BARSORIS overview report: precarious work, collective bargaining and European social dialogue in four sectors

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Introduction

In recent decades, Europe has seen a significant rise of non-standard employment, including fixed-term contracts, temporary agency work, (dependent) self-employment and (marginal) part-time contracts, in particular in the service sector but also in the rest of the labour market.[1] One of the consequences of this development is that job quality is under pressure and that job precariousness is on the rise.[2] Non-standard employment is not necessarily precarious, however, most precarious jobs are indeed non-standard jobs. It is the precarious nature of many non-standard jobs that makes them a major concern in today's labour market in Europe.

The rise of precarious employment is not simply an outcome of inevitable economic and technological developments. It is also an outcome of conflicts and choices both in the political sphere and in labour relations.[3] At the macro-level, national and European political actors determine, to an important extent, in what institutional context employment is situated (through labour legislation, labour market policies, social security, economic and social policy, etc.). Major differences in labour market regulation can be observed between European countries and over time regulations can change substantially. Political actors here include not only governments, political parties and the European Commission but also neo-corporatist actors, i.e. employers' organisations and trade unions, who exercise influence on labour market reforms through consultation, pressure and social pacts.[4] Hence, macro political actors set the institutional context for labour market behaviour, putting constraints on certain types of behaviour and enabling others.

[1] European Commission (2011) *Employment and Social Developments in Europe 2011*, Luxembourg: Publications Office of the European Union. Eichhorst, W., Feil, M. and Marx P. (2010) 'Crisis, what crisis? Patterns of adaptation in European labor markets', *Applied Economics Quarterly Supplement*, 61(supplement): 29–64.

[2] Greenan, N., Kalugina, E. and Walkowiak, E. (2010) *Trends in Quality of Work in the EU-15: Evidence from the European Working Conditions Survey (1995-2005)*, Document de Travail N° 133, Centre d'Etudes de l'Emploi, Paris. Peña-Casas, R., Pochet, P. (2009) *Fifteen Years of Working Conditions in Europe: Convergence and Divergence Over Time and Within Europe*, European Foundation for the Improvement of Working and Living Conditions, Office for Official Publications of the European communities, Luxembourg.

[3] Crouch, C. and Keune, M. (2012) 'The governance of economic uncertainty: beyond the "new social risks" analysis', in: Bonoli, G. and Natali, D. (eds) *The Politics of the New Welfare States in Western Europe*, Oxford: Oxford University Press, pp. 45–67.

[4] Keune, M. (2015) 'Trade unions, precarious work and dualisation in Europe', in: Eichhorst, W. and Marx, P. (eds.) *Non-standard Employment in Post-Industrial Labour Markets*, Cheltenham: Edward Elgar. Pochet, P., Keune, M. and Natali, D. (2010) *After the Euro and Enlargement: Social Pacts in the EU*, Brussels: ETUI.

However, macro-level institutions leave ample space for labour market actors to develop a variety of meso and micro strategies. At the micro level, employers and managers make choices concerning their competitive strategies and the types of jobs, contracts and working conditions they offer. Also, and key to this study, at the level of sectors and companies, employers (and their organisations) and trade unions negotiate, cooperate or have conflicts concerning wages, types of contract, working conditions, etc. in the respective sector or company. Sector-level industrial relations then play a key role in shaping, regulating and setting limits to precarious employment. What is more, major differences exist between the sectors within countries concerning the characteristics of sectoral industrial relations, the way they operate and the results they produce.[5] Also, across countries, specific sectors often look remarkably similar in terms of the labour market problems they face and in their industrial relations characteristics and dynamics.[6] This has also been one of the motivations for the development of the European Sector Social Dialogue in which sectoral industrial relations actors from across the EU come together to discuss developments, problems and solutions their sectors.

This overview report of the project BARSORIS provides a comparative study of social partners' experiences with improving social rights and conditions of precarious workers through collective bargaining and social dialogue in seven EU countries: Denmark, Germany, Italy, the Netherlands, Slovakia, Spain and the United Kingdom. This project focuses on 4 sectors: industrial cleaning, hospitals, construction, and temporary agency work. The overview report consists of two major parts. Part 1 presents the key findings of seven country studies on precarious work in the four sectors. It highlights what the broader developments leading to precariousness in the sectors are and discuss the role and positions of the social partners concerning precarious work, as well as the main social partner initiatives taken to combat precarious work, in particular through collective bargaining. Part 2 discusses the dynamics and outcomes of EU sector-level social dialogue addressing the working conditions and workers' rights workers in the four sectors and the assessment of the European sectoral social partners of the EU legal framework in this field. It also addresses the question of knowledge sharing between the European and national levels and the exchange of experiences.

[5] Bechter, B., Brandl, B. and Meardi, G. (2011) *From national to sectoral industrial relations: Developments in sectoral industrial relations in the EU*, Dublin: Eurofound.
[6] Ibid.

Part I: Precarious work and collective bargaining in 4 sectors and 7 countries

1. Introduction

In this section we present the key findings of the seven country reports, which each studied the incidence, characteristics and causes of precarious work in four sectors: construction, industrial cleaning, temporary agency work and hospitals. The country studies present very detailed information on the economic context, labour market developments, industrial relations and collective bargaining in the sectors, cooperation, disputes and conflicts between employers and trade unions and the effect of their policies on precarious work in the sectors. Here we present some of the major findings of the country studies grouped by sector. First we highlight what the broader developments leading to precariousness in the sector are and then we discuss, per country, the role and positions of the social partners concerning precarious work in their sector, as well as the main social partner initiatives taken to combat precarious work. Here we will focus in particular on the role of collective bargaining.

All information in this section comes directly from the country reports. The reports can be accessed at the BARSORIS website: http://www.uva-aias.net/411. The national report were written by Marcello Pedaci and Rossella Di Federico (Italy), Melanie Simms (United Kingdom), Maarten Keune, Klara Boonstra and Sean Stevenson (the Netherlands), Marta Kahancová and Monika Martišková (Slovakia), Oscar Molina, Alejandro Godino and Juan Rodríguez (Spain), Trine P. Larsen and Mikkel Mailand (Denmark) and Thorsten Schulten and Karin Schulze Buschoff (Germany).

2. Construction

The construction sector has been subject to a series of longer term changes in recent decades. A key development is a strong internationalization of the sector fueled among others by European tendering procedures. This internationalization includes the emergence of extensive cross-border production chains in which often very large companies subcontract numerous smaller companies and self-employed. Also, there is a growing influence of the third parties that tender the major construction projects, including public procurement by national, regional and local governments. They exert strong pressure for cost reduction and cause vigorous competition between companies tendering for major projects, which continuously feel the need to limit costs and increase flexibility.

Where employment is concerned, major developments include the declining share of permanent contracts and the growing share of especially self-employed but also fixed-term contracts in the sector, as well as extensive posting of workers, in particular from central and eastern European countries to Western European ones. This goes hand in hand with continuous pressure on wages, flexibility, health and safety and other aspects of job quality, a fragmentation of responsibilities for health and safety and quality at construction sites and a circumventing of protective regulations. Moreover, the construction sector is one of the sectors most affected by the crisis that emerged in 2008. Public and private investment in construction declined deeply during the crisis, leading to enormous job losses. For example, in 2008-2013, in the Netherlands it resulted in the loss of some 60-70,000 construction jobs, equivalent to some 20 percent of the total jobs in the sector, while in Italy the sector lost close to 400,000 jobs, i.e. 25 percent of employees and 11,5 percent of self-employed lost their employment. In Spain, the country where construction made up the largest share of total employment of all EU countries before the crisis (13.3 percent), the burst of the housing bubble resulted in the loss of around 1.5 million construction jobs in the same period, or 60 percent of the sector's employment. The main exception has been Germany, where employment in the construction sector declined strongly in the decade before the crisis and actually increased somewhat since 2009, in line with overall developments in the German labour market.

The decline of construction projects and jobs in the sector has resulted in an even stronger competition, as well as in a stronger position of the clients and parties tendering projects,

allowing them to push even more for lower costs and higher value-for-money. In this context, precarious work has been on the increase across the countries studied here and has been high on the industrial relations agenda. Some of the key issues that are under discussion are the balance between competitiveness and decent work, problems with compliance with collective agreements or legislation, limited coverage of collective agreements, widespread bogus self-employment, unfair treatment of migrant workers, unfair competition through posting constructions and others. Clearly, the difficult situation of the sector puts the relationship between unions and employers to the test and makes it sometimes complicated to harmoniously resolve problems related to precarious work.

Where this is possibly most visible is in **the Netherlands**. Employers and unions have quite different visions on how employment in the sector should look and this is complicating collective bargaining. Indeed, in the past two years they have not managed to negotiate a new agreement, leaving the 2012 one in force. Employers in the sector argue that this is because there is a need to profoundly revise the agreement but that the trade unions unions do not want to do so. According to the employers, the collective agreement over-regulates the sector, having detailed provisions for every possible eventuality, raising costs and undermining adaptability and decentralized solutions. This makes employees (regular or flexible) unattractive to employers who therefore turn to the self-employed: they do provide the required flexibility, since they do not make a problem of finishing a job after hours or to work on Saturday instead of Wednesday, and they do not claim the right to a bonus for overtime or other rights included in the sector collective agreement that belong to the 'labour market of the past'. Similar arguments are forwarded concerning the increasing use of foreign subcontractors.

The trade unions rather argue that employers have entered a deadly cost competition in their attempts to get orders and that they put the burden of this competition on the shoulders of the employees and self-employed. They observe extensive employment of precarious self-employed, with low fees and no social benefits, which also puts pressure on the wages and working conditions of the regular employees in the sector. This pressure has been mounting further as a result of the growing migration and streams of posted workers, including organized social dumping and harsh exploitation. The unions find this not only socially unacceptable treatment of defenseless foreign workers but also argue that it puts pressure on the remuneration, working time and working conditions of both the regular employees and the self-employed. They claim that they are not against flexibility but against excessive

flexibility. Also, they do not want to give in on wages and other standards because they argue that every demand by employers for concessions is subsequently followed by further demands, risking a continuous downward spiral.

As a result, the two sides of the construction industry have a tense relationship, disagree on the type of jobs, contracts and working conditions which should be pursued in the sector and have failed for two years now to agree on a new collective agreement. And on the employers' side a number of large companies are threatening to withdraw from the agreement. This reflects the difficult conditions in the sector as well as the weakening foundations of the sectoral institutions. Still, the two sides do cooperate on a number of initiatives aimed at addressing precarious work. They agree that there have been numerous cases of non-observance of regulations concerning wages, safety and health, working time, and others in the sector, and for this reason they jointly established a Compliance Bureau that monitors compliance in the sector, as well as explains the rules of the collective agreement and mediates between employers and employees in case of a conflict or dispute. To complement this, the unions want companies to take responsibility for compliance in their production chain and want to introduce an identity card for construction sites, but the employers underline the practical difficulties of these two initiatives, which have therefore not been implemented yet. Unions and employers also agree on the expectation that the sector will return to a growth path in the coming years and, with government support, developed a sector plan aimed at the retention of skilled employees and the guaranteeing of good quality labour supply to respond to the expected growth.

In **Germany**, unions and employers have focused their attempts to combat precarious work on four issues. One is to increase the compliance with the collective agreement, a widespread problem in the sector. Employers and unions cooperate closely with the customs service's 'Financial Control of Undeclared Employment' department, which has the right to make unannounced workplace inspections and which has similar rights to the police. As a result, the construction industry has the highest number of company inspections of all sectors in Germany and in 2013, the custom services visited more than 25,000 construction companies. In 1,638 cases the custom services initiated a criminal investigation and companies had to pay about 11.8 million Euros in fines for offences against agreed working standards. Apart from the regular labour inspections, trade unions and employers in construction also use their joint agency SOKA-BAU to monitor compliance with minimum employment standards. SOKA-BAU also awards certificates to construction companies that have demonstrated their

compliance with collectively agreed working conditions. Companies can use this certificate, for example, as an attestation when tendering for public contracts.

Second, as the problems with precarious employment in construction are most common among mi-grant workers, many initiatives have also focused on this group of employees. Following the adoption of the German Posted Workers Law in 1996, the construction sector was the first sector in Germany in which trade unions and employers concluded a collective agreement on sector-specific minimum wages that were subsequently declared to be generally binding, and therefore extended to the entire branch, including most importantly migrant workers. Also, a more general approach to support migrant workers was developed in 2011 with the project 'Fair Mobility' by the Confederation of German Trade Unions (DGB), with the to support migrant workers from Central and Eastern Europe and strengthen the enforcement of fair wages and working conditions. The project has set up local information centres in six major German cities where migrant workers can obtain information and practical support on employment and social law in Germany.

Third, the German unions have been calling for the use of public procurement as a means to enforce compliance. AAs a result, most federal states in Germany (Länder) now have their own public procurement laws under which public contracts may only be given to companies which apply the minimum working conditions laid down in the Posted Workers Law. And fourth, the construction union IG BAU has started to organize self-employed workers in the sector. It tries to achieve an improvement in the access to the public social security regime for self-employed workers. The unions have advocated a fundamental reform, in which contracting firms would take on a share of the social security contributions of their self-employed workers. IG BAU, together with the Central Association of German Building Trades (ZDB), has also called for the reintroduction of the obligation for those setting up a number business in a construction-related trade to hold a 'Master Craftsman' certificate, as a means for stopping the further spread of bogus self-employment in the sector. The union also proposes an obligatory control of single person companies in construction by the public authorities as well as for a better legal definition of bogus self-employment and higher fines for companies that make use of it, and for the right of co-determination over the use of sub-contractors for works councils in construction companies.

In **Denmark**, the unions and employers have as a common goal to ensure that the collective agreements are respected and that collective bargaining can continue to be the prime mode of

regulating wages and conditions in the sector so that more legislation and a statutory minimum wage can be avoided despite pressure on the collective bargaining–based model from, among others, EU regulations and labour migration. The social partners in the construction industry have focused their activities where the reduction of precarious work is concerned on two issues. One is improving access to social benefits by gradually lowering the seniority threshold for accruing rights to the social benefits outlined in the collective agreement by the Association of Danish Construction and 3F. This change has been of great importance to all types of employees as this has eased their access to social benefits regulated through collective agreements. The major issue here has been the lowering of the threshold for pensions from 9 to 2 months of employment in 2010 in accordance with an initiative in the trendsetting collective agreement of the manufacturing industry. This implies that after only two months of employment, the employee has rights to accrue occupational pensions.

The other issue has been migrant workers from Central and Eastern Europe. The social partners have managed to agree on a number of initiatives to improve the wages and working conditions for CEE-workers and to avoid social dumping through unfair competition. The attention on CEE migrant workers does not stem from solidarity or concern for their well-being however, but rather from the trade unions' fear of unfair wage competition and the employers' fear of unfair competition in general. At the same time, different types of construction employers have clearly different interests here, and for some, the advantages of cheap CEE workers are greater than the disadvantages of competitive pressure. Hence, in some cases the employers are in line with the unions on initiatives to limit social dumping, and in others they are not. One initiative has been to establish joint mechanisms to deal with suspicions that a foreign-owned company does not follow the collective agreement, including the obligation of the employer to prove compliance instead of the union proving a violation. Also the sector established a fund to handle the payment of holiday allowances for all employees covered by the construction sector collective agreement, including posted workers and other CEE workers, and following reports on employers reducing CEE workers' wages for the reason that the employers provided them with transport and accommodation, in 2010, a code of conduct was added to the collective agreement stipulating that it should be voluntary for foreign workers to be included in such arrangements. Finally, the Danish unions have been making attempts to organize CEE migrant workers. They have been large unsuccessful in their attempts, however, possibly because they act to a large extent as

monitors and administrators of the industry, rather than as organisers and activists that approach migrant workers out of solidarity.

