having a skilled family member working in the industry, contributing in a subtle and indirect way to a direct
route for some (something more likely to apply to white applicants), to stereotyping in schools and by employers, to peer group pressure on the behaviour of young people and an experience of direct or indirect discrimination.

The final speaker, Paul Chan, from the University of Manchester, sought to challenge prevailing research traditions, addressing the importance of sexuality and its impact in a bid to create a holistic understanding of the experience of the individual within the world of work. With an emphasis on the experiences of lesbian, gay, bi-sexual and trans-gender (LGBT) individuals, Paul raised some difficult questions challenging feminist and identity-based research.

Building on an earlier Ashgate publication EU Labour Migration Since Enlargement (see CLR-News 3-2009 for a review), an expert team from across Europe tried to shed light on the critical issues raised by the free movement of labour within the EU in a period of crisis. The economic crisis changed the environment for cross-border labour mobility, as both sending and receiving countries were affected but with large intra-country differences and in waves that were not completely synchronised. The authors reflect on different forms of cross-border labour mobility, including commuting, short-term, circular and more permanent migration. Structured in three parts, the chapters are dedicated firstly to issues of skills and skills mismatch and how they relate to migration forms, secondly to characteristics of migrant workers and of those returning to their home countries after a period working abroad and finally to an analysis of the policy implications of and responses to cross-border labour mobility. The book is rich in its variety and contains a lot of important knowledge and analysis. On the other hand the headings do not always cover the content. Several contributions do not take into account the promised analysis of the impact of the crisis. And the variety is once and a while a handicap as it hinders a clear assessment, for instance of the use of different types of migration as a method to bypass national regulations in the host countries.

The comprehensive introduction provides an overview of relevant literature enriched with selected data on overall population movements, employment and unemployment trends and migrant stocks and flows. One conclusion is ‘that the decision to emigrate is driven by absolute differences in wage levels across countries rather than by the relative returns to skills: migrants, particularly those who are planning to return at
some point in time, are willing to take up jobs below their skill level as long as this allows them to accumulate savings (that can later be invested in the home country) or sent as remittances’ (p.9). Due to large-scale skills-occupation mismatches affecting EU10 migrants on EU15 labour markets, post-enlargement East-West labour mobility has not contributed to better human capital allocation.

The sectoral distribution of employment has changed to little extent during the crisis with one notable exception: the construction sector. Construction accounted prior to the crisis for just below 15% of EU8 (the CEE countries that entered the EU in 2004) and more than 28% of EU2 (Bulgaria and Romania) migrant employment. By the first quarter of 2011, these figures had fallen to just over 10% and 20% respectively (p.18). Sectoral-share gaps between local workers and EU8+2 nationals in the old member states remained broadly stable, with, for instance, working in households being completely marginal for nationals of old member states (less than 1%) compared to EU2 and EU8 workers (13 to 17%). But foreign labour in construction served as a buffer; before the crisis the proportion of EU8 and EU2 workers in construction was respectively around twice and almost four times higher than was the case for nationals, a divergence that reduced during the crisis. The book signals that there might be underreporting in household work and agriculture; surprisingly there is no reference to construction in this respect. This is certainly an omission; already in 2006 a CLR- team found evidence to conclude that the share of undeclared labour in construction output and employment appears to be much higher in all countries than the average share of undeclared labour in GDP or overall employment1.

The data indicate two types of substitution in construction. Job losses in the old member states were extremely heavy with more than four and a quarter million lost jobs. The brunt of the sectoral employment crisis was borne by nationals, EU8 workers and non-EU nationals, whilst the EU2 (Bulgaria and
Romania) employment in construction actually increased (in absolute figures with 13,000 workers). Another type of substitution was the increase in self-employed workers. At the aggregate level, there is no excessive recourse to (bogus) self-employment, but in countries with restrictions by transitional measures ‘it clearly is an adjustment strategy that is used’ (p.25). The rate of self-employed workers from EU2 countries has increased since 2008 and by 2011 differed starkly in Germany, Belgium and Austria, compared to local and EU8 self-employed workers.

The heading of Part 1 is to a certain extent misleading as it is said to be dedicated to different types of cross-border labour mobility and skills-job mismatch. However, the analysis presented is limited to general migration in two countries (Chapter 2 by Giulia Bettin, on the UK and Italy) and to commuting in the EU (Chapter 4 by Peter Huber). Huber concludes that cross-border commuting entails a lower degree of ‘brain-drain’ than classical migration. Commuters from EU8 and EU2 countries still have higher over education rates but their rates are substantially lower than the rates of recent migrants from these countries. The third contribution (Chapter 3 by Kea Tijdens and Maarten van Klaveren) is on skills-job mismatch as reported by migrant workers that are not further specified in a typology. Their dataset was derived from the Wage Indicator Survey Data (the period 2005-2010). However, they have not investigated the impact of the economic crisis on skill mismatch. One of their conclusions is: ‘Of all migrant and domestic groups, the odds of being overqualified are highest for migrants working in the EU15 and born in the EU12’ (p.97).

