



Beyond dreams and belief

– pictures of posting in practice and the need for an amended Posting of Workers Directive

Author: Claes-Mikael Jonsson



© The Swedish Trade Union Confederation 2015

Cover photo: Lars Forsstedt

Graphic form: LO

Print: Bantorget Grafiska AB, Stockholm 2015

ISBN 978-91-566-3077-4

LO 15.06 500

Contents

Summary	4
1. Introduction	6
2. Extent of posting in Sweden	8
3. The deficiencies of the Posting of Workers Directive	11
4. Five variations of fraudulent activities	13
4.1 Variation one – low pay and subsistence allowance fiddle – or the truth about Laval	14
4.2 Yet another example of variation one – or Staticus’ low wages	18
4.3 Variation two – false business operators – or without insurance in the forest	22
4.4 Yet another example of variation two – or different contracts for Swedes and Poles	24
4.5 Variation three – short-term contracts – or the company at the Swedish Consulate in Gdansk	27
4.6 Variation four – front companies – or Slovakian wages in Sweden	32
4.7 Variation five – international group – or with Europe as a cover	35
5. The importance of a collective agreement – or the man who became a child	38
6. Dirty competition – or serious business operators are losers	42
7. False posting – or the Baltic Trio example	44
8. The illusion of a foreign company – or behind the Drawbridge facade	48
9. Two labour markets – or the FoodTankers example	50

Summary

THIS IS AN LO (Swedish Trade Union Confederation) report that proceeds from a number of real-life cases to illustrate some of the most important mechanisms that contribute to dirty competition, that is competition with lower wages and worse working conditions, in the Swedish labour market. The circumstances and in many cases tragic human destinies described in the report are not unique to Sweden. Throughout Europe, in the EU internal market, various methods of exploiting the differences in pay and terms of employment have emerged.

The EU's rules on posting of workers for temporary provision of services in another EU country ("the Posting of Workers Directive") regulate directly and indirectly a number of important legal matters that arise when work is performed across borders. The report shows that an amendment to the Posting of Workers Directive is crucial for rectifying many of the problems. At the same time there is reason for trade union self-criticism. There is reason to work further on transparency in the posting agreements provided via the Swedish Work Environment Authority. In the same way the Swedish legislator can take measures at national level, particularly as regards certain tax issues and some of the social insurance problems. All the unsatisfactory conditions that have arisen in the wake of the Posting of Workers Directive are not due to deficiencies of EU law.

In Sweden the social partners have the main responsibility for regulating conditions of pay and employment. Collective agreements set out the terms and conditions that are to create neutrality of competition between both workers and firms. An important part of this model is that trade union organisations can use industrial action to induce firms to sign collective agreements. The uncertainty that has arisen over requirements that can be made of posting companies after the European Court of Justice judgment in the Laval case has restricted the trade unions' ability to achieve competitive neutrality in the Swedish labour market.

The Posting of Workers Directive should be revised to restore the principle of equal treatment. In the long term it is untenable for EU law to contribute to competition with lower wages and worse conditions of employment. Likewise, the legal base for the Posting of Workers Directive should be amended. Posting of workers concerns work, not enterprise and free movement of services. It is time to take issue with the fiction that companies posting workers are in the host country temporarily. In the LO affiliates' agreement areas the main rule is in practice the opposite.

In terms of the size of the respective industries, posted workers make up almost 19 per cent of the total workforce in the construction industry. In forestry the figure is about 11 per cent. The transport sector also has a high percentage of posted workers. In other industries the percentage of posted workers is more modest.

Patterns are discernible of various methods of circumvention used by posting companies to hide wage dumping and juggle down social security contributions.

The report reveals five variations of fiddling that have emerged in the meeting of laws and rules in the companies' home countries with the rules in the host country. The hub of this circumvention is the illusion of the Posting of Workers Directive that the work is only performed temporarily in the host country. The five most common variations are: a) the low wages and subsistence allowance model; b) the false business operator model; c) the short-term contract model; d) the front company model and e) the company group variation. Through practical examples from the real world the report also shows the deficiencies of the Posting of Workers Directive, as well as the need for supplementary measures in EU law.

1. Introduction

THE PURPOSE OF this report is to call attention to some of the most important mechanisms that contribute to dirty competition in the Swedish labour market. An amendment to the EU Posting of Workers Directive is crucial for rectifying the problems. The circumstances and human destinies described in the report are not unique to Sweden. Throughout the EU internal market various methods of exploiting the differences in pay and terms of employment have emerged. By choosing the country from which the worker is posted from, companies can push down their labour costs considerably. The term dirty competition may possibly be perceived as controversial. The term has historical roots in European labour law and is used to describe competition with lower wage and worse working conditions.

The report is a continuation of the series of reports that draw attention to real conditions in the Swedish labour market.¹ As before, the report rests on extensive gathering of facts and close cooperation with investigative journalists. The conditions and circumstances described in the attached examples can be verified. The report was written by Claes-Mikael Jonsson, Swedish Trade Union Confederation. Reference material and examples from real life were obtained by the journalists Anna-Lena Norberg and Thomas Lundh. Dan Holke, LO-TCO Rättsskydd and Torbjörn Johansson, Swedish Trade Union Confederation, participated in the work of the report.

It is necessary to change the regulatory framework at European level that enables and supports dirty competition. The Posting of Workers Directive is of central significance for the infrastructure of European legislation and case law that has emerged. Many of the different variations that create the conditions for low-wage competition rest on an illusion that the posting companies are in the host country temporarily. The Posting of Workers Directive is the hub of dirty competition. The methods for circumventing the rules of the host country are many and have grown in interaction with differences in Member States' tax and contribution systems. The report describes the commonest methods of circumvention – we call them five variations of fiddling.

Recently the question of reviewing the Posting of Workers Directive has gained renewed momentum. The President of the European Commission, Jean-Claude Juncker, has hinted that such a process may be initiated, and possibly also a revision. This report aims to illustrate the need for a revision. We concentrate mainly on certain premises on which the Directive builds. The Directive is based on the relatively homogeneous economic and administrative European cooperation of the 1990s, when there were no material differences in labour costs. But enlargement of the EU has changed the fundamental conditions for the Directive. It is these principles that must be changed.

¹ Previous reports in the series are: *When labour costs squeeze the price* (2010), *Winners and losers* (2013) and *Guest in reality* (2013).

In this context there is reason to recall the concrete proposals for amendments that were drawn up by an expert group in the European Trade Union Confederation (ETUC) in 2010 as a reaction to the Laval and Rüffert judgments. The group consisted of both trade union and academic lawyers/experts. The Swedish Trade Union Confederation was represented in the working group and the proposals were agreed with the Confederation of Professional Employees, TCO and the Swedish Confederation of Professional Associations, Saco. Last year the Enforcement Directive was adopted, which regulates the way the Posting of Workers Directive is to be applied, which means that some of ETUC's proposed amendments are no longer relevant. However, most of the ETUC's proposed amendments are still relevant and require action.

2. *Extent of posting in Sweden*

IN SWEDEN THE social partners have the main responsibility for regulating conditions of pay and employment. Collective agreements set out the terms and conditions that are to create neutrality of competition between both workers and firms. An important part of this model is that trade union organisations can use industrial action to induce firms to sign collective agreements. This prevents non-unionised employers from gaining a competitive advantage by applying inferior terms and conditions of pay and employment. The wage levels are regulated in negotiations and agreements between the trade unions and employers. There is no law that guarantees wages, but there are industry-specific collective agreements that determine a minimum common gross wage level. In that all firms follow the same terms and conditions of pay and employment the legitimacy of the model is guaranteed. This is a model for regulating the labour market with broad legitimacy and acceptance on both employer and employee sides and that is backed up by politicians on both the right and the left.

In light of this it is very worrying that the number of signed collective agreements with foreign companies operating in Sweden fell dramatically after the Laval dispute. As regards application agreement signed in the construction industry, there were about 100 per year until 2007. In 2007 itself there were 107. Immediately after the Laval judgment the number of signed agreements fell to 40 in 2008 and thereafter to about 30. In 2011 there were 33, in 2012 there were 32 and in 2013 there were 33. In addition there are 5–10 companies per year that join the employer's organisation the Swedish Construction Federation. Thus the number of signed collective agreements has stabilised at about one third of the number before the Laval dispute. This is the consequence of the deterrent effect that the judgment in the Laval case has had on trade union work. Legal uncertainty and the risk of high levels of damages have had a strong inhibiting effect on the practical possibilities of taking trade union industrial action. This is an indirect consequence of the European Court of Justice's interpretation of the Posting of Workers Directive.

Different pictures of the problems and scope of posting are communicated. It is sometimes asserted that the problems are marginal. It depends on the perspective. One way of approaching reality is to take note of the Swedish Work Environment Authority's compulsory register of posting operations in Sweden. The regulatory framework that makes it compulsory to report to the Swedish Work Environment Authority has extensive loopholes, however, and needs to be tightened up. Somewhat simply it can be said that it is the serious actors that announce their presence in the country. The parts of the labour market, large parts of the construction and transport industries, where unsatisfactory conditions are greatest, and the non-serious actors more numerous, are in all essentials unreported.

The most correct reflection of the scope of posting of workers in the Swedish labour market is probably still that given in the 2013 LO report that rests on a large amount of material from questionnaires. The report notes

that most posting of workers to Sweden is in the construction sector. Of the total number of posted workers, just over 18,000 workers in the LO area during the period of the questionnaire, about 15,000 work in the building and construction sector. The percentage of posted workers in the forestry industry is also relatively high, with about 1,200 people. Apart from these, the report estimates that about 3,700 foreign workers holding F tax cards were working in Sweden at the time of the survey.

In terms of the size of the respective industries the report shows that in construction, posted workers make up almost 19 per cent of the total workforce, and in forestry about 11 per cent. In other industries the percentage of posted workers is more modest. It should be mentioned in this context that there are no figures for the transport industry, but there is reason to suspect that the extent of posting is considerable, perhaps on the same level as in construction.

The main motive for the large percentage of posted workers in some industries is a wish to reduce costs in one way or another. This relates to avoiding Swedish tax legislation, corporate tax, social security contributions, occupational pension costs, insurance or other things, reducing labour cost and making it difficult for Swedish companies to compete. Fast-moving contracting industries, where projects and work sites are moving all the time, are also particularly suitable for the type of competition that tries at any price to avoid the costs associated with more serious establishments. Not infrequently these are cases of pure cheating and ruthless exploitation of employees, which are repeatedly reported in the media.

Thus it is unusual in the LO area to have posting due to a shortage of qualified workers in Sweden, but probably more common in the white collar area. The fact that posting of qualified labour in the LO areas is on a modest scale is presumably because the principal interest is often low labour costs. Shortage of labour is an exceptional situation for posting in LO areas.

The people who are posted to Sweden mainly come from the eastern parts of Europe and the Baltic States. Common to these countries is that employees there have, or have had, a lower pay level than in northern and western Europe and at times have also struggled with high unemployment. The social safety nets have also in many cases been poorer, which has meant greater pressure on people to find an income even if it has meant scattered families and insecure employment.

The 2013 LO report estimated that six out of ten posted workers are here in Sweden with the company that employs them, two out of ten are contracted by a foreign staff agency and as many again are here as self-employed workers.

