

# Informal Economy and Trade Unions in Germany

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## Definitions

In the international context, employments that are paid below subsistence level and do not guarantee adequate social protection are considered to be “informal“, while “informal economy” is not a common term in Germany. If at all, its usage is limited to “household economy” [Haushaltswirtschaft], “self-subsistence economy” [Selbstversorgungswirtschaft] and “self-help economy” [Selbsthilfeökonomie] (cf. Volker Teichert, Wissenschaftszentrum Berlin), in contrast to “shadow economy” [Schattenwirtschaft] which is more or less equal to “undeclared work” [Schwarzarbeit].

The International Conference of Labour Statisticians 2003 set up guidelines for the collection of data on informal employment. They refer to the following forms of employment:

- own-account workers employed in their own informal sector enterprises;
- employers employed in their own informal sector enterprises;
- contributing family workers, irrespective of whether they work in formal or informal sector enterprises;
- members of informal producers' cooperatives;
- employees holding informal jobs (i.e. if their employment relationship is, in law or in practice, not subject to national labour legislation, income taxation, social protection or entitlement to certain employment benefits, like advance notice of dismissal, severance pay, paid annual or sick leave, etc.), whether employed by formal sector enterprises, informal sector enterprises, or as domestic workers employed by households;
- own account workers engaged in the production of goods exclusively for own final use by their households.

“The reasons for being considered informal may be the following: non-declaration of the jobs or the employees; casual jobs or jobs of a limited short duration; jobs with hours of work or wages below a specified threshold (e.g. for social security contributions); employment by unincorporated enterprises or by persons in households; jobs where the employee’s place of work is outside the premises of the employer’s enterprise (e.g. outworkers without employment contract); or jobs for which labour regulations are not applied, not enforced, or not complied with for any other reason.”

(Daza, José Luis: Undeclared Work and Labour Administration, ILO, June 2005, pp. 9)

As far as the informal economies in developed countries are concerned, the International Labour Organisation (ILO) has found out that the percentage of non-standard employment arrangements has increased. Here, the informal sector is considered to include employments, which are disadvantaged compared to standard employments, as far as labour rights and employment-based social protection are concerned:

“Measuring Employment in the Informal Economy in Developed Countries:

Employment in the informal economy in developed countries is linked to employment arrangements that have tenuous connections between the worker and formal structures and little if any access to fundamental labour rights and protection and employment-based social protection. The following specific categories of non-standard employment arrangements are relevant:

- part-time employment in formal firms;
- temporary employment in formal firms;
- self-employment, in particular own-account workers with no employees;
- inter-firm subcontracted work;
- industrial outwork, including homework;
- sweatshop work;
- day labour.

To arrive at a more precise estimate of employment in the informal economy in developed countries, two types of additional information are needed: data on all categories of non-standard work; and data on access to worker benefits and social protection across all categories of non-standard work.”

(Women and men in the informal economy. A statistical picture. ILO 2002, p. 26)

In other words: not all types of part-time employment arrangements can be classified as informal (in Germany, the percentage is very small, as part-time related disadvantages are legally prohibited, although there are disadvantages with regard to social insurance as soon as part-time jobs are turned into so-called mini jobs); similarly, not all types of self-employed persons or fictitiously self-employed persons can be classified as informal workers. The crucial point is whether or not a person in non-standard employment is provided with the same labour rights and social protection or otherwise earns enough to be able to acquire these benefits on a private basis.

Any criminal economic activities providing illegal goods and services are excluded from the considerations and evaluations of ILO. This also applies to illegal trafficking of arms, drugs and slaves (according to the definition of ILO, production and employment arrangements in the informal economy can be partly or completely illegal, while the provided goods and services are legal). Also excluded from the definition are unpaid housework and upbringing of children (cf. Women and men in the informal economy. A statistical picture. ILO 2002, p. 12).