Bettin analyses the effects of EU enlargement and of the economic crisis on migrant populations in the UK and Italy (over the period 2006-2010). The UK and Italy have some characteristics in common: migrants are overeducated and work in blue-collar jobs. Although in both countries construction is one of the important sectors with a high incidence, the overwhelming part of the migrants in Italy are women working in the
care sector. Whilst Polish and Baltic migrants still represent 75% of the migrant population in the UK, the largest increase in absolute terms involves Romanian workers. And, as already signalled in the first chapter, with UK restrictions still applying for Romanian workers, a high percentage enters through the use of the self-employed status (almost 45%). Workers from the EU8 countries that no longer need authorisation have nowadays on average a percentage of self-employed that has decreased to the UK national average. Surprisingly, Bettin sees the disadvantages of being self-employed (lower social security coverage and less protection of labour rights), but she still sees these workers as entrepreneurs, not as bogus self-employed. She talks about ‘business owned by immigrants’ that in times of crisis has ‘limited access to credit and limited financial assets’ (p. 61). In our opinion the figures provided demonstrate that the status of self-employed is simply used to bypass transitional labour market restrictions. Also striking is the fact that she does not refer to labour brokers and agencies that ‘deliver’ these self-employed workers. In fact the evidence for this bypass can be derived from the Italian case. With no restrictions for the care taking sector and construction E2 migrant workers, mainly from Romania, who predominantly work in these sectors have on average lower figures of self-employment than local workers or other EU and non-EU migrants.

Part 2 focuses on the extent and qualitative characteristics of migration and return in Poland after enlargement and on the socio-demographics of emigration from the two Baltic countries Estonia and Latvia pre- and post-enlargement and during the crisis period. Anacka and Fihel find (in Chapter 5) that the likelihood of return is positively related to age, vocational training and originating from rural areas or particular regions in Poland. The typical returnee profile would therefore be ‘a middle-aged rural dweller with a low level of education’ (p.164). The stock of Polish nationals in destination countries has decreased since the end of 2007 due to return migration. Another important cause of this decrease, the authors
point out, is transmigration of Polish nationals to different destination countries. Hazans provides (in Chapter 6) some interesting insights into the migration intentions of Baltic citizens during the crisis. He finds that during the crisis emigration from Latvia rose significantly more than emigration from Estonia. Hazans links this to the fact that Latvian emigrants were more oriented towards longer-term emigration and that the crisis was perceived more as a systemic problem in Latvia compared to Estonia. Another finding is that the importance of push factors, such as high unemployment rates, increased as reason for emigration, especially for the low-skilled.

Part 3 of the book discusses policy implications and responses to post-enlargement cross-border labour mobility. However, one chapter, Korpi’s analysis of migration policy and immigrant skills and earnings, is based on data from the 1990s and thus not related to post-enlargement labour mobility.

Heyes and Hyland provide a review of trade union practices in Ireland and the UK towards migrant workers, ranging from setting up advice and guidance web sites, the facilitation of language training, to community based organising campaigns. Unions employ different tactics to reach, recruit and represent migrant workers establishing links with partnership bodies and NGOs. Though unions in the UK and Ireland have both adopted an inclusive and rights based approach, the UK unions focus more on recruitment and organising campaigns within workplaces and community, whereas the Irish unions have used their social partnership model to influence government policies to support migrant workers. Heyes and Hyland conclude ‘there are limits to what trade unions can achieve in the absence of a supportive regulatory environment’ (p.231).

Line Eldring and Torsten Schulten address the impact of wage setting institutions in Germany, Norway, Switzerland and the UK on differentials in pay between migrant and local workers. Empirical studies on the effect of migration on wage levels remain inconclusive, though many find that the low-wage sector is most liable to downward pressure on normal wages.
Even though the countries vary in their wage setting institutions, the authors find that migrants in general earn less than their local counterparts. After EU enlargement, all countries have opted for re-regulation of wage formation. The UK has a statutory minimum wage, but no provisions for the legal extension of collective agreements. Therefore, the statutory minimum wage remains the main instrument for migrant wage regulation. In Germany and Switzerland, there is rising demand for the introduction of national statutory minimum wages. In Norway, extension of collective agreements has become an accepted instrument in regulating wage standards.