Workers posted to Sweden are considerably overrepresented in fatality statistics. The number of fatal accidents among employees and self-employed workers/entrepreneurs in foreign companies operating in Sweden but registered in other countries is high. Fatal accidents that took place in Sweden and that have come to the attention of the Swedish Work Environment Authority numbered seven in 2014, nine in 2013 and nine in 2013. This is equivalent to an average of just under 20 per cent of accidents in the Swedish labour market in the past three years.²

2 <http://www.av.se/statistik/faktarapporter/dodsolyckor.aspx?AspxAutoDetectCookieSupport=1>

Occupational accidents and diseases affecting foreign workers who are in Sweden only temporarily must be reported in their home country. In Sweden the Swedish Social Insurance Agency has no, or insufficient, data on these occupational injuries. Consequently they cannot either be reported in Swedish official statistics even if all serious events in the form of accidents and incidents must be reported to the Swedish Work Environment Authority. One exception is fatal accidents at work affecting foreign workers, which are separately reported in the official occupational injury statistics.³ Foreign workers are considerably overrepresented in the fatality statistics. There are sound reasons to assume that posted workers are exposed to more risk at work. The number of unreported occupational accidents involving posted workers is probably great.

³ Cf. Swedish Work Environment Authority's report: *Arbetskadorna 2014* (Occupational injuries in 2014), Work environment statistics Report 2015:1.

3. *The deficiencies of the Posting of Workers Directive*

THE POSTING OF Workers Directive regulates directly and indirectly a number of important legal issues that arise when work is performed across borders. The legal relationships concern the employees' relation with the employer, trade union organisation, purchasers of the services, agencies etc. The regulatory framework that has developed is complex.

Work performed in another country can end up under various forms of free movement. One and the same employee can potentially travel to another country and perform work under various provisions. It may be free movement of workers, posting within contracting, free movement of services (with the support of an F tax card) or posting through staff agencies. The regulatory framework varies depending on the legal form under which the work is performed. It is either the host country's rules that apply to the full, on the principle of equal treatment, or, on the basis of the logic in the European Court of Justice' interpretation of the Posting of Workers Directive, a type of minimum regulation must be applied. The legal situation that has arisen for free movement in the EU internal market, where workers are involved, is very complicated. For workers, trade union organisations and agencies that want to maintain good order in the labour market and ensure equal treatment, it is almost impossible to establish what conditions apply. The actors who profit from this have over time learned to exploit the differences between the legislation in the EU and between various member states.

The choice of country of posting, the country from which the workers are sent, constitutes a factor of competition as regards the possibility of pressing down labour cost. The decision of the European Court of Justice in the Laval case has made it impossible for Swedish trade union organisations to require equal treatment in the Swedish labour market, in other words Swedish wage and agreement levels for both domestic and foreign companies operating in Sweden. It is important to recall that even if posting companies follow laws and agreements, the conditions of competition between Swedish and posting companies are often distorted. This is because collective agreements regulate employees' gross wages, without taking into account variations in social insurance contributions between countries.

The following deficiencies in the Posting of Workers Directive should be rectified

- Restore the principle of equal treatment in the Posting of Workers Directive, it is untenable to have competition with lower wages and worse conditions of employment.
- Change the legal base of the Posting of Workers Directive to Article 153 of the Lisbon Treaty. Posting must be about the rights of the workers, not companies' opportunities for dirty competition.
- Strengthen the presumption that companies with several, regular contracts in another country are also established there. Take issue with the fiction that companies posting workers are in the host country temporarily.

- Clarify that the various labour market systems in the member states can be used to ensure that equal treatment is maintained.

Besides revision of the Posting of Workers Directive, *supplementary measures* are also required. Some examples are given below:

- The government agencies of the host country must have the ability to review A1 certificates issued.
- The European Commission should be tasked with actively opposing the systematic issuing of A1 certificates by member states, such as Ireland and Cyprus, for workers who do not really belong to the country's social insurance system.
- Require transparency and openness from member states' tax authorities as regards paying in of taxes and social security contributions.
- Tighten up conflict of law rules for social insurance. Before being posted a worker should, as a starting point, have been liable to pay tax in the country of origin for at least five years.
- A European labour inspectorate should be established to improve cooperation between national labour inspectorates and tax authorities. The authorities in the EU countries must establish effective cooperation that enables monitoring of correct payment of taxes and contributions for posted workers.
- EU law must respect the ILO's Core Conventions and the European Social Charter. Trade union industrial action must not fall under free movement provisions. The purpose of industrial action is always to restrict the employer's operations and the right to take industrial action must not be constrained by the employer's economic interests.
- The criteria for a fixed place of business need to be tightened.

In this context there is also reason for self-criticism. All the unsatisfactory conditions that have arisen in the wake of the Posting of Workers Directive are not due to deficiencies of EU law. The Swedish legislator is not powerless, despite membership of the EU. Measures to handle some of the problems of posting of workers must be taken at national level. *Lex Laval* can be further strengthened. But it is also a matter of tax issues and some aspects of social insurance. Trade union organisations in Sweden should ask themselves which measures can be taken to strengthen compliance with collective agreements signed with foreign companies. Likewise there is reason to work further on transparency in the posting agreements provided via the Swedish Work Environment Authority.

4. Five variations of fraudulent activities

IN PRACTICE THERE are now two labour markets in the richer countries of northern and western Europe. Partly the domestic population whose pay and working conditions are regulated in the home country, partly the posted workers, who are usually not posted within the meaning of the law. They work on a regular basis in the richer countries but have entirely different wages and entirely different working conditions. Taxes and social security contributions are paid by their foreign employers in their home country. If they are paid at all.

Under the Laval judgment posted workers are entitled to some minimum conditions, expressed in the “hard core” of the Posting of Workers Directive, of the domestic labour force’s wages and working conditions.⁴ Disregarding the fact that many foreign guest workers are not posted at all but work permanently in the host country, it can be noted that the foreign companies (sometimes with Swedish owners) do not even comply with the hard core. Not infrequently the business concept is to systematically break laws and violate regulations just as much as is possible.

It is possible to discern a pattern of various forms of circumvention used by foreign posting companies to hide wage dumping and juggle down social security contributions.

These variations of fiddling have emerged in the meeting of laws and rules in the companies’ home countries with the rules in the host country. The hub of this circumvention is the illusion of the Posting of Workers Directive that the work is only performed temporarily in the host country. The examples the report is based on show clearly how the respective fiddle works in practice.

a) Variation one – Low pay and subsistence allowance fiddle

The companies that come from the Baltic States usually use a fiddle with very low pay that is spiced up with tax-free subsistence allowances. Labour costs are then very low as the social security contributions are based on the low wage. The wages are usually around the minimum wage level in the posting countries in question. Workers from the Baltic States working in Sweden earn about SEK 15–30 per hour. There are cases where they have earned more. But there are also cases where they have not received a single krona, only tax-free subsistence allowance. The best known example of the Baltic fiddle variation is Laval. When Laval operated in Sweden the company paid its workers about SEK 20 per hour.

b) Variation two – False business operators

False business operators from Poland working in Sweden are not unusual. It is most common in the haulage industry. In Poland there has been an ongoing campaign for many years to get the population to start companies. The

⁴ The hard core covers wages, working hours, holiday, work environment etc.

attraction is a low and fixed monthly rate for social security contributions (self-employed contributions). In the short term this is of course attractive, but when the workers get old they pay a great price. Their pension is then so low that they cannot support themselves on it.

It is not only Polish companies that require their workers to be self-employed so as to shift costs onto the workers. This also exists among companies from the Czech Republic, Slovakia, Romania, and others.

c) Variation three – Short-term contracts

In Poland there is another variation used when working in Sweden. However, it is not very common. The fiddle entails the worker signing a document called Umowy o dzieło, which is a short-term work contract. This means the worker is not employed but on a short-term contract and the client pays not a krona in social security contributions. The contract must be short-term, for a fixed period and the work is to be specified. But this is often circumvented.

d) Variation four – Front companies

In recent years it has become more and more popular to start front companies in Sweden for the foreign companies. It is easier to get customers when you are an established Swedish company paying F (business) tax. It is the front companies that send offers, submit bids and send invoices. But the front companies are fairly empty. They have no or few employees. Sometimes the front company is just a PO Box address in Sweden and the post is dealt with by the Swedish bookkeeping firm. For the most part the front companies have the same name as the parent company in the home country. This means that it is easy to confuse customers and trade unions, among others.

e) Variation five – the company group

By having several different companies around Europe a group can bounce its employees between different companies and make it more difficult for the authorities and trade unions to keep track.

4.1 Variation one – low pay and subsistence allowance fiddle – or the truth about Laval

Fiddle variation: Low pay and subsistence allowance

Common among: Companies from Latvia, Estonia and Lithuania.

Method: Workers paid a very low wage plus tax-free subsistence allowance.

Pay range: Most hourly wages are about SEK 15–30. This to be compared with the normal hourly rate in the construction industry in the Stockholm region of about SEK 185 per hour.

Description: This fiddle variation is based on paying very low wages and a tax-free subsistence allowance. For workers the money paid is acceptable (though pension contributions are low). For employers the personnel costs are minimised as social security contributions are based solely on the low wage.

The Laval case has affected the entire European labour market. The Building Workers' Union's blockade against the Latvian company in 2004 led to restriction of the right of trade unions to take industrial action. But all was not well in the case of Laval. The company paid wages of about SEK 20 per hour on Swedish soil, lied in the Swedish Labour Court and cheated on its taxes.

Laval's workers did not at all receive a monthly salary of SEK 13,600 and benefits in kind of SEK 7,000 (board, lodging and travel) as claimed by the company in the Swedish Labour Court.

The company's own annual report reveals the truth. It shows that the workers earned about SEK 3,500 per month (SEK 20 per hour) when they were building Söderfjärdsskolan in Vaxholm.⁵ In addition the workers received a tax-free subsistence allowance that at the time was a maximum of SEK 354 (28 lats) per day. With this extremely low wage Laval could keep down the labour cost, offer a low price and outcompete serious companies in the Swedish market.

Not a temporary provider

To cap it all Laval had an advanced tax arrangement. Laval was not a temporary provider of services. On the contrary. Laval had been operating in Sweden for five years. Without paying F (business) tax. And without paying either payroll tax, income tax or social security contributions. But let us take start at the beginning: Laval started its operations in Sweden as early as in 2000. The company's first job was work for the American embassy, followed by some minor jobs the company obtained through word of mouth. But despite the operations in Sweden Laval never registered for F tax.

The front company

One of Laval's employees was on site in Sweden. One of that employee's tasks was to look for new construction jobs for Laval. But it is not easy for companies without F tax to get customers. Perhaps that was the reason that Laval started a Swedish subsidiary in 2003: L&P Baltic Bygg AB. The subsidiary, registered for F tax, was now what customers saw. It was the subsidiary that could submit bids, write contracts and invoice. But otherwise Baltic Bygg was pretty empty. There were no employees or any machines. They hired them from Laval. Baltic Bygg got its first major contract in the same year. With the lowest bid the company was awarded the contract for conversion of Birkaskolan in the municipality of Ekerö.

Frodas

The parent company in Latvia flourished thanks to the subsidiary's successes.