In **Slovakia**, sectoral collective bargaining is well-established and rarely conflictive. However, it mainly covers the large enterprises, leaving in particular the large share of (often bogus) self-employed in the sector, 41 percent of all construction employment in early 2014, in a vulnerable, insecure and unprotected position and frequently suffering from problems related to health and safety. Also, with extensive outsourcing, subcontracting and high shares of self-employed, construction sited have become fragmented and it is often unclear who is responsible for quality and health and safety at construction sites. Unions and employers see an important role for the government in improving precariousness and jointly lobby the government for a better regulation of the hierarchy of responsibilities at construction sites. Also, they ask for more transparency in public procurement processes, in particular to prevent continuous underbidding, which leads to dumping prices, unfair competition and weak health and safety standards. Finally, both employers and trade unions view that education and vocational training relevant for the construction sector should undergo major reforms and improvements, among others to reduce precariousness. Employers are actively engaging with secondary and vocational schools to better relate education to company-specific skills and experience demands. In addition, both employers and trade unions support the proposal that licensing for the self-employed in construction should undergo a stricter formal proof of skills.

Also in **Italy**, there is a high incidence of precarious work in construction, closely related to extensive outsourcing, multi-level subcontracting, low wages and long working hours and a high share of self-employed (38 percent of employment) and fixed-term contracts (15 percent). Production is strongly fragmented to reduce costs and to circumvent regulations, also on health and safety and there is a lot of undeclared work and violations of the law. Industrial relations in the sector are also fragmented, conflictive and unstable and there are many different collective agreements. Also, the self-employed do not fall under the collective agreements, while in small enterprises their regulations are not always respected.

Still, unions and employers have been active to reduce precarious work. Employers' associations do so starting from the problem of unfair competition based on poor working conditions, non-respect for legal or collectively agreed regulations,), different forms of tax and contributions evasion, or support from organized criminals. To reduce this type of

competition, employers accepted to negotiate with trade unions stricter regulations concerning contracting out, outsourcing, use of fixed-term contracts, etc.

Reducing precarious work is the main concern of the sectoral workers' organisations. They try to limit the use of atypical contracts and combat bogus self-employment and undeclared work. Through collective bargaining the social partners have regulated the recourse to atypical contracts, above all fixed-term contract and temporary agency work. National agreements have enforced the principle of equal economic and normative treatment of comparable permanent workers; they have specified the reasons for use of these kinds of atypical contract; they restricted the possibility to use staff leasing; then they have stated the maximum share of workers with temporary positions in a company's workforce. They have also set up various bilateral funds and bodies that provide a wide range of provisions and services aimed at reducing precariousness: income support, supplementary pension schemes, health care benefits, support for workers' family members (such as study grants), further training, etc. They also specifically address the working and living conditions of foreign workers, often the ones with the most precarious jobs, including access to vocational and language training and holidays, welfare provisions for specific needs such as the cost of the 'residence tax' and to compensate for the loss of a working day when renewing a residence permit, extended parental leave, etc. The unions also aim to extend collective bargaining to the large group of precarious self-employed, but have not yet succeeded in this.

However, both sides of industry consider that they cannot sufficiently limit precarious work and see a major role for the government and public authorities. They demand a more effective regulatory framework that defines companies' pre-requisites to operate in the Italian construction market and minimum standards for all workers (concerning health and safety, working time, pay level, etc.). Also, they push for more effective control of compliance with regulations through extensive inspections. In particular the unions have developed mobilisations, strikes and public opinion campaigns to support these demands.

In **Spain**, in the context of the enormous decline of employment, the share of temporary contracts, above 50 percent before the crisis, declined substantially in recent years, as they were the first to be dismissed or were not renewed. Minimum pay and other minimum standards are regulated in the sector collective agreement and the social partners are confident that they cover the most important issues for the sector in the agreement and no major conflicts can be observed at the level of the sector (there are some at the lower,

provincial or local levels). One of the main threats to decent pay and working conditions is uncontrolled subcontracting, leading to a downwards spiral. Through the collective agreements the social partners set rules for this to avoid the gradual deterioration of the working conditions of subcontracted workers, including also rules for the use of temporary work agencies. Second, they established the bipartite Construction Labour Foundation that promotes and provides training, in particular on health and safety issues, a key concerns considering the sector's high level of work-related injuries and accidents. Third, they established the Bipartite Commission for Prevention in the Construction Sector, that provides legal support and training to companies to incorporate prevention mechanisms.

Also, the social partners often find common ground in joint demands towards the government, whom they consider in part responsible for the precarious position of the sector. They point in particular to limited public investment which is detrimental for turnover and employment, and to limits set to dismissal compensation and unemployment benefits. They support their claims by lobbying and public information and awareness campaigns.

Also in the **United Kingdom**, the construction industry is noteworthy for extended chains of sub-contractors where large projects are sub-contracted many times and many subcontractors are present at a construction site. As a result, wages, health and safety standards and training get under pressure, as well as the position of migrants, widely present in this sector. Moreover, bogus self-employment is a major concern. This gives the individual worker responsibility for paying their own social security contributions and removes risk of managing dismissal from the larger organisation.

The sector has a long history of bipartite efforts to collectively regulate job quality of highly precarious workers. Importantly, large employers are engaged in these institutions of job regulation and have a particular interest in both minimizing health and safety problems, and also in ensuring skills development. Still, there is a substantial amount of precarious employment in the sector, also because only about one-third of the employed are covered by collective bargaining, down from around 50 percent in the mid-1980s. The major player in collective bargaining is the Construction Industry Joint Council, a collective bargaining forum that regulates basic job quality such as wage rates, subsistence allowances, sick pay rates, accident and death benefit rates, etc. The agreement covers around 20 percent of construction employment

The sector also counts with the Construction Industry Training Board, a bipartite institution regulating training in the sector. It collects a training levy from large enterprises to fund training and skills development across the sector, subsidising and incentivising employer training through grants, developing apprenticeships, etc. The CITB does not receive government funding directly, but through the UK Commission on Employment and Skills received project-specific funding for projects to promote skills development across the sector. It is controlled by a Board that has representation from employers, unions, education providers and includes government observers.

In spite of these sectoral institutions, the sector includes many precarious workers who fall outside their coverage, in particular migrants and bogus self-employed. Also, the relations between unions and have come under pressure in recent years when a blacklisting scandal emerged, in which employers compiled lists of workers who had been active within the unions and/or health and safety campaigns. This list was to be used by employers not to hire these activist workers willing to raise problems related to precariousness. Indeed, only a small part of the sector can be characterized as organized and consensual whereas in the majority of the sector social partners play a minor role and have limited opportunities to address precariousness.

3. Industrial cleaning

The sector is characterized by three-party labour and services relationships, where the cleaning companies compete in a highly competitive market of services provided to user companies, including large clients like private office buildings, residential buildings, airports, railways, government buildings, universities, and others. The sector has been growing in the past decades as many companies and organisations have outsourced cleaning activities that were previously done by workers they employed themselves to specialized cleaning companies. At the same time, following the crisis of 2008, both public and private users have reduced their cleaning budgets. Large numbers of cleaning companies compete for the contracts with these user companies who continuously push for lower prices and shorter contracts. As a result, wages are under a constant pressure, also because the main cost in the sector is indeed labour, while the time available to the cleaners to do their job has been decreasing strongly, leading to mounting pressure. Also, insecurity of workers in the sector is high, also because their company may not always be able to renew contracts with major clients, making their jobs uncertain. The sector is characterized by low-skilled work, low wages, small part-time contracts and very high shares of women and immigrants.

In the **Netherlands**, the industrial cleaning sector has over the past decades been almost completely outsourced by user companies and public institutions. This has however led to severe tensions and the sector is one of the sectors in the Netherlands that has seen most industrial action in recent years. Over the past decade the trade unions have organized three major collective actions in the form of long strikes up to nine weeks (2010, 2012 and 2014), in order to demand visibility and respect for the cleaning workers and to improve their wages and working conditions. These strikes were not merely or solely directed against the cleaning companies as the employers of the workers, but also at the user companies. The more or less explicit notion that supported that strategy was that the user companies are as much or more responsible for the price of labour in the sector. With much of the attention shifting to the user companies, employers and unions have been cooperating on a collective agreements which cover the entire sector after extension by the government and which gradually evolved from regulating merely the primary conditions of labour, i.e wages, working time etc., to the development to a wider set of arrangements like pension schemes. The sector has also established a joint organization called RAS that organizes training and educational programs, including language, organizational and trade union skills. The stake of the employers

participating in such developments, according to the spokesperson, is to distinguish the higher quality part of the sector from the lower quality part. The aim is to further increase the higher quality part and to make the sector a better place to work. The employers and unions agree that the conditions of the cleaning personnel have deteriorated and should be improved again.

The collective agreement contains provisions that guarantee that in case of a contract shift after a procurement procedure with a user company, from one to the next cleaning company, part of the workers and their conditions of employment follow the work. Somewhat but not totally analogous to the legal EU doctrine called transfer of undertakings, the workers at the workplace of the user company will then become part of the cleaning company that has secured the contract. This practice has been endorsed as possible best practice by the current government, that investigates whether it can serve as a model for other sectors that are labour intensive and characterised by a lot of contract shifts. Another key matter and difference of opinion between the employers' and the workers' side is sick leave. In both the 2012 and 2014 collective actions, ideas about (un)justified sick leave played an important role. The trade unions consider the fact that the worker was until this agreement not paid during the first two days of sickness as unjust (the Dutch Labour Code allows this). Employers stipulate that they feel a lack of commitment and security that would enable them to trust that their employees do not to call in sick for wrong reasons. The current collective agreement now stipulates that the first days will be paid, but monitoring and in a couple of years evaluation is to take place and both sides agree that this remains a potentially subject of disagreement. A key concern remains how to get the user companies committed to the improvement of work in the sector, to move them from being morally committed to being actually supporting the upgrade of cleaning employment.

In the **United Kingdom**, precarious employment is abundant in the cleaning sector. Contrary to the Netherlands, there is no sector collective bargaining and there are hardly any joint social partner initiatives to address precarious work. Most of the action in this respect comes from the unions, even though union membership is very low. The core concern to unions has been the downward pressures on wages, terms and conditions generated by intense competitive tendering in the industry. They have developed a number of campaigns to address these issues.

Key here is the Justice for Cleaners campaign, modeled on the US Justice for Janitors movement. Here unions established local alliances of faith, labour and community organisations to campaign to improve their local area, in particular in and around London. They focused in on issues of employment, working conditions and social justice, and developed the Living Wage campaign. The objective was to reach agreement with both clients and providers on a living wage substantially above the National Minimum Wage, expected to reduce undercutting and wage competition. It included extensive organizing of new members, discussions with clients and contractors in an effort to secure recognition rights covering those cleaners (and, ideally, others) and agreement to regular bargaining on a range of terms and conditions such as wage rates, holiday entitlements, sick pay etc. This approach was very successful in the medium term and secured a number of high profile recognition agreements that gained key concessions from employers. Union figures suggest that around 75% of the approximately 4000 cleaners who are members of Unite in those areas do now earn the London Living Wage which was £8.80 (€10.80) per hour in 2013. However, it should be noted that this is a very small proportion of the total number of workers in the sector and retaining these agreements remains a resource-intensive struggle. Other campaigns built on the achievements of the Living Wage campaign, resulting for example in the university sector in the 3Cosas or three causes campaign that focuses on regulating and improving sick pay, holiday entitlements and pensions in the sector, in particular for the more vulnerable, often immigrant workers. Also here important results were achieved but again for small groups of workers.

Also in **Slovakia**, the cleaning sector is largely unorganized and there are no joint employers-unions initiatives to deal with precarious work. The most important factors determining the existence, extent and forms of precarious employment in the industrial cleaning sector derive from the type of employment contract and wage levels. First, in terms of employment contracts, the highly flexible 'work agreements' with marginal social protection and health insurance coverage were widely used in the cleaning prior to 2013. After the 2013 legislative changes and the introduction of obligatory social security and health insurance contributions onto work agreement contracts. Employers therefore put most employees on a formal employment contract, with social security contributions deducted according to the new legal regulation. This step brought increase in total labour costs, which were also reflected in increasing cleaning service fees to customers and thus income. They also reduced the size of staff to reduce costs, focusing on retaining a smaller pool of permanent, full-time employees

and increasing their productivity through efficient work organization and tight time/cleaning schedules. However, an element that increases precariousness of workers in the cleaning industry is the system of wage payments. Within the maneuvering space offered by legal regulations, employers seek innovative ways of cost-saving, for example, by paying part of the wage as travel reimbursement, which is exempt from taxes, social security and health insurance contributions.

The developments of precarious work in the cleaning sector are the result mainly of individual company behaviour, because the sector lacks any kind of sector-level social partner organization or structures for social dialogue and collective bargaining. Cleaning firms consider each other as strict competitors and show no interest in coordinating their employment strategies. On the side of trade unions, the organization level of cleaning employees is marginal.

In **Italy**, unions and employers do conclude collective agreements in the cleaning sector, and there are two competing agreements, one for the large companies and the one for smaller craft companies. Bargaining is the sector is often conflictual and in recent years there have been major problems to renew the collective agreements. Where the agreement for the large companies is concerned, wage levels are the main area of dispute between unions and employers, whereas in the craft agreement the conflict has been around the regulation of transfers of undertaking. Together the two agreement have a wide coverage of the sector. Through collective bargaining unions and employers have indeed gradually ensured equal treatment for workers in temporary positions and with part-time arrangement compared to permanent full-time employees (in terms of pay level, work organization, overtime, territorial mobility, etc.). In 2011, the social partners agreed on more working time flexibility but also on the introduction of welfare provisions and the enlargement of training opportunities both for permanent and contingent workers. They set up two bilateral bodies that provide supplementary pension schemes, additional benefits in the case of accident at work and refunding for health care expenses. Almost all workers can qualify for these provisions, including workers with fixed-term contracts, apprentices and part-timers. They also increasingly engage on the issue of contracting out of cleaning services and on the regulation of transfer of undertaking as to provide continuity of job and of terms and conditions of the previous contract for all workers involved. The have developed joint regulation on these matter, strengthening rules regarding transparency and unions' information rights.

The sectoral trade unions have made the issue of precarious work central to their action. They aim to progressively improve the quality of work of all workers and reduce the share of workers on flexible contracts. Apart from collective bargaining, they provide individual services, such as tax and pension counselling, advisory services, information on statutory rights, employment situation, health and safety provisions and litigation. Both social partners also increasingly address the government, parliament and local administrations. Most importantly, they demand end expenditure cutbacks and low-price contracting practices. A very significant common initiative here concerned cleaning services in public schools and targeted government. Social partners' pressures were accompanied by a number of mobilisations at national and local level, both of employees and employers, and by media campaigns. This common action proved to be effective: in 2014 Ministry of Labour and Ministry of Education agreed with social partners on new funding for public schools (also for cleaning activities). According to interviewees, contributing to the success of the initiative was not only the 'bilateral' pressure that was exerted but also the involvement of mass-media and public opinion on an issue everyone could relate to: clean schools.

In **Spain**, relations between unions and employers are fairly cooperative, not in the least because they perceive they have a common 'enemy' in the user companies, often public sector organisations who reduce their cleaning budgets and sometimes delay or default on their payments, causing major problems with the payment of wages. One of the key achievements of social dialogue in addressing widespread precarious work in the cleaning sector is the subrogation clause in the sector's collective agreement of 2013. The clause guarantees that if the contracted company for a cleaning contract changes, the cleaning workers will be assigned to the newly contracted company and will continue to perform the cleaning service. In this way, the stability of workers has been vastly improved and uncertainty reduced. This does not mean, however, that there are no pressures on costs, wages and working conditions anymore. Indeed, in many cases working hours are adjusted downwardly to reduce costs when for example the user company reduces its cleaning budget.

