

## **Using East European labour - a safety risk on Norwegian construction sites?**

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Since the enlargement of the EU and EEA on 1 May 2004, a relatively large number of Eastern European workers have arrived in Norway, compared to the other Nordic countries.<sup>13</sup> The most important explanation is the high demand for labour, particularly in the construction industry. Fafo's recently accomplished survey<sup>14</sup> among leaders in

1 244 construction enterprises shows that around 20 per cent of the enterprises are now using labour from the new EU member states, or have done so during the past year (called user-undertaking in this article). The majority of these – around 60 per cent – used East

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<sup>13</sup> On the scope and effects of labour migration, see the article «EU enlargement two years after: Mobility, effects and challenges to the Nordic labour market regimes» (Dølvik and Eldring) in this issue of CLR-News.

<sup>14</sup> The survey represents a more in-depth study of the results of an enterprise survey undertaken by Fafo in January-April 2006, in which a total of 5,104 enterprises from four Norwegian industries (construction, manufacturing, hotel/catering and cleaning) were questioned about their use of East European labour (Dølvik et al. 2006), commissioned by the Norwegian Research Council. The survey in the construction sector was commissioned by the Board of the Fund for the Regional Safety Deputies. A number of other organisations and public authorities have provided financial support for the project: The Labour Inspection Authority, The Federation of Norwegian Construction Industries, the Norwegian United Federation of Trade Unions, The Norwegian Union of General Workers and the Norwegian Directorate of Customs and Excise.

European labour hired from manpower suppliers or employed by subcontracting firms.

In this article we investigate the health, environment, and safety (HES)<sup>15</sup> situation within the Norwegian construction industry following the influx of labour from Eastern Europe. The industry has faced major challenges over the years with regard to HES, irrespective of labour migration. In spite of all the rules and regulations, many workers in the construction industry observe that, even though the formal HES requirements are usually in place, practices may leave something to be desired. The risk of injuries and accidents is high, and the safety efforts are complicated, due to the prevailing focus on project progress and completion. In general, the main challenges seem to be related to improvement in communication and coordination routines (Frøyland et al. 2004).

The survey shows that increased labour and service mobility from the new member states has given rise to new problems in terms of safeguarding HES. Deficient training, language barriers and cultural differences with regard to safety and other working methods are recurring issues in the study. Different forms of labour and service migration are also subject to varying and sometimes highly complex regulations, leading to grey areas with regard to labour conditions, more or less deliberate circumvention of the regulations and deficient worker registration.

This article will summarise the main findings from our HES survey of the construction industry. The survey also comprised in-depth interviews with all regional safety deputies in the Norwegian United Federation of Trade Unions and the Norwegian Union of General Workers, key personnel in the Labour Inspection Authority, the Petroleum Safety Authority, the police, and employers' associations, as well as a number of industry associations. Taken as a whole, these informants represent the key actors in the field. The article will address the following issues:

- What are the key HES challenges for enterprises regarding the use of Eastern European labour, and how is the situation addressed?
- What is the current situation with regard to HES for labour migrants?
- What new tasks, requirements and challenges are the inspection authorities encountering as a consequence of the changing HES framework in the workplace?

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<sup>15</sup> This is the Norwegian term for the better-known OSH (Occupational Safety and Health).

- What might be the possible long term effects of the increased use of imported labour from the new EU member states on the HES situation in Norway, for both domestic and foreign labour, and what kinds of measures may be relevant?

### **HES regulations**

The Norwegian Working Environment Act obliges the employer to ensure a fully satisfactory working environment, including safe and secure working conditions. All Norwegian enterprises have a statutory obligation to address health, environment, and safety (HES) issues in a systematic manner. In 1992, a regulation was introduced with the purpose of ensuring that enterprises established internal control systems for documentation of these efforts.

For workplaces involving more than one employer, a written agreement must be drawn up, specifying the responsibility for coordination of working environment and safety issues. The Regulation of Safety, Health and Working Environment on Construction sites (Construction Client Regulation), which was adopted in 1995, implementing EU directive 92/57/EC stipulates that clients<sup>16</sup> are responsible to make a HES-plan on their own construction sites and for appointing one or more coordinators for HES issues. The objective is to ensure that HES issues are attended to during construction design and that they are followed up systematically during the construction phase. According to the regulation, the client or their project managers, and employers are responsible for maintaining a safe working environment on construction sites.

HES issues should include definition of targets for efforts, assessment of risks, planning of HES measures and follow-up of discrepancies and undesirable incidents. The employer is responsible for providing the appropriate training, and for familiarising workers with the HES plans for the site. All workers have to have at least a two hour course to familiarise themselves with the project and how HES work is planned and conducted. According to the Construction Client Regulation, information must be comprehensible to the workers concerned (implementation of the EU directive 92/57/EC).

When it comes to the coordinators, they are supposed to have proper competence, both in theory and practice, i.e. intimate

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<sup>16</sup> Client: Any natural or legal person for whom a construction project is carried out.

knowledge of the regulations, be able to make a judgement of the risk-factors and also have the authority to follow up all parts of the HES-plan in practice.

In order to facilitate the work for the Labour Inspectorate Authority, all building activities lasting more than 30 days are subject to mandatory reporting. To improve coordination and follow-up of HES issues, a proposal to introduce staff lists and ID cards was tabled in 2004. The provision making staff lists mandatory was implemented on 1 January 2006, whereas the provision of mandatory ID cards will in all likelihood be implemented from 1 January 2007.

Enterprises are under a statutory obligation to appoint a safety deputy, but enterprises with less than ten employees may enter into a written agreement not to have a safety deputy. The safety deputy is the workers' representative in HES matters, and should attend to the workers' interests in matters pertaining to the working environment. If a direct threat to life or health occurs, the safety deputy is authorised to suspend operations. It should be borne in mind, however, that even though the safety deputy is charged with responsibility for inspection and monitoring, this does not reduce the employer's liability with regard to working environment and safety. The individual employer is obliged to provide safety deputies with the required training. The minimum here is a 40 hour course in HES matters.