⁵ The calculation was made as follows: Based on the total amount of subsistence allowance it was calculated how many working days Laval had in Sweden in 2004. Laval's total wage figure was then divided by the number of days worked. If the workers work eight hours a day this gives an hourly rate of SEK 22.83. The monthly pay is then SEK 3,972. This figure is too high, since it would mean that Laval's workers in Latvia would not have a krona in wages. If we take Laval's total wage figure and divide it by the number of employees (115) we get monthly pay of SEK 1,328. The minimum wage in Latvia in 2004 was SEK 1,100 per month, the hourly rate was SEK 9.32. In 2004 1 lats was equivalent on average to SEK 13.7283 (Riksbank currency converter).

Previously Laval's catering and food trading had been the company's main business. But when the construction operations were in principle moved to Sweden they earned the most money for the company.⁶ Laval's owners were then involved in the Swedish operations through often being here. Sometimes for very long periods. For example he lived here with his family for seven or eight months in 2002, according to information from Laval's spokesperson at the time of the Vaxholm dispute. In 2003 business was booming in Sweden and the year after, in April 2004, Baltic Bygg with its low bid won the major contract: Conversion of Söderfjärdsskolan in Vaxholm. But Baltic Bygg, empty of assets, was not flourishing. The share capital was slowly being eaten up and the company was bankrupt at the end of August. That is long before the Building Workers' Union blockade. Despite the company being bankrupt no balance sheet for liquidation purposes was prepared, as the company is obliged to do.⁷

Blockade

The Building Workers' Union wanted to bring about a collective agreement giving an hourly wage of SEK 145 to the Latvian workers, but Laval refused. In October 2004 the Building Workers' Union therefore declared the company under blockade and the Swedish Electricians' Union gave notice of sympathy action. The municipality of Vaxholm discontinued the contract with Baltic Bygg in February 2005. One month later Baltic Bygg applied for liquidation. Several Swedish companies were adversely affected by this, but the Swedish State lost most. The parent company Laval escaped unhurt from its subsidiary's insolvent liquidation. Laval lost only SEK 26,000 and the company's annual report states: *"Despite the failure in Sweden we closed 2004 at a profit."*

The building rule

When does a foreign company cease to be a temporary provider and instead have a fixed place of business? The Swedish Tax Agency has different criteria for what implies a fixed place of business. In the Laval case the tax agreement between Sweden and Latvia and the "building rule" must be the starting point. It means the following: *If the construction work site exists longer than six months the construction company has a fixed place of business during the project.* The work at Söderfjärdsskolan would have lasted far longer than that. Laval really had a fixed place of business here and should therefore have followed the rules and laws that Swedish companies must follow.

Social security contributions and tax

For the five years Laval conducted operations in Sweden the company paid no social security contributions here. Laval decided to pay these in its home

6 According to Laval's annual accounts for 2003 and 2004 construction operations are Laval's main business. And according to information from Laval's spokesperson at the time the construction operations were carried out in Sweden.

7 "As far as is known no balance sheet for liquidation purposes has been prepared for the insolvent company. The obligation to prepare such a balance sheet probably arose at all events when the closing accounts of the insolvent company for the year ended 31 August 2004 were available". (Quote from the administration report of the liquidator).

country despite the company not meeting the conditions for posting workers. For Laval's workers to be issued A1 certificates and social security contributions thus to be payable in Latvia Laval should have had its main business (at least 25 per cent sales) in the home country. But this was not the case. According to its annual report for 2003 the company had 20.4 per cent of its sales in Latvia.⁸ In addition it is only possible to post workers from the same type of operations. In that case Laval should have sent bakers to Sweden and not builders.

Payroll tax

Laval had operations in Sweden for five years and according to Laval's spokesperson at the time "some of the workers were here the whole time for five years. *Some were here for a shorter time. Then there were those who were here for two months and then returned after four months.*" You cannot work in Sweden for five years without paying tax in our country. If you are posted you are liable to tax after 183 days. And if you work for a foreign company that has a fixed place of business tax must be paid from day one. Not one single krona has been paid in tax to the public treasury. The Swedish Tax Agency states "*If the company had been operating today it would definitely have been the subject of investigation*".

Sia Pare

The parent company Laval did not go into insolvent liquidation until 2009. But Laval's project management has continued with the same tax arrangement as Laval: a front company in Sweden and a Latvian company supplying personnel. The Swedish front company was first called Omren AB. It went into insolvent liquidation. The new front company is called Nams AB. A company that is dangerously close to insolvency as its share capital has been entirely exhausted and the company has a large negative balance in its tax account. The Latvian company Sia Pare was started in February 2005. About the same time as Baltic Bygg's insolvent liquidation. It was registered as a staff agency and construction company. Pare staffed the front companies but did not pay F tax in Sweden but "flew" under the Swedish Tax Agency's radar. Just as Laval did.

Fixed place of business

Pare also paid its workers an extremely low wage, about SEK 25 per hour. Taxes and social security contributions were paid in Latvia. And this was despite the fact that Pare should have had a fixed place of business in Sweden as one of its owners has lived here for 12 years. This arrangement continued up to and including 2011. Then something happened. From having had 27 employees the Latvian company sank like a stone. In 2012 no wages were paid at all and in autumn last year the company went into liquidation.

Many workers had first worked for Laval, then for Pare. They had been working "temporarily" for more than ten years in Sweden.

The judgments handed down in the Laval case are entirely based on

⁸ The construction operations are 79.6 per cent. The rest is 20.4 per cent.

Laval's workers being posted to Sweden. But the truth is quite different. Laval was a company that cheated on taxes with a fixed place of business and paid its workers a fraction of the wage that a Swedish building worker earned.

Finally there is reason to recall the vague absurdity of the final judgment of the Swedish Labour Court in the Laval case. The building Workers' Union and the Electricians' Union were ordered to pay fines for industrial action that was unequivocally lawful under Swedish law when it was taken. However, the European Court of Justice considered that Swedish law was incompatible with EU law. Thus the unions were made responsible for Swedish law being incompatible with EU law. All this while the subsistence allowance fiddle and payment of low wages continued. The real circumstances remained hidden.

4.2 Yet another example of variation one – or Staticus' low wages

Every time you see the magnificent Tele2 Arena in Stockholm or the fantastic office building Kuggen in Gothenburg you should know that the façades were put up by Lithuanian workers receiving about SEK 30 per hour for their trouble.

Staticus is a company of contrasts. On the one hand light, ultra-modern and clean factory premises outside the town of Vilnius in Lithuania, where the company manufactures glass and aluminium façades. Premises that make many factories in Sweden feel very 80s.

On the other hand extremely low pay for Staticus' workers who come here and erect the façades. These wages do not comply at all with the collective agreement the company once signed in 2009.

400 employees

Staticus has a total of about 400 employees today. There are about 100–140 working two shifts in the factory. When it is really stressful production is round the clock and the workers then work three shifts. As regards those who are sent abroad to erect the façades, there are normally between 75–100 people. This is what the management of Staticus tells us during a visit to the company in Lithuania in autumn 2014. After being shown round the factory and offices we meet several members of the management up in the fashionable meeting room. Those sitting around the large black table include finance director Ignas Stasiukonis and Tomas Astrauskas who is CEO of UAB Staticus.

Economic crisis

At the end of 2008 the financial crisis hit Lithuania hard, not least the construction industry. Several construction companies failed. Staticus then decided to find new markets abroad.

Their efforts succeeded. Today all Staticus sales in principle are from Sweden and Norway. This is shown by the company's annual reports.⁹ And

⁹ In 2012, 63 per cent of sales were from Sweden, 32 per cent from Norway and only three per cent from Lithuania. In 2013, 53 per cent of sales were from Sweden, 40 per cent from Norway and six per cent from Lithuania. (Figures from the company's annual reports).

Staticus has been involved in many large construction projects in Sweden as sub-contractor to the big dragons NCC, Peab and Skanska.

2011 Norway – NOK 14 per hour

Early in 2011 the Norwegian Labour Inspection Authority made an inspection of Staticus and discovered that the workers' employment contracts did not tally with the pay slips. Not by a long way. This is what the Labour Inspection Authority wrote:

"The Labour Inspection Authority notes that there is no correlation between employment contracts and pay slips for wages and holiday pay. The employment contract states that the hourly wage is NOK 144,50 while the wage in the pay slips is approximately 6.4 litas per hour (NOK 14.3 per hour)".

The wages that Staticus' workers were receiving was equivalent to approximately the minimum wage in Lithuania.

The Norwegian Labour Inspection Authority continues its description:

"We have noted that payment is made totalling LTL 7,842.67 which the Labour Inspection Authority understands to be payment for board, lodging and travel. Our understanding is that these benefits are not included as wages since they are not included in the calculation of holiday pay, tax or social security contributions".

Staticus' managing director commented on the Norwegian Labour Authority's description:

– It's idiotic! No-one could live on such a low wage. It must be translation problems as we sent our papers in Lithuanian. We pay our workers in accordance with the Norwegian collective agreement," says Tomas Astrauskas indignantly.

Norwegian Labour Authority

But the Authority maintains that the information is correct. The Authority has experts in the area who translated the Lithuanian documents correctly. Staticus is then given another opportunity to comment. This is the company's written reply:

"After the Norwegian Labour Inspection Authority's audit of Staticus in 2011, the company has adjusted its documentation to ensure compliance in Norway. The following adjustments have been made: – Employment contracts have been adjusted in accordance with Norwegian law. – Pay statements are issued in Norway. – The personnel's taxes are paid in Norway. – Wages are paid in accordance with the latest version of the Glas agreement. – Other benefits are compliant."

2012 Sweden – SEK 30 per hour

The Swedish Tax Agency has documentation of an audit of the company carried out for 2012. And again, there it is, in black and white, that Stat-

icus pays its workers extremely low wages. First a few facts: Staticus had worked for more than six months on two construction projects during the year, which meant that the company had a fixed place of business for the projects. Staticus should comply with laws and rules like any Swedish company. This means for example that Staticus workers should pay tax here from day one of the projects.

To a layman the Swedish Tax Agency's audit seems somewhat half-hearted. The fact is that not all the workers came to pay tax here in Sweden. And the reason is that they earned far too little for it to be economically justifiable for the Swedish Tax Agency to devote time to calculating the tax. It was only the workers who worked here for more than six months on the projects that the Tax Agency decided to devote time and resources to.

In the audit papers there are the names of workers, the number of months they had worked and received wages for here in Sweden, and their total wages.¹⁰ When calculating the hourly wages, including holiday pay, the lowest was SEK 19 and the highest SEK 51. For the most part the wages were around SEK 30 per hour. And then the Swedish Tax Agency converted large parts of the Latvian subsistence allowance to wages. Only Swedish subsistence allowances of SEK 220 per day were approved. The wage was really lower from the start. The company states that the calculation is wrong. This is what Staticus writes:

"Note that time specified in the tax audit represents the employees' total period on the project without excluding time spent in Lithuania or another country. Consequently such a calculation is misleading. Please also note that the taxable income does not include subsistence allowance of SEK 220. SEK 30 per hour is calculated from a number of negative assumptions and is irrational since it is even lower than the average industrial wage in Lithuania at that time".

2013 – Same cost

What are the wages for 2013? Are they still at an extremely low level? Or has the company now raised the wages? The answer can be found in Staticus' annual reports. The personnel costs have decreased from 2012 to 2013, while sales have increased. The wages must then reasonably speaking be at the same low level. Staticus states that this is a completely incorrect conclusion:

"This is an unreasonable assumption. At our meeting in Vilnius we explained that by changing to unit production we have succeeded in reducing the number of high-cost installers considerably."

