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The future of the EU health and safety legislation

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Contents

Note from the Editor 4

Subject articles 6

Jan Cremers: Health and safety standards under deregulation threat. 6

Rolf Gehring: Technic design: A pathway to improve working conditions. 21

Rolf Gehring/Stephen Schindler: EFBWW asbestos campaign: state of play. 35

Reports 48

EFBWW Public procurement seminar, 28-29 May 2015 (Susanne Wixforth) 48

Reviews 51

Hee-Chang Seoa, Yoon-Sun Leeb, Jae-Jun Kima, Nam-Yong Jeea (2015) *Analyzing safety behaviors of temporary construction workers using structural equation modelling* (Jan Cremers) 51

Benjamin Hopkins (2015) *Occupational health and safety of temporary and agency workers* (Jan Cremers) 52

Note from the editor

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A few weeks ago, the Dutch labour inspectorate published its report on occupational accidents in the period 2010 to 2013. The inspectorate reported on all the cases investigated and came up with details on sector, type of registered accidents (in 2013: 2000 cases), number and type of breaches and specific at risk groups. Apart from the fact that construction was (again) high on the list of most dangerous sectors (number two), the most striking finding was the risks for newcomers and migrants. Out of fifteen workers, one is, on average, confronted with accidents at the workplace. Among the high-risk groups, you will find agency workers, youngsters and temporary workers. Moreover, among the victims of serious accidents, one out of eight workers has another nationality, with a fatality rate that is twice as high as for Dutch workers. This is in itself already good reason for a strong occupational safety and health policy all over Europe, and, with the mobility of workers being prominent on the EU agenda, to work out a more coherent and unified, upwards oriented policy in this field as a matter of urgency.

This issue of CLR-News is dedicated to this very important theme. The first contribution questions whether the OHS-policy developed is internal market proof and resistant enough to the reigning dogma of deregulation. My conclusion is that the EC is leaning too much on so-called evidence coming from business consultants and their very one-dimensional patchwork of attitudes and other 'irritations' expressed by entrepreneurs. Rolf Gehring makes two contributions. One is about the assessment of the Machinery Directive 2006/42/EC that provided the regulatory basis for the harmonisation of the essential health and safety requirements for machinery at EU level. Already the old Machinery Directive 98/37/EC aimed to formulate clear criteria in terms of free circulation and safety of machinery. Several aspects of this Directive are important for the woodworking and building sectors (sawing,

lifting materials, underground work). In his second contribution, he updates, together with Stephen Schindler, the EFBWW activities in the fight against asbestos and reports about a number of meetings with EU services to discuss the relationship between various EU policies (such as energy efficiency, waste policy, market surveillance and training) and the asbestos issue.

The report included is from Susanne Wixforth of the Austrian Arbeiterkammer who contributes with a short overview of the main themes discussed during a seminar on the new procurement rules in Europe. The issue rounds up with two reviews from my side that fit in the OHS-theme.

In my very first note from the editor, back in 1993, I wrote that the aim of CLR-News was to report on important developments and research projects in the construction field seen from the workers' point of view. Now, more than 80 issues later, I will withdraw from this important post. I have accepted a new job at the Law School of the Tilburg University and have decided to hand over the post of editor. Notwithstanding this, I think that the added value of CLR-News is still undisputed. We have discussed my intentions at the AGM and I am quite sure that the quarterly will continue to serve its readers with valuable important scientific research and related information about construction labour.

Subject articles

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HEALTH AND SAFETY STANDARDS UNDER DEREGULATION THREAT

At the start of the EU internal market

The Treaty of Rome that formulates the building blocks for the foundation of the European Economic Community (1957) underlines in Article 117 the aim of the member states to work towards an upwards harmonisation of the living and working conditions of its citizens and workers. The ambition is clear, the free movement and mobility of workers envisaged ask for European-wide, streamlined and joint legal standards in the field of occupational health and safety (OHS). In the ensuing years, the European institutions began to work out a joint policy in this area (as for instance the formulation of a harmonised list with recognised occupational diseases in 1962)[1]. It took until the 1970s before a more coherent EEC-action program for health and safety at the workplace was concluded[2].