Also, it does not mean that unions and employers are in agreement on the basic issues in the sector. Unions demand higher base salaries, continuation of seniority bonuses, full pay during sickness, an end to gender discrimination, continuation of holiday entitlements and the introduction of some sort of career possibilities to increase employee motivation. The employers' position are almost exactly the opposite on almost all of these issues, including a demand for wage moderation, termination of seniority bonuses, less holidays, etc. They often

find a middle ground in a trade-off between stability of jobs on the one hand and reduced working conditions on the other.

An interesting initiative addressing precarious employment was taken in Catalunya, where a sectoral bargaining table was formed with the objective to develop a professional cleaner accreditation. This represents an opportunity to link skill profiles to re-qualification and training trajectories as well to set up a formal recognition of these skills and open up possibilities for specialization among cleaners, for example in environmentally sustainable cleaning methods.

In **Germany**, For some decades, employment conditions in commercial cleaning have been regulated by sector-wide collective agreements (Bosch et.al. 2011, 2012). These include a framework agreement, which regulates areas such as holidays, additional bonuses, pay scales etc., as well as pay agreements setting applicable wage levels. Both agreements have been declared to be generally binding under the German Collective Agreement Law (Tarifvertragsgesetz), so that all companies in the sector are required to comply with their terms and conditions. In view of the large number of small and medium-sized companies in the sector, as well as the very competitive market structure, both employers and trade unions have an interest in such a system for sector-wide regulation in order to create a level-playing field and limit downward competition on wages and other labour costs. In addition, since 2007 employers and trade unions have also negotiated specific sector-wide minimum wages that have subsequently been declared binding for the entire sector under the provisions of the German Posted Workers Law. This obliges companies from other EU countries that bring their own staff into Germany to pay the sector-wide minimum wage.

However, although there are sector-wide and generally applicable minimum wages, the levels at which they are set are still low and are often undermined by piece-work or performance-based pay systems. For example, pay for cleaning workers may be determined not by the number of hours they work but how many rooms or a defined area they have cleaned. In such cases, if workers are not able to clean within the working time allowed, they are often forced to do unpaid overtime. As a result these workers may receive a wage that is below the sectoral minimum when calculated on an hourly basis for the time they have worked. Also, many cleaning workers will work on several objects on a given day and will have to travel between these buildings. According to the collective framework agreement, this travel time

counts as working time and should be paid. In practice, however, employers often pay only for the time when workers are actually cleaning.

It is the trade union side of the sector represented by IGBAU that is most active on addressing precarious work in cleaning. In very general terms it has been doing this through a number of campaigns. One was a campaign to improve the public standing of workers in the sector. Under the slogan 'I clean Germany' the union highlighted the value and importance of cleaning and the individuals performing the cleaning work. Another campaign, inspired by the famous US 'Justice for Janitors Campaigns', aimed to strengthen the self-confidence and professional pride of cleaning workers and to support them to take industrial and political action against precarious work. More specific strategies have then focused on safeguarding and raising the collectively-agreed minimum wages, setting standards for the quality of work, limiting non-standard employment and, in particular, marginal part-time and temporary employment, and a better enforcement and control of compliance with collective agreements. As part of these strategies the union organised the first-ever strike in the cleaning sector in 2009, in particular to support demands for a higher minimum wage.

In order to promote quality standards, a number of cleaning companies founded the RAL, an association that awards quality seals in industrial cleaning. The RAL currently has 50 affiliated companies employing some 40,000 workers. All certified member companies have committed themselves to observe certain quality standards and to be regularly controlled by independent inspectors. As part of the quality certificate, member companies also made a commitment to pay their workers in line with the collective agreements. The trade union IG BAU and the RAL have also jointly launched a campaign under the slogan 'Cleanliness takes Time', which aims to promote reasonable regulations on performance and working time and they have worked out detailed performance catalogues on the time needed to clean a certain number of square meters in different kind of buildings (for example, offices, schools, kindergartens, hospitals, etc. to avoid undue time pressure on cleaning workers.

Following frequent problems with illegal practices and non-respect of the collective agreements, in 2008 the employers, the trade union and the customs service created an 'alliance against illegal employment in commercial cleaning'. The aim of the alliance is to identify the specific forms of illegal employment in the sector and improve the cooperation between all parties involved to secure better compliance with collective agreements. Apart

from the national control system exercised through the custom services there are also further control institutions at regional level.

In **Denmark**, women, migrant workers, unskilled workers and atypical workers are overrepresented compared to the rest of the labour market. Both private and public employers are active in the sector. Self-employed without employees and part-time work, including marginal part-time employment, are employment types commonly used throughout the industrial cleaning sector whilst flexi-jobs and other public-funded employment schemes are found mainly within the public part of the sector. The entire public part of the sector is covered by collective bargaining while in the private part between 80-95 percent of employees are covered.

Given the relatively precarious nature of the cleaning sector, improving and ensuring reasonable wages and working conditions of atypical workers have been high on the bargaining agenda of social partners within the sector. It is particularly fixed-term workers with very short contracts, temps, subcontractors and the bogus self-employed that have attracted the attention of social partners, although for different reasons. The unions and the employers' associations have jointly developed different initiatives including:

(1) lowering the thresholds for accruing rights to social benefits like pensions along with new social rights to, for example, further training and parental leave;

(2) implementing new regulations for subcontractors to prevent social dumping and unfair competition, including agreements between the social partners that stipulate that that companies using subcontractors cannot offer lower levels of social protection and wages than the standards outlined in the collective agreements, that unions have the right to information on subcontracting practices, and that the burden of proof falls on the employer if social dumping is suspected;

(3) improving the working conditions of fixed-term workers recruited for very short periods, who have no guaranteed weekly hours and suffer from low levels of job security;

(4) raising union density and collective agreement coverage, for example through the sharing of information on newly-hired employees, a protocol to jointly promote the election of shop stewards in cleaning companies without union representatives and emphasise the advantages of close and formal collaboration between management and shop stewards at the company level, and the setting up, in 2014, of the collaboration committee 'Samarbejdsfond', which

aims to strengthen and expand the organised labour market within industrial cleaning by strengthening the relations between social partners at the company level, supporting further training at the company level and contributing to activities to address the various challenges related to outsourcing.

Often it has been the union proposing these changes and the employers agreeing to the after negotiations. However, the employers themselves set up a certification scheme to prevent social dumping and unfair competition and improve wages and working conditions within industrial cleaning. Likewise, a number of municipalities has also initiated responses to avoid social dumping when cleaning contracts are subject to compulsory tendering. They include, for example, the development of social clauses that request that private companies comply with the wages and working conditions outlined in the collective agreements when they bid on cleaning contracts.

4. Temporary agency work

In the past 20 years, temporary agency work (TAW) has become a stable component of EU labour markets. Its share in the labour market, in terms of the number of jobs, is generally modest, not exceeding 3 percent in most countries. However, it plays a major role in providing labour market flexibility. Also, it is sometimes concentrated in certain sectors. For example, in Germany, whereas TAW makes up only 2.5 percent of total employment, in many car manufacturing plants agency workers represent between 10 and 15 per cent of the overall workforce, while in some plants the percentage rises to 30 percent. The TAW sector suffered severely from the 2008 crisis, with employment declining substantially, but in most countries it has been recovering from the crisis since 2012-2013.

In TAW, the employment relationship is triangular: a worker is not directly employed by the user company but by the temp-agency. The worker is then hired out to perform work under the supervision of the user company. This triadic-relationship places user companies in a strong position to demand not only flexibility but also competitive prices. Temp-agencies compete with each other for user company contracts, which is putting a constant pressure on the wages and working conditions within the whole TAW-sector, especially when demand is slow like during the financial crisis. TAW has always been in the picture because of its risks related to precariousness. One issue is if TAW workers have the same wages and working conditions as the ones regularly employed in the user companies or if they are worse off. Formally, the EU Directive on TAW has ensured equality in wages and working conditions for temps but this Directive is often only very recently implemented, and it remains an issue if it is properly respected and if equality concerns all aspects of the employment relationship. For example, in Germany, controlling for individual and job characteristics, an agency worker's pay is between 15 and 25 below the pay of a regular employee. The access to social benefits and training is another dire issue here while also the position of migrants is sometimes problematic in this respect. For example, in Denmark only 46 percent of TAW workers have access to occupational pensions and 14 percent to training, compared to respectively 94 and 91 percent of permanent full-time employees. Another issue is that there are thousands of TAW agencies in each EU country and in each of them a substantial number operates (partially) outside the legal regulations. And a third issue is to what extent TAW is precarious in itself, i.e. if it provides workers with enough stability and income, as well as with opportunities to advance in the labour market, for example by performing a stepping

stone function towards permanent employment. Often TAW constitutes an alternative to unemployment but often this alternative suffers from high degrees of insecurity and instability, apart from the possible disadvantages in employment conditions. And indeed, trade unions as well as public opinion often consider TAW intrinsically precarious, although employers in the sector vigorously dispute this.

In **Germany**, trade unions have serious reservations concerning TAW since it often does not result in equal pay and working conditions for equal work. Therefore they have been both trying to limit TAW and to regulate it through collective agreements. There have been various attempts to limit the use of TAW, in particular, in the metalworking industry. The German metalworkers' union IG Metall has concluded a number of workplace agreements at user companies that restrict the proportion of agency workers as a percentage of the total workforce, limit the duration of their assignments, and improve their prospects for moving into regular employment. At the same time, unions and employers now cover over 90 percent of the sector with collective agreements, including, since 2011, a sector-wide minimum wage determined by a branch-level collective agreement that has been declared as generally binding on all employers in the sector under German statutory provisions and hence also applies to employment agencies in other EU countries that post employees to Germany. However, since concerns about equal pay remain, in many sectors across the German economy unions have conducted campaigns to highlight these persisting problems, to provide practical support to agency workers and to organise them into unions, and to approach the user companies, where trade unions were often in a much stronger position, to promote workplace agreements to regulate TAW. In four years, 1,200 workplace agreements were concluded. They significantly improved working conditions at user companies by stipulating certain supplements that user companies must pay in addition to the minimum rates in the TAW collective agreement for agency workers or even by introducing an obligation for equal pay after a certain period of time. In 2010, IG Metall also conclude a first sector-wide collective agreement in the steel industry which stipulates that employers must commit themselves to pay agency workers at the same rate as the pay of workers starting regular employment at the user company. This example was later followed in a number of other sectors.

In the **Netherlands**, employers and unions have been concluding collective agreements for a number of years now. In fact, there are two agreements, each negotiated by a different employers' organization, the ABU, whose members cover around 65 percent of TAW

workers, and the NBBU, covering mainly small and medium-sized agencies. The ABU agreement is also extended to the non-covered part of the sector.

A major problem within the Dutch temp-agency sector is illegal temp-agencies, especially now that cross-border posting of workers has been made easier within the European Union. Illegal temp-agencies do not respect the rights of employees and oftentimes even abuse their position as an employer to exploit employees unaware of the unlawful status of their temp-agency and unfamiliar with the rights and obligations of working in the Netherlands. This is something that has been recognized by trade unions and employer representatives, both poised to come up with measures to distinguish legal from illegal temp-agencies and support the prosecution of the latter. One of the measures the regular employers have taken, is to brand themselves as 'good flex' and by asking businesses to only use the services of recognized temp-agencies. To this effect, the temp-agency sector has organized a licensing scheme within the sector and created the Foundation for Labour Standards (SNA) to administer NEN 4400 certificates, a prerequisite for an ABU-membership. However, this is not mandatory within the sector. In a joint effort between all social partners the Social Fund for the Temporary Agency Work Sector (SFU) was created in 2007, which collects 0,2% of all wages paid in the sector and administers this money to the sectors' schooling fund STOOF, the working conditions fund STAF and the collective agreement compliance fund SNCU ("CLA police") of the TAW-sector. Also the Ministry of Social Affairs has a special labour inspection team for the temp-agency sector, primarily focusing on non-ABU and non-NBBU members without a SNA certificate.

A major dispute in the sector concerns new activities of the TAW agencies. While on the one hand they negotiate collective agreements with the trade unions to regulate and stabilize the sector and to address issues related to precarious work, on the other hand they have been developing new services to their clients, called payrolling and contracting, cheaper and more flexible form of hiring temporary labour of which the second one even falls outside of the scope of the sector's collective agreement. The unions object to these new services of TAW agencies and consider that they undermine the sector's collective agreement. Indeed, the temp agency sector collective agreement is controversial for the trade unions. Until now the unions have chosen to participate and use their influence to support workers within the sector. However, they see that flexibility and cost pressure increase while the share of employees working on a temp-agency contract has only decreased over the last few years, as more and more employees are working through the new alternative employment regimes payrolling and

contracting. Hence, there is a debate within the unions if they should continue negotiating a specific agreement for the temp agency sector or if they should attempt to regulate temp agency work in the regular sector agreements covering the traditional sectors.

In **Denmark**, the TAW sector is regulated through a combination of legislation and collective agreements; employees without collective agreement coverage are covered by labour law following the implementation of the EU's directive on TAW in 2013. Covering the vast majority of TAW in Denmark is a complex web of different collective agreements signed at the sectoral and company levels. In some sectors, such as manufacturing, TAW is covered by the collective agreements of the user company. In other parts of the private sector, TAW is covered by distinct sectoral and company agreements between the social partners representing the TWA and the temps according to their specific occupation. For example, temps within nursing are covered by their own collective agreements on TAW. Yet in other sectors a different approach is used, where the temps' wages and working hours follow the collective agreement of the user company, whilst other working conditions such as pensions, further training are regulated by the collective agreement of the agency.

Danish trade unions tried to minimize or even avoid TAW up until the mid-1990s. Since then most unions have accepted TAW as an employment form in the Danish labour market and have pushed for new rules and regulations to ensure reasonable wages and working conditions for temps. The employers' associations have also been willing to develop initiatives to respond to the challenges facing the TAW sector. Some responses have been developed jointly by the unions and the employers' associations through collective agreements while others have been union led or employer led. The main initiatives are:

(1) raising collective bargaining coverage and union density, by covering more and more groups and sectors with TAW related protocols, collective agreements and other agreements, thus expanding the web of agreements covering TAW workers and ensuring equal pay and conditions to those of regular workers.

(2) lowering the thresholds for accruing rights to social benefits for TAW workers, improving the social benefits and adding new social rights. This was done in many sectors and concerns improved access to and levels of occupational pensions, paid sick leave, parental leave, training

(3) developing new rules and regulations for TWAs and subcontractors to prevent social dumping and unfair competition. To this effect, the Federation of Staffing Agencies in Denmark (VB), in 2011, set up a certification scheme which aims to ensure user companies and the employees of the TWAs that certified TWAs comply with legislation and the employers' obligations which the TWA has undertaken. The scheme is compulsory for all VB's members and includes rules and regulations regarding compliance with collective agreements on TAW. The certificate is renewed on an annual basis, and certified TWAs are subject to random reviews by an independent authority. TWAs that fail to comply are subject to exclusion. Also employers' organisation Vikarbranchen in DI has developed a similar scheme. The unions have reportedly supported and welcomed the schemes because they raise awareness and ensure reasonable wages and working conditions for temps.

In **Italy**, the sector has been always characterized by cooperative relations between social partners, leading to an uninterrupted dialogue and to a consolidate practice of collective negotiation. Against a very regulated context, both employers and trade unions agree on the necessity/possibility to balance labour flexibility to greater security, setting up and/or enforcing welfare provisions, stabilization mechanisms, improving working conditions, training opportunities, etc. This is a common position and strategy of social partners. Since the ending '90 they have been pursuing this purpose by using collective bargaining. As said, the regulatory role of such an instrument has been strongly supported also by legislative initiatives. Employers' associations and trade unions perceived the signing and the renewals of the collective agreements as chances to introduce important institutional innovations (favoring a more effective flexicurity).

The first national TAW agreement was signed on May 1998 and was renewed regularly since. These collective agreements have focused on a series of issues such as: the regulation of the use of this non-standard form of employment, especially on equal treatment for agency workers with comparable user company's employees, according to the EU Directive 2008/104/EC; representation rights; stabilization; collective negotiated welfare provisions: for sickness or accident, maternity, unemployment, further training; etc. In relation to these benefits, collective bargaining, in particular the 2008 agreement, has established various bilateral bodies providing benefits and services to TAW.