The regional safety deputy scheme was established in 1981, due to the particular conditions prevailing in the construction industry. For building (including rehabilitation and maintenance), the regional safety deputies are appointed by the Norwegian United Federation of Trade Unions, for other construction projects they are appointed by the Norwegian Union of General Workers.<sup>17</sup> The regional safety deputies should attend to workplaces where there is no elected safety deputy or no working environment commission in accordance with the provisions of the Working Environment Act. They have the same authority as the local safety deputies, and are entitled to have access to the same information from the enterprises as the ordinarily elected safety deputies. This scheme is authorised through a separate regulation pursuant to the Working Environment Act, and is financed through a fee paid by employers to the Regional Safety Deputy

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<sup>17</sup> This includes civil engineering (roads, railways, bridges, tunnels), excavation, blasting, earthwork and other work carried out in connection with construction sites.

Fund.<sup>18</sup> During 2005, the regional safety deputies performed a total of 6,500 visits to workplaces, making them a valuable source of information on current developments in construction.

### **Similarities and differences in the construction industry**

The construction industry is mobile in character, and assignments and workplaces vary from one project to the next. All new projects and workplaces present particular problems and unforeseen hazards (Bosch and Philips 2003). Cost issues, in combination with time constraints, often result in deficient planning and poor coordination. At the same time, communication during the project implementation phase acquires greater importance when enterprises are pressed for time.

Because a number of specialised functions are required, the organisation of production usually involves a number of sub-contractors. Coordination and cooperation between a large number of people from different technical backgrounds set stringent demands on communication and planning, while this type of production system may easily lead to dissolution of responsibility for HES issues (Frøyland et al. 2004).

In our context, it is important to distinguish between two different sectors in the construction industry, each having their own characteristics. In the building sector (including non-residential building, rehabilitation and maintenance), the use of East European labour is more common than in other work connected to construction sites (excavation, earthwork and so on) and civil engineering. This latter sector is in Norway dominated by four large enterprises that have a joint market share of 50 per cent.<sup>19</sup> A recent survey carried out by the Federation of Norwegian Construction Industries also shows that this part of the construction industry has spare capacity (BNL 2006).

In other words, there is not the same scarcity of labour to be observed within the building sector. The other main difference is that the building sector is characterised by many small enterprises. In Norway, two thirds are sole proprietorships, and 90 per cent of these have fewer than ten employees. The proportion of one-person and

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<sup>18</sup> For enterprises with employees, the fee constitutes 0,075 per cent of the basis of calculation. For one-person enterprises the fee is NOK 250. (Regionale verneombud i bygge- og anleggsbransjen. Årsoversikt fra Fondsstyret 2004).

<sup>19</sup> These are Skanska, Veidekke, NCC and Mesta

two-person enterprises grew during the period from 2000 to 2004 (SSB 2006), and a comprehensive restructuring took place in the construction industry during the 1980s and 1990s, including a number of mergers and acquisitions. The resulting centralisation and concentration led to the emergence of a small number of construction enterprises and a host of sub-contractors (Andersen 2004). The modern organisation of construction projects hence involves widespread sub-contracting and leasing of manpower, and this combination of centralisation and splitting of functions has a bearing on HES issues. Increased use of sub-contractors and leasing of manpower also contribute to weakening collective agreements, which in turn entails consequences for training, distribution of responsibilities and industrial relations in general (Klemsdal 2003).

Experience indicates that while the large enterprises make commendable efforts, the small ones have less appropriate routines for follow-up of HES issues, and they rarely have a separate safety deputy. Some of the problems encountered by small enterprises are related to the formal requirements for HES work, such as commercial/administrative paperwork and administrative forms associated with monitoring routines. Many are less skilled in this aspect of the work, it takes a lot of time, and errors can easily be made. This part of the work is difficult to reconcile with the demand to balance the books (Frøyland et al. 2004).

### **Labour and service migration to the construction industry**

The Norwegian building sector has a long tradition of using foreign labour during periods of boom. Workers from the other Nordic countries have had a strong presence in the Norwegian workplace for many years. Increasing internationalisation can provide increased skills and new ideas, cultural exchange and a more varied working environment. On the other hand, it can also entail poorer communication and hazardous situations, as well as negative reactions from Norwegian employees.

As described above, jobs are in good supply in Norway, in particular in the building sector, which offers prospects for favourable wages and labour conditions. The wage level in Poland and the Baltic countries is about 20 per cent the Norwegian level (Dølvik and Eldring 2005) which is therefore far ahead of prevailing rates in the countries of origin, even though many workers are paid much less

than Norwegian employees.<sup>20</sup> A total of 20 per cent of enterprises in the construction industry are currently using labour from the new EU member states, or have done so during the past year. Poland and the Baltic countries are the major countries of origin. The largest enterprises (with more than ten employees) are the most frequent users. When questioned about the most common form of attachment, manpower leasing was most prevalent (44 per cent of the enterprises), whereas 27 per cent hired this labour directly, and 17 per cent used labour employed by sub-contractors. Only 2 per cent of enterprises hired sole proprietor/one-person firms from the new EU member states, but reports of increasing numbers have been received from various quarters.

Public statistics do not distinguish between the different sectors in the construction industry.<sup>21</sup> In order to further investigate any differences in the use of Eastern European labour, we requested enterprises to select one of three main fields of activity: 1) building, 2) other activities such as excavation, blasting, earthwork and civil engineering 3) main activity equally distributed between the two other sectors. Nearly half of enterprises (48 per cent) reported that their main activity is related to building (group 1). Among these, a total of 25 per cent are currently using labour from Eastern Europe, or have done so during the past year. Corresponding figures for group 2 were 15 per cent (these enterprises accounted for 14 per cent of the units in the sample). Enterprises with activities equally distributed between group 1 and 2 accounted for 38 per cent of the sample and, of these, a total of 17 per cent were currently using East European labour, or had done so during the past year. The findings underline the differences between the branches in construction with regard to the use of East European labour.