Although from the very beginning there were collisions in the EEC between economic reasoning and targets and the necessary social policy, the European-wide legislation in the OHS-field could flourish for a long time as a relatively insensitive political item. Progress was made based on a strong consensus among the experts involved in and outside the European institutions. Besides, for a long period lip service was paid to a progressive better regulation of working conditions and health and safety during successive revisions of the Treaties and the related festive ceremonies of the European Council. Even the enlargement with the UK and Ireland had no negative impact on this situation. Moreover, as soon as the UK started to obstruct progressive development, it was possible to continue this direction, by changing the Treaties introducing the qualified majority in this area. The

1. Official Journal of the European Community, P 80, 31.8.1962
2. The European Council concluded on 21 January 1974 an action plan for social policy, followed in June 1978 by an action program on health and safety at the workplace, with special attention for migrant workers.

European regulation of health and safety got a boost in 1985 after the (then) EC-president Jacques Delors called this legislation a cornerstone of the social dimension that was necessary for the completion of the internal market. Here again, the UK abstained from the concluded social protocol (and the flanking social pact) that went side by side with the Maastricht Treaty[3].

The result was an ambitious package of European minimum-standards in the field of occupational health and safety, with a framework directive that formulates the basic principles. Underlying directives (some 20) specify these principles in different areas and for different sectors and themes. Consequently, a large part of national health and safety legislation finds its origins in European regulation. In this area the slogan European policy = national policy became thus reality[4].

However, by the end of the 1990s the political tide turned, as EU-policy became more and more dominated by the primacy of the economic freedoms and an absolute priority was given to competitiveness and free trade. This will not be treated here in detail. The UK continued with its blocking policy and the country had a serious influence on the watering down of law-making as the search for consensus remained a diplomatic goal of the others. The East enlargement led to the entrance of countries with only a tradition on paper in the OHS-field (the former Eastern Bloc countries were always among the first to ratify ILO-conventions), and the globalisation and free trade lobby groups started to push for deregulation of social standards. From that moment on, hardly any piece of social legislation was tabled and finalised, not only in the general social policy area, but also in the OHS-field. In recent years, this change of paradigm led to an introduction of the deregulation dogma into the existing legislation. In this contribution, I want to examine whether

3. Delors in an interview, 2009, www.cvce.eu
4. See the overview: http://old.eur-lex.europa.eu/nl/consleg/latest/chap05202010.htm

EU-legislation in the field of occupational health and safety is internal market proof and resistant against this neo-liberal dogma. Beyond this, I want to advocate a more intensified and detailed harmonisation, taken into account the increased cross-border mobility of workers envisaged.

Is progressive health and safety legislation internal market proof?

Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (the 'Framework Directive') formulates the basic principles to be respected for health and safety at the workplace. The related specific directives have functioned, after transposition into national law and combined with important chemical agent provisions, limit values and other product safety prescriptions that were formulated for the free circulation of products and machinery, as the main pillars for the health and safety regime all over Europe. The directives prescribe minimum standards and provisions, for instance with regard to prevention and risk analysis, combined with mandatory obligations for workers and employers. Clear information and consultation rights of workers are included as well. Several studies have revealed that both in countries with a long tradition in the field of health and safety (i.e. Germany, the Netherlands, the Nordic countries) and in new member states EU policy in the OHS-field led to a new dynamic with substantial improvements to the health and safety regime. Moreover, although there was no explicit aim to harmonise the regimes completely, the result of this exercise can justifiably be characterised as an area (one of the few) that led to real convergence. After the British opt-out ended in May 1997, EU-principles even became, according to an official British report, one of the most important building blocks for health and safety legislation[5].