Jokūbas

But the papers that one of Staticus Lithuanian workers, let's call him Jokūbas, gives us shows something quite different. Despite fear of reprisals he has submitted a bank account statement to us to provide evidence of Staticus'

¹⁰ There are only a few workers where the number of months stated does not match the number of months worked. The Swedish Tax Agency has then included in its calculation some months when the workers were not in Sweden. However, as stated, this applies only to a few of all the 44 workers.

wages. The figures show clearly, year after year, how much was paid out. When it was paid. What was paid. An examination shows that Staticus has a routine of paying out subsistence allowance at the beginning of the month. Dienpinigiai (subsistence allowance) is written clearly and explicitly. Some days later the company pays out the wages, Atlyginimai. The subsistence allowance is considerably more than the wages. The figures cannot be reported exactly, as this may make it possible to identify Jokūbas. But the bank account statements reveal that nothing has changed for Staticus' workers in 2013 and 2014. They still only earn about SEK 15 per hour. Sometimes even less than SEK 15. The calculations were based on 174 hours work per month. According to Jokūbas he did not work any more either. Even if Staticus' workers could work six days a week if they wanted to earn a little more.

Tax

The Tele2 Arena was one of the construction projects that the Swedish Tax Agency determined was a fixed place of business at its audit for 2012. Staticus did the right thing and paid the tax required by the Swedish Tax Agency. But Staticus continued work at the Tele2 Arena far into 2013. Something like 25–30 men worked on the arena from the beginning of January right up to midsummer. Despite this Staticus only paid just over SEK 55,000 in tax for all of 2013 and the first payment was in May of just over SEK 400.

Pia Bergman is the coordinator against serious economic crime at the Swedish Tax Agency.

“This doesn't seem reasonable. The Tele2 arena workplace was a fixed place of business and tax must be paid for the workers in 2013. The Swedish Tax Agency is grateful for all information,” she says.

Staticus does not agree, however, that the Tele2 workplace was a fixed place of business in 2013. This is what the company writes:

“Staticus had two separate projects (contracts) for the Tele2 arena with two different clients (main contractors). The second project for internal facades, started in February 2013, was shorter than six months and therefore was not a fixed place of business in 2013”. It was Peab that was the main contractor for the Tele2 Arena and the company most firmly denies Staticus' information.

Peab signed one single contract (framework agreement) with Staticus. And none of Peab's sub-contractors used Staticus – because then Peab would have known about it.

2014 – Fixed place of business

At our visit to Lithuania Staticus' financial director, Ignas Stasiukonis, related that the company had decided to have a fixed place of business in Sweden – for all the construction jobs – short and long, as of 1 January 2014. This means among other things that from that date the company must pay the workers' tax here. Jokūbas has worked for several years in Sweden altogether. After 183 days tax must be paid here in Sweden (if you work for a foreign company without a fixed place of business), under tax legislation.

But Staticus has not paid any payroll tax for Jokūbas in Sweden. A check

with the Tax Agency shows this. Not even in 2014. The year that Staticus' CEO, Ignas Stasiukonis, said that the company paid tax and social security contributions for all its workers working in Sweden. Somehow the company has "forgotten" one of its workers in reporting and payments to the Swedish Tax Agency.

4.3 Variation two – false business operators – or without insurance in the forest

Fiddle variation: False business operators

Common among: Companies from Poland, the Czech Republic, Romania, Slovakia and others.

Method: The workers must be self-employed.

Pay range: Most of the wages are around SEK 50–70 per hour. But both lower and a few higher hourly rates exist. The wages can for example be compared with a normal hourly rate for forestry work, which is just under SEK 140 per hour.

Description: Demand that the workers start their own companies so as to shift the cost of social security contributions and avoid employer responsibility. The employer has lower costs and turns into a customer with no responsibility.

Marcin was injured in the Swedish storm forest. But his employer had not taken out any insurance. So he received no compensation. And he had to pay the costs required for medical care himself. He was in a no-man's land out of touch with either the Swedish or the Polish social systems.

When it is really difficult in the forest after a storm. When tree trunks are lying on each other like spillikins and uprooted trees are piled up like gigantic rat traps. Then it is not possible to use the big, expensive, fine forestry machinery. Then you have to send in people with chainsaws in their hands. Marcin was one of these people. He worked for more than a year in the Swedish forest before he was injured. A tree trunk turned backwards when being felled and Marcin was underneath. His leg was trapped, resulting in a complicated fracture. This was in 2006 in the work after the major storm Gudrun, in Småland. This is a case that had after-effects for many years after the event. Marcin was injured and because he was not insured he never received the treatment he needed and has permanent injuries as a result.

60 hours a week

The story began when Marcin was unemployed at home in Poland. When he was offered a job in the Swedish forest he accepted. Despite the fact that he was not a forestry worker. He had no training. No experience of forestry work. But he thought he could learn as he went along. And it was better than being unemployed. When he came to Sweden he was immediately sent into the forest with a chainsaw. They were in a hurry to chop up the large volumes of wind-thrown forest. In an interview Marcin relates that he got a few knocks at first. Branches springing back to hit him in the face.

But on the whole it went well. He learned. It was a tough job. Long shifts of work. Marcin and his fellow workers (there were several forestry workers from Poland in the same team) worked ten hours a day, six days a week. A continuous 60-hour week. It is a crystal clear breach of Swedish working hours regulations and neither contractual wages nor overtime compensation were being paid. But the pay was nevertheless decent, thought Marcin, by Polish standards. He used to get SEK 20,000 every month. But then neither tax nor social security contributions were deducted from that amount. The idea was that he would pay them himself in Poland.

False business operators

Marcin had understood that he would have a normal employment contract when he travelled to Sweden. But when he got there he was told by his employer that he was expected to start his own company in Poland. Otherwise there was no job. This is a common method in Sweden, for employers who want to avoid paying wages under collective agreements for guest workers. Instead of employing a worker they engage a “self-employed sole trader”. In that way it is harder to identify you, both for trade unions and tax authorities. The gain for the Swedish employer is obvious. The payroll cost of this arrangement is just a third of what it would have been under a collective agreement.

No-one heard his shouts in the forest

The day Marcin was injured he was working alone with his chainsaw. His closest workmate was felling a few hundred metres away. With the chainsaw at full speed and earmuffs over your ears you can't hear when someone calls out in the forest. Marcin lay alone under the tree for fifteen minutes before his workmate started looking for him. Then it again took quite a long time before he got to hospital. It is not entirely easy to direct an ambulance to the right place in the forest in Småland, when you can't speak Swedish or English. But finally he got to the hospital in Värnamo, where he was treated for his injury. It was a complicated fracture and a steel splint was surgically inserted so that the bone would heal correctly.

Hospital bill

A very difficult period followed for Marcin after the visit to the hospital. His injury prevented him from working. He was not covered by any collective agreement and not protected by the insurance that such an agreement provides. He was not insured. It took him a year to heal enough to be able to work again. During that year he stayed at home in Poland with his mother. After a few weeks at home a letter arrived from Värnamo hospital. It was a bill for SEK 40,000 for the hospital care he had received in Sweden.

When Marcin came to Sweden he had an insurance certificate with him that entitles citizens of EU countries to medical care in Sweden. But that was for tourists and was only valid for three months. Marcin had worked for more than a year in the Swedish forest when he was injured.

Your employer then, what did he do during this time?

“Nothing.” He sent a bill for medicine that I had been given at the hospital that the company had paid for,” says Marcin in an interview.

The next shock came when Marcin then sought medical care in Poland. There Marcin’s injury was regarded as an occupational injury arising in Sweden, which should be paid for by the Swedish healthcare system. He had ended up in no-man’s land. No insurance was applicable, either for the injury or loss of work income and no system covered the medical costs. He had to pay them himself. Time passed and he could not afford to go back to Sweden and pay for a new operation. An operation was necessary to remove the metal splint so he could recover completely. In Poland the doctors were not familiar with the surgical technique used at the Swedish hospital, so they could not perform adequate final treatment.

The trade union wanted to help

When Marcin’s case became known to the Swedish GS trade union, they wanted to help. Even if Marcin was not a member and not covered by a collective agreement, they felt Sweden had a kind of moral responsibility. The Swedish client in the Marcin case was Södra skogsägarna. The company is a major actor in the forest industry with many subcontractors. Of course they did not contract Marcin directly. He is far down in the chain of sub-contractors. The firm who had the contract with Södra skogsägarna was a Swedish company called Ekna gård. The owner of this company was in turn a partner in a company registered in Poland, called Ekna polska. It was in turn Ekna polska who contracted Marcin and his workmates. This arrangement makes it difficult for both trade unions, authorities and customers to discover the real conditions of the people doing the work in the forests.

Continued in Sweden

Södra skogsägarna had no legal responsibility to cover Marcin’s injuries. But the GS trade union nevertheless negotiated SEK 40,000 to cover any follow-up treatment. But by then, several years after the injury, it was too late.

“I have been to doctors, they say the splint has grown into the bone and cannot be removed,” says Marcin, who still feels pain in the leg.

He will not be able to work in the forest again. But when he had recovered sufficiently he returned to Sweden for a new job. This time in an industry. Now he was employed, not a “self-employed sole trader”, and conditions better. He will have to live with his injury, as well as the financial loss it caused him. But at least life looks better now.

“I am glad I have a job, as unemployment is now,” says Marcin.

4.4 Yet another example of variation two – or different contracts for Swedes and Poles

Neo-gruppen had collective agreements. They covered their Swedish employees. But their Polish building workers earned far less than under the agreement. The Poles were “false business operators” and were subsequently hit by major tax arrears.

Neo-gruppen is a company in Linköping that offers services in the construction sector. They do a lot of work for house owners and replace windows and doors and do façade renovations etc.

The company was going fairly well. It had sales of just over SEK 20 million per year and made a small profit every year. Right up until 2014, when the company went into insolvent liquidation.¹¹ There was just one reason for the liquidation: a tax debt of SEK five million. The Swedish Tax Agency conducted an audit in 2013 and then found that the company had not paid in social security contributions for 28 of the building workers who worked for the company. The company had two categories of building worker you could say. The ones living in Sweden and covered by the Swedish collective agreement. And the ones from Poland, regarded as self-employed. They were given remuneration instead of wages and were expected to pay tax and social security contributions themselves, in Poland.

Less than half the cost

This is an arrangement that brings down the payroll cost substantially. The Polish workers were remunerated at SEK 100 per hour. This is less than half of what an experienced building worker under a Swedish collective agreement costs. The method of hiring foreign self-employed sole traders in this way is very common in Sweden.

“Almost all our competitors work in the same way,” says Andreas Brand, who was deputy managing director and partner in the company.

But the Swedish Tax Agency does not approve this arrangement. Neo-gruppen’s workers had accommodation as well as work clothes and tools arranged by the company. But to be recognised as self-employed in the eyes of the Tax Agency you must be independent, have several customers and your own equipment.

Nevertheless it went well for a few years. Neo-gruppen was established in 2008 and used the arrangement with Polish self-employed sole traders until 2014, when the Tax Authority’s requirements put a stop to the operations.

The Swedish Tax Agency limited its audit to 2011 and 2012. In those two years, 28 Polish workers who worked for the company had been paid remuneration totalling SEK 7.8 million. The company was required to pay social security contributions and the workers were sent demands for income tax.