The majority of the enterprises that used East European labour in our sample reported having used this either as leased manpower or through sub-contractors, i.e. as service providers. This serves to exacerbate the prevailing trend towards functional specialisation within the industry, involving more prevalent use of leased manpower and sub-contracts, which in turn affects the ability to carry out

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<sup>20</sup> The Norwegian regulations on wage levels for Eastern European workers – including the use of generally applied collective agreements within the industry – is described in more detail by Alsos and Eldring in this issue of CLR-News.

<sup>21</sup> In the structural statistics, the industries are grouped according to the standard for industrial grouping, the NACE (SSB 2006).

systematic HES work. The upshot is that coordination of such work becomes increasingly complicated, and that responsibility for HES training is distributed among a number of employers.

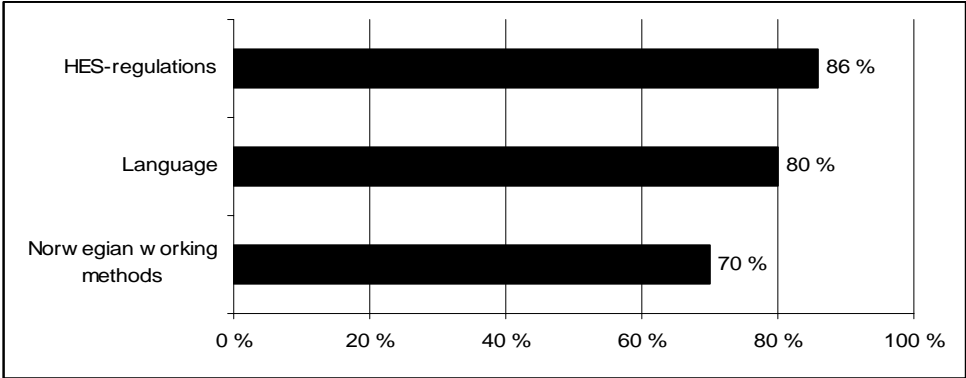
As already mentioned, enterprises tend to use East European labour in the form of leased manpower. A key issue in our context is that Norwegian regulations do not set down requirements as to who may operate a manpower supply firm or an employment agency. Few conclusions can thereby be drawn on the quality assurance routines these firms follow with respect to their employees, for example in terms of training.

**Need for training in HES, language and Norwegian working methods**

Enterprise leaders were asked to assess a number of questions related to the use of East European labour and the HES situation in the workplace.

A full 86 per cent of the user-undertakings agree with the assertion that sub-contractors and workers from the new EU member states have a need for training in HES regulations when they arrive in Norway. Furthermore a total of 80 per cent of the leaders in these enterprises believed that language training is required for Eastern European workers and firms, and 70 per cent held that training in Norwegian working methods was required. In other words, a comprehensive need for training of labour from the new EU member states was reported.

**Figure 1. The enterprise leaders report on needs for training in HES, language and Norwegian working methods for workers from Eastern Europe (N=257).**



## **Increasing safety risks**

The character of the work itself has a major bearing on HES efforts in the construction industry. On a building site, many operations take place simultaneously, often in hazardous locations, such as high above ground. Understanding how a task should be performed and how one's colleagues intend to solve it can be decisive, also in terms of safety. Time pressure leading to accidents is often associated with problems of coordination between the various skill groups on the building site. Planning is often deficient; this leads to waiting periods and subsequent time pressure. Recent research shows that attempt to make up for lost time result in a high risk of injuries (Gravseth 2006). When other working methods and different types of protective equipment are introduced into the mix, the risk of injuries may rise even further. Time constraints, poor access and clutter increase the risk of accidents, and require good communication between workers. In addition, the construction industry often makes use of heavy machinery that requires appropriate communication while in operation.

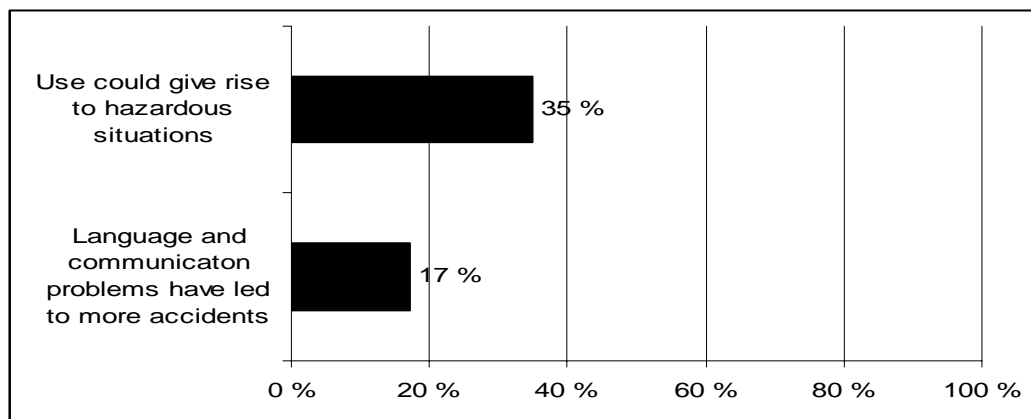
In the survey, enterprise leaders were asked whether the use of East European labour could give rise to hazardous situations. A total of 35 per cent of the user undertakings agreed with this assertion. The respondents were further asked whether language and communication problems have in fact led to more frequent accidents, and 17 per cent answered in the affirmative. In other words, one in three believes that the use of East European labour may create hazardous situations, and almost one in five reports that this has in fact occurred; this must be described as a substantial finding. The type of affiliation of this labour (hired by the enterprise, leased or employed by a sub-contractor) appears to have little importance for how enterprise leaders assess the risk.