Through collective bargaining, social partners have progressively enforced the principle of the equal treatment for agency workers, with positive outcomes in terms of pay levels,

working time, etc. On the contrary, only limited outcomes have been obtained as regard the provision of additional wage components, such as production bonus and productivity bonus to TAW workers. The 2014 agreement has however set up a mechanism, which should ensure these wage components also to agency workers: at the end of the assignment, user companies must pay a sum calculated on the previous year bonus, proportional to the time workers has spent on that job. Collective bargaining also resulted in promoting a system of collective negotiated welfare provisions. The original social partners' common purpose was to improve employability and social security of agency workers, partially filling the gaps of the welfare state, trying to get a better balance between flexibility and security. In particular the 2008 agreement has strongly reinforced this system, enlarging the functions of the bilateral body EBITEMP set up in 1998 by the first national sector agreement. First of all, by means of EBITEMP, agency workers are provided with additional benefits (beyond those conferred by public programs) in case of an accident at work (even after the temporary contract has expired and even if agency has failed to pay contributions), for permanent disability and disease . Starting from 2005 EBITEMP also provides refunding for dental and health care expenses, especially for those incurred during hospitalization in connection with major surgery, including to family members. Other important provisions introduced by the 2008 agreement and provided by EBITEMP are related to maternity support and childcare contribution, income support (a kind of unemployment benefit) and financial support in the form of small personal loans at competitive interest rates. both provided by EBITEMP. With the 2008 negotiation, social partners also agreed to set up a pension fund for both agency workers with temporary and open-ended arrangements, called FONTEMP, which provides supplementary benefits. Finally, another important bilateral body (FORMATEMP) was set up to support further training and to improve leased workers' employability.

In **Spain,** trade unions and employers organizations in the TAW sector agree on the importance of the gradual convergence between working conditions and rights of TAW workers and those of user companies. As a matter of fact, trade unions claim that working conditions of TA workers are nowadays largely the same as those of any worker in user companies, except for the temporary character of their relationship with this company. Collective bargaining in the TAW sector is characterised by the existence of a national – sector agreement, then complemented by lower level agreements at provincial as well as company level. There is limited scope for collective bargaining to substantially affect developments regarding precariousness in this sector since it is heavily regulated by law.

Still, both trade unions and employers agree that in spite of the narrow spaces left by legal regulations, social dialogue and collective bargaining in this sector has most of the time been cooperative and has contributed to provide additional protection to TAW workers. It also introduced training opportunities for TAW workers and initiatives to strengthen gender equality in the sector.

More recently, disagreements have emerged in the sector, however, as a consequence of the crisis, and in particular following reforms in 2011 expanding the scope of activities of TAW agencies and the 2012 labour market reform, which extended the possibilities for temporary opting out by the employer and imposed limits on the temporary extension of collective agreements (*Ultractividad*). The reform eroded the regulatory and protective capacity of collective bargaining, and has introduced elements dampening workers' voice. It has also promoted a decentralisation of collective bargaining. In this context, where until the 2012 reform, there was consensus among trade unions and employer about a two-tier bargaining structure, with a state-level sector agreement establishing common guidelines and minima for company level agreements, since then the employer position has shifted towards a strong defence of company level bargaining. As a result, the sector collective agreement has not been renewed since 2012, even though a court ruling has determined that the earlier sector agreement remains effective for the time being. This has both blocked further joint initiatives to address precariousness in the sector through collective e bargaining as well as discouraged cooperation on these issues through other means.

In the **United Kingdom**, the TAW sector is highly fragmented with a large number of small firms: there are around 17,000 agencies registered in the UK, the majority of which consist of just one office. In fact, the five largest firms only account for around 20% of the revenue of the sector. As a result of this fragmentation and the overall weakness of collective bargaining in the UK, there is little collective bargaining at organisational level, and no collective bargaining at sectoral level. Hence, the sector is mainly regulated by legislation, which in the UK is not among the more protective ones in the EU. The relative lack of joint regulation in the TAW sector means that workers are inevitably more exposed to managerial unilateralism and vulnerability at work.

A notable exception to the sectoral characteristic and tot UK employment relations in general, was the key role of social partnership in introduction of the Agency Workers Regulations. The implementation of the regulations was achieved through a bi-partite agreement between

the Trades Union Congress (TUC) and the Confederation of British Industry (CBI). The bi-partite approach was driven by a commitment by the then-Labour government to encourage and develop social dialogue. This is extremely unusual and has helped give these regulations a considerable degree of legitimacy.

One area where there is some (sub)sectoral efforts at regulation is the Gangmasters Licensing Authority (GLA). This was established in 2006 after public outrage at the death of 23 Chinese workers who had been employed to collect shellfish (cockles) from Morecambe Bay. The Authority's primary purpose is to prevent exploitation of workers in the food production sector, particularly debt bondage and forced labour. It is specific to the food production industry; agriculture, food processing, and shellfish collection, and there is no intention to extend it to other sectors. Companies that use unlicensed labour providers (agencies, gangmasters etc.) face criminal prosecution. The role of the Authority is both to provide licences to labour providers, and to oversee the application of the licensing process. Overall, the Authority is judged by social partners to work well. There are some concerns from unions that it does not have sufficient powers to ensure consistent monitoring of labour standards between licensing applications, but there is strong recognition that this system of regulating agency work is stronger than in any other sector in the UK. Unions particularly commented on the fact that the Agency has the right to bring criminal prosecutions against employers and agencies that are non-compliant.

In **Slovakia**, the TAW sector is a growing one, responding to employers' demands for flexibility and cost containment. TAW also became an attractive alternative to other precarious and flexible employment forms especially after the two latest Labour Code amendments in 2011 and 2013. These reforms reduced the flexibility of fixed-term employment and increased costs to work agreement contracts, until then neither subject to social security deductions nor to health insurance contributions, therefore yielding TAW more attractive to certain employers.

Industrial relations in the sector are evolving in the past few years. Until recently, there was no clear trade union representation of TAW workers. However, as temporary agency work was gaining importance and brought an increase in unlawful employer behaviour, trade unions started to focus more on the TAW sector. Since TAW is especially widespread in the automotive and electronics industries, OZ Kovo, the strongest trade union federation in industry, launched initiatives to represent agency workers. Employers in the sector are

fragmented and differ concerning their views on cooperation with trade unions and on the possibility of a collective agreement for the sector. While employers initially supported the idea of negotiating with the trade union, the more complex structure of interest representation and fragmentation among employers' associations complicates the development of social dialogue and bargaining in the sector. Still, in early 2014, in cooperation with sector-level employers' associations, sector-level bargaining structures in the previously unorganized TAW sector started to take shape and a collective agreement may be possible in the near future. This would signify an important shift in social partners' strategies to deal with the precariousness of the agency work.

The most important dimension of precariousness in TAW derives from practices of unlawful employer behaviour in order to minimize labour costs, under pressure of the user firms. Agencies often find innovative ways how to avoid legal requirements e.g. in pay issues or the types of employment contracts for agency workers, which directly influence the working conditions of the agency workers and raise precariousness in the TAW sector. However, even though employers recognise that further regulation is necessary to stop illegal practices and competition through social dumping in the TAW sector, they do not think a collective agreement to be the right tool. The main reason for the limited prospective of a collective agreement's regulatory scope is the diversity of agencies and their conditions. Another reason is that employers fear that increased employment protection through a collective agreement would increase labour costs, which could result in layoffs and thus higher unemployment. In contrast to employers, trade unions would like the anticipated collective agreement to introduce more encompassing and significant changes to the current practice of temporary agency employment. In the meantime, both sides target the government with requests and proposals for legislative changes to limit illegal practices and reduce precariousness.

5. Hospitals

Hospitals are different from the other sectors discussed in this report. A major difference is that in most countries the majority of hospitals belong to the public sector, and employers are often municipalities or regional governments. This situation is not static however, as in countries like Germany and Spain the share of the private sector is increasing. For example, in 2013, in Germany, only 48 percent of hospital beds were located in public hospitals, whereas 34 percent were in non-profit private hospitals, often run by churches, and 18 percent in for profit private hospitals.

Another difference is that in most countries the hospital sector has relatively low levels of precariousness compared to the other three sectors. In relative terms, they generally have more secure jobs, are better paid, enjoy better access to social security, etc. Still, there are a number of processes ongoing in the sector that have a tendency to increase precariousness. One is that the financing of hospitals is subject to first of all austerity in most countries, meaning less availability of funds, and second a changing mode of financing where no lump sums are given to hospitals or actual work spent on treatments is reimbursed, but a standard compensation is given for a certain treatment fitting a certain diagnosis. Also the way hospitals are managed is increasingly focused on rationalisation and financial efficiency. And this comes in a time when the population is ageing and the amount of care provided increase. This puts strong pressure on costs in the hospitals, which is reflected in pressure on employment, wages and working conditions, also because labour costs are a very high share of total costs in the sector. Another is that a number of activities in the sector have been contracted out, including in many cases cleaning, laundry services, pharmaceutical and laboratory services, etc., often resulting in lower wages, less security, worse working conditions, etc. As a result of all these developments the jobs of nurses and support staff are under pressure, leading, among others, to work intensification, more temporary contracts, less job security, more marginal part time jobs, i.e. to more precariousness. There are major differences between the countries however, with limited precariousness in Denmark, Slovakia, the UK or the Netherlands and more in Italy and Germany.

In **Denmark**, public hospitals form by far the largest part of the sector. The sector is almost entirely covered by a web of collective agreements that cover the various occupational groups active in hospitals. In general, precarious work is hardly an issue in the sector, in particular in

comparison with the other sectors studied here, as most hospital employees have quite acceptable levels of wages, stability, job security, access to social security benefits and others. Also, part-time employment in the sector is widespread but largely voluntary. One exception to this is the group of employees 'paid by the hour', often having contracts with a very low number of hours that are extended according to the needs of the employer, who have no right to pay during sick leave or to maternity-, paternity- or parental leave. Also, for the TAW workers in the sector, those on fixed-term contracts and possibly some of the marginal part-timers, the thresholds for accruing rights to social benefits are relatively high in terms of the number of months after which they start accumulating these rights. Moreover, there are some, but no conclusive, indications that a process of work intensification resulting in too heavy workloads is ongoing among the nurses. Finally, in more general terms, the sector has a problem of job and employment security in the sense that in almost all employee groups employment has declined in recent years.

In the various collective bargaining processes affecting the sector these issues are on the table, in some cases specifically for the hospital sector and in others for larger parts of the public sector. Also, EU regulations on part-time, fixed-term and TAW employment drive adjustments in these agreements. Possibly the main recent achievement here has been to give, as of August 2014, all employees in the entire regional and public sector on contracts of longer than one month the same right to occupational pensions, payment during sickness and terms of notice as employees on open-ended contracts. Major bone of contention remains the position of employees paid by the hour; trade unions do not like this type of contracts and reject the practice of renewing these contracts year after year. Employers consider the flexibility these workers provide as key to their operations.

In **the Netherlands**, the social dialogue between the major employers organization and the four main unions in the sector has been very constructive over the last ten years, the unions work closely together and the bargaining process has been relatively harmonious, the social partners within the hospital sector have not been in a major conflict for over a decade. Still, with wages making up roughly 60% of all expenses of an average Dutch hospital, the current austerity measures reducing this is putting the collective agreement negotiations under increased pressure as the unions demand wage increases. The social partners agree on the external origin of these challenges, but disagree in part on the measures with which to confront these challenges.

Also a separate one-year collective agreement between the private healthcare sector and a small union called Alternative for Union (AVV) is putting pressure on the negotiations. Neither the general hospitals nor the unions representing employees in the Dutch public healthcare sector are happy to see that this separate collective agreement gives the private sector more room to negotiate flexible contracts and lower wages, setting a lower benchmark for the public sector. With a growing disparity between the public sector and private sector collective agreement the unions fear even more pressure for cost-effectiveness and hence pressure on wages, employment benefits and contract types, which is something they definitely want to avoid.

The employers in the sector are convinced precariousness is not very prevalent within the Dutch hospital sector at the moment. The unions do see some elements of precariousness related to the fact that the sector works 24 hours a day and all days a week. Certain working hours pose a larger strain on employees, especially the older employees, then other hours of the day. The unions would like to retain remuneration based on inconvenient working hours, an important topic of the social dialogue in the sector, while the employers regards this extra remuneration as an unnecessary expense within an already tight budget. Another issue the unions highlight is that workloads and work pressure have increased over the years, and they point to the negative long-term effects of work-related stress.

In the **United Kingdom**, pay and working conditions are regulated nationally through two main mechanisms. Pay is determined for all non-medical staff (including nurses, and other professional staff) through an independent Pay Review Body. This takes evidence annually from the government, unions, NHS Employers, and professional bodies and makes periodic recommendations (typically annually, although not always) about pay increases. Pay Review Bodies are common across many areas of the public sector and have historically been supported by both employers and unions as a mechanism for diffusing potential political tensions associated with collective bargaining in strategic areas of public sector. There has been a long-standing acceptance of the principle that the recommendations of independent Pay Review Bodies should be accepted by governments, although this principle has recently come under pressure and the government is currently proposing to reject the 2014 recommendation of a 1% increase for all NHS staff. This reflects concern in government about spending increases and is likely to result in collective action in some form.

Other issues such as pay grades, supplementary payments, non-wage benefits, and core working conditions are negotiated nationally under a series of agreements that cover all non-medical staff. Within these, there is some scope to negotiate local agreements, but these have generally been limited to areas that national agreements do not cover such as on-call payments and the implications of restructuring plans. It is rare that local agreements would seek to vary nationally agreed conditions.

Unusually in UK employment relations, in this sector there are also social dialogue mechanisms at national and regional level through the Social Partnership Forums. These take the lead in issues such as training and workplace learning strategies, improving the quality of patient services and working patterns. In practice, SPFs operate at local level and are typically driven by an interest from individual managers and/or union representatives.

Coverage of collective agreements is high and wages and working conditions are generally decent. Nonetheless, there have been pressures that also act to limit the coverage of collective regulation of pay, terms and conditions. The first is the creation of new grades whose roles fall outside the national agreements. The largest group in this category are Healthcare Assistants. These roles give scope for Trusts to determine (not always negotiate) pay, terms and conditions locally and there is considerable variation between Trusts. Second, contracting out of services makes it more difficult for unions to ensure compliance with national agreements. The overall effect, therefore, is that although there is still a strong commitment to national bargaining for core staff, these developments act to increase precariousness and to dilute existing sectoral regulation of employment.

In **Slovakia**, the healthcare sector has been exposed to major reforms in the past 15 years, which aimed at strengthening individual responsibility, introduction of market principles and a regulated competition. From the perspective of work and working conditions, the most important change concerned an organizational decentralization and corporatization of selected healthcare providers. This process first concerned smaller, regional, hospitals, in the mid-2000s, but was put on halt under the 2006-2010 social democratic government. After 2010, the right-wing government coalition attempted to resuscitate corporatization efforts. This time, the process was stopped by organized trade union action and professional chambers' negotiations with the government. In result, a full marketization of healthcare was not completed, and the halfway liberalisation reinforced variation in organizational forms of public hospitals and their access to public finances. Since the mid-2000s, large university

hospitals enjoy better access to finances in case of debt accumulation, while smaller, so-called regional, hospitals were transformed into publicly-owned 'corporations', motivated to act like private market actors. The state no longer bears bailout responsibility for regional hospitals. In result, regional hospitals face hard budget constraints while their income from health insurance companies is strictly regulated at the central level.