In insolvent liquidation

The company went into insolvent liquidation in September 2014, due to the tax debt. There were not many assets in the company when it was liquidated, so the tax debt is unpaid and when the company does not exist any more the State will find it difficult to collect that debt. The income taxes however, concern private individuals. The building workers did not have limited companies that can be liquidated. They had sole proprietorships and are personally liable for their debts. One of them is Adrian (pseudonym). He is back in Poland now and has a tax debt to the Swedish State of SEK 80,000.

¹¹ The company’s name was Edlund & Brand AB, in connection with the liquidation it changed name to Gräsanden 3 AB, the market name was the Neo group, and it lives on as a market name, but with a newly formed company, Nordisk entreprenör organisation.

How will you pay it back?

“It’s impossible,” says Adrian, who hopes somehow that he will not have to pay the debt. The decision of the Swedish Tax Agency has been appealed.

“All the money I earned in Sweden is gone. I spent it on renovating my own house in Poland, among other things.

Adrian relates that he worked for several years in Sweden for Neo-gruppen. The working hours were normally between 07–19 on weekdays and 07–18 on Saturdays. He travelled back to Poland regularly. The company paid for the air fares, accommodation in Sweden, tools and work clothes.

Almost all the workers from Poland have travelled home to Poland a few times a year. But thanks to the long working days many of them reached total annual working hours in the order of 300–400 hours more than normal, compared with a person covered by a collective agreement.

Disappointment

The tax debt of SEK 80,000 hangs like a black cloud over Adrian. Some of his friends who also worked for Neo-gruppen have started to repay the debt, he says.

But not Adrian, it’s hard to do that with Polish wages. SEK 80,000 is more than a normal annual wage in Poland. There is now great disappointment in the Swedish customers.

“It’s a bluff company,” says Adrian.

He and his workmates thought all the papers were in order. Almost all the Polish workers who have made submissions to the Swedish Tax Agency say that they were cheated and told all the time that everything was above board. Andreas Brand is also disappointed. His disappointment is in the Swedish Tax Agency.

“What grieves me most is that I have always done the right thing. Paid my bills to subcontractors and the Tax Agency and everything. So this decision came like a knife in my breast. It was a good firm, not a fiddle. We were always open and above board.

Did you think it was allowed to hire Poles as self-employed?

“Yes this is what we were told when we started. But then they seem to have changed the rules after a while. No information about it reached us.

Do the Polish building workers have large tax debts now?

“Yes, it’s heart-breaking,” says Andreas Brand.

“Many of them can’t pay. The whole story is sad.

Neo-gruppen still lives on, despite everything. A new company called Nordisk entreprenad organisation has been started, in which Andreas Brand is active. But in a new role.

“I am more of a consultant now,” says Andreas Brand.

So the old marketing name Neo-gruppen is still used. The website is active and they are taking on new work. Last year Nordisk entreprenad organisation had sales of SEK 13 million. But they do not have any employees, and no collective agreement.

“We work in another way now,” relates Andreas Brand.

They still use Polish building workers, but under a different arrangement than before.

Do the ones you hire now have Swedish F tax cards?

“Yes, some of them do and others are hired from other companies.

At the same time, Andreas Brand believes that most companies in the industry still work with the same arrangement as Neo-gruppen had before.

Do you have higher payroll costs now, with the new arrangement?

“Yes, we lose work because of it.

4.5 Variation three – short-term contracts – or the company at the Swedish Consulate in Gdansk

Fiddle variation: Short-term contract (Umowy o dzieło)

Common among: Companies from Poland.

Method: Using a short-term work contract unique to Poland called Umowy o dzieło that means that no social security contributions are paid at all.

Pay range: From SEK 50–120 (from what is known).

Description: This variation is not very common in Sweden. It used to be found in the forestry industry. It may be used in agriculture, but there is no proof of this. Our example is from the construction industry in Sweden. This fiddle variation is very profitable. The employer is the client and pays no social security contributions. The worker may be satisfied with the payment but in this case has not social security protection. In addition the worker does not earn any pension rights at all.

No F tax. Neither tax nor employer’s contributions paid. This concerns the Polish construction company Pilgrim that only operated in Sweden. The company was run from the Swedish Consulate in Gdansk. The spokesperson for the company was Sweden’s Consul-General himself.

In early October 2014 Pilgrim’s workers called an unofficial strike. They were then working at Johanneberg Science Park in Gothenburg and had received demand letters from the Swedish Enforcement Authority. Pilgrim had not paid its taxes. This was the second time the workers had been on strike. The first time was also over taxes. Pilgrim’s spokesperson, Tadeusz Iwanowski, then assured the workers and the Building Workers’ Union West that the tax would be paid. But it has not been. The demand letter from the Swedish Enforcement Authority has, however, been withdrawn pending the investigation by the Swedish Tax Agency. An investigation that will probably take some time. Perhaps several years.

The Swedish Consulate

The address in Poland where Pilgrim can be found is Ulica Chmielna 101/102 in Gdansk. On the fourth floor – behind the same door – is the Swedish Consulate, the Polish-Swedish Chamber of Commerce, the company Abbeys

(that has now changed its name to Pilgrim International) and Pilgrim. Behind Pilgrim are a number of people working at the Polish-Swedish Chamber of Commerce. A Chamber that with its expertise on Swedish laws and regulations is to help Polish companies to become established in Sweden. In February 2014 Tadeusz Iwanowski was still President of the Polish-Swedish Chamber of Commerce. A job he later left after media revelations of his link with Pilgrim. Tadeusz Iwanowski is also an honorary consul general at the Swedish Consulate. And he is also the person who once upon a time started Pilgrim.

An office

The construction company Pilgrim is an office where a woman sits at the computer typing.

That's all. Here there is not a vestige of any blue overalls or timber or anything else that might conceivably be associated with a construction company. The other rooms belong to the other tenants: the Consulate, Abbeys and the Polish-Swedish Chamber of Commerce. The Consulate is a small "meeting room" with a large table that is decorated with flags. Among the pictures on the walls there are portraits of Queen Silvia and King Carl-Gustaf. On the other side of the Consulate wall there is another room. It is the Polish-Swedish Chamber of Commerce office. Tadeusz Iwanowski does not think it strange that the address and telephone number are the same for Pilgrim and the Consulate.

"I do not receive any remuneration from the Swedish State, this is an honorary appointment," he says.

The Polish-Swedish Chamber of Commerce

Tadeusz Iwanowski speaks about the Polish-Swedish Chamber of Commerce and that he represents a number of Polish companies in Sweden, and in other Nordic countries. Among them can be found Kormal, which sued its workers for sabotage of a bridge construction in Sweden. It was only the workers who joined the Building Workers' Union who were brought before a Polish court. Tadeusz Iwanowski also represents Pilgrim in Sweden and says that he knows the company in and out. Consequently there is no reason to contact Magdalena Pramfelt, who owns Pilgrim. Magdalena Pramfelt also works at the Polish-Swedish Chamber of Commerce. At that time she was responsible for PR & media, now she is acting managing director, after Iwanowski's departure.

Experts

Tadeusz Iwanowski relates that the Polish-Swedish Chamber of Commerce is a link between Poland and Sweden. The Chamber has helped the Swedish Tax Agency, customs and the police in various matters. The Chamber has also, according to Tadeusz Iwanowski, had to help trade unions to explain the collective agreement to Polish companies. And helped Polish companies to explain to trade unions the way Polish rules work. The Polish-Swedish Chamber of Commerce has extensive expertise on both Sweden and Poland he states. Despite that, Pilgrim does not pay F tax in Sweden.

“The company does not have a fixed place of business in Sweden, that is why it does not pay F tax. There is no requirement to be registered for F tax in Sweden. Pilgrim pays corporate tax in Poland,” says Tadeusz Iwanowski.

The consul general is mixing apples and pears. It is perfectly fine to be registered for F tax and be without a fixed place of business in Sweden. There are many such companies in Sweden.

Contract for short-term work – Umowy o dzieło

When you employ a person it involves paying social security contributions. But Pilgrim did not do that. When examining the company’s annual reports for several years back zero is conspicuous several times and usually only a few percent is paid in social security contributions. Pilgrim has used a short-term work contract: *Umowy o dzieło*. Since *Umowy o dzieło* refers to an assignment and not employment no social security contributions are payable. But such short-term work contracts only apply to work in Poland and cannot be applied to any operations in Sweden. If a foreign company operates in Sweden social security contributions must be paid here, unless you have a certificate from the home country’s social insurance office that social security contributions are payable there. And Pilgrim can hardly get that as the company does not pay social security contributions.

At the same time as Pilgrim has used *Umowy o dzieło* Tadeusz Iwanowski states that Pilgrim hired in workers from another company. He maintains this to this day.

– “Pilgrim operates under rules that apply to companies in Poland. We have a form of employment where it is not necessary to pay social security contributions. The primary employer pays social security contributions and the person who does the work is paid extra on which they pay tax. That’s how it works in Poland,” he says.

Can you explain in more detail?

“You are employed by one company that pays social security contributions and you can work for others as well. Then you don’t need to pay social security contributions twice. You can’t receive pension twice. You can only be protected once. That’s how it works in Poland.”

So they get wages from two companies?

“Yes, exactly.”

Wages from the company they don’t work for and from Pilgrim that they do work for?

“Yes.”

Tadeusz Iwanowski says that he is no longer a spokesperson for Pilgrim. Nor is he a spokesperson for any Polish company at all. And the reason is his exposure in the media. He says also that Magdalena Prampfelt is no longer the owner of Pilgrim. The company has been sold. But he does not want to say to whom. But a check of the Polish public register shows that Magdalena Prampfelt is still the owner.

Which company?

In an interview with one of Pilgrim's workers, Andrzej, it almost becomes comical when he is asked which company he actually worked for.

According to Tadeusz Iwanowski the workers at Pilgrim are contracted under Umowy o dzieło and actually employed at another Polish compa...

"Which one?"

So my question is, Pilgrim's workers were supposed to be employed at another Polish...

"Which one?"

That's my question! Which company?

"It's my question too! Which company? This is the stupidest thing I ever heard. We are not employed at any other company. We are employed by Pilgrim. Really employed.

All these lies! When we demanded that Pilgrim should act correctly and pay in our tax in Sweden they said that Swedish tax authorities worked slowly and that they were doing everything they could to put it all in order. That was not how it was. Now we all risk hefty tax arrears."

Not a spokesman

Tadeusz Iwanowski says that he is no longer a spokesperson for Pilgrim. Nor is he a spokesperson for any Polish company. And the reason is his exposure in the media. He says also that Magdalena Pramfelt is no longer the owner of Pilgrim. The company has been sold. But he does not want to say to whom. But a check of the Polish public register shows that Magdalena Pramfelt is still the owner.

Andrzej again:

"Our perception was that Tadeusz Iwanowski was the real boss and that the managing director, Mr. Rutkowski was only boss on paper," he says.

Poland

At the meeting in Poland in 2014 Tadeusz Iwanowski says that from 2013 Pilgrim only has permanently employed personnel. No Umowy o dzieło are used. The workers are posted, there is a certificate from the Polish social insurance agency about this, and social security contributions are paid in Poland. Today when the annual report from 2013 is public it can be established that this information is not correct. The social security contributions paid are 0.19 per cent of the wages. Polish social security contributions are normally more than 40 per cent.