The regional safety deputies and the labour inspection authorities confirm this impression, and suspect that a number of accidents go unreported and that some injured workers are being sent out of the country without receiving medical attention. However, these findings are difficult to corroborate through public statistics. The official statistics from the Labour Inspection Authority show a decline in the number of fatalities from 2003 to 2004, and an increase from 2004 to 2005. The construction industry has reported a decline in the number of other types of injuries and accidents from 2001 to 2005, in spite of

increasing levels of activity. A general uncertainty surrounds the figures on accidents, and there are indications of underreporting. A report from Oslo Casualty Ward, involving an investigation of 50 workplace accidents in construction, shows that 37 of these 50 accidents should have been reported immediately to the Labour Inspection Authority. Only 12 of the cases were in fact reported (Gravseth 2006).

The question therefore arises whether the increased publicity around these issues has spurred enterprise leaders to «believe that this is so, without quite knowing». On the whole, enterprises that do not use or have not used Eastern European labour take a more negative view of the HES challenges than enterprises that have direct experience. This scepticism may easily infect the entire industry, in particular because of the many media reports on hazardous situations caused by foreign workers.

**Figure 2. The enterprise leaders opinions on use of Eastern European labour as a safety risk in Norwegian construction sites**



### **Training and other measures enacted by the enterprises**

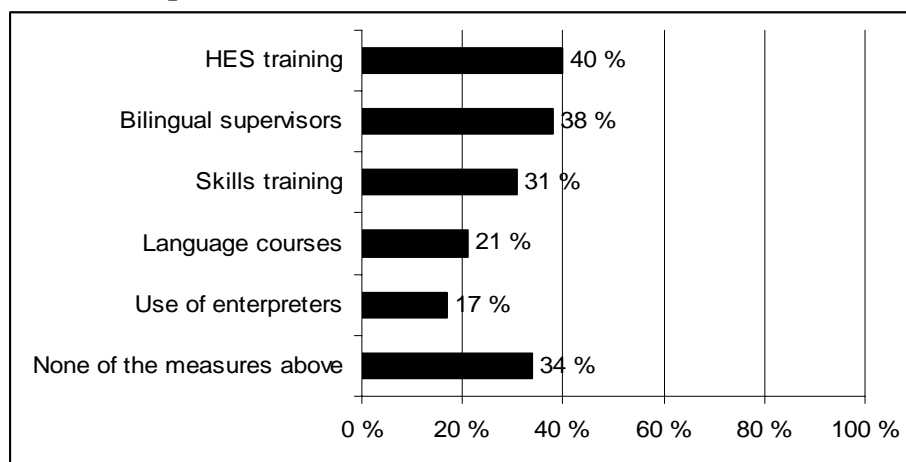
As we have seen, enterprise leaders who use East European labour report that the need for training is comprehensive and that the safety risk increases when such labour is used, irrespective of its form of affiliation. It would therefore be reasonable to assume that enterprises provide training in order to prevent deterioration in workplace standards, even if a single employer is formally responsible for this.

But despite the needs of enterprises, the survey shows that 23 per cent of the leaders rely on East European workers and firms familiarising themselves with Norwegian HES regulations. A total of 16 per cent of enterprises reported that training takes place at home –

i.e. before the workers arrive at the Norwegian workplace. A full 15 per cent of enterprise leaders reported that they have no knowledge of how East Europeans receive information on Norwegian regulations. Consequently, many Norwegian enterprises have no control over whether workers have been trained or the kind of training they have received.

Among enterprises that do offer training or other measures, the most common forms are HES training (40 per cent) or bilingual supervisors (38 per cent). Furthermore, a total of 31 per cent of enterprises provide skills training, 21 per cent offer language courses and 17 per cent have made use of interpreters. The difference in offers for workers who are directly employed and workers who are leased or employed by sub-contractors is seen throughout the material. With regard to training there are also significant differences between small and large enterprises. Nearly half of the smallest enterprises, having from one to nine employees, have enacted none of the measures described above. On the other hand, some of the enterprises have enacted several measures in parallel, and some of these have certainly provided training without being the responsible employer. But in light of the pronounced need for training reported, we have to say that enterprises are not very well prepared to take on foreign labour in a proper manner – irrespective of whether they are responsible for training or not. As mentioned above, the regulations state that all concerned workers are entitled to information that is comprehensible. As far as we can see from the research, there are only few examples of information material, such as safety rules and plans, being translated into relevant languages. The main rule is that workplaces do not offer such material.

**Figure 3. Percentage of enterprises providing different forms of training/other measures to Eastern European workers**



## **Difficulties in coordination of HES efforts**

On a construction site with more than 10 employees, the main contractor is responsible for coordination of HES efforts between all the parties present at the site. An HES plan must also be available for purposes of such coordination, in order to prevent various firms on the site placing each other in harm's way. As a rule, a large enterprise with its own safety deputy will act as main contractor and hold the responsibility for coordination. Large enterprises are in better possession of the routines and organisation to deal with HES challenges. The large construction enterprises routinely summon all workers to an HES briefing before work starts on a new site. Some enterprises have also drawn up instructions and employment contracts in several languages.

We asked enterprise leaders whether the use of East European labour and subcontractors had any effect on this coordination. Almost half (45 per cent) of the user undertakings reported that coordination is more complicated when using this type of labour. This applied to large as well as small enterprises. These difficulties of coordination are in all likelihood associated with the circumstances mentioned above, such as communication problems, scant knowledge of HES regulations and other working methods and cultures. Another possible reason for coordination problems is probably that the majority of Eastern European workers are on service assignments, i.e. they either arrive with their foreign employer on an assignment in Norway, or are hired by a foreign manpower supply firm.

