Precarious Work in Times of Crisis: Regulatory Discourses, Labour Inspection and Soft Law in the new EU

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From ‘command and control’ to voluntary compliance

- Global agency reform of Labour Inspection
- Concentrating on achieving a shift in focus of activities from “punishment” for violations, to “compliance-based activities aimed at meaningful observance of health and safety rules”
- Labour inspectors take on the role of “advisor” to business “clients”, who should be “encouraged and helped to comply with requirements”
Regulatory discourses

• Soft law, smart regulation, reflexive regulation, better regulation, responsive regulation, cost-effective regulation, self-regulation, regulatory simplification

• A complex mixture of de-regulation and re-regulation in favour of managing risk for capital’s competitiveness

• As against regulation seen as protecting the unprotected from excessive ‘risk-burdening’
Three days about soft law and voluntary initiatives
Hans-Horst Konkolewsky plays a key role in promoting health and safety at work throughout the European Union. He is currently hard at work in Spain to implement the new EU health and safety at work strategy. “We are entering a new era in terms of health and safety at work regulations.”
“If people can agree about something then they are more likely to actually do it than when it is imposed on them.”

The European Commission is specifically looking for instruments to supplement legislation to improve workplace health and safety. Getting both employers and employees involved is essential to bridge the gap between legislation and workplace practices, says Bernhard Jansen, Director of Adaptability, Social Dialogue, and Social Rights, at the Directorate-General for Employment and Social Affairs.
Towards Effective Intervention and Sector Dialogue in Occupational Safety and Health

A European conference held during the Dutch presidency in 2004
17-19 September in Amsterdam

A three-day conference on soft law and voluntary initiatives

Proceedings
The European Commission is committed to improving the regulatory environment within which our businesses operate and in so doing help them compete successfully in global markets.

Major efforts have already been launched to improve the regulatory environment as part of the so-called Lisbon Strategy for growth and jobs. Consultation procedures have been strengthened, major new proposals for legislation are now subject to impact assessment, and existing legislation is being evaluated on its effectiveness.

In mid-March, the Commission announced further steps in its Communication on “Better Regulation for Growth and Jobs”. This includes the launch of a major new simplification programme by October, 2005. In order to ensure that the programme responds to real concerns, the European Commission is keen to hear from businesses …which rules need to be simplified because they stand in the way of sustainable growth, deter business investment or hinder job creation.

Your views are important to us. They will be compiled and examined in the Commission’s “Red Tape Observatory” and will also be examined by the responsible Commission services.

Thank you in advance for your time.

José Manuel Barroso, President of the European Commission

http://europa.eu.int/yourvoice/forms/dispatch?form=418&lang=EN
Please indicate which policy area is causing you problems: (Compulsory)

- Retail/Distribution trade
- Employment
- Company law
- Consumer protection
- Energy
- Agriculture
- Production & marketing of goods
- Taxation & Customs
- Public procurement
- Provision of services
- Research and Innovation
- Fisheries
- Health & safety in the workplace
- Financial Services
- Environment
- Social security
- Transport
- Other, please specify

Do you know the source/origin of the rules/procedures? (Compulsory)

- Yes
- No

Please identify the source of the rules/procedures:

- European legislation
- National rules/procedures implementing EU legislation
- Other National/Regional rules/procedures

Please identify where you experience problems with the rules/procedures: (Compulsory)

- AT - Austria
- CZ - Czech Republic
- EE - Estonia
- FI - Finland
- IE - Ireland
- LU - Luxembourg
- NL - Netherlands
- SE - Sweden
- UK - United Kingdom
- NO - Norway
- BE - Belgium
- DE - Germany
- EL - Greece
- FR - France
- IT - Italy
- LV - Latvia
- PL - Poland
- SI - Slovenia
- IS - Iceland
- CY - Cyprus
- DK - Denmark
- ES - Spain
- HU - Hungary
- LT - Lithuania
- MT - Malta
- PT - Portugal
- SK - Slovak Republic
- LI - Liechtenstein

If you can, please provide us with specific reference to the legislation which is causing problems.
The impact of the crisis
Real GDP growth rate compared to previous year
The ‘Hard Landing’ scenario

Baltic boom states face hard landing

By Robert Anderson
Published: July 5 2007 03:00 | Last updated: July 5

The Galerija Centrs shopping arcade is down Latvia’s transformation from a former Soviet state in the European Union.

Baltic Boom: The adjustment is likely to be painful and to start soon

Eastern Europe’s economies

Worrying about a crash

Jul 5th 2007 | RIGA
From The Economist print edition

East European economies are still powering along—but the region is ill-prepared if the weather turns nasty
Economies that faced the crisis with **unsustainable domestic booms** that had fueled excessively large current account deficits (Bulgaria, Latvia, Lithuania) and those with vulnerable private or public sector balance sheets (Hungary, Romania, Baltics) are expected to recover more slowly.
Total hourly labour costs Q4 2009 compared to same quarter of 2008

Unemployment rate in EU Member States in Q2 of 2009 compared to 2008

Source: Eurostat
Percentage of part-time workers in employed population
2008 Q2/ 2009 Q2
52% of Latvian residents would not mind working under the table

Nina Kolyako, BC, Riga, 01.06.2009.