Salary

In the same month that Pilgrim's workers declared an unofficial strike they also ceased to receive wages. They worked for three months without receiving a single krona. The case is now with legal adviser Susanna Kjällström at LO-TCO Rättsskydd (the legal bureau of the Swedish Trade Union Confederation and the Confederation of Professional Employees).

“Unfortunately we will not be able to apply under the wage guarantee scheme for the unpaid wages, but we plan to put Pilgrim into insolvent liquidation to be able to apply for holiday pay under the wage guarantee system for members of the Building Workers’ Union. To do this we must first prove that the company’s main business is in this country. We must also prove that the company does not have any money,” she says.

No money

It seems it will not be difficult to prove that the company has no money. According to Tadeusz Iwanowski the company that Pilgrim worked for in Sweden did not pay Pilgrim.

“That is a very rotten entrepreneur that abuses its position. Strong client and weak Polish sub-contractor. I think it is horrible what they have done. Pilgrim worked on projects in Stockholm and the company did not receive any money. Then Pilgrim worked in Gothenburg and received no money from there either. If you are sympathetic towards the Polish workers who built there you should look at that company, why it didn’t pay,” says Tadeusz Iwanowski.

Wages too high

The company that Tadeusz Iwanowski is talking about is Seneke (previously SEFA). A company that in 2013 gave notice to all its cement workers since they, via the trade union, had asked for wages that were “too high”. Seneke used Pilgrim instead. Now that cooperation has fallen through. Seneke confirms that both companies are in a dispute that will probably end up in court.

“Construction company”

Nor will the legal adviser have great problems in proving that Pilgrim’s main business was in Sweden. In Poland the operations are limited to the small office at the Swedish Consulate.

Pilgrim is just an office. Is Pilgrim not just a letterbox company?

“There are five office employees here working at Pilgrim!” says Tadeusz Iwanowski rather indignantly.

Annual report

The annual reports also boast that Pilgrim only operates in Sweden: “*Since May 2006 the company conducts business in the form of building and renovation services in Sweden*”.

The annual report is not easy to obtain for a Swede. Nor is it easy to read it as everything is in Polish. Nevertheless, Tadeusz Iwanowski states that the text of the annual report targets Swedish customers. “*For commercial reasons the annual report mainly targets the Swedish market, that is why Poland is not mentioned. Swedish customers are not interested in the Polish market.*”

Tax

Holiday pay may be a reality for Pilgrim’s workers who belong to the Swedish Building Workers’ Union. But how will it be for the almost 50 Pilgrim

workers who worked in Sweden since summer 2013 as regards tax? Some of them have worked for the whole period. Others have worked a shorter time. They will probably be among the foreign workers who receive hefty tax bills. Workers who are growing in numbers. If the employer has not paid tax then the workers must. If the workers have wage slips the “deducted” tax is disregarded – and the workers pay tax on the remaining amount. Pilgrim’s workers have received SEK 160 gross per hour. After tax they received SEK 120. But the thing is that the tax has not been paid in. At least not in Sweden. According to Tadeusz Iwanowski Pilgrim is no longer operating: But the website is still there. There a text scrolls: *“Pilgrim an attractive alternative in a sound construction industry”*.

4.6 Variation four – front companies – or Slovakian wages in Sweden

Fiddle variation: Front company

Common among: Exists among companies from several EU countries.

Method: Start a front company in Sweden that becomes the public face for customers, authorities and trade unions.

Pay range: Depends on the country the parent company comes from (see the other fiddle variations).

Description: The front company often contains no more than the share capital paid in to the company. There are no or few employees. The front company submits tenders, writes contracts, invoices etc. But all the work is done by personnel from the parent company in the home country. Sometimes machinery is also taken from there. There are cases where customers have not been aware that the company they sign a contract with (the front company in turn has engaged a sub-contractor (parent company)). The front company may also have signed a collective agreement in Sweden without the agreement covering the employed guest workers in the parent company.

They work in Sweden for a Danish company but come from Slovakia. They clean road tankers and do it full time. But the salaries, they are Slovakian. This is a story of how low wages can be infectious, into established Swedish businesses.

When Jimmy Ovesson was driving round in an industrial area in Karlshamn one day he discovered something that captured his interest. On a site that really belongs to a company that sells gardening services there were rows of tanker trailers. The kind that carry liquid goods of various kinds. Jimmy is the chair of the Transport Workers’ Union section in Blekinge and himself a former tanker driver. He knows the industry. But he was unable to work out the equation he saw before him. He understood he had discovered a facility for cleaning road tankers. That is why there was a row of tanker trailers waiting in line. The thing is that there were already two tanker cleaning facilities in Karlshamn. It is quite a small town and how could the market support a third cleaning facility?

Cleaning is a must

The listed company AAK's main facility is in Karlshamn. The "dairy" as it is called, lies in a large facility just by the sea in central Karlshamn. But it is not milk products that are refined there. It is vegetable oils and fats. AAK has global operations and trades in and refines oils over much of the world. Rapeseed oil, olive oil, palm oil etc. Their oils ultimately end up in food, sweets and cosmetics. Consequently AAK is a major purchaser of goods transport. They use haulage contractors that own tankers that carry the oils from the facility in Karlshamn to customers in Scandinavia. When it comes to tankers, cleaning is important. They must be washed out after each run. This is of course extra important as it is foodstuffs that are being transported.

Wage competition

AAK has a well-established moral conduct policy, which the company describes in its annual reports. It means that the company declares its willingness to respect laws and rules and to fulfil the rights of workers. In addition, AAK's owners are careful to respect collective agreements. Swedish employees' large pension companies, AMF and Alecta, are both major shareholders in AAK. For them it is very important that Swedish collective agreements are applied in Sweden. Not only in the company they own, but also throughout the sub-contractor chain. Despite this, low wage competition has crept into this well-established Swedish company.

Slovakian wages

There is already a tank wash just by the AAK plant in Karlshamn, which is operated by the Swedish company Foodtankers. The personnel at that facility are covered by Swedish collective agreements. The tank wash that Jimmy Olovsson discovered is also operated by a sub-contractor of AAK, the Danish company LS Intertank, but that does not have Swedish collective agreements and thus has considerably lower payroll costs than its competitor. It is as if Swedish rules had ceased to apply at the gates of LS Intertank's tank wash facility. As if a Slovakian enclave had been set up within Swedish territory. In an interview two of the employees at the tank wash related that they are employed by a Slovakian subsidiary of LS Intertank, that they work in Sweden three weeks at a time, then they go home to Slovakia for a week, to return for another three-week period. So it rolls on. In Sweden they live in rooms above the tank wash where they work. Asked what they earn they reply EUR 1,500 per month. This is a net wage, including daily allowances. It is far lower than the wages they would have received if they were under a Swedish collective agreement.

A third of the cost

Their employer, LS Intertank, is owned by Danes and has its parent company in Denmark. They have subsidiaries in Slovakia, Sweden and Norway. In the annual report for the Slovakian subsidiary for 2013 it states that the company's personnel costs in that company are SEK 120,000 per year, per employee. This is wages including social security contributions. It is that company that employs the workers at the tank wash in Sweden. This means

that they cost their employer only a third of what an employee under a Swedish collective agreement would cost.

But the Danish haulage contractor also has a Swedish subsidiary. The Swedish subsidiary is called Leif Sörensen tanktransport AB. But that company has no employees. It is not registered as an employer with the Swedish Tax Agency. However, the company does own eight trucks that are registered in Sweden.

The managing director of the haulage contractor, Nikolaj Sörensen, says in an interview that the Swedish subsidiary handled transport in Sweden and that they hire drivers that man the vehicles. Incidentally, LS Intertank handles a lot of international shipments. But to be able to contract for Swedish domestic shipments you have to have Swedish-registered vehicles, otherwise you are in breach of the cabotage regulations.

Leif Sörensen tanktransport AB's vehicles run a continuous service in Medelpad. The company's vehicles drive daily between Imerys Mineral in Sundsvall and Metsä paper mill in Husum. They are Swedish registered trucks that are driven by foreign drivers. This traffic has drawn attention in the Swedish media after it was revealed that there was a ban on the use of the vehicles on that route due to unpaid road traffic tax.

Will there be order?

LS Intertank is an example of a phenomenon that is fairly common in the Swedish transport industry. The starting point here is a haulage contractor with international traffic. And they must be able to do that. If Danish drivers with Danish contracts operate continuous traffic between Sweden and Denmark it is naturally quite in order.

But if you staff Danish-Swedish routes with personnel employed by a Slovakian company with Slovakian conditions it becomes distorted. And it is even more distorted when the employees of the Slovakian subsidiary staff domestic transport routes as well as fixed operations in Sweden, such as the tank wash in Karlshamn.

It not only contravenes the intention of the Swedish model, where collective agreements are to specify conditions in the labour market. It also of course contravenes Swedish tax rules. A person working in Sweden should pay tax in Sweden. The case of LS Intertank's operations in Sweden is now under litigation. After the attention given to the case in the Swedish media the Swedish Transport Workers' Union requested negotiations with LS Intertank. But the company does not want to sign a collective agreement for personnel stationed in Sweden via the subsidiary in Slovakia. At the time of writing the agreement question has not been solved. The case is still under litigation.

4.7 Variation five – international group – or with Europe as a cover

Fiddle variation: International company group

Method: Bouncing employees and money between different companies in the group.

Pay range: From SEK 60 upwards. To compare with the national average wages in the construction industry that are about SEK 180 per hour.

Description: The group variation is an advanced arrangement to dump wages and juggle with social security contributions. Here employees and money are bounced between different companies so as to confuse authorities and trade unions. Most groups that “post” staff are staffing groups even if they are registered as something else.

Under the protection of free movement the Irish staff agency Atlanco Rimec operates across national borders in Europe. Power plant construction in Östersund, Sweden. Nuclear power plant construction in Olkilouto, Finland. Motorway construction in Maastricht, the Netherlands. Nuclear power plant construction in Flamanville, France. These are a few examples of construction contracts in Europe where Atlanco Rimec was active. The company supplies construction companies as well as slaughterhouses in the richer EU countries with cheap labour from the poorer countries. This is a very extensive business. The personnel register of the company that has seeped out into the open shows that more than 50,000 people have been employed by the company since it started in the 1990s.

Time and again the company has been exposed in the media. It is an ongoing scandal in Europe’s labour markets. Employees have described conditions far from the rules and standards of the richer EU countries. By using Atlanco Rimec construction companies such as NCC in Sweden have been able to circumvent the rules of collective agreements and ignore labour law. At one and the same building site it has been possible for two classes of worker to work under two completely different sets of conditions. The employees of staff agencies often earn only about a third of what their workmates from Sweden or the other countries in the client country. They follow completely different work schedules and as a rule work 60–70 hours a week. They have often signed employment contracts that stipulate that their supervisors can dismiss them at any time for trivial things or fictitious accusations.

The fight against Atlanco

Trade unions in countries like Sweden, Finland, the Netherlands and France have had difficulties in pleading the cause of guest workers. They are seldom members of trade unions. Information in the media has also shown how Atlanco regularly blacklists and dismisses employees who try to join trade unions. But the company continues to get new work, despite the scandals that have dogged their path through Europe.

There are many twists and turns and many cases where Atlanco Rimec is involved. In Sweden for example they have tax judgments against them.