In order to remedy some of the coordination problems, a requirement to maintain staff lists was introduced from 1 January 2006, and starting from 2007 all workers on construction sites will have to be supplied with an ID card. In our survey, enterprises were asked about how they maintain staff lists.<sup>22</sup> It turned out that 25 per cent of enterprises rarely (7 per cent) or never (18 per cent) have an updated list of the staff present on site at any one time. Among the small enterprises (1-9 employees), a total of 31 per cent responded that staff lists are never drawn up, while the corresponding figure for large enterprises was 11 per cent.

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<sup>22</sup> At the time the survey was implemented, these regulations had only recently been introduced, and this may have had a bearing on the number of enterprises that had introduced staff lists.

For our purposes, it is most relevant to take a closer look at enterprises that are in fact using East European labour and firms. Among these, a total of 74 per cent responded that they always or as a rule keep staff lists of workers who are present. In other words: the enterprises that actually use East European labour in fact have a better overview. This observation may be related to differences in enterprise size, because the larger enterprises are the most prevalent users of this type of labour.

Many enterprises attempt to handle problems of communication and coordination by letting the different nationalities work in separate teams. As a result, for example, a Polish and a Norwegian work team at the same workplace may in fact not have much contact on a daily basis. The survey shows that provision of bilingual supervisors is quite common. In practice, this means that one or more workers in the team will possess a working knowledge of English, and gradually also Norwegian, and will pass on messages to and from the other workers.

Regional safety deputies unequivocally pointed to poor integration of East European firms and labour as becoming one of the main HES challenges in the construction industry. This issue is reported along with more traditional problems, such as poor skills and awareness, deficient safety precautions for work high above ground, poor coordination and increasing time constraints. The enterprise leaders corroborated this impression, with a total of 55 per cent claiming that the use of East European labour complicates the systematic implementation of HES efforts (Dølvik et al. 2006).

But it is here important to emphasise that HES challenges are not ‘made up’ by East European firms and labour. The building sector has for many years tried to improve the poor situation, but there are still huge problems concerning good HES-systems and attitudes. East European firms and labour force are therefore often included in systems that are fragile and risky from the start. This is not the situation for the industry as a whole, but is a widespread problem especially in the smaller firms.

### **The HES situation for labour immigrants**

«Many Poles have set their sights on the gold. They want to earn as much money as possible and then go home. They are not interested in learning safety rules, and they are willing to endure a lot because of the money waiting at the other end».

This quotation from a regional safety deputy illustrates how many of our informants assess East European firms and workers.

Foreign workers who are employed by Norwegian enterprises are subject to the same regulations as Norwegian employees. Posted workers are also subject to the Norwegian Working Environment Act through Norway's implementation of the EU Posting of Workers Directive (96/71/EC). The Act states clearly that HES rules also apply to posted workers. In addition, provisions in the Act pertaining to working hours, the right to take leave, work contract requirements, annual holidays and gender equality also apply.

During the last year, an increasing, but still modest number of East Europeans have chosen to settle in Norway and have brought their families with them. These are in all likelihood employed by Norwegian firms. The most common form of mobility – and particularly in the construction industry, where the majority arrive as service providers – is to stay for relatively short periods. Most likely, the objective is to earn the highest possible amount of money during the period spent working in the country.<sup>23</sup> This could mean that many of the workers have little interest in reporting possible violations of legislation and regulations or unsatisfactory housing conditions, as this at worst may entail being sent home.

Our informants claim that, as a result of poor knowledge of HES or fear of losing their job, Eastern European workers are more often set to perform hazardous work, for example the removal of asbestos, without any protest. The inspectors of the Labour Inspection Authority report seeing this as a dilemma: their job is to uncover and point out violations, but they also know that the most likely result will be that the worker in question is sent out of the country and replaced by another. In practice, the only one who will have to pay for the violation is the individual worker, and not the enterprise or responsible builder. The regional safety deputies share this experience, as illustrated by the following story:

«I discovered a Lithuanian at the bottom of a ditch which was four metres deep, 70 centimetres wide and unsecured, two metres from the

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<sup>23</sup> 62 per cent of permits had a validity of 3-12 months, while the proportion of permits with a validity of more than 12 months was 8 per cent in Spring 2006. (UDI, 28.06.06: EØS-utvidelsen – tillatelse med formål arbeid).

main road where traffic was thundering by. I am fairly certain that I would never have found a Norwegian in that ditch».

Deficient safety precautions and poor communication constitute hazards, not only for the workers who are negligent, but also for other people on the construction site. Reports indicate that East European workers are often highly skilled professionals, but still have a different attitude to safety than their Nordic counterparts. This applies to taking precautions when working high above ground and to using protective equipment, such as proper scaffolding, and wearing a helmet.

Working methods are also to an extent different because of the use of some other types of tools. Workplace cultures, including relationships to superiors, are also different. The typical situation is that the foreign worker will not dare to admit that he has failed to understand a message and that he never dares to question the appropriateness of performing a particular task assigned to him. If a superior has given an order, you just go and do as you are told. This is not like the situation for most Norwegian workers.

The «status» granted to a worker is also a decisive factor for the type of regulations that will apply. A distinction is mainly made between workers employed in Norwegian enterprises, posted workers arriving along with their foreign employer, workers leased from Norwegian or foreign manpower supply firms, and one-person enterprises. The regulations are not easily accessible, and many are unaware of the rights that apply to them. Uncertainty with regard to the regulations may also contribute to non-reporting of accidents and to fear of seeking medical attention in Norway on the part of accident victims.

The different sets of rules for workers depending on their type of employment relationship have created grey areas and loopholes that can be used to avoid registration for the purposes of taxation and social security. Deficient registration and documentation of the employment relationship could mean that workers are left with no entitlement to medical treatment or compensation if they fall victim to an accident. The enterprise survey shows that 30 per cent of the smallest enterprises have no control over whether their East European workers are legally registered in Norway. In the largest enterprises (those with more than ten employees) the corresponding figure was «only» 9 per cent.