The differentiation in access to public finances also brought important consequences for working conditions and opened space for the emergence of precarious work in hospitals. First, the gap in working conditions and wages between large state-owned university hospitals and the regional hospitals was increasing despite the average increase of overall wages. Second, the slower wage growth and limited perspectives for improved working conditions in the regional hospitals fuelled migration of nurses and care personnel to better paying employers in Slovakia and abroad. Finally, regional hospitals with greater budgetary constraints experienced shortages of health personnel, which had consequences for the quality of care but also employee satisfaction. Despite the above trends, employment in healthcare is relatively stable, without great exposure to dismissals and the need for employment guarantees and employability measures. While employment trends show a minor decline after 2011, wages in healthcare continued to rise.

During the reform years, industrial relations in healthcare have stabilized at the sector level, with a high organization rate and bargaining coverage. Initially covered by bargaining in the public service sector, the healthcare sector developed its own bargaining structure after 2006. Currently, at the sectoral level, two employers' associations, representing larger state-owned hospitals (ASN SR) and smaller regional hospitals (ANS) conclude collective agreements independently with the relevant trade unions (SOZZaSS and LOZ). At the hospital level, bargaining takes place with relevant unions established in particular hospitals. Second, important public initiatives were taken by some of the unions since 2011, including a campaign for wage increases for doctors and another one for nurses, public protest of nurses in response to government policies, etc., resulting in doctors and nurses obtaining wage rises through the legislative process. The new laws on wage rises for doctors and nurses did however pre-empt the employers' interest to further bargain at the sectoral or hospital levels about working conditions of doctors and later also nurses. Indeed, the organized and influential industrial relations structure in healthcare, with established multi-employer bargaining, has suffered under the campaign for improving nurses' working conditions. While still relevant, the sustainability of sector-level bargaining is questionable after the

bargaining coverage of the most important occupational groups in healthcare (doctors and nurses) has been squeezed out by legislation.

Job security, social security and employee voice are reasonably established in hospital care, and do not suggest a major trend towards exposure to precariousness. While job security and social security can be considered as factors of external employment flexibility, trends toward precarization of hospital employment originate in internal forms of flexibility. These relate to working time, work organization and pay of particular employee groups. In other words, within stable full-time employment positions with high social security, some occupational groups, in particular nurses, become increasingly vulnerable to work reorganization, pay decreases or pay differentiation, lose access to lifelong learning and training, or feel discriminated against in pay regulation.

In **Germany**, public, non-profit private and for profit private hospitals exist side by side. The public hospitals are still very much linked with the public sector industrial relations regime. Most municipal clinics, for example, are still covered by the national public sector collective agreements. Most non-profit hospitals adhere to the specific industrial relations regime that operates within the Christian denominations: this is characterised by a special legal status and is not fully covered by German labour law. In particular, industrial relations within the churches are usually not covered by collective agreements but by special provisions not determined by collective bargaining. The private for-profit hospitals have also developed their own industrial relations regimes. After privatisation, the companies usually withdrew from the public sector agreements. In some of the larger private hospital corporations there are nation-wide company agreements that cover the whole of these undertakings while other private hospitals have only workplace agreements for individual clinics. A minority are also not covered by any agreement. Apart from different regulations for the different hospital providers, there are also different agreements for doctors and for the remaining hospital staff, who are mainly represented by the trade union ver.di, which organizes across the entire service sector, private and public. The diversified structure of industrial relations in the German hospital sector undermines equal conditions for all hospital workers.

During the 2000s, trade unions in German hospitals set two main priorities. One has been to try to ensure that the growing number of private-for profit hospitals would be covered by collective bargaining and provide similar conditions to those laid down in the public sector collective agreement. Trade unions also started to question the special industrial relations

status of Church-related companies and tried to negotiate genuine collective agreements in non-profit hospitals. While the unions generally been quite successful in establishing collective bargaining in private clinics, genuine agreements still remain an exception in Church-related hospitals.

The second priority was a call for more public financial resources in hospitals. Together with the hospital providers' organisations and other medical professions they ran a campaign under the slogan "Away with the cap!", which called for the removal of the cap on hospital budgets. In 2008 more than 130,000 hospital employees took part in a demonstration in Berlin, the largest demonstration ever in that sector. The campaign has proved highly successful, leading to the Federal government setting up a special financial programme to improve care in hospitals for the period 2009-2011 that in total has provided about 1.1 billion Euros, allowing the creation of about 15,300 new jobs.

More recently, the unions have started to focus more on strategies against precarious employment in the hospital sector. Three main campaigns can be identified:

1. For collective agreements to be concluded in hospitals' in-house service companies to ensure better working conditions, if not necessarily equal to those of core hospital staff;

2. For the closure of in-house temporary work agencies in hospitals;

3. Combating work pressures on employees and for higher staffing levels through the introduction of legal minimum requirements for hospital staff. and is focused on work pressure and understaffing

In **Italy**, the hospital sector is under strong pressure from government austerity, imposed partially by the EU institutions. Most initiatives, approved by different parliamentary coalitions and governments, have promoted a reduction of employment levels, in particular of the permanent positions, and have affected many dimensions of the quality of work. Moreover, starting from the end of the 1990s, the sector underwent concomitant processes of decentralisation, specifically of regionalisation, of corporatization and – less prominently – of marketisation and managerialisation.

The system of interests' representation is highly fragmented. A plurality of organisations is active in representing workers. Some are general, cross-professional; the majority, often with very small membership, are instead specialists unions, representing only single professions or

occupations, such as medical managers, nurses, technical professions. Nevertheless, those affiliated to the main Italian confederations, CGIL-FP, CISL-FP, UIL-FPL, still represent the majority of the workers, both of public and private hospitals. Workers' representation and collective bargaining are extensively regulated and supported by legislation; since the beginning of 1990s, social partners' negotiations, both at national and at lower levels, have played a key role in the regulation of the sector and in addressing issues of precariousness.

Still, reforms introduced in 2008-2009 by the centre-right government in the regulatory framework regarding the employment relationship of the public hospitals workers (and of all public employees) strengthened the privatization process and reduced the role of collective bargaining, subjecting it to stricter legal rules and controls. It strongly limited the number of negotiable issues in the area of organizational and human resources management. Moreover, with the 2010 budget law government and parliament decided to freeze the national bargaining machinery for all public sectors (with the aim to contain costs), effectively also freezing wages and leading to low pay. Collective bargaining has effectively stalled in the sector.

However, low pay also results from the increasing fragmentation of the hospitals' value chains and in particular from sub-contracting. Sub-contractors, often in strong competition with each other, tend to offer lower wages. The negative tendency of pay levels is confirmed by surveys carried out on large sample of workers, showing that a large percentage of hospitals workers, above all nurses and assistants, are low-wage workers and are unsatisfied of their pay level: about an half claims their wage is not sufficient to maintain himself/herself and his/her family members. But the widest gap concerns the so-called collaborators or para-subordinated (dependent self-employed). According to trade unions, their pay is 30-40% lower with respect to equivalent permanent positions.

Also a general tendency towards an extension of working time has also been observed, in particular through overtime, and an intensification of work, through a saturation of time, the speeding up of the work process. According to trade unions, these tendencies concern above all nurses. There is a limited incidence of atypical flexible contracts, under 6 percent of employment in the sector. Workers on such contracts do have less possibilities to benefit of public welfare provisions (as said above, this is closely linked to the deficit of the national social protection system).

National (and also company level) collective agreements resulted in progressively improving working conditions and in setting up innovative rules concerning some types of atypical contracts and part-time. For instance, with regard to fixed-term contracts (and also temporary agency work), they established the principle of equal treatment with comparable permanent workers and ensured that years in temporary positions count equally in the build-up of the internal career. They also set up a priority right for fixed-term workers in case of new recruitment with open-ended contracts. As for part-time jobs, the collective agreements regulated the transition to full-time arrangement. The self-employer however fall outside the scope of the agreements, explaining its high levels of precariousness.

In **Spain**, the hospital sector is predominantly public but since the late 1990s there has been a rapid growth of private hospitals, many of which act also as subcontractors to public hospitals. In the public hospitals, full-time open-ended contracts traditionally dominate, although in recent years atypical contracts have gained in importance. The most important example is the growth of part-time employment, largely involuntary in nature, but not necessarily characterised by low pay. There is also a growth of temporary employment and there are certain examples of particularly precarious contract types, including contracts to cover night hours or weekends only or interim contracts for doctors with lower protection. In the private hospitals, part-time and fixed term contracts as well as self-employment are much more widespread and wages and working conditions are disadvantageous compared to public hospitals. Also, in the private hospitals many activities are outsourced to companies offering again lower wages and working conditions.

There is no collective bargaining in the public hospital sector. Workers in the public sector are covered by specific regulations for public employees. However, there are negotiations between trade unions and public health authorities that have delivered several agreements and that perform a similar function to collective bargaining. It is nonetheless important to note that collective bargaining is different depending on the contractual position of the workers. Thus in the case of civil servants (funcionarios), their working conditions are laid down in the laws regulating the public sector employees and the public health sector4. By contrast, those with an employment relationship regulated according to the Workers' Charter (personal laboral), collective bargaining will develop according to the general regulations.

Taking this into account, all employees in the public sector working in the profession of nursing and care work, recruited as non-civil servant staff, are covered by the Collective

Agreement for non-civil servant staff of the Public Administration and the agreements negotiated at regional level. The working conditions of civil servant staff, on the other hand, are regulated according to the regional agreements concluded in each autonomous community by the most representative social partners and members of these administrations.

In the private hospital sector, collective bargaining is very fragmented and lacks articulation. There is no national level agreement and only in some provinces there are sectoral collective agreements covering private hospitals. Many private hospitals lack their own collective agreement and there is a predominance of individual negotiations between management and employees, which is one of the explanations of the worse working conditions here.

Indeed, in the public hospitals, collective agreements are the key instrument to deal with precarious work. Several clauses are included in regional level agreements of the public hospital sector in order to promote stable contracts. These establish limits to temporary contracts or minimum percentages of open-ended contracts; contain very detailed regulations of the maximum duration of temporary contracts; and promote stable contracts by spelling out the mechanisms for the transformation of temporary contracts (including training contracts) into open-ended contracts. Also, in many agreements, social partners have agreed to pay a compensation to the worker when the temporary contract finalizes.

At the same time, the relationship between the unions in the sector and the Ministry of Health are tense. The unions want to establish minimum conditions across regions through an agreement with the Ministry, also to diminish the disparities across the public sector that characterise the public health system, but the Ministry considers that the interlocutors for the unions are to be found at the regional level. In addition, the unions dispute the austerity measures of the government that affect the hospitals and in particular the limits that have been set on the hiring of new personnel. At the moment a new person can be hired only after two persons retired. According to the unions this is one of the reasons for the growth of temporary employment in public hospitals.

For the private hospitals sector, trade unions and the main employer federation FNCP (National Federation of Private Hospitals) signed in 2012 an agreement to foster lifelong learning and health. The ultimate goal of this agreement was to improve the possibilities for internal promotion of employees and the stabilization of their employment.

6. Conclusions

In very general terms, over time, an increase in precarious employment can be observed across countries and sectors. This confirms the results of many other research projects that point to this trend. Clear differences exist however between countries, following from differences in economic development, legislation, government policy and industrial relations systems. In particular Italy and Spain have seen an increase in precariousness that can be linked to the austerity programs and changes in legislation and government policy that follow from pressure from the European level. In Germany, changes in legislation and government policy have also played a key role, but their origin is more endogenous.

Even more noticeable is how similar the causes and manifestations of precarious work look across countries. The construction sector is in all seven countries heavily influenced by internationalization, austerity programmes, tendering procedures, third party pressure, pervasive subcontracting, etc. Also, in all countries construction has seen growing precariousness related to the growth of (bogus) self-employment or problems related to the posting of workers. In hospitals these issues hardly apply, except for austerity programmes, and precariousness is lower than in the other sectors across countries. Also, in all countries the TAW sector faces the problem that part of the TAW agencies operates in illegality. This underlines the importance of including a sectoral dimension in the study of precarious work as well as in devising solutions to problems of precariousness.

At the same time, we can observe a number of common themes that are key to understanding developments in precarious employment in the various sectors. One has been the role of the crisis, affecting in particular public budgets and hence, the cleaning budgets of public sector organisations, the budgets of public sector organisations available to hire TAW workers, the funds for public construction projects, and the finances of public hospitals. The decline in public funds has then in all sectors an effect on the quantity and quality of employment.

A second issue that has come to the fore in cleaning, construction and TAW is the dominant role of third parties, i.e. actors that are not the employers or the employees involved in the employment relationships or the self-employed active in the sector, but the parties that tender the construction projects, the client companies of the TAW agencies and the user companies in the cleaning industry. Their role is crucial in the growth of precarious work across the countries because of the cost and flexibility-based competition they foment between the

cleaning companies, construction companies or TAW agencies. This often cut-throat competition causes great pressure on the cleaning companies, construction companies or TAW agencies to lower their costs, often mainly labour costs, and to increase flexibility. In this way, the third parties' pressure leads to increasing precariousness.

Third, and key to this study, the various country studies have demonstrated the key role of social partners and collective bargaining in developing answers to precarious work. Examples abound of joint initiatives by social partners or single initiatives by one of them that aim to limit precariousness. In particular solution at the level of the sector have proven important here because they both adjust themselves to the specificities of the sector and reduce competition on wages and working conditions within the sector. This is especially true when there are strong social partners that engage in collective bargaining. Where of comparable companies or workers some are covered by collective agreement and others are not, the latter generally suffer from higher levels of precariousness than the former. Strengthening the position of the social partners and increasing the coverage of collective agreements is therefore one of the key measures that can be taken to reduce precariousness and increase the quality of employment.

Part II: European Sectoral Dialogue

1. Introduction

The Commission Decision 98/500/EC of 20 May 1998 established the legal framework for sectoral social dialogue committees. The sectoral dialogue committees facilitate sectoral social dialogue at European level. European social dialogue is essential for the implementation of European social policy and this is recognized in several provisions of the EU Treaties. Article 152 TFEU, establishes that the EU promotes the role of the social partners at European level; Article 154 TFEU, provides that the Commission consults social partners before submitting legislative proposals in the area of social policy. This consultation with European social partners could lead to contractual relations, including agreements, according to the terms of Article 155 of the TFEU.

European sectoral social dialogue is led by representatives of European employers and employees, grouped by economic sectors. The social partners in a sector may make a joint request to establish a sectoral dialogue committee. These committees shall be consulted on all Community developments which have social implications and their main role is to facilitate sectoral social dialogue. These committees are composed of a maximum of 64 members. They are generally chaired in turn by a trade union or employer representative or, at their request, by a representative of the Commission. Each committee establishes a work programme in collaboration with the Commission and meets at least once a year.

Employers' organisations and trade unions from the sector must meet certain representativity criteria to be eligible social partners to participate in these sectoral committees:

- they shall relate to specific sectors or categories and be organised at European level;
- they shall consist of organisations which are themselves a part of Member States' social partner structures and have the capacity to negotiate agreements, and which are representative of several Member States;
- they shall have adequate structures to participate in the work of the Committees.

This part of the overview report provides a summary of the interviews with the representatives of the relevant European sectoral social dialogue committees representing employers' associations and trade unions at this level.

2. Temporary agency work

The employees' organization representing workers in this sector is UNI Europa and the employers' are represented by the European Confederation of Private Employment Agencies, EUROCIETT. Representatives of both sectoral social partners were interviewed within the BARSORIS project.

Social dialogue in this sector covers "temping agency" work - the supply of workers by intermediary firms for assignments in other organisations. Temporary agency work (TAW) or “temping” is a triangular employment relationship. This is a significant form of employment in most EU countries and employs large numbers of workers, especially in the larger economies. Belgium, France, Germany, Italy, the Netherlands, Spain, and the UK have a particularly well-developed temping agency sector. An estimated 12 million workers in Europe use the services of private employment agencies to enter the labour market or change jobs.[7]

At EU level, temporary agency work is regulated by the EU Directive 2008/104/EC, which defines a general framework for the working conditions of temporary workers. The directive aims to guarantee a minimum level of effective protection to temporary workers by ensuring equal treatment concerning the basic working and employment conditions and to contribute to the development of the temporary work sector as a flexible option for employers and workers.