Common German descriptions are “atypische Beschäftigung” [atypical employment], “prekäre Beschäftigung” [precarious or contingent employment], but also “Schwarzarbeit” [undeclared work] and “illegale Schattenwirtschaft” [illegal shadow economy]. In line with the approach followed by the international labour statisticians, “precarious employment” seems to be the most appropriate term to describe the general situation in Germany. It includes all possible types of employment arrangements, which cannot be subsumed under the term “standard employment”. However, a clear classification is not possible: A self-employed consultant who is exposed to high risks, because he depends on his clients, is considered to be in precarious employment, although a high income may enable him to take out private

health and unemployment insurance and to pay into private pension schemes, while an unskilled agricultural labourer earning a tariff wage of Euro 4.68 per hour (= Euro 814 per month; source: WSI-Tarifarchiv, as of 31-12-2003) is not considered to be in precarious employment because his/her job is subject to social insurance providing him/her with a basic social protection. Yet, he/she is unable to make a living with this low income.

## Facts and figures

According to (seasonally adjusted) figures provided by Statistisches Bundesamt (Federal Bureau of Statistics), approx. 39 million persons have a gainful occupation<sup>1</sup>, which is about the same number as in the early 1990ies. However, the structure of gainful occupation has changed dramatically: from 1991 to 2004, the number of regular full-time employments has decreased by 20%. Approx. 6 million people have left this group and the total of full-time employments decreased from 29.5 million to 23.75 million.<sup>2</sup> More than 25% of all gainfully employed persons are categorized as part-time employees (since the early 1990ies, their number has almost doubled from 5.5 million to nearly 11 million). This group also includes minor employments (e.g. mini jobs: 6.6 million on 31 March 2005). Self-employment and fictitious self-employment have increased to 11% (= 4.25 million). In the early 1990ies, their percentage was at 9%.<sup>3</sup>

This trend goes along with an increase in subcontracted work (at present approx. 350,000 persons<sup>4</sup>) and other forms of temporary employment. And these developments are in accordance with existing legislation and sometimes even with collective agreements. Despite extra legal provisions, most subcontracted work arrangements do not mean long-term employment but a high degree of uncertainty and payment approx. 30-40%<sup>5</sup> below regular employees of the hiring companies also resulting in poorer social protection.

## Undeclared and illicit employment

Undeclared employment is defined as any gainful work (except for help among neighbours and friends etc.) which is not declared to the tax or social insurance authorities. Undeclared employment violates existing legislation and is therefore illegal. This type of work is illegal in two aspects, when the concerned person is an undocumented migrant worker.

The German Trade Union Confederation DGB, believes that the scope of undeclared employment is generally overestimated. Rather 4-6% than 17% of the gross domestic product are considered to be realistic.<sup>6</sup> This would be equivalent to 4.1% of the total working hours.

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<sup>1</sup> cf. Deutsche Bundesbank, Monatsbericht Juli 2005, p. 16

<sup>2</sup> *ibid.*

<sup>3</sup> *ibid.*

<sup>4</sup> e-mail from ver.di (Uwe Woetzel, 18-07-2005)

<sup>5</sup> *ibid.*

<sup>6</sup> DGB comment on the Federal Government's report: Bekämpfung der Schwarzarbeit und illegalen Beschäftigung vom 28.01.2005; at: [www.dgb.de](http://www.dgb.de); Prof. Schneider (Universität Linz) concludes that 17% of the

## The general situation

In the recent years, the German trade unions are increasingly under pressure. Vested rights and achievements of the 1970ies, such as holiday pay and an additional month's pay at the end of the year, have now been cut in many cases. Employees even had to accept real wage cuts. In addition, employers' associations and some politicians demand a relaxation of the Dismissals Protection Act and the abolishment of continued pay during sickness. Unlike earlier times, employers are no longer ready to agree to the universal validity (for a region or industry) of collective bargaining agreements. In the past it was the other way round. The trade unions were reluctant to agree to the universal validity of collective bargaining agreements because this helped non-trade union members to get the same benefit from the negotiated agreements and made it difficult for trade unions to recruit new members. Today, employers take advantage of the situation of 5 million unemployed persons and manage to push through payments below standard rates. More and more employers leave their employers' associations or just accept a type of membership with no commitment to collective agreements. Consequently, the region-wide type of collective agreement, which commits all employers of the concerned industry in the same region to pay equal wages for comparable work, is going to lose significance. The regional collective agreement used to guarantee that competition was not based on wages but on innovation. Employers had to invest in new technologies in order to survive at the given standard wage costs. Today, however, more and more companies attempt to compete on the basis of wage costs. Regional collective agreements are limited to regional and national boundaries. As wage levels in the neighbouring countries are well below the wage levels in Germany and due to lower transportation charges, regional collective agreements have hardly any chance. But even the lowest wages in Germany cannot compete with those paid in Poland, Romania or China. As a consequence, many companies move their production plants to these low-wage countries. However, jobs in the retail trade, the hotel trade, private households, the health sector and the construction industry cannot be moved. Consequently, the percentage of migrants from low-wage countries is very high in these industries. Within the sphere of influence of the NGG trade union (Food, Beverages, Catering), there are no generally binding agreements on standard payments. Only the sector of the baker's craft has a generally binding collective agreement on working conditions (working hours, holiday etc.).