5. The EU-Directives played a substantial role in the formulation of the safety standards in the British Management of Health and Safety at Work Regulations 1999. See: A guide to health and safety regulation in Great Britain (2013) Health and Safety Executive, http://www.hse.gov.uk/pubns/hse49.htm

It is quite remarkable that the legislative OHS-package with minimum standards, developed after 1989, includes only few considerations that defend these measures against regression or future deterioration. In the considerations of the Framework Directive it is stated that the Directive does not justify any reduction in levels of protection already achieved in individual member states, the member states being committed, under the Treaty, to encouraging improvements in conditions in this area and to harmonising conditions while maintaining the improvements made. This also means that the starting point is a process of convergence in a progressive and upward direction. Given the fact that 'social progress' still figures prominently in EU treaties as a central aim, one could expect that the philosophy of non-regression and encouragement of improvements should apply to national transpositions that brought improvements beyond the minimum. However, this is no longer the case.

The conclusion of health and safety directives was based on large majorities in the Council and the European Parliament. Professionals could do their work relatively 'undisturbed' inside the Commission's services, often in cooperation with the European social partners, thus laying the foundations for progressive EU policy in the area. Several observers nowadays believe, for instance, that it is questionable whether the conclusion of the Directive for temporary and mobile work sites (the directive for construction sites, formulated in 1992) would go that smoothly in the current political climate. This Directive introduced all over Europe the notion of the safety coordinator and the necessity of drawing up a health and safety plan with a risk assessment (from the drawing board till the final execution, even taking into consideration demolition aspects of a building)[6].

6. R. Gehring, http://www.wiki-gute-arbeit.de/index.php/Die_europ%C3%A4ische_Arbeits-_und_Gesundheitsschutzpolitik.1

Smart regulation of OHS-policy another word for deregulation

Current European Commission strategy in the field of occupational health and safety is characterised by a lack of initiative, whilst deregulation is also announced. At the end of 2013, the Commission designated several pending files in the OHS-field as repealed (including the social partner agreement in the hairdresser sector, proposals in the field of muscular skeletal disorders and screen displays, environmental tobacco smoke, and carcinogens and mutagens)[7]. The Communication of the Commission was based on a so-called Top10 consultation that highlighted the regulations designated by SMEs as 'most burdensome'. Under the cover of smart regulation, the EU has started to deregulate and to withdraw from legal action. Progressive regulation and encouragement to improvement are activities from the past. The European Commission will only come with improvements if scientific evidence and the public request them.

The so-called high-level stakeholder group on administrative burdens that advises the Commission on simplification and reducing the administrative burden, the Stoiber-group, in the meantime acts as if the its members are not aware of the fact that the OHS-framework is based on minimum prescriptions. Stoiber pleads for a 'lean' implementation into national law and against 'gold-plating', or the inclusion of improvements compared to the EU minimum. The European Commission seems to take over this stand and advocates simplification, a simplification to the regulatory framework, procedures and burden for individuals and business that results first and foremost in derogations or exemptions for small and medium-sized enterprises ('to better suit the needs of SMEs')[8].

7. Communication of the European Commission, Regulatory Fitness and Performance Programme (REFIT): Results and Next Steps, COM(2013) 685 final
8. Commission Staff Working Document, Regulatory Fitness and Performance Programme (REFIT): Initial Results of the Mapping of the Acquis (2013), SWD(2013) 401 final.

The justification of the Department responsible for social affairs (DG EMPL) is remarkable. DG EMPL first invokes the EU Treaty (article 153.4), where it says that member states may formulate better and improved rules, and thereafter provides a long list of better, national provisions beyond the EU minimum. Thus, implicitly DG EMPL blames the member states that there is better regulation. How long ago is it that encouragement to improvement was defended inside the Commission's services? Why is it no longer highly desirable to progress and for what reason are member states no longer stimulated to take the lead? The further development of a progressive OHS-policy is no longer the starting point, let alone the will of the member states ' to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonisation while the improvement is being maintained ', as the Rome Treaty suggests.

Consequently, we have to face a situation of defence, not of a pro-active OHS-policy. The defenders of an EU-policy based on competition and 'leave it up to the market' have found an 'effective' stick against progressive legislation. This lobby has been very successful with its deregulation campaign, even though there is no evidence of higher societal costs of the existing OHS-legislation[9]. Besides, in those cases where costs and benefits are measured, this often happens with a focus on administrative costs for businesses, without further attention paid to the positive societal effects and social benefits. Occupational diseases and accidents (notably fatalities) are not that easy to measure in economic or monetary terms – unless we see labour as a commodity, not an unusual viewpoint in neo-liberal terms.