In 2006 and 2007 the company was engaged by NCC to provide personnel for work on the tunnel through Hallandsåsen and the City tunnel in Malmö, among other things. The Swedish Tax Agency discovered that the company had not paid employer's contributions for its staff and demanded SEK 11 million. A tax case that was only settled in 2014 in a judgment in the Administrative Court of Appeal, which found in favour of the Swedish Tax Agency.

At the nuclear power plant construction site in Olkiluoto in Finland an unofficial strike almost broke out among Atlanco Rimec's employees. That conflict was to do with the company deducting 30 per cent of the workers' wages. The money was intended to go to taxes and contributions. But the workers had discovered that no taxes or contributions had been paid in. The strike threat was avoided there in that the Finnish construction trade union took up negotiations on behalf of the Atlanco Rimec workers. But soon after the negotiations were concluded Atlanco Rimec's contract in Finland ended and the workers were sent home, or out to other assignments. The Finnish construction trade union to this day does not know if the strike-inclined workers really received their withheld wages or not.

The group method

Atlanco Rimec's face in Europe is many-sided. It branches out into many subsidiaries across the countries of Europe between which personnel can be moved. This makes it more difficult to discover regulation violations. One example of this is how Polish building workers were employed by a subsidiary in Cyprus, thereafter to be sent to work in France, Sweden or other countries. They did not live in Cyprus but were just employed via a letter-box company there. With employment contracts and insurance documents in Greek an imaginary right of domicile in Cyprus was created to make it look like the workers were posted from there, though they could not really be regarded as posted at all under the provisions of the Posting of Workers Directive. A Cypriot company cannot post Polish workers from Cyprus if they have never worked there.

Change to a new company

The method of deducting for taxes and contributions from workers' wages, without then paying them in to the authorities is something that has followed with Atlanco Rimec. In France a court case is now in progress involving the company. If the French prosecutor succeeds, Atlanco Rimec will be banned from all work in France and in addition be forced to pay damages of many millions.

The court case is part of the aftermath of a scandal exposed in connection with the construction of the nuclear power plant in Flamanville. In 2011 French authorities discovered that no social security contributions had been paid in for the workers there. In France the client was also brought before the court. The French construction giant Buygues, which had engaged Atlanco Rimec, was fined EUR 150,000 euro for unpaid taxes and subsequently forced to cover the EUR 22 million in unpaid social security contributions that their sub-contractor had failed to pay.

Several legal proceedings are also ongoing in the Netherlands in which

Atlanco Rimec is involved. There it is the motorway works in Maastricht that were first drawn attention to in the media. After this exposure the investigation bureau TBB, Technisch Bureau Bouwnijverheid, began to look into Atlanco Rimec. TBB's task is to ensure that companies comply with the collective agreement and the bureau has extensive powers. Behind TBB are trade unions and employer organisations. TBB has taken Atlanco to court and in a first interim judgment Atlanco Rimec has been ordered to follow the collective agreement.

Final judgments, both in France and the Netherlands are expected in 2015. But the question is whether legal proceedings in individual countries will be sufficient to stop Atlanco Rimec's ravages in Europe. The company has retaliated legally in the Netherlands, suing authorities, trade unions and individual trade union officials. And it is probably changing identity. When the workers at the motorway construction site in Maastricht came back from their Christmas holiday in 2015 their employment contracts had changed. They were no longer employed by a company called Atlanco Rimec. Their employment contracts had been moved to a new staff agency called Oradeo. There is much to indicate that this Oradeo works on the same principles as Atlanco. It is owned by two companies registered in the British Virgin Islands, which makes public control of them more difficult. And they are beginning to spread across Europe, with contracts for work for example in France, at an airport construction site in Orléans, in Norway, at a tunnel construction site in Ryfast, in Sweden as sub-contractor to the construction company Moelven, et cetera, et cetera.

5. The importance of a collective agreement – or the man who became a child

Example: The importance of a collective agreement

There are many foreign guest workers who are injured at workplaces in Sweden. The number is unknown as they are not included in Swedish statistics. Sometimes there is a notice in a newspaper. Then we don't find out much more. But there are many tragedies.

A demand for a collective agreement at the foreign company not only means that the guest workers receive a higher wage and better conditions but also insurance cover for the workers. That is if the insurance cover is not set aside through negotiation, which is possible under Lex Laval.

A complete Swedish collective agreement also provides insurance cover for the foreign workers. This is illustrated by the case of the Polish building worker Tomasz, who was injured for life in a serious workplace accident in Karlskrona in 2008. Regardless of whether his employer had paid the collectively agreed insurance or not Tomasz will now receive compensation.

He was 28 years old with his whole life ahead of him. And now he was in Sweden, a chance for him to give his family a better life. He had been promised monthly pay of PLN 6,000 net (after tax), which was equivalent to about SEK 16,500 at that time. But he did not get many days work in Sweden and not a better life either.

Wall panel

Tomasz and his workmates, employed by the Polish company Gn-knit, were in Karlskrona to carry out indoor work. But for a couple of days the Polish workers had to go in and help as there were no workers to erect a wall panel. Normally a check is made that the wall panel is in the right position before it is hoisted up. But this was not the case here. The wall panel was hoisted up, a number of floors, and was turned round there by Tomasz and his fellow workers.

Strong wind

This had gone alright before. At a lower height. Tomasz' place for each turn was between the wall panel and the guard rail. This is what he says. In the papers from the Swedish Work Environment Authority about the accident the people working that day say that Tomasz basically just ended up there. On the day of the accident there was a really strong wind and seven metres from the ground there was a very strong gust and the wall panel threw Tomasz against the weak and incorrectly erected guard rail – which gave way. Tomasz fell to the ground and sustained severe skull and back injuries. He was operated on in Sweden and then moved to a Polish hospital where he remained for four months.

New work contract

The dreadful accident was only the beginning of the nightmare. The employer's cold-heartedness was the continuation. Two months after the accident, when Tomasz was still in hospital fighting to start walking again, a letter arrived from Gn-knit requiring him to explain why he had not been at work. If he was ill he should submit a certificate, otherwise he would be given notice after seven days. There is no doubt whatsoever that Gn-knit knew about the accident. In the investigation of the accident by the Swedish Work Environment Authority there are notes from a conversation with the company.

Travel insurance

Tomasz did not receive much compensation for his severe injuries. Gn-knit only had travel insurance for a maximum amount of SEK 13,900. Tomasz received just over SEK 13,300 for his accident. When Tomasz was in hospital he reported Gn-knit among other things to the Polish labour inspectorate. Under Polish law Gn-knit must report a workplace accident within two weeks. The company had not done so. And Tomasz had not received any sickness benefit after the accident. The Polish labour inspectorate carried out an investigation and replied to Tomasz that under the employment contract his wages were PLN 1,216 per month, about SEK 3,300.

Employment contract

Thus Tomasz had been promised a wage, but the employment contract seen by the Polish labour inspectorate showed the Polish minimum wage. Tomasz' sickness compensation was based on what was in the contract.

"I did not receive an employment contract when I was employed. I got one later, as well as an employer's certificate, but they do not mention anything about wages.

Tomasz and his family were thrown into poverty. And the fight for every day's survival became a constant conflict between Tomasz and his wife Anna. With SEK 1,200 per month to live on, after the bills are paid, there is no chance of going to a restaurant or buying new clothes. The children receive outgrown clothes from relatives or they buy in second-hand stores. Anna is about to start working as a kitchen helper after a long period of unemployment. This does not bring in a great amount of money. She will earn the minimum wage of PLN 1,600 (about SEK 3,500). But it will nevertheless be an added income.

No more disability pension

At the interview in May 2014 neither Tomasz nor Anna knew that life would take another sudden turn. This time for the better. They only see before them an even worse situation when Tomasz disability pension disappears in 2015.

"The social insurance agency doctor has said that I have a head and two hands. According to him I can work," he says.

Children

Tomasz is a tall and impressive man, almost two metres tall and the picture of a big strong East European man.

“I don’t feel like a man. I am like a child in constant need of help,” he says quietly.

Even if Tomasz does not see it in himself, he has enormous mental strength. When he got home from the hospital he could not manage to sleep in a normal bed. His severe injuries, particularly in his back, meant that he needed a specially built bed. He built it himself, sitting and lying down.

In addition he has carried on a four-year legal battle against his employer Gn-knit in Poland. Gn-knit is a sole proprietorship, synonymous with a woman called Wanda Golombek.

“She was ordered to pay PLN 669 (about SEK 1,600) every month to me for the rest of my life. In addition she was ordered to pay a lump sum of PLN 100,000 (SEK 233,000),” relates Tomasz. “The money was to buy a small two-room flat for the family. The flat was a blessing, the family would have gone under otherwise. The cost of accommodation, electricity etc., is only about SEK 2,300 per month.”

Laval

Life took a turn for Tomasz. He did not join the innumerable foreign workers who are injured, sometimes die, in Sweden and who do not receive any compensation at all. The magazine *Byggnadsarbetaren* wrote in May 2015 about the Pole Marek Ruszel, who died in a similar falling accident as Tomasz. He fell in 2008, the same year as Tomasz, nine metres from scaffolding at the Dáva thermal power station in Umeå. According to the magazine Marek Ruszel’s family received less than SEK 170,000 in compensation. Compensation consisted of funeral assistance, three months wages and a pension of SEK 3,700 per month for a year. The survivors of a Swedish worker would have received much more in compensation. And this is despite the fact that Marek Ruszel’s employer Mostostal Zabrze Holding had a Swedish collective agreement. According to *Byggnadsarbetaren* the difference lies in the agreement IF Metall had signed with the employer. The agreement made it possible for the company to take out insurance in Poland instead of the insurance normally included in the collective agreement. This is what *Byggnadsarbetaren* wrote: “*This reflects the fears of the debate concerning the ‘Laval law’: That foreign workers risk inferior insurance cover due to their nationality.*” Trade unions that demand the same insurance conditions for foreign workers do not have the right to take industrial action to enforce their demands.

Fora

But Tomasz was lucky. In March 2007 Gn-knit joined the employer’s organisation BI. Even if Gn-knit did not register with Fora until 2011 and only then after it being rather so-so with payments, Tomasz does have cover. But he did not know this.

The question of compensation was solved thanks to Björn Petersson, trade union official at the Building Workers’ Union Småland Blekinge, noticing Tomasz case in summer 2014 and dealing with it immediately. He managed

to send in an application for compensation to AFA Försäkring before the end of the period of limitation. In May 2015 a decision came from AFA. Tomasz will receive SEK 60,000 as compensation for pain and suffering. In addition he will receive an advance on the compensation for permanent incapacity of SEK 100,000. He will probably receive more when the degree of invalidity is determined. Despite the fact that Tomasz has a foot that does not respond and constant pain as a screw in his back has broken, he writes that the family is extremely grateful and they will pray for "Björna" the trade union official.

"We are happy. MEGA".

6. Dirty competition – or serious business operators are losers

Example: Dirty competition

Dirty competition arises when companies shop between different tax and contribution systems in Europe. Judicial systems are played against each other and competition is undermined. It is no longer certain that the most effective, innovative and productive companies will survive the competition in the EU. Dirty competition not only has consequences for workers. Swedish small and medium sized companies are affected.

The Elon Svensson haulage firm has been running a daily transport service between Sweden and Norway for many years. But it came to an end last year. The price fell far below the pain threshold. This is a living example of how the Swedish haulage industry is bleeding to death right now.

