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Introduction

In late 2019 the European Trade Union Confederation (ETUC) announced that a construction worker who had been waiting three years for over €8,000 in unpaid wages was among the cases of worker exploitation referred to the new European Labour Authority for investigation (ETUC, 2019). Cases such as this represent how construction workers experience labour exploitation across European countries and industries. Given that the European construction industry is expected to continue growing in the foreseeable future (BIM, 2018)¹, it represents an increasingly important area of investigation for issues associated with labour exploitation and corporate criminology. Labour exploitation can be broadly understood as a spectrum, ranging from criminalised practices such as forced labour, to 'routine' breaches of labour or employment legislation (Murphy et al, 2019). The purpose of this chapter is to consider what is 'European' about white-collar and corporate crime throughout the European construction industry, with an emphasis on exploitative labour practices and the 'posting' of workers. 'Posting' refers to the temporary migration of workers sent by their employers to work on projects abroad, which is facilitated under EU free movement of services rules² (Lillie, 2012). It is hoped that this chapter will help to frame labour exploitation in the European construction industry through a corporate criminology lens, especially concerning why businesses are able to exploit posted workers in the context of 'free movement', as well as how governance gaps serve to maintain weak standards of accountability in this area.

¹ At the time of writing, it is not yet fully clear what impact the ongoing COVID-19 crisis will have across European construction industries, but many self-employed workers and small-medium sized businesses have voiced significant concerns over their future in construction, as well as growth rates (The Construction Index, 2020).

² This employer-led worker posting contrasts with individual labour migration, which is governed by EU principles of freedom of movement for workers.

White-collar and corporate crimes in European construction

Discussion of criminal activity in European construction industries is not new. For example, Savona (2010) analyses the infiltration of the Italian construction industry by organised crime groups; in Dutch construction, van Duyne and Houtzager (2005) frame concerns on the 'black labour market', whereas van de Bunt (2010) focuses on cartels and construction fraud scandals; Kankaanranta and Muttillainen (2010) examine economic crimes and the 'grey economy' in Finnish construction. More recently, concerns revolving around human trafficking and other forms of 'modern slavery' have generated significant European interest regarding the protection of (migrant) workers, as well as the role of states and corporations in facilitating exploitation (Caro et al, 2015; CIOB, 2018; FLEX, 2018a; FRA, 2019; Murphy et al, 2019).

While this body of literature is not usually framed from explicit white-collar or corporate crime perspectives, corporate criminology can play a significant role in helping to explain how and why exploitative practices occur in European construction, as well as interventions to address them. Firstly, a corporate criminology perspective facilitates an understanding of business decision making processes when temporarily moving workers from one country to another (worker posting), who may then be vulnerable to exploitation. The issue of posted workers is one example of how many construction companies use otherwise legal processes and routine business practices in order to remain competitive, and thereby can wittingly or unwittingly facilitate labour exploitation. Secondly, corporate criminology provides opportunities to examine regulatory spheres within which businesses operate; in the case of posted workers, this may include discussion of pan-European frameworks such as the Posted Workers Directive 96/71/EC. In short, the intersections of legitimate business practices, limited regulatory oversight, and market dynamics that expose workers to labour exploitation, arguably provide a dynamic area of investigation for corporate criminology in this industry.

In a broader context, (migrant) labour exploitation can be considered as a subcategory of corporate crime due to its emphasis on criminal, illegal, and other 'dubious' business practices and the individuals associated with them (Alvesalo-Kuusi et al, 2014; Davies and Ollus, 2019). There are numerous social harms not legally branded as 'criminal' that occur in the construction industry, such as non-payment or underpayment of wages (FLEX, 2018a; FRA,

2019), which provides opportunities for corporate criminologists to examine. In recent years, there has been a significant increase in academic and policy attention given to the central role of businesses in facilitating labour exploitation across their product and labour supply networks (Meardi et al, 2014; Crane et al, 2019). Given that businesses are arguably in a dual position to exploit labour but also help prevent such practices, there are key questions concerning how to achieve such prevention. Part of the answer involves considering supra-national trends and policies, including at the European level, especially since the process of labour exploitation can and does occur across borders, both within and beyond Europe.