The 1989 Framework Directive stated clearly that the improvement of workers' safety, hygiene and health at work is an objective, which should not be subordinated to purely

9. See also: Informationskostenmessung EU-Benchmark und Gold-Plating-Analyse auf Basis des Standard-Kosten-Modells (2006), Bertelsmann Foundation, Gütersloh.

economic considerations. The EU Action Programme for OHS 2007-2012 (COM [2007]62) still emphasised that better rules cannot be watered down. In the Strategic Framework 2014-2020 the Commission's aim is to simplify existing legislation where appropriate to eliminate unnecessary administrative burdens, while preserving a high level of protection for workers' health and safety and, when taking action, due account should be taken of the costs to companies[10].

Intermezzo – how business consultants investigate

The Stoiber-group underpins its recommendations with some data. Most data stem from reports that were prepared by a consortium of three agencies (Capgemini/Deloitte/Ramboll Management, 2009 and 2010), dealing with the administrative costs for business of the EU-legislation[11]. Close examination of this research leads to serious question marks: with regard to the method used (the Standard Cost Model – SCM), the representativeness of the sample of respondents, and the interpretation of the research findings. To a certain extent, the authors are even aware of the weaknesses of the SCM-method as they admit that this model does not assess the political purpose of a measure. SCM measures and analyses the necessary administrative tasks related to the defined rules, not the profits and benefits of a piece of legislation[12]. Consequently, one should be prudent with the conclusions and recommendations of the research. The least one can say is that proposals stemming from such a research method, certainly if these proposals have far reaching effects like the exemption from legislation, are weakly substantiated.

10. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on an EU Strategic Framework on Health and Safety at Work 2014-2020, COM(2014) 332 final, Brussels.
11. Capgemini, Deloitte, Ramboll Management (2010) EU Project on Baseline Measurement and Reduction of Administrative Costs: Final Report, incorporating report on Module 5.2 – Development of Reduction Recommendations.
12. *As such, the measurement and analysis focus only on the administrative activities that must be undertaken in order to comply with regulation, not on the benefits that accrue from the legislation*. Capgemini, Deloitte, Ramboll Management (2009) Final report of Modules 3&4 for Working Environment Priority Area.

The survey was executed in face-to-face talks with employers and the key method was an attitude measurement of the 'perceived burden'. The data collection was based on the 'irritation potential' of the EU requirements. There is no justification of the size of the sample with respondents (relatively 'small' samples of businesses in six Member States supplemented by existing data from other countries and then extrapolated). It is in fact incomprehensible that hard numbers and 'accurate' figures, which in the meantime figure in many documents, are deduced based on this method. To present this, without any reservation, as evidence for proposals that will lead to the deregulation of OHS-policy is downright absurd. Even worse, a majority of the European Commission tends to embrace this patchwork and to rely on its outcome in a campaign against red tape and too heavy administrative burden. Besides, to focus on savings in the OHS -field is doubtful, with more than 97% of all administrative burdens originating from other (mainly non-social) internal market legislation.

Perhaps still an illustrative example of the justification applied. Stoiber and his group are using the SCM-study with data originating from a small group of 6 countries (Bulgaria, Estonia, Malta, Portugal, Romania, Sweden), combined with earlier data from 5 other countries. As said before, no information is accounted on the size of the sample of respondents, apart from the fact that the respondents stem from the business environment. The data collected are extrapolated to all other EU Member States, without taking into account the fact that countries have plenty of space for a transposition into national law that fits in their tradition, level of protection and OHS-standards. The extrapolation leads to obscure results. The highest OHS-costs are signalled in France, Germany, Italy and Great Britain. All four countries were not directly assessed (Germany and UK being in the group of five countries with earlier data). The authors admit that the outcome cannot be used for comparative conclusions, but thereafter they present the results as strong