Directive 2008/104/EC on temporary agency work establishes a rule of equal Treatment applying to working conditions including pay. However, Member States may authorise the social partners:

- to define specific working and employment conditions for temporary workers.

- to derogate from the principle of equal pay for temporary workers who have a permanent contract of employment and who continue to be paid between two postings.

Therefore, the TAW allows for several ways of derogating from the general equal treatment principle, so that in transposing the Directive, Member States enjoy a margin of discretion as how much equality they give to agency workers. In any case, the attainment of the

[7] EUROCIETT and the Boston Consulting Group, *Adapting to Change, How Private Employment Services Facilitate Adaptation to Change, Better Labour Markets and Decent Work*, (2012), 13.

Directive's objectives of promoting effective protection of temporary workers and establishing a good reputation for temp work agencies as employers, requires that any acceptable exception to the general principle must preserve an adequate level of protection.[8]

The national legislation implementing the TAW Directive should also ensure that temporary workers must be free to conclude an employment contract with the user undertaking at the end of their posting. They must therefore be kept informed of vacancies for permanent employment. In addition, participation in training programmes must be encouraged. Access to collective services of the user undertaking (canteens, childcare facilities and transport) must be open to them, and under the same conditions as other workers.

As a counterbalance for the establishment of the equal treatment principle, the TAW Directive contains provisions aiming to facilitate the operation of these agencies. Therefore, restrictions or prohibitions applicable to temporary work should be eliminated and limitations may be justified only on grounds of the general interest.

The representatives from UNI Europa and EUROCIETT interviewed agree that temporary agency work fulfils specific needs for both companies and workers and aims at complementing other forms of employment. They consider that temp agency work is a form of employment that not only contributes to the fluidity of the labour market but it also provides opportunities in particular for unemployed persons and Europe 2020 target groups by functioning as a "bridge into work". EUROCIETT representatives highlighted that temporary agency work, when assessed on objective criteria on access to labour rights, is no significantly different than open ended contracts.[9] They argue that the organized and regulated private employment agencies sector provides decent work when compared with other forms of external flexible work such as on-call work, fixed term contracts and outsourcing which can be very precarious for workers.

The role and functioning of temporary agency works as a stepping stone into permanent and/or direct employment is a highly controversial issue of public debates as well as social dialogue on the effects of temporary agency work on contemporary labour markets. The

[8] This strict use of the exceptions to the general principle allowed by the TAW Directive is especially relevant in the context of the transnational temporary agency work, where a combined application of this Directive and the Posted Workers Directive should not lead to a reversion on the protection of foreign agency workers to merely minimum standards. See Schlachter, M., 'Transnational Temporary Agency Work: How Much Equality Does the Equal Treatment Principle Provide?', *The International Journal of Comparative Labour Law and Industrial Relations*, 28, n. 2, (2012), 177-198.

[9] London Metropolitan University and Working Lives Research Institute, *Turning Precarious Work into Work with Rights* (2011).

employers' organisations and trade unions in the sector disagree on the interpretation of data and statistical evidence. Existing surveys and research studies (e.g. in the United Kingdom, the Netherlands, and Germany) suggest that there is an 'adhesive' effect of temporary agency work, i.e. that a significant number of employees after one year or so are likely to be offered a direct employment by the user company after an assignment.[10] The quantitative scope of this effect differs quite significantly between different surveys and countries and seems to depend very much on the specific survey methodology and also certainly is influenced by the date of the respective study. Some empirical analyses show that temporary jobs shorten the unemployment duration, although they do not increase the fraction of unemployed workers having regular work within a few years after the entry into unemployment.[11]

The interviewees stated that this sector has been strongly hit by the economic crisis which started in 2008 and has caused the foreclosure of a large number of temp-agencies. However, since 2012, they are observing growth in the volume of the sector and signs of recovery.[12] They also recognized that in the last decade competition between companies is the sector is increasing and that that is due to several factors. Firstly, in several EU Member States alternatives more flexible triangular forms of employment such as pay-rolling and contracting are proliferating. Secondly, a large problem within the temp-agency sector is illegal temp-agencies, especially those providing cross-border provisions of workers. Since the European Union legislation has made the cross-border posting of workers much easier, international competition has intensified which is also making the prosecution of illegal temping-activities violating workers' rights more difficult. Both side of the industry agreed that it is important to cooperate to combat mal-practices in the sector but they have a slightly difference point of view concerning how to tackle this problem. The unions are in favour of more European legislation and an update of the posting-of-workers directive. The employers' associations are satisfied with the EU directive 2008/104, they called it a "balanced legislation" and do not see the need for new European legislation at this point in time.

The employers argued that the TWA is an over-regulated sector in comparison with other flexible forms of employment such as pay-rolling or services companies which provide low

[10] Voss E., Vitols, K., Farvaque, N., Broughton, A., Behling, F., Dota, F., Leonardi, S. and Naedenoen, F., *'The Role of Temporary Agency Work and Labour Market Transitions in Europe: Institutional frameworks, empirical evidence, good practice and the impact of social dialogue'*, Final Report for the Joint Eurociett / UNI Europa Project:"Temporary Agency Work and Transitions in the Labour Market" (2013), 115.
[11] Graaf-Zijl, M., Van den Berg, G. J., and Heyma A., 'Stepping Stones for the Unemployed: the Effect of Temporary Jobs on the Duration until Regular Work,' *J Popul Econ* (2011) 24:107-139.
[12] EUROCIETT, Economic Report, (2014), 16-25.

quality of jobs. They call this a case of unfair competition and mentioned the case of the elimination of licensing systems in the Netherlands, which have made easier to open up mala-fide temp work agencies undercutting workers' rights. They are in favour of imposing reasonable controls to avoid that the "good name" of the sector is taunted by the operation of illegal agencies and other flexible alternative triangular employment arrangements. A best practice mentioned at the interview with the EUROCIETT representatives is the code of conduct that temp work agencies should abide to in order to join the federation. A national controlling example mentioned as a good practice is the initiative of the Dutch administration to bind all agencies to register at the Chamber of Commerce to be able to operate in the sector. The example of the social partners' cooperation in the Netherlands to combat malpractices through the collective agreement compliance fund SNCU ("CLA police") of the TAW-sector is also considered a very good example. In this context of increase internal and external competitive pressures, the employers' representatives ask for a flexibilisation of the legislation applicable to temp work agencies and for a revision and elimination of restrictions on the use of temporary agency workers.

The Committee is currently focusing its work on promoting more flexible labour market policies, promoting national social dialogue, try to find common positions on how to improve temporary agency work regulation, discussing sectoral developments and how to react to the economic situation; and projects on cross-border activities within temporary agency work and on transitions in the labour market.

Relevant Achievements of the Committee mentioned at the interviews:

- Joint project on temporary agency work and transitions in the labour market (2011-12).

  The work of the Committee try to promote the stepping stone function of temporary agency work and emphasize that temporary agency work should be on an equal footing with other non-traditional forms of work in terms of access to social protection.

  In 2012, EUROCIETT and UNI Europa put forward joint recommendations on temporary agency work facilitating transitions in the labour market to national and EU policy makers. The European sectoral social partners encourage sound social dialogue as a meaningful way to support transitions of agency workers and recommend cooperation among public, private and third sector employment services to improve

access for jobseekers into the labour market, therefore facilitating transitions from unemployment to work ("bridge into work" function). The establishment of bipartite funds for vocational training, pensions, health insurance and/or additional social benefits are encourage to enhance agency worker's employability and portability of their rights. These recommendations follow up the results of the report "Temporary Agency Work and Transitions in the Labour Market".[13] This study indicated that joint practice of social partners in the TWA sector is a key factor for transforming numerical transitions into "quality transitions", i.e. enabling no only "bridges into work" frameworks but also fostering stepping-stone effects and upward/progressive transitions. This rationale in particular is embodied in the developing of bipartite institutions and funds supporting training provision and skills development of temporary agency workers as well as providing more social protection.

- Declaration on training for temporary agency workers/Joint actions developed by sectoral social partners play a key role in facilitating skills upgrading (2009).

  This declaration has served as a first step for the creation of several jointly vocational training bipartite social funds at domestic level, i.e. in the Netherlands, Spain and Italy. The employers noticed that the providing further training to employees goes on the one interest of the TWAs because it is an investment in their workforce that improves their employability chances.
- Agreement to set up a European observatory on cross-border activities within the temporary agency work sector (2009).

  This initiative tries to foster the enforcement of the posted workers Directive. Both sides of the industry are in favour of control and reiterate their joint commitment to fight fraudulent TWAs and illegal practices to avoid unfair competition in cross-border activities and create a level playing field for the agencies to operate at EU level.[14]
- Joint opinion: EUROCIETT/UNI Europa joint declaration on the directive on working conditions for temporary agency workers (2008)

[13] ORSEU-Lille, IRES-Rome, Institute for Employment Studies London and Lentic-University of Liege, *The role of temporary agency work and labour market transitions in Europe* (2012).

[14] Clark, N., Joint Eurociett/UNI Europa Project, Setting up a European Observatory on cross border activities within temporary agency work, (2009), acceded on 20.06.2014, <http://www.eurociett.eu/fileadmin/templates/eurociett/docs/Cross_Border_Activities/WLRI_survey_report_Final.pdf >

EU regulation of the sector – position of social partners

In the 2008, the sectoral social partners issued a joint declaration on the draft directive on working conditions for temporary agency workers. This declaration was adopted by the sectoral social partners after the negotiations at cross-industry level collapsed and they agreed that an EU wide regulatory framework on temporary agency work should be of interest of both business and workers. They considered the proposed legislation balanced as it combines the equal treatment principle for temporary agency workers with regard to their basic working and employment conditions with a framework developing a well-functioning European market for temporary agency work services. On the one hand, the social partners agree on the necessity to identify and review obstacles of legal and administrative nature, which may limit the opportunities of temporary agency work services to operate and eliminate them. On the other hand, they also agree that licensing systems plus monitoring by labour inspections are good for the sector, as long as they are proportional and not-hampering the development of temporary agency work. EUROCIETT consider that the implementation of the Directive has been adequate, mentioning that a majority of member states have some regulations or generally applicable collective agreements which provide for equality of pay between temporary agency workers and permanent comparators and they only recognize some implementation problems in the "new Member States" from Central and Eastern Europe, where the TAW industry faces a lack of representative trade union organisations.[15] On the contrary, UNI Europa considers that agency work is still too heterogeneously regulated across Europe and that, in many Member States, important problems are the low awareness of their rights by agency workers and the lack of trade union organization for these workers. UNI Europa stressed therefore the need for further enforcement of the EU legislation in this area. According to them there are main causes for concern, ranging from the proper implementation of the equal treatment rule, the review of restrictions and prohibitions that might lead to the diminution of workers' rights and protection, to issues related to proper access to workers' collective rights and training and proper protection in case of dismissal.

Many EU Member States have been seeking ways to reconcile employment protection with flexibility when transposing the European Temporary Agency Work Directive into their

[15] European Foundation for Living and Working Conditions (2008) Temporary agency work and collective bargaining in the EU Dublin, European Foundation

national legal orders but "domestic laws still contain loopholes in the protection of temporary agency workers. This makes European regulatory enforcement all the more important."[16]

In June 2012 EUROCIETT issued a position paper on the Enforcement of the Posting of Workers Directive.[17] This confederation considers that the new Directive imposes disproportionate obligations on private employment services, which will hamper their contribution to work mobility in Europe.

EUROCIETT is concerned with the Directive because they consider that it will increase bureaucracy and hamper mobility of temporary agency workers in Europe. They are specially critic with the system of joint liability for minimum wages of posted temporary agency workers in the construction sector. According to their position, a better enforcement of the Posting of Workers Directive needs to focus on improved access to information for companies and workers, better administrative cooperation Member States and a proper enforcement at national level. UNI Europa is partially satisfied with the new enforcement Directive and welcomes the new joint liability provisions.

General view of social dialogue and interaction with other bargaining levels

Both sides of the industry are committed to promote sectoral social dialogue at national social level, as the most appropriate means to organize the regulatory framework of the temporary agency work industry. They also agree that promoting social dialogue for Eastern European countries is a key issue. In addition, they encourage the recognition of temporary agency workers' right to freedom of association at all levels and their right to information, consultation and participation. With that purpose they have organized several roundtable events not only in EU Member States but also in associated countries: i.e. in Turkey in December 2010 and in Serbia in September 2014. These events promote social dialogue in the temporary agency work sector. These meetings, often supported by the European Commission, aim to bring together the social partners, representatives of the government, and of the International Labour Organization to discuss key issues, challenges and opportunities of temporary agency work in the given country. These roundtables offered the stakeholders in the temporary agency work sector a platform to exchange views on the ongoing labour

[16] Schomann, I. and Guedes, C., *Temporary Agency Work in the European Union, Implementation of Directive 2008/104/EC in the Member States,* (2012) ETUI Report 125, 65.

[17] Eurociett, Position Paper on the Enforcement of the Posting of Workers Directive (2012), acceded on 10.07.2014 <http://www.eurociett.eu/fileadmin/templates/eurociett/docs/position_papers/2012_PWD/Eurociett_Position_Posting_of_Workers_-_June_2012.pdf>

market reforms and on the adoption of regulation in line with the ILO Convention on Private Employment Agencies, 1997 (No. 181) and the EU Directive on temporary agency work 2008/104/EC.

EU sectoral social partners aim at facilitating collective bargaining at domestic level but they acknowledge their limits. They cannot interfere in the national bargaining processes and they recognized that their influence there is quite limited. As the BARSORIS country reports have shown, there are strong differences between the studied countries in the structure of the sector and patterns of TAW use. A crucial difference concerns the form of the regulation of temporary agency work. In general terms, this is sector highly regulated by law, collective agreement and self-regulation in many EU Member States. The European sector social partners stressed that the EU Member States have different traditions of labour market regulation, and different policy preferences concerning the balance between employment flexibility and security, as well as notable differences on the role played by social dialogue and collective bargaining in developing and implementing the legal framework. The influence of the European sector level agreements is therefore constrained by the strong differences between countries, ranging from 80% collective bargaining coverage in Germany to a lasting deadlock in the renewal of the framework agreement for the sector in the Spanish case.

3. Construction

In Europe, the construction sector is the biggest industrial employer in the EU. With more than 18.5 million employed, and more than 14 million businesses, it represents around 26% of industrial employment in the EU (6.8% of total employment).[18]

The globalisation of construction activities is especially important for large civil engineering companies wishing to sell management and planning concepts and managerial and engineering skills. However, manual labour is generally carried out by the local workforce. Challenges for the sector include seasonality and variable demand. Given its dependence on access to credit, the construction sector has been particularly hard hit by the crisis.

The social partners represented at this European sectoral committee are the European Federation of Building and Woodworkers -EFBWW- and the European construction Industry Federation -FIEC-on the employers' side.

Both social partners recognize that there is a high share of self-employment in the sector and that the figures of cross-border posted workers in the EU are growing. The EFBWW representative considers that the predominance of the competitive factor in the sector has led to an excessive increase of forms of flexibility (bogus self-employment, pay rolling, long-term trainees) and to a dramatic deterioration of work and employment conditions in the sector. The EFBWW emphasized that cross-border posted workers are often exploited, as many of them are employed with no (or poor) social security arrangements, low wages, poor compensation for overtime, and lack of decent accommodation facilities and that self-employment in the sector often corresponds to bogus self-employment.

European social dialogue in this sector covers mainly employment issues, health and safety and training and lifelong learning. The Committee is currently discussing initiatives dealing with the broad negative impact of the economic crisis in the sector, the strengthening of industrial relations, the functioning of the internal market (including the conditions of work and employment of cross-border posted workers), the improvement of health and safety, promotion of vocational training, and competition pressures deriving from companies and workers from non-EU countries providing construction work in the EU.