As part of recent developments, 9 out of 21 surveyed EU countries identified construction as the sector that is most vulnerable to labour exploitation (FRA, 2015). An estimated 6% of the European workforce is based in the European construction industry (Building Radar, 2016), and organisations such as the FRA (2019) point to growing concerns of labour exploitation across this industry amid a somewhat slow recovery from the 2008 economic/financial crisis. Materials used in the construction industry, including bricks, cement, and timber, may be sourced, produced, processed, and assembled under exploitative conditions (KnowTheChain, 2019: 4). Construction industry work is characterised by short-term projects, extensive subcontracting as part of fragmented supply chains, informal work, hazardous conditions, and poor treatment of workers including payment problems – all of which are key vulnerabilities to labour exploitation (Elliott, 2014; FLEX, 2018a). Most construction work has to be completed on-site, which limits the ability of companies to outsource production to less expensive locations within or beyond Europe – therefore, labour and materials are routinely key costing factors. Perhaps one of the most recent well-known examples of labour exploitation in European construction involves the ‘Space Egg’ EU headquarters being built with the aid of undocumented migrants, who at times went without pay, partly due to complex subcontracting arrangements (Boffey, 2019).

Although there are European trends and issues across its construction industry, there is also significant diversity within Europe concerning issues related to construction, as well as broader factors such as migration patterns. First, according to the European Construction Monitor (2018), although there are varying levels of growth between North-Western, Southern, and Eastern European countries, profit margins are under pressure most in the North-West due to

relatively high labour costs, whereas the South and East are less affected by such pressures. These challenges are significant because narrow profit margins encourage many businesses to reduce labour costs by outsourcing or informalising employment relationships (Davies and Ollus, 2019).

In contrast, construction costs in southern and eastern countries have risen less than the European average, or have even declined in some cases due to a slower recovery from the 2008 economic/financial crisis (European Construction Monitor, 2018: 7). This slow recovery, in conjunction with fewer projects and less competitive work, has encouraged many businesses and workers from southern/eastern countries to bid for projects and migrate to the North/West in order to improve their prospects (Caro et al, 2015). For example, long-term high unemployment rates and structurally low wages in countries such as Greece and Portugal have seen increases in emigration, especially among young people (Gorjão Henriques, 2011). As is well documented elsewhere, such labour migration has associated risks to exploitation, since many workers are unfamiliar with host countries or rely on intermediaries when searching for work and accommodation (Berntsen and Lillie, 2016).

Second, and related to the first point, European migration patterns traditionally follow East to North-West and South to North-West trajectories, which means that migrant workers are particularly vulnerable to exploitative practices linked to companies trying to reduce their costs and business pressures. This pattern is especially prominent following the 2004 accession of Eastern European countries to the EU. These factors have important implications for corporate criminology, since they would benefit from a pan-European discussion on how and why vulnerabilities develop, and how they can be addressed at organisational, regulatory and political-legal levels. The intention of this chapter is not to resolve these issues; a more wide-ranging and in-depth discussion would be required in order to begin doing so. However, an issue often linked to the pan-European labour market, and therefore European-wide regulation, is that of posted workers.

Posted workers in European construction

The notion of 'posted workers', which as noted above, refers to the temporary migration of workers sent by their employers to work on projects abroad, has become increasingly common throughout the European construction industry (Caro et al, 2015). The posting of workers is a distinctly European, or at least EU practice, since this process does not occur in the same form beyond EU borders. As a side note, the UK's withdrawal from the EU means that, at the time of writing, it is unlikely to continue using posted workers, and instead may increase the use of Temporary Labour Migration Programmes (TLMPs)³ in order to meet fluctuating demand in sectors such as construction (FLEX, 2018b). Posted migration is substantively different from those migrating to work in other EU countries as individuals, since employers arrange this posting with host countries strictly on a temporary basis (no more than 24 months) as part of their business needs.