indicators ('a robust indication', Capgemini 2010). The Stoiber -group subsequently applies the sometimes-absurd results of the investigation without any reservations. One of the SCM outcomes was used by Stoiber in 2009 to 'prove' that the costs for companies of a mandatory health and safety plan all over Europe amount to a yearly 567 million euro. The underlying analysis states that the costs in Portugal are about 15 times higher than in Sweden. Moreover, it takes 77 hours of labour for the setup of such a plan in Portugal, against just 2 hours in Romania. Next, these figures are extrapolated to all EU countries, without any justification as to how this is done[13]. Generously, our business consultants divide between ordinary operating costs ('business-as-usual') and additional administrative costs (88.9% of all costs) without justification given for this distinction and the underlying calculation. In all honesty, it has to be said that a later study, also commissioned by the EC, concludes bluntly that the SCM-method is inaccurate and that the methodological simplification leads to suggestive findings, sampling bias and extreme ambiguity in the presentation of the facts (CEPS 2013)[14]. However, this does not prevent the EC from using the figures.

Free movement and OHS – construction as a pilot

Several studies come up with evidence that special measures are needed for mobile workers with a migrant background, sometimes because of language problems or a lack of education, but mainly because of the fact that migrant workers often work in sectors and workplaces with higher safety risks and work pressure. Inadequate language skills, combined with insufficient or no induction, increase the probability of exposure to work-related accidents (see also the Hopkins review in this issue). Besides, there is evidence that elementary instructions are very often missing for newcomers and for workers who are hired on a temporary

13. The authors: '*The SCM does not aim at producing statistically valid results, but rather estimates (i.e. figures based on relatively small samples or expert judgment)' and* '*comparisons should be handled with caution'* (Capgemini 2009).
14. Assessing the costs and benefits of regulation - Study for the European Commission, Secretariat General (2013), CEPS, Brussels.

contract (with an increased accident risk of up to 50%)[15]. The literature and statistics indicate a negative relationship between temporary employment and occupational health and safety[16]. Migrants work at sites and in jobs where there is no time to lose, either for safety instructions, or for preventive introduction ('let's get the job done'), with sometimes severe consequences[17]. The European agency for health and safety at the workplace states that, though not all migrants are engaged in risky jobs, there are three major worrisome problems: work that has to be pursued in high-risk sectors and functions; communication problems attributable to language and culture; too much overtime, often combined with poor physical living conditions[18]. Given the fact that access to local health care is not obvious or even not allowed, the consequences are predictable[19]. A British case study, in health care, with many migrant workers, concluded that 'calling in sick' is no option for agency workers and migrants. It would mean the end of the employment; it would diminish the chance to be recruited again; it represents a loss of income, often without any guarantee of sick pay. The result is 'biting the teeth and go' and the attitude to pay less attention to safety or health. The authors observed a lack of the necessary induction and instruction with all the risks for workers and even patients[20].

15. www.arbeitsschutz-portal.de/beitrag/asp_news/3530/strukturierte-einarbeitung-so-klappts-auch-mit-dem-neuen.html
16. Quinlan et al 2001, International Journal of Health Services, Volume 31, No. 2, pp. 335-441
17. Katrin Boege (2012) Preparatory study - the influence of labour migration on prevention in Germany, Institut für Arbeit und Gesundheit der DGUV (IAG), Berlin. Important research comes also from the Institute for Work&Health in Canada, https://www.iwh.on.ca/topics/immigrant-workers-experiences
18. osha.europa.eu/de/priority_groups/migrant_workers
19. For example: Austrian media published a case of a 59-year old Hungarian worker falling from height. Instead of alarming the emergency service – forbidden by the gang master because it would become apparent that the work was done undeclared – a colleague had to drive the man over the border (90 kilometres) to a Hungarian hospital, where he died. http://www.krone.at/Oesterreich/Schwarzarbeit_kostet_59-Jaehrigen_das_Leben-Kein_Notruf-Story-422590
20. Maroukis, T. (2015), Stretching the flexible labour: Temporary agency work and 'bank' labour in the lower skill echelons of the healthcare labour market in UK and Greece, *Journal of European Social Policy*