In Germany, calls for a low-wage sector become ever louder, although regular full-time employments have gradually been replaced by low-wage jobs long since. "The trade union-friendly *Wirtschafts- und Sozialwissenschaftliche Institut (WSI)* found out that in 2003, approximately 3.4 million people in Germany earned less than Euro 8.75 per hour. These people are considered to be poor, although they are in employment. For, this payment is exactly half of the average income of full-time employees liable to social insurance and it defines the so-called wage poverty line. Even if the German legal minimum wage had been fixed at Euro 7.50, 2.4 million employees would have been below the poverty line in 2003."<sup>7</sup> Despite this development, the number of unemployed is not decreasing but increasing.

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gross domestic product fall on the shadow economy. Statistisches Bundesamt and the Danish Rockwool Foundation Research Unit believe that the percentage is at 6% and 4% respectively.

<sup>7</sup> "Gleiche Arbeit, gleiches Geld?" in: Die Zeit, 16/2005

According to the Neo-Liberals all this means simply that wages have not been depressed enough: "Getting the German 'working poor' out of unemployment means to increase the gap between the poor and the rich. This would be a radical u-turn, the anything but unsocial end of forty years of social policy. For, unemployment is unsocial: not only with regard to the five million unemployed, but also with regard to everyone else, who has to bear the costs."<sup>8</sup>

Calls for the introduction of a low-wage sector aim at splitting up the existing jobs in various forms involving, usually, more poorly paid jobs with less social protection. This means that the objectives of creating jobs which enable people to earn a living and to pay for adequate social insurance through economic growth promotion and adequate redistribution would be given up in favour of another model of society, in which the poor render services for the rich.

### **Some remarks on two special cases: the reunification of Germany and persons of German origin emigrating from Eastern Europe after 1980 (*Spätaussiedler*)**

The consequences of the German reunification and the influx of persons of German origin emigrating from Eastern Europe and entering the German labour market and the options available to the trade unions have not yet been sufficiently explored. The following aspects should be examined in more detail:

In the former GDR, trade unions were perceived in a neutral or negative way. The reunification process brought new trade union members from East Germany, whose hopes for secure jobs were bitterly disappointed. It is hard to expect that these employees can be won as steadfast union members. High unemployment rates in East Germany have caused a shift of employer-employee relationships from trade union level to company level. Works councils are now forced to negotiate internal solutions with their company managements, because there are no collective agreements at industry level. Existing agreements are often ignored.

The increased total workforce has forced the West to give up the status quo. At the same time, these developments exert pressure on the social insurance systems, which, in the final end, have to bear the costs of the reunification, although they are not designed to cope with this.

The pressure on the labour market further intensified, as more and more people of German origin (*Spätaussiedler*) emigrated from Eastern Europe to Germany. Although these *Spätaussiedler* feel themselves as Germans and in fact are Germans, their integration problems are similar to those of other migrant groups.

### **Approaches and strategies pursued by Trade Unions**

How do the German Trade Unions respond to these fundamental changes on the labour market? To get a clear picture, various trade unions were asked the following questions:

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<sup>8</sup> "Working Poor und Wohlstandslüge" in: Die Welt, 09-07-2005

- 1) Does precarious employment exist in your trade? If yes, what kind of precarious employment? At what scale? What is your experience?
- 2) Are employees in precarious employment unionized? What types of jobs are concerned? How many?
- 3) Is the problem of increasing informal employments discussed in your trade union? If yes, what are the objectives, consequences and strategies? What are the results? What is your experience?
- 4) Do you cooperate with nongovernmental organisations and/or self-help organisations in this respect (e.g. foreign labour and migrant associations, Church groups)? If yes, please describe this cooperation.