Irregular working hours and long working days represent a common problem in the construction industry. Because of the mobile character of the industry, it is fairly common for workers to work away from home, and many wish to accumulate days off in order to spend longer periods of time at home. The motivation to work extra hours is probably even greater when working in another country, because the cost level makes it unattractive to taking days off, and workers wish to earn as much as possible in the shortest possible time. Enterprises may have strong incentives to stretch the working day when assignments are in good supply and time is of the essence. We therefore requested enterprise leaders to assess the following statement:

«The use of foreign sub-contractors and workers from the new EU member states provides opportunities for circumvention of Norwegian regulations on working hours». A total of 22 per cent of the user-undertakings agreed with this assertion. A full 30 per cent were uncertain. This may mean that they were reluctant to give an honest answer, or that they were actually unaware of the fact that the regulations apply equally to both Norwegian and Eastern European workers.

But it does give us a clear indication that a considerable proportion of enterprises violate regulations on working hours with regard to their East European workers. In a survey conducted in four Norwegian industries (Dølvik et al. 2006), enterprises were asked to evaluate the assertion: «Workers from the new EU member states are more eager to work than Norwegian workers». In the construction industry more than 60 per cent responded that this is to a large extent true. This finding can be given varying interpretations, depending on the point of view. One interpretation could be that this reflects a better work ethic, better work discipline and a higher motivation for work, for example due to the financial incentives. An alternative interpretation could be that many of the workers from the new EU member states are unaware of their rights, and can therefore more easily be exploited, for example in the form of unpaid overtime.

Whether a person comes to work rested and capable of doing a good and safe job is also dependent on his housing conditions, which vary greatly. Some are offered accommodation in the same workmen's barracks as their Norwegian colleagues. Many other variants have been noted, from separate flats and bedsits to accommodation in abandoned houses, or workers living on the

concrete floor of the building site, in tents, in their cars or in discarded caravans. The supervisory authorities do not check these matters, unless they discover that workers are living illegally on the building site. In the enterprise survey, a total of 42 per cent of respondents reported that the East European workers make their own accommodation arrangements. To date, we have little information on the housing conditions of these workers, but a forthcoming study of Polish workers in Norway will shed more light on this matter.

A widespread notion among enterprise leaders is that workers from the new EU member states take fewer days off sick than Norwegian workers do. More than 80 per cent of the leaders in the construction industry claim that this assertion is true or partly true. The question then arises as to whether this is a real difference or whether these workers go to work even though they are ill, maybe because they are afraid of losing their job. Compared to Norwegian workers, the lower number of days off due to sickness may also partly be caused by the fact that the workers coming to Norway are on the whole younger men. In terms of HES issues, it is not favourable if East European workers push themselves – or are being pushed – to go to work when they should in fact have taken time off; this benefits neither themselves, nor their colleagues.

There are indications that Norwegian contractors and builders regard East European workers as a flexible and cheap reserve labour force. There is also a danger that many Norwegian enterprises in practice accept that these workers receive insufficient training and follow-up, work longer hours than their Norwegian counterparts, and are set to perform strenuous and risky jobs more frequently than their Norwegian colleagues. This involves not only immediate consequences for the life and health of the workers, but also the long-term effects on workers who are exposed to accidents or overwork. The extensive use of workers coming to Norway as service providers (meaning that they are not hired directly by the enterprises), might be an explanation for a more ignorant treatment concerning training, housing, working time and sickness.

### **New demands and challenges for supervisory authorities and regional safety deputies**

As described above, the presence of foreign labour is not a new phenomenon in the Norwegian construction industry. Nordic

enterprises and workers have for many years been a common sight in Norwegian workplaces. However, the use of East European labour has given rise to a new set of demands and challenges to the supervisory authorities and the regional safety deputies. The supervisory authorities and regional safety deputies encounter similar language barriers and communication problems as enterprises that use East European labour. This complicates efforts to disclose violations of the regulations and to implement appropriate measures.

Following EU enlargement, the Labour Inspection Authority and the Petroleum Safety Authority have been given the new task of monitoring compliance with the generally applied collective agreements. In spite of increased financial grants, the resources remain limited in relation to the efforts required, and this may divert attention away from HES considerations and towards a focus on wage levels. In this context, however, we will concentrate on the particular challenges for HES.

The role of the regional safety deputies falls somewhere between that of the public supervisory authorities and the trade unions. The posts are financed by the enterprises, but the Norwegian United Federation of Trade Unions and the Norwegian Union of General Workers employ the deputies. Their level of authority is the same as that of the regular safety deputies in enterprises – but only with regard to enterprises that have no safety deputy of their own. They can thereby suspend operations where there is a threat to life and health. Their position also gives them the same authority as the regularly elected safety deputies to collect information from the enterprises. The regional safety deputies therefore see themselves not as performing public supervisory functions, but mainly as providers of guidance. An important part of their job is to report to the Labour Inspection Authority on matters they discover during their site visits. In many regions there is close cooperation between the public labour inspectors and the regional safety deputies.

On-site visits and inspections mainly consist of conversations with the site management, safety deputies, forepersons and ordinary workers. In addition, documents are checked, including HES plans and staff lists, and a walk-through of the site is undertaken. As regards the East European manpower, problems are reported in terms of both communication and documentation. The individual workers as a rule are apprehensive or unwilling to reveal facts about their own situation,

or they are unable to do so because of language problems. Some have been told by their employer not to disclose information on their employment relationship, under threat of being sent home if they fail to comply. As regards the leased workers, the responsible employer (the manpower agency) is rarely present on the site. The East European sub-contractors often have only a site representative, who tends to refer to the main office or the manager in the home country. Some workers have been handed out several sets of work contracts and payslips. To have three such sets is not uncommon: one, which is shown to the Norwegian authorities, another that is shown to the Polish authorities, and a third which contains the real information. In this context, the regional safety deputies are regarded as part of the public supervisory authorities and they consequently encounter major difficulties in soliciting the correct information. In terms of language barriers, the problem goes both ways. Several of the regional safety deputies report having no command of any foreign language, and a possible command of German or English among the Eastern Europeans is therefore to no avail.