The building sector remains the sector with, on the one hand, a large segment of migrant workers and, on the other, the appearance of temporary and mobile worksites with flexible, short-term contracts. In the sector, a broad range of labour contracts can be found with an instable and flexible layer of (bogus) self-employed, temporary workers and day labourers that are recruited via gang masters, agencies and other middlemen[21]. British research reveals profoundly the high frequency of fatalities among migrants on construction sites[22]. Mandatory OHS-coordination between all involved actors on a construction site, as prescribed by the European Directive on temporary and mobile worksites (92/57/EEG), is of great significance precisely because of frequent subcontracting and employment through intermediates. This Directive aimed to settle enhanced cooperation in the field of occupational health and safety, starting from the concept phase. A crucial condition is the mandatory duty of mutual exchange of information[23]. Actually, it can be deduced from this duty that thorough registration of all necessary information related to OHS-aspects during the entire construction process should be considered as part of normal procedure ('business-as-usual', in REFIT-terms). However, we must conclude that the business consultants, engaged by the EC, have a different view. Based on their interviews, they conclude that this mandatory coordination belongs to one of the most irritating OHS-themes for employers. Moreover, according to their calculations (based on attitude-measures, remember), the conclusion must be that 73.38% (very precise indeed, if we look at the methodological question marks) of the administrative work involved should be labelled an administrative burden. Still, it has to be said, they are rather generous (!); in other areas only about 10% of the costs

21. Harvey & Behling (2008) The Evasion Economy: False Self-Employment in the UK Construction Industry, UCATT.
22. Migrants' Workplace Deaths in Britain, report Irwin Mitchell, March 2009, CCA 2009
23. Article 5.c Directive 92/57/EEC states that the coordinator has to prepare a file appropriate to the characteristics of the project containing relevant safety and health information to be taken into account during any subsequent works. Article 6 guarantees that the necessary provisions are implemented and adjusted, taking into account the progress of the work.

involved are considered ordinary operating expenses (Capgemini 2009). Finally, also in the treatment of this item, the consultants come up with remarkable differences between countries, ranging from countries where employers do not have to 'lose time' with this burden and countries where at least 40 hours of work are invested.

It can be assumed that the hard core of the workforce has sufficient knowledge about occupational risks and the necessary prevention. But, as several statistics indicate, it has to be doubted that this is the case for newcomers and temporary workers, like most migrants. It is therefore of the utmost importance that all companies comply with the basics of OHS-policy and that they can be made liable through the whole chain. This notion is completely absent in the reasoning of the EU-proponents of deregulation and burden reduction. Even worse, DG Employment has repealed in the new policy plan the explicit relation between migration and OHS as one of the key priorities[24]. In the old strategic plan 2007-2012 the EC listed four priorities (demographic development and ageing of the workforce; new forms of labour relations including self-employment and outsourcing; the development of SMEs; and migrant work). In the new plan, demographic change is seen as crucial as if labour migration is history. This is the more remarkable given that the promotion of cross-border mobility still has primacy in the general Europe 2020 Strategy. The flanking OHS-policy in this area is thus not very internal market proof.

Convergence or taken for granted

Specific OHS-risks in sectors have great similarity irrespective of borders; this was the reason why the framework directive and its associated directives speak about the need to assist the member states in the development of further improvements of their OHS-policy. At the start, the term harmonisation was used cautiously; most experts saw it at the time as their task

24. EU Strategic Framework on Health and Safety at Work 2014-2020. COM(2014) 332 final

to create uniform or similar conditions as far as possible across the EU. In reality this approach has led to a substantial convergence; a positive result, certainly against the background of growing mobility and externalisation of the workforce. For instance, during a project of the joint labour inspectorates it turned out that the existence of an OHS-coordinator, as prescribed by the temporary and mobile worksites directive, was relatively well known (though not always ascribed to EU law)[25]. British research revealed that migrants (from EU countries) had basic OHS-knowledge as a result of the content of EU-legislation, because that legislation was in the meantime implemented at home[26].

However, it became clear during an analysis of the content of the existing national websites for posted workers that the provision and distribution of OHS-information among migrants is still at its infancy or completely absent. Labour inspectors noted that, during inspections, compliance with the OHS-rules is poor and migrants are excluded from their application. Especially lacking is the necessary cooperation between all those (sub)contractors on site that work with migrant workers. The inspectors therefore argue for training from a European perspective and for strengthening the chain of liability, with the customer or the main contractor being responsible for the necessary and timely disclosures in the required languages of OHS-information[27].