In recent years the integration debate has led to a more restricted political attitude towards labour migration in Europe. In the political debates the positive effects migration has for a labour market with frictions and shortages, and the profit that receiving countries have from foreign labour doing the job notably in the lowest echelon of the economy could not outweigh the supposedly negative effects. Against this background ideas of ‘circular migration’ can be seen as the ideological frame for a temporary ‘migration of labour not of people’. The discussion paper written by Piyasiri Wickramasekara, a former Senior Migration Specialist in the ILO’s International Migration Programme (MIGRANT), says it very bluntly: one of the advantages claimed for circular migration is that ‘there are no integration costs given the temporary stays of circular migrants. This in itself implies tacit support for xenophobic tendencies in destination countries’ (p.2). The author takes another stand; in his view ‘Even temporary workers have basic labour market and social integration needs defined
by international standards, and national legislation’ (p.44). The trade union movement has a crucial role to play. The author refers to the possibility to sign cooperation agreements between unions in sending and receiving countries to address protection gaps relating to migrant workers in temporary and circular migration programmes.

The paper goes beyond the political hype of wordings, such as ‘triple win’ or even the notion of ‘circular migration’, which mask the narrow-minded economic and political view of (migrant) workers as a commodity that can be hired and fired when it serves business. The author looks at definitions of circular migration, evidence of its incidence, and some practical examples of different circular migration systems in operation. He reviews European Commission policies and activities on circular migration and the approach of global agencies and the trade unions. According to the author, circular migration is nothing new. Definitions of circular migration have ranged from simple generic definitions to prescriptive ones, but in fact it is ‘temporary migration of a repetitive character across borders involving both formal and informal movements’ (p. 92). Circular migration can be divided into spontaneous circular migration, occurring when migrants from origin countries or the diaspora in destination countries engage in back and forth movements, and managed or regulated circular migration programmes (CMPs). ‘While it can be distinguished from permanent migration, and return migration (one-trip migration and return), there are nevertheless interfaces among them with circular migration sometimes leading to permanent migration or final return. By definition circular migration is part of temporary migration regimes’ (p. 92).

The concept of circular migration has been promoted by the European Commission and the Global Forum on Migration and Development as a triple win solution, bringing ‘benefits to destination countries, origin countries and migrant workers themselves – and a major mechanism to reap development benefits of labour migration’ (p.1). While most supporters
refer to the growing demand for flexible labour markets (not necessarily a win for migrant workers) and effective migration management and mention the triple win argument, the author concludes that the benefits ‘have been exaggerated, and that they are not very different from those of temporary labour migration programmes, which share a number of weaknesses’ (p. 22). Some of the supposed wins may be at the expense of either migrant workers or local workers or countries of origin, and thus hardly represent a ‘triple win’. A long list of weaknesses (instead of wins) can be made:

- The short duration of contracts, especially in seasonal and non-seasonal work, is a cause for concern that directly affects migrants’ capacity to contribute back home.
- The short duration may mean that migrant workers can be denied the assistance needed in working and living in destination countries.
- The re-migration process may involve high costs that cannot be fully recovered by migrants.
- Labour brokers and intermediaries can find many opportunities to defraud migrants.
- The undue power of employers in the selection of workers and re-nominating them for subsequent visits must be noted.
- The unequal bargaining power of countries of destination is well known.
- While migrants are expected to bring back skills, it is unlikely that employers invest in training circular migrants in lower skilled categories.
- Frequent separations from the families at home also involve social costs.

In the concluding sections, the author writes that there is hardly any difference between temporary labour migration and circular migration movements/programmes: ‘Both are affected by the operation of private employment agencies who contribute to the considerable erosion of the expected wins for migrant workers’ (p.86). Both have major issues relating to workers’ rights and trade unions have identified both
temporary and circular migration with precarious work. The author challenges the underlying idea that host country citizens do not want permanent settlers. A comprehensive migration approach should look at ‘permanent migration programmes to address permanent or long-term labour shortages induced by demographic and other factors, regular labour admission programmes with guaranteed rights for workers on a par with national workers, improved seasonal worker programmes, and the exploration of other options in addition to circular migration’ (p.86).

Finally, why this upsurge of interest? In the case of the European Union, circular migration approaches can be seen as being a part of the externalisation of the EU migration policy. It seems first an attempt to find an alternative to the less successful, traditional guest worker programmes when a proportion of temporary migrants settled in destination countries. Second, it reflects the trend towards flexible labour markets and flexicurity – migrants have to leave or not arrive when there is slackening of labour demand in the destination country – and thus, countries of origin have to shoulder the reintegration burden. Third, it represents security-oriented approaches to migration driven by the need to combat irregular migration and shifting part of the burden responsibility to countries of origin. Fourth, the recent emphasis on promoting migration and development linkages through win-win formulas has found circular migration to be a useful tool to supplement or replace the limited co-development approaches.
Preliminary announcement

CLR Annual General Meeting

The 2013 CLR AGM is scheduled to take place in the EFBWW office in Brussels on 11-12 April and will be combined with the book launch of CLR studies 7: *The long and winding road to an asbestos free workplace*.

More information will be given in the next issue of CLR News.