Many violations of the HES regulations are discovered on building sites. However, violations of the regulations on working hours are close to impossible to discover in the absence of real payslips, staff lists and an opportunity to communicate with the workers. Finding the employer and revealing actual labour conditions can be a puzzle, as well as determining whether the person in question has received any training. Poor housing conditions can also be difficult to uncover. The public supervisory authorities report that certain cases have to be shelved because they require excessive casework. On some occasions, the Labour Inspection Authority has brought along an interpreter to inspections of enterprises. However, this has not yet become common practice, both because of the cost and the lack of qualified interpreters. But even with the help of an interpreter, it has proven difficult to solicit information on the labour conditions of the Eastern European workers.

When the Labour Inspection Authority uncovers violations of the HES regulations, an instruction to improve compliance is handed out. If the instructions are not followed by the specified deadline, the enterprises are issued with a coercive fine warning. In the case of imminent danger, operations can be suspended immediately. When gross violations of the regulations are uncovered, the Labour

Inspection Authority reports the cases to the police. A number of formal complaints have been launched with regard to the use of foreign labour, related to violations of the provisions pertaining to wage levels in the generally applied collective agreements, violations of regulations on working hours, hazardous work and deficient safety precautions. However, it is the experience of the Authority that the police have insufficient resources to follow up these cases, and that most are dropped. The police confirm this, and claim that they have received no additional resources designated for matters pertaining to labour migration following EU enlargement. The extra resources provided to the Labour Inspection Authority have enabled it to submit more cases, and the police therefore act as a bottleneck in this system. According to some reports, the police are placing considerable emphasis on these cases in some locations.

Still, time is of the essence. It takes a long time to investigate violations of the HES regulations and bring a possible indictment, and as a rule the building project will be completed and the foreign parties will have left the country before the case can be brought to court. The same problem applies to the instruments of the Labour Inspection Authority. When an instruction is handed out and must be followed up, possibly with a coercive fine, recovery of the fine from foreign enterprises may prove difficult.

### **Extended effects for HES in the Norwegian construction industry, and possible countermeasures**

Short-lived contractual relations and lower standards for one type of labour – in this case firms and workers from the new EU member states – could result in knock-on effects on the labour market, in the form of increasing demands for flexibility, deteriorating HES standards and the advent of different classes of workers in the same workplace. In order to assess possible knock-on effects in the construction industry, we also need to take into account the particular challenges that this industry is facing, first and foremost time and cost constraints. The mobile nature of the industry necessitates a continuous creation and recreation of productive and safe labour conditions. A third factor is the major differences between small and large enterprises, reflected in both the questionnaire survey and the qualitative interviews. These are important concerns, regardless of the use of East European firms and labour force.

Both time and money can be saved by not adhering to the HES regulations, provided that possible injuries and accidents are left out of the equation, for example in the form of absence due to illness. Systematic HES efforts, including planning, training and follow-up at all stages, require resources. The regulations are regarded as beneficial, but they are also detailed and can be inaccessible.

In general, employers and employees alike indicate lack of awareness and proper attitude as a key challenge to the HES situation. This attitude often emerges in expressions like: «I will only...» and «This has worked well before». When workers who are unfamiliar with both the language and the Norwegian regulations exhibit this attitude, the builder, the enterprises and the Norwegian co-workers may face a considerable additional problem. Our survey revealed a substantial gap between the need for training and the actual situation. These problems are exacerbated by the fact that most workers from the new EU member states spend relatively short periods in Norway, and therefore perceive learning the language, the regulations, and the new working methods as unnecessary.

At the same time, we should emphasise that two out of three Norwegian enterprises report having undertaken training sessions and assistance in order to secure a satisfactory HES standard in the workplace after having hired East European labour. As regards violations of these regulations, one of the major problems is likely to be lack of knowledge of the conditions and control down the contractual chains. Norwegian enterprises most likely make insufficient efforts to obtain information on the training that has been provided to the sub-contractors' employees and the leased manpower, on the nature of the information in the HES plan that they have been given, and on whether regulations on working hours have been violated. In additions, time constraints and communication problems may hinder follow-up of whether the workers have understood and comply with HES regulations while work is being done. This responsibility rests unequivocally with the builder and employers, and our survey indicates major weaknesses in this system.

The increased availability and use of Eastern European firms and manpower on short-term assignments and contracts has reinforced the trend towards outsourcing of services, the use of temporary manpower, and thereby more flexibility. Enterprises may profit from adjusting the number of employees according to their projects and

dealing with peaks in their production by hiring Eastern European sub-contractors and manpower supply firms that are not subject to Norwegian collective agreements. This may also have consequences for the HES situation. Previous HES studies in Norway have shown that the safety deputies and the enterprise managements are the main initiators of HES efforts. The studies also show that Norwegian employers and employees generally have shared views of the HES situation in the workplace (Torvatn and Molden 2001). A survey from the United Kingdom showed that workers hired through sub-contractors were treated differently from the employees of the main contractor with respect to health and safety (Gyi et al. 1999, quoted in Klemsdal 2003). In other words, an appropriate HES standard is linked to favourable industrial relations and having an orderly system, which also includes the appointment of a safety deputy. As a rule, a well-organised enterprise will have a large number of permanent employees who wish to secure and develop their own workplace and implement an appropriate HES system. Temporary employees, leased manpower and sub-contractors' employees are likely to be less motivated to make a contribution in this area.