Some trade unions have provided written answers, whereas others answered the questions in interviews.

Neither DGB nor the individual trade unions have dedicated cross-departmental offices dealing with the problem of “precarious employment”. This made it difficult for me to identify the right contacts in the trade unions. However, all trade unions face the problem of precarious employment in one sector or the other. For some trade unions such as NGG (Food, Beverages, Catering) and IG Bauen-Agrar-Umwelt (Construction, Agriculture, Environment), the problem is highly relevant. Others such as IG Chemie (Chemicals) are less affected. Dedicated cross-departmental offices for women and migrant policies, for example, also deal with precarious employment because the rate of precarious employment is very high in these groups of employees. Full-time union officials are competent and well informed on this issue and pursue differentiated approaches involving various solutions. However it looks as if this working field is not necessarily integrated in the trade unions’ master strategies. Also, there seems to be no systematic exchange on this issue among the different trade unions. Many press releases reflect reactions to the latest legislative amendments, but there is hardly any strategy papers published by trade unions in this respect. IG Metall published a statement on “*Aspekte der Schwarzarbeit*” (“Aspects of undeclared work”) and DGB a comment on the report of the German Federal Government with the title “*Bekämpfung der Schwarzarbeit und illegalen Beschäftigung*” (“Fighting undeclared and illicit work”) of 28-01-2005. IG Bauen-Agrar-Umwelt (Construction, Agriculture, Environment) is pursuing the strategy of finding political solutions to the problem of undocumented migrant workers and wage dumping. As a consequence, the Posted Workers Act (*Arbeitnehmer-Entsendegesetz*) was passed in Germany (see below).

Because of the difficulties mentioned above and based on the assumption that certain structural problems affect all industries where precarious employment is found (where there is a high percentage of personnel costs or production plants are tightly bound to their locations and cannot be moved to other countries), I decided to focus on two trade unions: IG Bauen-Agrar-Umwelt (Construction, Agriculture, Environment) including the European Migrant Workers Union and NGG (Food, Beverages, Catering). Furthermore, these trades have recently been in the focus of public interest. However, it will be important in a next step to explore the differences between the various trades (laundry trade, retail, freelancers in the media, scientific assistants at universities and in further education etc.).

## **The NGG trade union (Food, Beverages, Catering)**

Unlike many other trade unions, NGG has not been subject to major merger processes, and is therefore a relatively small trade union with approx. 225,000 members<sup>9</sup> (3.2% of all unionized employees). NGG covers the food production industry and food craft (e.g. sector of baker's craft), the beverages industry (beer, coffee, spirits etc.) and the hotel, restaurant and catering trades. These are traditionally small and medium-sized companies, although large global food production groups are of increasing significance. For historical reasons, NGG also covers domestic workers, for whom regionally applicable collective agreements are signed with the German Housewives' Association (Deutscher Hausfrauenbund).

### ***Meat industry***

Intolerable conditions in connection with illegal employment, exploitation, wage dumping and inhuman accommodation of mostly East European workers, especially in the butchery and meat processing trade, have recently become public. These workers come to Germany either as service contractors<sup>10</sup> or they use their right as EU citizens to provide services in other EU member states<sup>11</sup>. These legal ways of forcing low wages in these trades have caused systematic cutbacks in permanent workforce and replacement with service contractors. Foreign sub-contractors often turn out to be letterbox companies which are actually run by the hiring companies themselves. These cases violate the Personnel Leasing Act, because no social insurance contributions and taxes are paid. Moreover, these foreign worker often have to accept excessive deductions for accommodation in Germany etc. Controls in the countries of origin are prescribed by law, but cross-border cooperation of authorities is hard to put into practice. In addition, subcontracting companies often smuggle East European employees with forged documents into the slaughterhouses. "We know from experience that slaughterhouses use illegal East European workers to cut their costs by approx. 50%. This is unfair competition and puts other companies in this industry under enormous pressure and prompts them to do the same. We have encountered people who worked under inhuman conditions for hourly rates of Euro 1.50 to Euro 2.27. No-one can compete with this, especially not the German employees." (Mr. Südbeck, speaker of Staatsanwaltschaft Oldenburg)<sup>12</sup>