Posted workers are a relatively small number of the overall European labour force – 2 million postings, or approximately 1% of total employed people in the EU (Darvas, 2017). In practice these figures may be higher, since some labourers may not be officially registered as posted workers due to short-term work tasks, frequent travel between home and work over shorter distances, and employers failing to register them by notifying relevant state authorities (European Commission, 2019). Nevertheless, at face value, worker posting may appear to deliver benefits to businesses and workers in the form of labour flexibility, as well as intra-EU labour mobility. The posting of workers, unlike individual migration, is not covered by usual freedom of movement rules, but by freedom of services, since it is businesses that instigate posting for their own needs (Lillie, 2012: 153). In addition, there are different forms of posting that reflect categories of employment, including agency work, self-employment, as well as regular posting, which further complicates the availability of accurate figures on numbers of workers involved in this scheme.

³ TLMPs involve the provision of time-limited work visas, often for seasonal or other production where there is fluctuating demand for labour. The posting of workers is comparable to TLMPs in terms of purpose, but each scheme is governed by different regulatory and enforcement frameworks, i.e. posted workers by EU Directive 96/71/EC, TLMPs by national immigration regimes.

However, there have been concerns across Europe which suggest that the posting of workers allows companies to avoid labour regulation, and exposes workers to exploitation due to increased segregation from local populations, payments below local labour standards, and unfair deductions from salaries (Lillie, 2012). Studies from countries including Finland, Germany, Spain, Sweden, the Netherlands, and the UK suggest that there are connections between the posting of workers and labour exploitation, including in construction (Lillie, 2012; Meardi et al, 2014; Thörnqvist and Bernhardsson, 2015; Berntsen, 2016; Wagner, 2015). Posting as a form of intra-EU mobility is not new, since this goes back at least as far as the 1957 Treaty of Rome. However, the Posted Workers Directive of 1996 sets out base level requirements, including minimum rates of pay, minimum paid annual leave, health and safety, as well as maximum work periods and minimum rest periods (Lillie and Greer, 2007).

Perhaps the most significant change over time has been that the facilitation of posted workers has become less state managed and more driven by the independent actions of businesses and workers. In other words, worker posting has become less like controlled migration between national labour markets, and more like a pan-EU labour market (Caro et al, 2015). In particular, there are concentrations between posting in low-wage jobs, including general labouring, where migrant labour streams flow from the East and South to the North-West; and high-wage jobs, such as IT experts, which are focused in the North-West, where streams work more equally both ways. As part of these flows, classic patterns of seasonal migration persist, but are becoming increasingly fragmented, less network-driven, and more employer-arranged (Caro et al, 2015: 1602). Hence, posted workers do not necessarily have the same rights as individual migrants who choose to move, live and work in another EU country, which has consequences regarding vulnerability to exploitation. This increased role of businesses risks them developing a dominant 'voice' on issues such as working conditions, since they frequently discourage workers from mixing with other local workers by providing separate accommodation.

Segregation and exploitation are not inevitable consequences of posted working, since to an extent this also depends on individual decisions of workers and personal circumstances of migration. However, as Caro et al (2015) note, the process of posted working organised by employers is temporary by design, which means that there is less incentive for workers to

integrate within the host society. In addition, in many countries posting is marketed as a safer form of labour migration due to employers providing accommodation; although this arguably reduces workers' independence from them (Thörnqvist and Bernhardsson, 2015). Employers may take advantage of this temporary nature of posted work by driving down work conditions, deducting expenses from salaries for accommodation, transport, and 'administration' costs, as well as encouraging workers to socialise only with co-workers in order to discourage integration with the host society. For example, when discussing the case of posted Polish construction workers in Sweden, Thörnqvist and Bernhardsson (2015: 25) found that the Polish workers were being paid less than their Swedish colleagues, and were routinely exceeding the maximum number of working hours that was written into their contracts. Companies also did not pay overtime for work during night shifts and during public holidays. Such mistreatment is hardly new, but workers' posted status adds an additional layer of vulnerability in that employers primarily control the process, thereby making workers more dependent on their employers than they otherwise would be in their home countries or as individual migrant workers.