Workers who have a loose affiliation with the labour market or the enterprise have a lower likelihood of joining a trade union (Nergaard and Stokke 2006). Social dialogue between the industrial partners and collective agreements may have a special importance in the construction industry, because of the high mobility of labour between different employers (Klemsdal 2003). The employers claim that unionisation has positive effects with regard to HES. An increasing and persistent use of sub-contracting firms and temporary manpower from the new EU member states may also contribute to a lower rate of unionisation, partly because of differences in traditions. Unionisation and social partnership are close to non-existent in several of the new EU member states, and the trade unions are often regarded as a relic from the Communist era. As regards unionisation in Norwegian enterprises, even here we can see that the industry is split into two groups of small and large enterprises respectively. In our sample, a total of 23 per cent of the small enterprises (1-9 employees) and 66 per cent of the large enterprises (more than 10 employees) were members of an employers' organisation. Only 13 per cent of the small enterprises were part of a collective agreement, as compared to 51 per cent among the large enterprises. The Norwegian United

Federation of Trade Unions has initiated systematic efforts to recruit East European workers as members, in order to improve conditions for the individual worker as well as communication with their Norwegian colleagues.

The public supervisory authorities base their control of the workplace on random checks. The probability of being caught violating HES regulations is therefore relatively minor. In addition, both monitoring and follow-up of foreign workers and firms have proven to be complicated.

If enterprises are caught violating HES regulations, the sanctions are so limited that attempts to cheat may pay off. This problem is not a new one, and is not exclusively related to the use of East European firms and manpower. There is little doubt, however, that the availability of East European manpower increases the opportunities for those who cheat deliberately – not only with regard to HES, but also in terms of legal registration, taxes and social security charges. Improved monitoring and tougher sanctions against those who threaten the industry's reputation are therefore also essential in this context.

According to available knowledge about the industry, the need for control and supervision is greatest in the smallest enterprises. Figures from our survey show that both the Labour Inspection Authority and the regional safety deputies make most of their visits to enterprises with more than ten employees. It should be added that many small enterprises are present as subcontractors on large construction sites, and consequently these are also included in the visit.

One explanation for the more frequent visits to the large enterprises may be that by visiting large sites the inspectors can also establish contact with a number of smaller enterprises acting as subcontractors. It is also the case that many of the smaller sites – with the smallest enterprises – are not reported to the Labour Inspection Authority. The inspectors and the regional safety deputies will therefore remain unaware of such short projects, unless they are discovered by coincidence.

The enterprise survey shows that the attention devoted to HES efforts increases following a visit from the Labour Inspection Authority or the regional safety deputies.

On this basis, the supervisory authorities and the regional safety deputies may still have cause to consider whether the inspections are sufficiently well tailored to the conditions prevailing in the industry. More inspections, possibly in combination with improved interpreting services and tougher sanctions, could constitute appropriate measures. As regards sanctions, higher coercive fines are pointed to as an effective instrument and the Labour Inspection Authority could be given greater authorisation to impose such fines on the spot. This would be most relevant in the case of flagrant violations, and would function in the same way that parking fines are imposed. There is a strong wish for the regional safety deputies, supervisory authorities, police, taxation authorities and social security offices to establish patrols that can jointly visit the sites in order to undertake comprehensive reviews of permits and labour conditions. Simpler and speedier casework by the supervisory authorities and the police is also high on the wish-list.

More systematic training of East European workers would seem to be an obvious measure to improve the HES situation. The chief obstacle seems to be a combination of lack of awareness and time, as well as cost constraints in the enterprises. As mentioned above, formal responsibility rests with the individual employer. Our survey indicates that this system is insufficient in an industry that commonly involves long chains of subcontractors, and that this responsibility often evaporates. Satisfactory adaptation of foreign enterprises to Norwegian conditions— for example language training, HES regulations and working methods – costs time and money. Foreign sub-contractors may have insufficient knowledge of the regulations, and thereby provide unsatisfactory training to their employees. A possible solution could be for Norwegian contractors to be obliged to demand documentation from both Norwegian and foreign subcontractors that this has been taken into account when the tender is submitted, and that the implementation of actual training courses is documented. Another possibility is for Norwegian contractors to take greater responsibility for training – irrespective of the employer's liability – and training costs to be deducted from the price.

Documentation of the personnel present at any time on site, the type of work contract they hold, and what kind of training they have completed may be included in the forthcoming ID card scheme. If this

documentation becomes available in several languages, this may simplify the supervisory functions.

Because leasing is the most common form of affiliation for East European workers, a more thorough regulation of such enterprises could be envisaged. This could result in better training of the workers deployed in Norwegian workplaces, possibly supported by higher coercive fines for deficient training programmes.

In order to establish a satisfactorily functioning system within a mobile and international industry like the construction industry, stronger and more practically oriented cross-border cooperation is likely to be required, between both the authorities and the industrial organisation in the countries concerned. This will enhance knowledge of each other's systems, also among the enterprises and the workers themselves.

The construction industry is a turbulent one, and the frameworks for HES efforts have been unstable, not least because the work itself is organised into projects and based on extensive use of sub-contracting. The responsibility for HES is shared between many parties, and the level of knowledge is variable and insufficient. Using firms and employees who do not understand the language and are unfamiliar with the Norwegian regulations can have a negative impact in this respect. Cooperation and communication between the various enterprises and construction workers involved are essential to achieve a satisfactory HES situation. Language barriers, cultural differences and different working methods tend to create hazardous situations.

Unsatisfactory HES conditions seem to be what characterises many Norwegian construction sites with East European workers and subcontractors, thus prompting the need for distinct action to be taken at firm, industry and authority levels to improve health and safety and reduce the risk of injuries and accidents. In a period of labour scarcity it is paradoxical that Norwegian enterprises do not pay better attention to labour that seeks to take on assignments and work in this country.

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