On March 4, 2005, the trade unions organising the butchery trades in Denmark, Netherlands, Great Britain, Poland, Hungary and Germany published a joint statement announcing a closer cross-border cooperation "in order to oppose the

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<sup>9</sup> Figures as of 31-12-2004, available at: [www.dgb.de](http://www.dgb.de)

<sup>10</sup> Since the 1980ies, the Federal Republic of Germany has concluded so-called service contractor agreements with almost all Central and East European countries. These allow companies from the signatory countries to act as contractors and send their own skilled workers to carry out services within annually fixed quotas, depending on the situation of the labour market. Payments must comply with local standard net wages, social insurance contributions are payable in the countries of origin. Today, these quotas are very limited for non-EU members, e.g. for countries such as Romania (after the scandal, the butchery and meat processing trades have been excluded).

<sup>11</sup> This principle allows service providers of all EU member states to offer services on the terms applicable in their own countries. As a consequence, East European workers can act as self-employed service providers and offer their services at prices below standard rates, and this without breaching the rules.

<sup>12</sup> Cf.: „Harter Kampf gegen Lohndumping-Mafia“ in Nordsee-Zeitung 18-06-2005

companies' strategies to bypass national regulations and standards in the labour markets and social systems."<sup>13</sup> This document comprises a wide range of measures: creating a European network of works council members, shop stewards and trade unionists; putting more effort into organizing workers; offering a Europe-wide protection of trade union members; negotiating and signing local agreements only with prior consultation at transnational level. Furthermore, the signatory trade unions committed themselves to "blocking any strike-related movements of productions and/or deliveries to strikebound companies or sectors, if workers in the meat processing industry or in the meat industry in general are on strike or take industrial action."<sup>14</sup>

### ***Hotel and restaurant trade***

The hotel and restaurant trade is traditionally characterised by low wages, precarious employment, seasonal work and a high percentage of undeclared work. The hourly rate paid to hotel servants is at Euro 5.95<sup>15</sup> in the Saarland and at Euro 5.12 in Mecklenburg-Western Pomerania<sup>16</sup>. On the basis of a 40-hour-week, this is equal to a basic payment of Euro 1,030 and Euro 887 respectively. But not everyone in this industry is paid tariff rates, because in 17 regions, the German Hotel and Restaurant Association refuses to sign collective wage agreements<sup>17</sup>.

Recent authority controls have revealed a high percentage of undeclared employments in the hotel and restaurant trade. This has given rise to public anger, while the widespread practice of tax evasion in beverages and food sales remained widely unnoticed. Controls carried out by the supervisory tax authority in Cologne revealed that 25% of the workers in this trade were illicit employees<sup>18</sup>. The HAZ newspaper reported on 29-08-2003 that the North Rhine-Westphalian labour office estimated the rate of illicit employees in the hotel and restaurant trade at 50%.

The NGG trade union has tried to adapt their collective agreements to this situation. In the regions of Bremen and Hesse, employers were forced to provide their employees with monthly pay slips showing gross and net payments. In addition, employers are solely held responsible for possible additional tax and social insurance payments. Elsewhere, the NGG trade union obliged employees and employers to fight undeclared employment, whenever they get notice of it<sup>19</sup>.

In interviews I was told that these agreements are hardly ever applied. On the one hand, this is because there is almost no "honest" employer left who could have an interest in fighting undeclared employments. On the other hand, the percentage of unionized workers in this industry is very small. Due to high fluctuation rates, the

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<sup>13</sup> EFFAT (European Federation of Food, Agriculture and Tourism Trade Unions; Regional Organisation with the IUF-Member of the ETUC): „Vereinbarung der Gewerkschaften EDOSZ/FNV-BG/NGG/NNF/NSZZ/T&G für den Fleischsektor“, Hamburg 04-03-2005 (quote translated from the English language)