The EU posting of workers Directive says that the OHS-legislation of the country where the work is pursued has to be respected. A first evaluation of the compliance in this field showed that little or no information was provided to posted workers. National enforcement services, most often with too few people, had their hands full with the control of construction sites with foreign posted labour. There was

25. Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).
26. See: *Migrant work in times of crisis* (2010) CLR-News 2-2010.
27. http://www.eurodetachement-travail.eu/synthese/home.html

frustration that the appropriate legal means were missing. Besides, for the sanctioning of different breaches inspectors could not act immediately and had to rely on the judiciary in the country of origin[28]. The European Court of Justice considers the free provision of services a matter of supranational law; national legislation may not create barriers for foreign service providers that are too high. The negative consequences of economic freedoms cannot be brought before any court in Europe, as posted workers are only eligible in a very restricted way in the host country. Even more complicated is the situation of third country workers who are recruited via letterbox companies or other bogus middlemen. Excessive overtime and the non-respect of rest periods cause additional risk; fatigue, ignorance of the dangers, non-understood regulations, inadequate or no protection and an unhealthy work environment do the rest.

Finally – fundamental right or production factor

The EU stimulates mobility and expects net migration in the coming years. Labour migration could become one of the key factors for the functioning of large parts of our labour market with an ageing population[29]. So far, a majority of migrant workers work in labour intensive, poorly paid and dangerous so-called 3-D-jobs ('dirty, dangerous, difficult')[30]. Recruitment takes place in the shady segment of the market, with no commitment to OHS-issues. The EU internal market, based on economic freedoms (notably the free service provision and the freedom to establish firms), endangers the health of the people, who actually embody the ideals behind this internal market[31].

28. Cremers J. and Donders P. (eds.) (2004) The free movement of workers in the European Union. Directive 96/71/EC on the posting of workers within the framework of the provision of services: its implementation, practical application and operation, CLR Studies 4, Brussels, CLR/Reed Business Information.
29. According to the European Agency for Safety and Health at Work the success of the EU-strategy depends largely on the EU's ability to face up to the major demographic challenges and the (consequences of) migration (Priorities for occupational safety and health research in Europe: 2013-2020, 2013).
30. Originally formulated as 3-K in Japan: kitanai (dirty), kitsui (difficult or demanding) and kiken (dangerous). Migrant workers (2007) Asian-Pacific Newsletter on Occupational Health and Safety, Vol.14-2, 2007, ILO.

This is already such a strong argument for the further improvement of the OHS-frame. Safety and health should not be offered to the holy cow of competition (between member states), let alone to plain commercial or business interests. The ILO has advocated a progressive OHS-policy since WW II, with special attention paid to migrant workers and vulnerable groups[32].

The labour perspective for labour migrants has to be more than a future of functioning like a commodity, a willing, easily available, international, mobile, second labour reserve. In the ILO's Declaration of Philadelphia of 1944, the international community recognised that 'labour is not a commodity'; labour is not like an apple or a television set, an inanimate product that can be negotiated for the highest profit or the lowest price. The EU must prevent labour becoming a simple factor of production at will to deploy, where profit is greatest. Therefore, permanent action in the OHS-field is necessary and wise. Restraint in this area is a bad counsellor. The improvement of occupational health and safety may not become a paper tiger, but has to stay a fundamental right, as the 1989 Community Charter of the Fundamental Social Rights of Workers states: 'Every worker must enjoy satisfactory health and safety conditions in his working environment. Appropriate measures must be taken in order to achieve further harmonization of conditions in this area while maintaining the improvements made. (…)The provisions regarding implementation of the internal market shall help to ensure such protection'.

31. Bruno Monteiro (2014) Portuguese construction workers in Spain: situated practices and transnational connections in the European field of construction, CLR-News 2-2014
32. ILO director Guy Rider, XX World Congress for Safety and Health at Work 2014, Frankfurt.