[18] FIEC, *Construction in Europe, Key Figures, Activity* 2012, (2013)

Relevant initiatives of this sectoral committee:

- Joint position on abnormally low tenders in public procurement (2013)

In March 2014, the European institutions adopted a legislative package aimed at "modernising" the existing legislative framework for public procurement and consisting of the revision of several existing directives.

Throughout the legislative process, the European sectoral social partners actively passed on a series of key messages from the sector to the European legislator. In particular, FIEC emphasised the necessity of reinforcing the identification and rejection of abnormally low tenders, promoting the award of the contract on the basis of the most economically advantageous tender rather than the lowest price, guaranteeing a strict link between award criteria and the subject-matter of the contract, improving confidentiality of tenders, promoting variants and guaranteeing transparency and equal treatment between public and private operators.

In 2013 the social partners at the sector published a joint position, stressing that quality needs to be chosen over price, getting rid of abnormally low tenders. To combat this problem, the Most Economically Advantageous Tender should be preferred over the "lowest price" criteria, the contracting authority should be obliged to check the reasons for an abnormally low price defined according to objective identification criteria and the contracting authority should be obliged to reject the identified abnormally low tender if and when any justification provided is not satisfactory (i.e. the price implies infringement of social, labour, or environmental rules).

- Joint proposed amendments on the Posting of Workers Enforcement Directive (2012). The FIEC and EFBWW jointly proposed several amendments to the new proposal for a Directive regarding enforcement of EU rules governing posting of workers. The join opinion stresses that according to social partners correct application of the legislation, collective agreements and practices go hand in hand with the 1) the availability of proper and correct information and 2) effective controls and inspections and 3) targeted dissuasive enforcement measures.
- Joint opinion on the future EU Strategy on Health and Safety for the period 2013-2020.

The sectoral social partners consider that a regular assessment of the existing legislative framework is important to ensure that any legislation can effectively be implemented and applied by all companies independently of their size. Moreover, they ask the Commission to introduce in the new strategy specific actions which aim to support the introduction of national asbestos registers, improve the working conditions of those workers and initiate a European-wide action aiming at the disposal of all asbestos from Europe's public and private buildings. In this document, they also committed themselves to improving the overall health and safety framework in the sector.

- Joint position on the proposal for a directive on Intra-corporate transfers (ICT) (2012).

  The European Commission presented in 2010 several proposals for Directives in the framework of its overall migration policy. These proposals aim at facilitating the procedures for obtaining work and residence permits for non-EU nationals. One of these proposals deals with "intra-corporate transfers". According to the Commission, these intra-corporate transfers of key personnel will result in new skills and knowledge, innovation, and enhanced economic opportunities for the host companies, thus advancing the knowledge-based economy in the EU.

  The sectoral social partners consider that some of the provisions of the proposed ICT Directive could seriously affect the smooth functioning of the construction industry in the EU. Thus, they have adopted a joint position paper in support of the compromise amendment adopted by the employment Committee that propose the exclusion of constructions activities from the scope of application of this Directive.

- Joint statement on third-country contractors and workers in the EU (2010).

  The demographic changes and the current global crisis have accelerated the entry of companies and workers from third countries into the European market. This has a direct impact on a labour intensive and highly mobile sector such as construction. In this statement the social partner advocated for a strict and adequate application, control, and enforcement of the concerned EU and national legislative frameworks to these contractors, in order to ensure non-discrimination, an equal and transparent level playing field for companies and workers and to prevent social dumping.

- Joint recommendations on employment and bogus self-employment (2010)

- Joint statement on the global economic crisis and its consequences for the European construction industry : positive measures and concerns of the European social partners (2010)
- Joint declaration on paritarian funds (2008).

  The European sectoral social partners pay special attention to further strengthening and developing national paritarian dialogues between social partners. One of the key jointly designed instruments for this purpose are paritarian funds, which are bodies established, funded, managed by the social partners themselves and often fulfil a complementary role to existing governmental structures. Together with the national social partners of several Member States, the EFBWW and FIEC have committed in the past and will continue to develop joint initiatives establishing paritarian social funds for vocational and professional training, health and safety, supplementary pensions, paid holiday schemes, supplementary unemployment payments, etc. according to the needs and the specificities of the various Member States.

  In most western EU Member States such bodies exist, whilst in the Central and Eastern EU countries only very few have been set so far. The European sectoral social partners in collaboration with the European Association of Paritarian Institutions of Social Protection, and with the financial support of the European Commission, try to promote the development of such "paritarian funds" through several joint initiatives, such as the launch in 2011 of a website presenting detailed information on the existing paritarian funds in the various Member States, as well as organizing "capacity building workshops" at the request of interested social partners in Bulgaria, Poland and Romania in 2012.[19]
- Joint recommendation on the prevention of work-related stress (2006).

<u>EU regulation affecting the sector – position of social partners</u>

The representatives of FIEC and EFBWW consider, with different nuances in their point of views, that the objectives of modernisation and simplification of the regulatory framework for public procurement have not really been achieved. While a few new provisions have been introduced (e.g. the innovation partnership procedure), they represent a minority. On the contrary, it is the original spirit of the regulatory framework for public procurement which seems to have lost something throughout this revision process. Public authorities and public

[19] FIEC, *Annual report* (2013), 43.

entities will be able to avoid applying public procurement rules in a larger number of cases, through public-public and "in-house" cooperation. Also, the principles of transparency and non-discrimination of tenderers are put into question by some of the amendments.

FIEC expressed great disappointment that the major problem of abnormally low tenders had not been settled at all, in spite of the joint lobbying activities undertaken together with the unions in the sector. Neither the objective identification criteria, nor the mandatory rejection of such offers when they cannot be properly justified were adopted by the EU legislator.

The European Federation of Building and Woodworkers has also been very critical with the new Posting of Workers Enforcement Directive adopted in 2014. They consider that the new legislation will not suffice to tackle exploitation of posted cross-border workers, social fraud and social dumping.

The new legislation established that Members States can only impose administrative requirements and control measures which are "justified and proportionate". Thus, every company or Member State would be able to get rid of dissuasive control measures of another country by questioning their legitimacy. In addition to this national restriction, all countries will have to inform and communicate the control measures taken to the European Commission, which will monitor the application closely. They consider this insufficient to tackle the current dimension of the exploitation of posted workers in the sector.

They EFBWW representative is also not satisfied with the chain liability of the main contractor for the non-payment of wages by the subcontractors for the construction industry. According to him, this liability is only applicable to the direct subcontractors and can be circumvented by letterbox companies and intermediaries. And finally, main contractors may be exonerated if they have applied "due diligence", a subjective and arbitrary control measure, -according to this federation-.

General view of social dialogue and collective bargaining issues

The global economic crisis has strongly impacted on the construction industry and jobs have been lost in several Member States. However, in some countries they still suffer from a shortage of skilled workers in this sector. Therefore, sectoral social partners agree on the need to increase investment in training and promote a better mutual recognition of qualifications.

In an attempt to create a platform for better anticipating the skills needed and to adapt the training schemes accordingly, in the last years, the social partners in the construction sector are contemplating to set up a European Sector Skills Council. With that purpose, they have launched a feasibility study with the financial support of the European Commission and in 2012, they organized a conference in order to discuss the feasibility, the structure, the participation of possible stakeholders and the long-term sustainability of a skills council.

Sector skills councils for vocational training are platforms at sector level where stakeholders (social partners but also governmental bodies, universities and schools, training bodies, etc.) seek to gain insight into de likely developments in employment and skills needs, through analysis of the development on the sectoral labour market, with the aim of assisting policy making for this sector. The European sectoral social partners FIEC and EFBWW see added value in creating and coordinating this platform. Several topics have been identified and included in the working programme for cooperation, namely, the mutual recognition of qualifications, the "greening" of constructions works, technical developments in the sector and how is the development of the construction process translate into training.[20]

Given the specific characteristics of the construction sector and its fragmented organization, mainly composed by SMEs, the sectoral social partners consider absolutely vital that there are structural, autonomous, stable and properly functioning industrial relations employers and workers both at the EU and at the national sector level. In this respect the EFBWW and FIEC agreed to examine specific needs or demands raised by national social partners and jointly develop specific capacity building programmes.

[20] EFBWW and FIEC, *Multiannual Action Programme for the Sectoral European Social Dialogue of the Construction Industry*, (2012-2015).

4. Industrial cleaning

The social partners represented at this European sectoral committee are the employees' organisation UNI Europa and the employers' organisation European Federation of Cleaning Industries -EFCI-.

Industrial cleaning is a labour intensive sector, characterized by a predominance of part-time work and highly feminized. The representatives of both side of the industry interviewed recognised that is high incidence of potentially vulnerable workers (Europe 2020 target groups such as women, migrants, non-skilled people) working in this sector. In the EU, the industrial cleaning sector employs around 3.3 million people (almost 2% of the EU workforce). The UNI Europa representative emphasized that, in general terms, since the economic crisis stated there has been a trend to worsening of labour conditions, in particular a downgrading of wages in a sector already characterised by low levels of pay. A caveat mentioned at the interview is that regarding employment trends and development of working conditions, it is hard to generalise and there are strong differences among EU countries.

In this sector, the continuous shift towards a service-based economy led to a net turnover increase of 13.9% (2006-08). On average, the annual employment growth over the last 18 years is at 9.9%. This industry grew constantly in the last decade until 2008 as a direct consequence of the outsourcing of cleaning activities which were formerly performed in-house. The sector turnover has been slightly affected by the economic crisis that the EU has undergone in the last lustrum (only 0.65% net decrease over two years 2008-201).[21] Nevertheless, dealing with the effects of that crisis is a major challenge for this sector, as it has got a strong indirect impact on employment and working conditions of the cleaning workforce. Between 2008 and 2010 in the EU-27 employment in the sector has a decrease of 10.5%.[22] The industry has been therefore strongly affected by the crisis in terms of employment destruction. The interviewed employers' representative argued that expenses cuts by (private and public) clients engaged in most countries have obliged companies to strongly reduce their employee base. The combination of low reduction of the industry turnover combined with the high figures on jobs lost shows that the perception of the unions' representative that the consequences of the unfavourable economic downturn has been mainly affected the workers in the sector and a transfer of the economic risks from the

[21] Source: "The Cleaning Industry in Europe – Edition 2012", (2012) Edited and Published by EFCI.
[22] Source: *Ibid.,* Figures based on the European Economic Forecast-Autumn 2011, Statistical annex, total employment – table 22, 216, DG Economic and Financial Affairs.

companies to the employees have taken place. Another trend in the industry noticed by the interviewees is the advancement of companies that are providing integral series, including cleaning, facility management, catering and security. The effect of this tendency is higher diversification of the sector by way of expansion of its activities.

Other challenges face by the social partners are the level of market penetration in certain Eastern European countries, low union and employer representation in Central and Eastern Europe, the visibility of the sector, the reform of the EU public procurement directives, and the impact of undeclared work.

Social dialogue in this sector covers the following activities: services provided by specialized contractors; building maintenance and associated cleaning; cleaning of trains, buses and planes; waste management services; and disinfecting and exterminating activities. The Committee is currently focusing its work on:

- health and safety issues
- socially responsible public procurement
- increased participation of employees and employers in sectoral social dialogue
- working conditions
- standard setting
- impact of the economic crisis.

Relevant Achievements

- Joint opinion of the social partners in the cleaning industry, contract catering and private security sectors on Modernisation of EU Public Procurement Policy (May 2012).

  For many years, the EFCI and UNI Europa have been calling upon the local, regional, national and European contracting authorities to base their selection procedures for service providers on the "economically most advantageous" tender rather than in the "lowest price" tender. In order to improve the quality of work and services at the sector, the EFCI and UNI Europa published a guide on selecting best value for organisations awarding contracts for cleaning services and promoted it through awareness and information campaigns.[23] This is a practical tool aiming to guide

[23]EFCI and UNI-Europa, with the support of the European Commission, "*Selecting Best Value. A Guide for Organisations Awarding Contracts for Cleaning Services*", (2004).

authorities through the different phases of analysing and awarding public contracts by offering an objective system of quality criteria which enables them to select “best value” cleaning services.

Even when these social partners are aware of the budgetary difficulties that the public authorities encounter, especially in a context of economic downturn, they believe that the general policy practice, which consists of awarding public contracts to the lowest bidder, generates particularly harmful effects in the sector. This situation results in a high competitive pressure which causes the contractor to present very tight bids, often to the detriment of the quality service, the working conditions and staff training. This situation leads to the proliferation of illegal and undeclared work, universally condemned by the EFCI and UNI Europa. This state of affairs goes against the efforts developed by the sectoral social partners in this area towards enhancing the quality of employment and services, as well as the professionalization of the sector.

In the context of the reform of the European Directives relating public procurement, the European social partners’ representatives of the cleaning industry were jointly bargaining to a strong recognition of socially responsible public procurement rules by applying the criterion that the “most economically advantageous tender” should be awarded the contract in public procurement procedures instead of the lowest bid.

- UNI Europa and EFCI joint position on the Enforcement Directive on Posting of Worker’s (2012).

  The European Federation of Cleaning Industries (EFCI) and UNI Europa, welcomed in their joint position the intention of the European Commission to reinforce the application of the Posting of Workers’ Directive (PWD). However, they stated that the establishment of a common framework to prevent the abuse of existing rules needs to be strengthened and ultimately benefit the workers in the sector, through the elimination of the existing legal uncertainty.

  UNI Europa and EFCI submitted comments on the proposed legislation that will affect the working conditions of the sectors’ employees and the competitiveness of the companies. The submitted comments address the issues of ‘monitoring compliance’ and the capacity of national authorities to carry out inspections and controls in the application of the PWD. UNI Europa and EFCI demand stricter monitoring mechanisms to effectively guarantee compliance with the legal provisions of the host Member State, in view of ensuring fair competition as well as the equal treatment of posted workers.

- Programme for prevention of MSDs in the cleaning sector, FARE (F) (2010-2014).
- Joint Declaration on the "flexicurity" debate launched by the European Commission (2007) and Joint Declaration and campaign on daytime cleaning (2010).

  In most EU Member States, clients generally insist that cleaning should take place outside the usual hours of occupation of their premises (particularly for office cleaning). As a result, the usual working hours of employees are carried out mainly in the early morning and late afternoon/early evening. In these joint declarations the social partners stressed their support to all initiatives aiming at increasing working hours for employees during the usual periods of premises occupation. They agreed that day-time cleaning does positively affect the quality of the services provided and improve the working conditions of employees as it leads to better social acceptance and a better conciliation of working and family life and higher dignity of workers, as the worker feels to be part of the clients' staff through making its work visible. As a consequence, the representatives of the two sides of the industry committed themselves to support initiatives to increase daytime work in negotiations with clients on working time and on the conciliation between professional and family life. In this context they have developed joint awareness campaigns towards clients in the need for new working time practices, i.e., the joint campaign on daytime cleaning by the Belgian social partners (2011-2012).

<u>EU legislation affecting the sector and social partners' initiatives</u>

In the last years the European sectoral social partners in the industrial cleaning sector have been actively collaborating in trying to influence the outcome of several EU legislative proposals indirectly having an important impact in the quality of work at that sector. One main point of concern for the industry has been the general trend among the clients of cleaning companies to select their cleaning contractors on the basis of lowest price as the only criterion. This have led to a high competitive market, which operates to the detriment of working conditions of the actual employees performing cleaning services and an increase of undeclared work in some EU Member States.[24] This situation is due to the growing levels of unfair competition by companies operating without fully abiding to existing labour and social security provisions to bid lower prices of the cleaning services. In the context of the revision of the EU existing Directive dealing with public procurement, UNI Europa and EFCI have

[24] UNI Europa and EFCI/FENI, *"Improving Implementation of the European Social Dialogue in the Cleaning Industry", Final Report*, (2010), 21-25.

issued a joint opinion on the modernisation of EU Public Procurement Policy promoting the application of the criterion of the “most economically advantageous tender” or “best value tender” should be awarded the contract in public procurement procedures instead of the lowest bid.