<sup>14</sup> *ibid.*

<sup>15</sup> WSI-Archiv, as of 31-12-2003

<sup>16</sup> *ibid.*

<sup>17</sup> NGG info-dienst 4/2005, p. 3

<sup>18</sup> Press release of July 2004, according to DGB comment on the report of the Federal Republic of Germany: Bekämpfung der Schwarzarbeit und illegalen Beschäftigung, 28-01-2005, [www.dgb.de](http://www.dgb.de)

<sup>19</sup> cf. DGB comment of 28-01-2005

small size of companies and the resulting higher degree of personal dependence, representation structures (works councils) are rare. Recruitment of new members from the outside, i.e. carried out by full-time officials, only works in cases when employees need legal support, for example when they want to enforce wage claims against the employer. A classical formula ironically used by trade unionists says: "Three new memberships in the hotel and restaurant trade means five new court-cases of legal protection." It is clear that NGG's capacities are limited in this respect.

### ***Domestic workers***

In the context of the public discussion on the reduction of unemployment, the sector of private households with its increasing demand for providers of domestic, childcare and nursing services became the focus of public attention. The number of employments in private households is between 1.4 and 3.8 million; the figures vary from source to source. Approx. 90,000 are registered with the mini job office<sup>20</sup>, which means that the majority of domestic workers does not pay any social insurance contributions. The act to combat undeclared employment still considers the illicit employment of domestic workers to be a regulatory offence. Previously, the governmental plans to stiffen the punishment of illegal employment in private households had caused great annoyance in the public. "This indicates that undeclared employment in private households is widely accepted today and that it is regarded as a rule, both on the demand side and on the supply side."<sup>21</sup> There are hardly any controls. But it is expected that there is an extremely high number of illegal foreign women working in private households. This is confirmed by nongovernmental organisations (e.g. the European "Respect" Network), which provide legal advice for undocumented migrants living in Germany (e.g. in case they receive no payment for their work).

A less known fact is that the NGG trade union signs collective agreements especially for this sector which determine wages (at regional level) as well as working conditions such as working hours, holiday and periods of notice (at national level). These collective agreements also apply to apprenticeships, casual employments and mini jobs. However, they are not generally binding, but do only apply to the members of the signatories. This means that only trade union members and households which are members of the German housewives' association (Deutscher Hausfrauenbund) are obliged to comply with the agreements. Thus, they only have limited effectiveness. But they also have a regulatory character, as they are often used as a reference for local standard wages in lawsuits on wage dumping.

There are hardly any unionized employees in this sector. Most of the employees even do not know about the existence of a collective agreement and about their rights resulting from it.

### ***What NGG calls for***

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<sup>20</sup> *ibid.*

<sup>21</sup> *ibid.*

Initially, the NGG trade union's demand for legal minimum wages has met with stiff opposition from other trade unions such as IG Metall, as they believe that they are able to push through better conditions for their members by way of collective bargaining agreements. In the meantime, however, some groups within IG Metall, such as the women, have changed their minds and now also call for legal minimum wages<sup>22</sup>. NGG appreciates the German government's decision of May 2005 to extend the Posted Workers Act (Entsendegesetz), which until then had only applied to the construction industry, to all industries. This would in fact mean that minimum wages would be applied to the whole industry, provided that the relevant collective bargaining agreement is effective nation-wide and industry-wide. This is not the case in the hotel and restaurant sector and the meat industry, for example, so that NGG continues to demand legal minimum wages. Moreover, there are around 100 regions with low tariff rates of less than Euro 1,000 in West Germany and Euro 670 in East Germany. In the absence of a legal minimum wage, these low tariff rates would be taken for granted. NGG is proposing to set the legal minimum wage at Euro 1,500, which is approx. 50% of the national average wage.<sup>23</sup>

### **IG Bauen-Agrar-Umwelt (Construction, Agriculture, Environment)**

In 1996, IG BSE (Construction) and IG GGLF (Horticulture, Agriculture, Forestry) merged to form IG Bauen-Agrar-Umwelt (Construction, Agriculture, Environment). With 424,808 members (as of December 31, 2004), it is among the smaller trade unions (6.1% of all trade union members). The majority of its members are employed in the construction trade. The temporarily continuous decline in membership was partly compensated by the admission of members from the cleaning trade. The construction sector is characterised by small and medium-sized companies. Due to the specific characteristics of the construction industry (e.g. seasonal fluctuations in employment, changing workplaces etc.), IG BAU has fought for industry tariff rates and successfully called for statutory regulations, such as the Posted Workers Act.