More recently, the EU announced revisions to posted worker arrangements, which are intended to address some of the concerns noted earlier in this section, whereby member states should have implemented these changes during 2020. Specifically, posted workers will be entitled to the same remuneration as local workers, for the same work in the same place (Laboris, 2018) – although this is problematic because there is no 'equal pay principle' among local (national) workers in any country, along with associated factors such as gender (Darvas, 2017). After 12 months of working in the same position, posted workers will also be entitled to all mandatory working conditions of the host member state, and the principle of equal treatment between agency workers and permanent employees will apply to posted temporary agency employees. Not all parties have welcomed these changes. Some speculate that changing the Posted Workers Directive will have little impact in practice, and instead argue for a stronger emphasis on tackling bogus self-employment and undeclared work as ways to enhance protection for workers (Darvas, 2017). Regardless of how these changes affect European construction industries in the short and longer term, it is clear that the posting of workers will remain a significant European dynamic that is worthy of attention from white-collar and corporate criminology.

These gaps in the regulatory oversight of posted workers, as well as the vulnerabilities to labour exploitation that these gaps may result in, mean that employers and businesses are in a prominent position to mistreat workers. Mistreatment of employees and workers is a key criterion for corporate criminology to address, and runs parallel with similar developments in criminology that emphasise the growing problem of labour exploitation across European countries (ILO, 2017). The challenge for white-collar and corporate criminologists here is in deciding to what extent it should emphasise the European level regulatory framework of posted workers, or national labour market policies and by extension, individual companies. Pursuing the former is likely to be helpful in the sense that posting is an EU-wide phenomenon, so data on numbers of workers, types of businesses, migration patterns, and enforcement mechanisms, however flawed, all provide sources of information from which to develop macro analyses of ongoing challenges such as labour exploitation.

However, if pursuing the latter, it will be possible to develop in-depth case studies of local and/or national labour markets, as well as how individual businesses manage associated pressures through their use of posted workers – thereby providing regular meso and micro analyses in line with previous research (Bernsten, 2016; Thörnqvist and Bernhardsson, 2015; Wagner, 2015). Ultimately, European-wide and national/localised case studies are worthy of attention, but the distinct European dynamic of posted workers is continually evolving, thereby making this subject an important one during the next decade. Such evolving policy is especially important as the EU seems to move towards further integration of its regulatory agenda, as evidenced by the new European Labour Authority (ELA), which will play a role in upholding labour rights and resolving disputes across EU labour markets (ETUC, 2019).

Concluding thoughts

This chapter has outlined some challenges that relate to white-collar and corporate crime – specifically, the sub-set of labour exploitation across the European construction industry. The role of construction businesses in facilitating exploitation has been introduced with regards to the topic of posted workers. Given that the European construction industry is now growing after a slow recovery from the 2008 economic/financial crisis (European Construction Monitor

2018), the issue of labour exploitation is also becoming more prominent across European countries and sectors (FRA, 2019). Although posted workers remain a relatively small subgroup of migrant workers in European construction, the vulnerabilities they face can be significant, and the posting of workers adds a distinctly European (or at least, EU) element to the question of what is 'European' about white-collar and corporate crime.

As others in this edited collection will have made clear, examining supra-national challenges – in this case, at the European level – provides opportunities to analyse corporate structures, their processes, and consequences of their actions in a way that is not as feasible when considering localised case studies or national factors. Due to space constraints, this chapter cannot discuss all such European-level factors on labour exploitation with the rigour they deserve. However, in some respects, the European-level policy agenda can prove to be helpful to workers, and less helpful or at least more complex, in others. Regarding posted workers, amending the Posted Workers Directive in order to improve working conditions may theoretically seem helpful, yet others cite concerns over differences between policy and practice (Darvas, 2017), which risks little changing 'on the ground'. The challenge for white-collar and corporate criminology regarding labour exploitation is to consider how far a 'one size fits all' policy approach at the European level is going to be a key trend in the foreseeable future, and if so, how it can position itself among the advantages and drawbacks of these approaches.

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