More than a half of Latvia's residents or 52% would not mind working under the table, according to a public opinion survey carried out by SKDS.

SKDS Director Arnis Kaktins informs that of these, 23% said that they would definitely accept such jobs, and 29% said that they would rather accept such jobs than not, writes LETA.
Number of workplace fatalities increased in Latvia in 2009

Nina Kolyako, BC, Riga, 23.03.2009.

13 workplace fatalities were registered in Latvia between January 1 and March 23 2009; compared to 10 in the same period of time in 2008, according to the State Labor Inspectorate (SLI) data.

On the other hand, the number of serious injuries has decreased: so far this year 53 persons have sustained serious injuries, which is by four less than a year earlier.
Labour inspection in new EU member states

- Low political priority assigned to health and safety improvement
- Chronic under-funding of Inspectorate activities
- Lack of resources including transportation, communication and IT resources, low wages, unfilled posts and high staff turnover
- Hostile assumptions from employers regarding the legitimacy of activities as enforcement agencies
### Respondents to whom the following regulatory area is an obstacle for the operation and growth of business

<table>
<thead>
<tr>
<th>Regulatory Area</th>
<th>2001, n=541</th>
<th>2003, n=502</th>
<th>2005, n=701</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inflation</td>
<td>39.4</td>
<td>48.1</td>
<td>72.3</td>
</tr>
<tr>
<td>Instability and unpredictability of changes in laws and regulations</td>
<td>60.7</td>
<td>71.2</td>
<td>71.2</td>
</tr>
<tr>
<td>Tax rates</td>
<td>60.6</td>
<td>73.1</td>
<td>73.4</td>
</tr>
<tr>
<td>Tax laws and regulations/tax administration</td>
<td>52.3</td>
<td>57.0</td>
<td>54.4</td>
</tr>
<tr>
<td>Cost of infrastructure services (phone, electricity, water, roads)</td>
<td>33.2</td>
<td>48.0</td>
<td>44.8</td>
</tr>
<tr>
<td>Anti-competitive practices by other market participants</td>
<td>31.9</td>
<td>45.0</td>
<td></td>
</tr>
<tr>
<td>Competition with grey/shadow economy</td>
<td>23.9</td>
<td>40.4</td>
<td>44.6</td>
</tr>
<tr>
<td>Favoritism/cronyism</td>
<td>23.3</td>
<td>27.5</td>
<td>28.6</td>
</tr>
<tr>
<td>Corruption in public sector</td>
<td>23.3</td>
<td>28.5</td>
<td>35.5</td>
</tr>
<tr>
<td>Corruption in municipal sector</td>
<td>20.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Obtaining licenses and permits necessary for doing business</td>
<td>18.8</td>
<td>30.6</td>
<td>31.7</td>
</tr>
<tr>
<td>Government anti-competitive practices</td>
<td>20.8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal and property safety (law and order situation)</td>
<td>18.2</td>
<td>27.6</td>
<td></td>
</tr>
<tr>
<td>Access to state information needed for doing business</td>
<td>16.0</td>
<td>25.9</td>
<td></td>
</tr>
<tr>
<td>Labor legislation and regulations</td>
<td>15.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Labor safety regulations</td>
<td>15.6</td>
<td>27.8</td>
<td></td>
</tr>
</tbody>
</table>

Base: all respondents

Source: INFLUENCE OF ADMINISTRATIVE PROCEDURES ON THE BUSINESS ENVIRONMENT IN LATVIA RESULTS OF THE SURVEY OF LATVIAN ENTREPRENEURS September – November, 2005 marketing and public opinion research centre SKDS p.27
The EU policy response to crisis
European Commission Action Programme for Reducing Administrative Burdens in the EU Sectoral Reduction Plans and 2009 Actions

• Acceleration of ‘Better Regulation’ agenda
• Working environment is identified as one of 13 “priority areas” for action
• “The importance of reducing unnecessary administrative burdens increased with the economic crisis”, since small and medium sized enterprises in particular ‘need quick relief””
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• Commission proposal to exempt small firms from risk assessment requirements
• “facilitate lighter transpositions by Member States of the Health and Safety of Workers Framework Directive”
EU recommendations for Labour Inspection

• “While inspections are essential to achieve safety and health at work, they should be made less time-consuming for businesses and compliant employers (e.g. in low risks enterprises) [and] should be rewarded by fewer inspection visits”

• Diversion of inspectorate activities from OHS regulation to ‘the fight against undeclared work’ (informal economy) in order to assist cash-strapped governments
The view of ILO on inspection

• The urgency of the crisis has in many respects limited the labour inspectorates’ scope of action. Inspectors have understandably focused their efforts on certain aspects related to the crisis (e.g. mass redundancies) with the result that inspection visits have not conducted in the normally comprehensive or balance way.

• The impact of this imbalance should be evaluated carefully because it could have a negative effect on other elements of working conditions (e.g. the impact of stress at work), which may be neglected at the expense of crisis-specific issues (Vega 2009: 16).
Conclusions

• The European Commission is using the crisis to accelerate its overall ‘Better Regulation’ agenda

• ILO appears to offer a weak counter-position (balanced inspection)

• Does not take account of actual precarity of work in new EU member states

• National regulatory authorities in danger of diversion from primary task of ensuring a decent working environment