As the percentage of unionized workers used to be relatively high in the construction industry (approx. 40% until the 1990ies<sup>24</sup>), IG BAU was able to moderate the social implications of frequently precarious employment arrangements at social partner level, e.g. by negotiating acceptable minimum wages or setting up social security benefits offices.

The construction sector is more than any other affected by undeclared employment. IG BAU expects that one third of all construction workers are illegal workers. Illegality may take various shapes, ranging from German and foreign employees (with residence and work permits), which are paid below tariff rates and/or do undeclared work on a full-time or part-time basis through to foreign workers staying illegally in Germany and having no other option than to do undeclared work, so wages are accordingly low. This development went along with the appearance of sub-contracting structures resulting from crises and restructuring processes from the early 1980ies onwards. Frequently, sub-contractors are not bound to collective agreements and can push through low wages and temporary employment arrangements. Rules and agreements which apply to regular employees do not apply

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<sup>22</sup> cf.: „Wir haben die Wahl! Frauenpolitisches Positionspapier zur Bundestagswahl 2005, June 2005, p. 4

<sup>23</sup> cf.: NGG info-dienst 4/2005

<sup>24</sup> Nickel, S. (2004), Gewerkschaften und Migration. Aktuelle Entwicklungen und Strategien am Beispiel der Industriegewerkschaft Bauen-Agrar-Umwelt., p. 22

to these fictitiously self-employed persons. Liberalisation of the German Handicrafts Code has caused self-employed individuals to team up and offer their services to construction companies. IG BAU is assuming that there are tens of thousands of these “self-employed” individuals working in Germany. This development has also caused cutbacks in the permanent workforce and an increase in marginal workers in precarious employment.

### ***What are the activities of IG Bauen-Agrar-Umwelt?***

IG BAU responds to these developments in various ways, e.g. by informing the employees (including the illegal employees) of their labour rights. Information is published in various languages.

A new office was set up in Warsaw to ensure proper information of posted Polish workers. The expectations of this office were by and large not met and therefore it was closed. Hopes for a better cooperation with the Polish trade unions were also not as successful as expected.

Furthermore, IG BAU spoke up for a governmentally funded network of advice centres run by trade unions and other organisations. Calls for the introduction of a certification procedure for posting foreign companies remained unheard.<sup>25</sup>

Foreign workers were successfully brought to participate in the national strike in the construction industry in 2002, while most of the illegal employees refrained from acting as strike-breakers.

With the creation of the European Migrant Workers' Union (EMWU) in 2004, IG BAU tried a completely new approach. For the first time, there was a transnational trade union especially for long-term posted workers who switch countries frequently and therefore do not have the chance to enter a single national trade union. EMWU is the first member-based trade union at European level. One of the two full-time union officials is bilingual: Polish-German. Recently, a Polish construction worker has started in the position as a full-time trade union official who makes efforts to unionize the Polish construction workers (who make up the largest group). Other national groups are to follow.

The problem of fictitious self-employment is considered to be the “topic of the future”. For quite a long time, fictitiously self-employed persons in the construction industry have had the chance to become members of IG BAU. In addition, the trade union is developing a new organisational and supportive concept that complies with the needs of this special group. The experience of the Dutch construction trade union may be helpful in this respect, as they have set up a dedicated organisation for fictitiously self-employed persons.

In cooperation with governmental authorities, IG BAU is making efforts to inspect building sites and to uncover illegal practices in order to protect collective bargaining agreements and enforce governmental legislation (Posted Workers Directive, Act to Combat Undeclared Work etc.). This dual strategy is also a dual dilemma: it is a

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<sup>25</sup> Nickel S. (2004), *Gewerkschaften und Migration*, pp. 60

trade union's job to look after the interests of their members, the majority of which are legally employed Germans and migrants. In the eyes of illegally employed persons they may be regarded as enforcement agencies of the government rather than representatives of their interests. It is hard to build up solidarity between different groups of employees who actually compete with each other and who actually have different interests.