Another clear case of joint bargaining by the sectoral social partners to influence the EU legislative process is the case of the Directive on the enforcement of directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

In 2014, the European Parliament and the Council finally adopted the new enforcement Directive. The European Federation of Cleaning Industries (EFCI) and UNI Europa have been monitoring the progress of adoption of this new directive closely. Both social partners welcome the Commission’s intention to enforce the right application of the Posting of Workers Directive (PWD) by establishing a general common framework of appropriate provisions and measures to prevent any circumvention or abuse of the rules. They agree that the current diverse implementation of the PWD at national level is a source of legal uncertainty and consequently tensions between social partners as seen in the recent case laws of the European Court of Justice, in particular the rulings in the cases Laval, Viking and Ruffert. Both EFCI and UNI Europa emphasise that better administrative cooperation and mutual assistance between member states is promoted and put in practice as far as possible. They say national control measures and inspections are crucial in order to ensure fair competition between companies and equal treatment of employees.

However, the EFCI's director general, warned against an exhaustive list of possible administrative requirements and control measures. "This would significantly reduce Member States' abilities to carry out effective inspections," he said. "A limitation such as this restricts to an excessive extent the member states' control options without tangible need.” He considers that "in labour intensive sectors, such as cleaning, it can be seen in practice that new innovative forms of circumventing minimum working conditions and minimum wages are regularly being found. Therefore, national control authorities must be granted a broad margin of discretion in order to adapt their control measures promptly and flexibly."

Social Dialogue trends

The situation of social dialogue at this European sectoral committee has been called by both the representatives of UNI Europa and EFCI as fluent and highly cooperative at the moment

being. Since the mid-1990s social dialogue at the sectoral Committee in the cleaning industry has covered several issues such as public procurement, sub-contracting and undeclared work but also set out a broader aim of promoting a sustainable framework for the development of a competitive industry able to provide decent working conditions for the cleaning industry workforce. In addition to the abovementioned topics joint actions have been adopted in the following fields: literacy and training programmes, ergonomics, and reconciliation of working and family life, health and safety, equal opportunities of vulnerable groups of workers (women and migrants). In this line, the European sectoral social partners for the cleaning industry have also adopted common recommendations to other bargaining levels regarding promotion of professionalization of the sector, encouraging the development of sound competition, securing personnel loyalty and enhancing the image of the sector, promotion of full-time and day-time work, improving health and safety and promotion of social integration and fighting discrimination.[25]

[25] Ibid. 25. For an overview of the implementation of these recommendations by collective bargaining at national level see: Cortese,V., Dryon, P. and Martínez, E., Report: *'The Modernisation of Work Organisation in the European Cleaning Industry'*, (2008).

5. Hospitals and healthcare

The social partners represented at the European sectoral social dialogue committee are the European Federation of Public Service Unions European Hospital (EPSU) and the Healthcare Employers Association (HOSPEEM).

In 2010 there were around 17 million jobs in the healthcare sector which accounted for 8% of all jobs in the EU 27. Hospitals employ more than 3.5 million workers in Europe.[26] The healthcare and hospitals sector is one of the sectors with the greatest potential for job creation in Europe due to different factors, among them, the increasing demand for healthcare services due to the demographic change. The EU's population is ageing: by 2020, there will be 40% more people aged 75 and above compared to 1990. This situation poses a challenge for the provision of good quality health services. The development of medical technologies will also have an increasing impact on health services in the future.

Challenges to the sector include recruitment (including cross-border) and retention of workers, the ageing workforce, the development of new skills to respond to patients' mobility and increasing demands for high-quality healthcare services.

Overall, the health of Europeans has improved enormously in the last decades. However, the sustainability of these high quality health standards is under strain due to the pressure put on health care budgets stemming from the economic crisis faced by EU Member States since 2008. Due to austerity measures, several EU countries have implemented a wide range of structural reforms and cost containment measures to improve the efficiency and effectiveness of their health systems. These measures have got a direct impact on their health systems, employment and working conditions of the healthcare workforce, and availability of services in the sector.

The social partners are currently focusing on:

- strengthening hospital and healthcare social-dialogue structures;
- creating specific instruments to face the challenges of an ageing work force;
- improving occupational health and safety;
- Recruitment and retention of healthcare workforce.

[26] Eurostat data (2011) NACE Rev. 2 categories 86 & 87.

Main relevant achievements:

- Joint Statement of HOSPEEM and EPSU on the new EU Occupational Safety and Health Policy Framework (2013).

  EPSU and HOSPEEM have agreed to work jointly to identify existing guidance/good practice tackling "psychosocial risks and stress at work" and "musculoskeletal disorders". Within the work-programme 2014-2015, they are organizing a seminar for the exchange of best practice, i.e. regarding measures and risk management.
- Guidelines to tackle third-party violence and harassment related to work (2010) and joint implementation report (2013).

  The social partners in the sector have agreed to monitor how the third-party violence agreement is follow-up and implemented by HOSPEEM members and EPSU affiliates and consider healthcare specific issues, also based on the joint implementation report of the multi-sectoral guidelines to tackle work-related third-party violence.
- Framework agreement on the prevention of sharps injuries (2009).

  The sectoral social partners have been very active in adopting initiatives in the field of improving occupational health and safety for the healthcare workforce. As a follow up of the framework agreement on the promotion and support of the implementation of Directive 2010/32/EU on the prevention of sharps injuries in the hospital and health care sector, HOSPEEM and EPSU have agreed to monitor the transposition and impact that Directive 2010/32/EU has on hospital staff in each Member State by the end of 2015. Further on, they have agreed to elaborate an updated report on the implementation of the Directive and a mid-term evaluation report to be share with the European Commission.
- Code of Conduct on Ethical Cross- Border Recruitment and Retention (2008) and Framework of Actions (2010).

  EPSU and HOSPEEM have committed to develop concrete actions to tackle staff shortages and qualification needs now and in the future and to promote life-long learning and continuing professional development for all healthcare staff by stimulating the creation of a learning environment in healthcare institutions both through formal and on-the-job training with the aim to improve and guarantee the quality of service. The precondition for this is a mutual commitment: for employers to ensure access to life-long learning and for the workforce to actively engage on it. This

activity is intended to also support the implementation of the revised Professional Qualifications Directive.

Bargaining Trends

The social partners interviewed noticed that since it was set up there never has been a particular focus on "social rights of precarious/vulnerable workers through collective bargaining and social dialogue" in the context of the SSDC HS sectoral committee. This might well be the case in different national contexts, e.g. when collective agreement foresee a relatively higher wage increase for lower income (health) workers but as social dialogue at EU-level is not dealing with pay conditions, an important "field of action" to focus social dialogue and collective bargaining on social rights and working conditions of precarious/vulnerable workers doesn't exist in a European context. One example where the actual benefit might be bigger for the group of (health) workers the BARSORIS project is focusing on is the issue of "prevention of and fight against third-party violence". As mentioned above, this topic has been tackled by the SSDC HS committee within the priority area: occupational health and safety.

Along with the key priorities for social dialogue of the sectoral committee: occupational health and safety and recruitment and retention of the healthcare workforce, HOSPEEM and EPSU have set up the following transversal priorities in their Joint Work Programme 2014-2016:

- Enhancing the impact of the activities undertaken in the context of the sectoral social dialogue committee for the hospital sector.
- Building up and strengthening the capacity of social partners in the sector.
- Promoting exchange of knowledge and experience regarding social and employment policy between social partners' organisations and their representatives, including the social partners at cross-industry level;
- Influencing policies at EU level by the monitoring and involvement in European consultations and legislative processes, both pro-active and re-active, where these would have an impact on the hospital sector, its financing, organization, regulation and workforce, if appropriate and agreed.

6. Conclusions, common trends and divergences in the four sectors

A general conclusion of the analysis of sectoral social dialogue initiatives dealing with the quality of work in the four selected sectors is that the picture of social dialogue actions and initiatives are much diversified among sectors and countries.

Another conclusion is that the interaction between the European sectoral and the national/sector levels is limited in general terms. The social partners at EU level try to facilitate collective bargaining at domestic level but they all emphasised that they cannot interfere in national/sector bargaining process and their agreements, joint opinions, declarations, etcetera, do not have a strong influence in the developing of bargaining processes at other levels. In particular, the interviewees underlined the autonomous competences of the national social partners in the fixing of wages and other working conditions in the sectors and the high diversification of national cases, social dialogue structures and traditions, and collective bargaining systems. The same conclusion applies to the definition and adoption of concrete measures fighting labour market segregation.

Many of the social partners' representatives interviewed also agree that promoting social dialogue structures and sectoral collective bargaining for Central and Eastern European countries is a key issue. Sectoral social partners in the interviews have noticed some implementation problems of the EU legal framework concerning agency work and posted workers in the "new Member States" from Central and Eastern Europe. Similarly, a lack of sufficiently representative trade union organisations and employers' associations has been noticed for these countries. Therefore, they mention the need to develop joint actions fostering the building up of adequate social dialogue structures and the capacity of social partners to engage in sector level collective bargaining.

An interesting best practice from the European sector level social partners, enhancing workers' social rights, employability and portability of their rights, is the promotion of bipartite/paritarian funds. In several reports, joint actions and programmes, the sectoral social partners are encouraging the establishment of bipartite funds for vocational training and skill developments, occupational pensions, health insurance and/or additional social benefits at domestic level. This positive outcome of EU sectoral social dialogue has been found in the activity of the European sectoral committees for TAW and construction, among others.

A core role of the EU sectoral level social partners, which has been evidenced in the four sector case studies, is their crucial role in lobbying for the interests of the whole sector in the context of the EU legislative process. A clear example of this important role is the EUROCIETT/UNI Europa joint declaration on the directive on working conditions for temporary agency workers, where the sector level social partners established the basic common lines that the EU legislation should contain. Most of these agreed points were reflected in the final text of the EU directive 2008/104/EC on temporary agency work. From that point of view, the sectoral social partners contributed to the definition of a general framework for the working conditions of temporary workers in the EU and to guarantee them a minimum level of effective protection.

A further conclusion of this study is the important role of European sectoral social partners in influencing the outcomes of the legislative process when the European institutions are foreseeing legal provisions with relevant impact on the quality of jobs and services provided by the companies operating in these industries. Two recent cases of EU legislation illustrate this concluding remark: the new Enforcement of Posting of workers Directive (assuring compliance with EU provisions dealing with decent working conditions in cross-border situations) and the new rules on public procurement.

6.1 Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and social partners demands

In 2014, the European Parliament and the Council in co-decision process adopted the new enforcement Directive. The Directive aims to establish a common framework of provisions, measures and control mechanisms necessary for better and more uniform implementation, application and enforcement in practice of Directive 96/71/EC on the posting of workers. The new Directive essentially aims to guarantee respect for an appropriate level of protection of the rights of posted workers for the cross-border provision of services, especially the enforcement of the terms and conditions of employment that apply in the member state where the service is to be performed.

New provisions have been introduced so member states shall designate one or more competent authorities. National labour inspectors will be guided by common lists of elements when checking whether posting is genuine. To determine whether a company really provides services abroad, national authorities will be able to ascertain where it is registered, where it pays tax and social security contributions, where it recruits posted workers, where its

business activity takes place and how many contracts it has to provide services. The aim is to exclude cases of persons falsely declared as self-employed and to ensure proper protection of workers who were not genuinely posted.

An extra monitoring of compliance measure, foresees by the Directive, is the elaboration of an indicative open list of national administrative requirements and control measures that member states may apply to inspect foreign companies that post workers on their territory. Additional requirements, provided that they are justified and proportionate, can be applied. Member States will have to simply communicate them to the European Commission, without constituting a prior authorisation requirement.

The Enforcement Directive aims to improve the protection of posted workers' rights by preventing fraud, especially in subcontracting chains where posted workers' rights are sometimes not respected. The sectoral social partners in the sectors of industrial cleaning, construction and TWA have highlighted the importance of this new Directive for the improvement of working conditions at their sector. The representatives of employers and employees at sector level in industrial cleaning and construction have been jointly lobbying the European Commission on the text of the proposed Directive. In the TWA sector the EUROCIETT has sent its own position paper to the Commission.

All social partners' representatives interviewed see the need of stronger enforcement and compliance with the PWD that the new Directive aims to ensure. There is a clear need that rules on the working conditions applicable to posted workers should be better applied in practice, especially in some sectors such as construction and temporary agency work, where for example so-called 'letter box' companies (without any real economic activity in their 'home' country) have been using false 'posting' to circumvent national rules on social security and labour conditions. However, the positions of the social partners at EU sector level have been different in evaluating the new Directive. The temporary agency work employers' confederation has been critical with the new obligations and liabilities imposed by the Enforcement of the Posting of Workers Directive on private employment services operating transnationally. EUROCIETT considers that the new administrative procedures set up by the Directive will hamper their contribution to work mobility in Europe.

In the construction sector, both sectoral social partners are not fully satisfied with the new enforcement Directive. On the one hand, the employers' representatives have expressed their concern about the new rules on subcontracting liability. On the other hand, the employees'

federation considers the measures adopted insufficient to tackle the current dimension of the exploitation of posted workers in the sector. They EFBWW representative is also not fully satisfied with the chain liability of the main contractor for the non-payment of wages by the subcontractors for the construction industry because they were aiming for more stringent liability provisions.

In the industrial cleaning sectors, the social partners seem to be more positive about the new Enforcement Directive but the EFCI sees as a threat the establishment of an exhaustive list of possible administrative requirements and control measures which could have the counterproductive effect of reducing Member States abilities to carry out effective inspections.

6.2 Public procurement and social partners demands

In March 2014, the European institutions have adopted a legislative package aimed at “modernising” the existing legislative framework for public procurement and consisting of the following measures:

• Directive 2014/24/EU (procurement in the water, energy, transport and postal services sectors), replacing directive 2004/18/EC;

• Directive 2014/25/EU (public works, supply and service contracts), replacing directive 2004/17/EC;

• Directive 2014/23/EU on the award of concession contracts.

These Directives introduce the new criterion of the "most economically advantageous tender" (MEAT) in the award procedure, which means that public authorities will be able to put more emphasis on quality, environmental considerations, social aspects or innovation while still taking into account the price and life-cycle-costs of what is procured.

According to the European Commission the introduction of the new criteria will put an end to the dictatorship of the lowest price and once again make quality the central issue. The Directives set up tougher rules on subcontracting. To fight social dumping and ensure that workers' rights are respected, the new laws include rules on subcontracting and tougher provisions on "abnormally low bids" and contractors that do not abide by EU labour laws may be excluded from bidding.

In the last years, the trade unions federations EFBWW, UNI Europa, and EFFAT have organised several actions to support their demand for enhanced and more socially oriented public procurement regulations. The delegation of the unions also had meetings with the European Commission about the need to reform EU legislation in this field. The final compromise and the deal struck on 2014 between the Council and the Parliament seem to have taken into account some of the major trade union demands. Therefore, they consider the adoption of the new legislative package as a partial success.

The new Directive introduces the concept of the "most economically advantageous tender" to be used for awarding contracts, abolishing the criteria based solely on lowest costs. On the contrary, the trade unions demand a mandatory mechanism for joint and several liability associated with the economic operator being awarded the contract is not included in the directive. However, a transparency mechanism regarding subcontractors involved is introduced, which could be a satisfactory solution. Article 71.5 obliges public authorities to disclose names, contact details and legal representatives of the subcontractors involved. The main contractor shall, moreover, notify the contracting authority of any changes to the chain of subcontractors.

The European sectoral social partners of the construction and industrial cleaning sector are not fully satisfied with this new regulation because they were jointly bargaining for a stronger recognition of 'socially responsible public procurement'. They also noticed that the final text of the Directive reflects better the demands of the cross-industry social partners, in particular, the approach of BUSINESSEurope and that their proposals have been neglected to a certain extent which will have an indirect negative impact on the quality of work in their sectors.