### **Contract cleaners**

The new trade of contract cleaning has developed as more and more industrial and business companies outsourced their cleaning services. In the cleaning trade, the percentage of personnel costs is approx. at 74% of the total cost. The statistics on service providers 2000 prepared by Statistisches Bundesamt shows that more than 200,000 cleaners (around one third) are employed with large-scale companies of more than 1,000 employees, another 250,000 cleaners are employed with medium-sized companies of more than 100 employees and only 130,000 are employed with small companies.<sup>26</sup> Rationalisation potential (e.g. by way of machine use and re-organisation of work) is very limited, so that competition is primarily based on wages. In order to ease the pressure on wages, collective bargaining agreements are generally binding in this trade. When the legislation on minor employments was amended in 2003, this did not contribute to the creation of new jobs, but existing jobs which previously had been liable to social insurance were turned into mini jobs. Since the liberalisation of the German Handicrafts Code, the cleaning trade has lost its traditional craft status and is no longer subject to strict training guidelines, i.e. any person can carry out the business as soon as he gets himself registered. In the course of wage negotiations, the traditional shop-like companies threatened to leave the employers' association of the trade guild and to form a new trade association. As there is no employers' association with collective bargaining capacity, the existing tariff system and the universally binding nature of collective agreements are at risk.<sup>27</sup>

Although IG BAU has tried hard to unionize employees in this trade and even organised warning strikes to get through an agreement on general working conditions, the percentage of unionized employees is relatively low (roughly 7%)<sup>28</sup>. Sadly one has come to realize that additional recruiting efforts will be necessary, but will have to be co-financed by other union members as the union dues in the cleaning trade are very low. Latest figures provided by IG BAU have shown that the numbers of new admissions are about the same in the cleaning and construction trades.

A description of the situation in the agricultural sector, which is characterised by a high percentage of East European seasonal workers, had to be left out for lack of time.

### **Conclusion**

For various reasons, the German trade unions have become under massive pressure in the recent years. They have lost members because of the high unemployment rate. At the same time, they were forced to make concessions in collective bargaining

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<sup>26</sup> Nickel, S. (2004), *Gewerkschaften und Migration.*, o. 72

<sup>27</sup> *ibid.*, pp. 76

<sup>28</sup> *ibid.* p. 82

negotiations and to give up some vested rights and achievements from the past. When more flexibility was demanded on the employers' side, trade unions tried to find collective agreement solutions which, in terms of flexibility, were also of benefit to the employees, while minimum social standards were guaranteed. In the public, however, the impression is conveyed that the trade unions are the "last dinosaurs" and oppose any modern reforming efforts, especially as far as a flexible wage policy is concerned. Employers and certain political movements favour arrangements at company level. But they forget that internal representatives are more susceptible to blackmail, when they are threatened with factory closure or relocation.

The structure of employment arrangements has fundamentally changed: the number of secure full-time employments is decreasing while there is an increasing number of more flexible forms of employment that offer less social protection. Furthermore, German employers exert additional pressure on existing wage and social standards by recruiting, legally or illegally, employees from neighbouring EU states and other countries where wage levels are much lower than in Germany. But illegal employment is only possible when employers are prepared to offer work on illegal terms. Precarious employment is spreading out and is increasingly undermining traditional standard employment arrangements. Undeclared work is not just limited to undocumented migrants. More and more German employees are prepared to give up tariff rates and/or they are prepared to earn undeclared money in addition to public benefits. If precarious employment arrangements are on the public agenda, it is only in connection with the illegal employment of migrants. This conveys the impression that problems on the labour market can be solved through restrictive policies towards immigrants and a closed-border policy.

From the interviews with full-time union officials, I got the impression that these new developments and potential strategies for action have not yet been sufficiently and co-ordinately discussed within the trade unions. There is no systematic exchange of experiences and successful strategies. The tried and tested strategy of recruiting young union members in large companies with the help of volunteers, is no longer as efficient as it used to be. If the trade unions do not manage to develop adequate concepts to organize workers in precarious employment, they will lose ever more members and, even worse, their political strength.

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