In Uddevalla, Sweden, Exxon has a facility that supplies the Nordic market with lubricating oils, under the trademark Mobil. Oils are shipped in in barrels that are received in Uddevalla, mixed and packaged in consumer packages and distributed on from there.

One of the distribution routes runs daily from the Mobil facility in Uddevalla, where pallets with oil cans are loaded, and then shipped to a terminal outside Fredrikstad in Norway, where they are unloaded. This kind of route is one day's work for a driver. You generally load before seven in the morning, drive to Norway, unload, drive back with an empty trailer and get back to Uddevalla at about four in the afternoon. That is the daily routine. A completely normal transport assignment. It used to be done by the Elon Svensson haulage firm, which is a medium-sized haulage contractor with 12 employees, situated outside Uddevalla.

"We have worked this route for 15 years," says Elon Svensson at the company.

Was it the price that made them choose another carrier?

"Yes it was. We were paid SEK 5,500. I have heard that the present carrier receives SEK 3,500.

How far is it?

"350 kilometres."

SEK 100 per 10 kilometres

What Elon Svensson received in payment gives a price of SEK 157 per ten kilometres. This is very close to the lower threshold that the trade organisation the Swedish Association of Road Transport Companies specifies as the lower pain threshold. They say that payment must be SEK 150 per ten kilometres for a normal transport contract, if the carrier is to be able to pay

a contractual wage and Swedish taxes. But the price for the Uddevalla to Fredrikstad route has now been pressed down to SEK 3,500, which gives a rate per ten kilometres of SEK 100.

The purchaser of this transport service is the German forwarding company Schenker's Norwegian subsidiary. Previously Schenker purchased the service directly from the Elon Svensson haulage firm. But now one more link in the supplier chain has been added. Schenker now purchases the service via the Danish forwarding company Freja, which in turn hires a haulier. This haulier owns a truck registered in Bulgaria. It is this Bulgarian-registered truck that now travels the route between Sweden and Norway. The truck is driven by two drivers living in Macedonia. According to observations made on site the truck returns to Uddevalla every evening and is parked outside the Mobil facility. The drivers spend the night in the truck cabin during their periods of work, both weekdays and at weekends. The vehicle is thus stationed in Sweden constantly. But since it drives over the border to Norway daily, these runs are counted as international traffic and thus allowed under the existing rules.

Major problem

"This is a very great problem for us," says Thomas Hammarström, who is regional manager in Västra Götaland for the Swedish Association of Road Transport Companies.

Is it possible to drive a truck for SEK 100 per ten kilometres if you pay a contractual wage and Swedish taxes?

"No, that is completely impossible. A normal driver's wage costs about SEK 250 per hour.

This gives a daily cost of SEK 2,000. If the payment for a day's work is as in the example above, SEK 3,500, the equation does not compute. But SEK 100 per ten kilometres is not the lowest extreme.

"No, I have come across horrendous examples where the payment was down to SEK 60 per ten kilometres," relates Thomas Hammarström.

"We meet this kind of competition quite a lot now. Particularly on the west coast, where there is a lot of traffic around the ports," says Thomas Hammarström.

What would you at the Swedish Association of Road Transport Companies like to do about it?

"We would like to see stricter responsibility for those who purchase the transport services.

7. False posting – or the Baltic Trio example

Example: False posting of workers

An A1 certificate states which country's social insurance legislation is applicable. For a worker who is posted to another EU country it means that he/she continues to be insured in the country of origin if the period of posting is expected to last a maximum of two years. For an employer, the A1 certificate means that employer's contributions do not need to be paid in the temporary country of work. In that way the labour costs can be kept low. It is not unusual for an A-1 certificate to be issued for workers who do not really belong to the country's social insurance system. LO has therefore demanded that the government agencies of the host country must have the ability to review A1 certificates issued. A1 certificates should not constitute a method of making it simpler for employers to post workers from the country with lowest taxes and contributions. Review in the host country must take place in a fast process, so that the work being done in that country does not have time to be completed before the certificates have had time to be reviewed. In addition, LO considers that the European Commission should be tasked with actively opposing the systematic issuing of A1 certificates by member states for workers who do not really belong to the country's social insurance system.

The Estonian forestry company Baltic Trio operates almost entirely in Sweden. It has done so for several years. But on paper it looks as if the employees are posted to Sweden temporarily. This has led to the company avoiding an extensive Swedish tax audit.

Baltic trio clears Swedish forests for its client Stora Enso. Baltic Trio's forestry workers come from Estonia. In reality they work continuously in Sweden, but on paper it looks as if they live in Estonia and work in Sweden temporarily. This is because the Estonian social insurance authority has issued A1 certificates for the employees, despite the fact that this is against the rules.

The basic rule in the EU is that social security contributions must be paid in the country where the work is performed. But no rule without an exception. If a worker is posted *temporarily* (maximum of two years) to work in another country he or she continues to belong to the home country's social insurance system. He or she receives an A1 certificate that shows that social insurance contributions are paid in the home country.

Such an exception can open unwanted doors for letterbox companies and others, consequently there are various conditions that the companies must be able to meet before an A1 certificate can be issued.

Conditions

One of the conditions is that the company must have at least 25 per cent of its business in the home country. Nor is this entirely written in stone,

but if the sales are less than this a proper review must be made before the A1 certificate is issued. But only in the first year of business (2006) did Baltic Trio meet this condition. Thereafter sales from Sweden were between 95–100 per cent.¹²

Criteria

The Estonian Ministry of Social Affairs (Sotsiaalministeerium) was asked why A1 certificates were issued for Baltic Trio's workers. A number of specialists from the Ministry of Social Affairs and the Estonian social insurance authority were tasked with answering.

They state first and foremost that the 25 per cent sales figure is not a rule but a criterion. There are more criteria that are weighed up before an A1 certificate is issued. Baltic Trio had stated that it had 20 per cent sales in the home country and 80 per cent in Sweden, they write, and then the insurance authority in Estonia assessed other criteria. Such as the fact that the company is registered in Estonia. That the company board was in Estonia. That the workers were recruited from Estonia.

Incorrect information

But Baltic Trio at that time had almost no operations in Estonia. Do you check the information the company provides? Before and after issuing the A1 certificate?

“The Estonian insurance authority checks all information provided in the application for A1 provided by the applicant before issuing an A1. In addition a special follow-up check is made after issuing an A1 as thoroughly as possible. All applicants are obliged to report to the insurance authority any changes in work relations during the validity period of the A1”. The insurance authority has access to the information that VAT has been declared and paid in Estonia and also the company's annual report”.

The specialists also add that Baltic Trio *“operated in the market for 10 years and social security contributions were always paid correctly.”*

Audit

You could say this is truth with some modification. Baltic Trio has operated in the *Swedish* market for ten years but social security contributions and tax were paid in Estonia. This is something that came to the attention of the Swedish Tax Agency, which audited the company for the years 2012 and 2013.

The decision came at the end of 2014 and the conclusion is quite different from what the Estonian specialists arrived at. The Swedish Tax Agency does *not* consider that Baltic Trio is a guest company but that it has a fixed

¹² The data is taken from Baltic Trio's annual reports. **2013** Sales in Sweden: 93.3 per cent Sales in Estonia: 6.7 per cent. **2012** Sales in Sweden: 99 per cent. Sales in Estonia: 1 per cent. **2011** Sales in Sweden: 98.5 per cent Sales in Estonia: 1.5 per cent. **2010** Sales in Sweden: 95.3 per cent Sales in Estonia: 4.7 per cent. **2009** Sales in Sweden: 99.2 per cent Sales in Estonia: 0.8 per cent. **2008** Sales in Sweden: 99.9 per cent Sales in Estonia: 0.1 per cent. **2007** Sales in Sweden: 100 per cent. Sales in Estonia: 0 per cent. **2006** Sales in Sweden: 74.8 per cent. Sales in Estonia: 25.2 per cent. NB. Baltic Trio pays social security contributions in Sweden from 2014.

place of business in Sweden. This means that the company must comply with all the same rules and laws as a Swedish company. For example social security contributions must be paid here.

The sacred A1s

But the issue of A1 certificates is always a crux. You could say they are “sacred”. Pia Bergman is national coordinator for the Tax Agency’s work against serious economic crime.

– We cannot set ourselves over another agency’s decision and when another country sends A1 certificates to the Swedish Social Insurance Agency we have to respect the situation and accept. The agency that could protest against the A1 certificate is the Swedish Social Insurance Agency but that is not in their remit,” she says.

What are your comments on Estonia’s action in the Baltic Trio case?

– “The controls in Estonia seem to have failed. The entire system is easy to manipulate unless other countries contribute with the correct input data and information to the right country and the right agency.

Without certificates

Despite the A1 certificates being sacred they should also be correct. The Swedish Tax Agency examined each A1 certificate in detail. This showed that the period of validity of the certificates did not match the period the workers were working here. And some workers did not have A1 certificates. There was money in it for the Swedish Tax Agency. When the Tax Agency comes to a decision it notifies the person it applies to, in this case Baltic Trio, to see if there are any comments.

And Baltic Trio had comments. Several of the workers were under the age of 25 so the company did not want to pay the full employer’s contribution for them. The Tax Agency recalculated the figures and wrote a “final” decision (review decision). The bill was almost SEK 380,000 to be paid to the Swedish State in employer’s contributions and tax surcharge.

U-turn

But now the company makes a U-turn. Baltic Trio submits new A1 certificates for all its workers and all months. The Estonian social insurance authority has issued A1 certificates retroactively for several years back in time! Bang. There went that audit into the wastebbin and not a single krona was paid into the public treasury from Baltic Trio.

Pia Bergman at the Swedish Tax Agency again:

– We asked from the start if they had certificates. They did not. But when we did the audit and the company understood that there would be consequences they submit A1 certificates from their home country retroactively.

Frustrating

This is not the first time the Swedish Tax Agency has devoted time and energy to an audit that did not lead to anything more than a waste of resources.

Is it worth doing audits on foreign companies at all?

“Yes and no. We can get the income taxes from the foreign workers. But the companies often get off scot-free. It doesn’t feel right. And it is frustrating when our major investigations do not lead anywhere.”

Will you continue to investigate the foreign companies then?

“We must use our resources in an economically justifiable way. We can only investigate what can be expected to be justifiable. The investigations must have an effect. Either financially or preventively or in terms of knowledge. Paper products do not interest us.”

Wages

The Tax Agency’s audit also shows that Baltic Trio pays far less than under the collective agreement. The audit lists the names of the Estonian forest workers and beside the name the wages month by month. The wages paid by Baltic Trio show extreme fluctuations. One month a worker can earn about SEK 52 per hour and the next month earn about SEK 90 per hour. Someone gets up to almost SEK 114 per hour. A third earns between SEK 54–68 per hour.

8. The illusion of a foreign company – or behind the Drawbridge facade

Example: The illusion of a foreign company

The location of a company's fixed place of business is directly decisive for dirty competition. A company that supplies labour within the EU can influence its competitiveness by choosing the sending country. Whether a supplier of labour can be regarded as established in the country of work is of practical importance. However, to succeed in dirty competition the companies must conduct their business in a way that prevents them from being regarded as having a fixed place of business in Sweden. The criteria for a fixed place of business need to be tightened.

Drawbridge is a staff agency that operates almost entirely in Sweden. For eleven years it has supplied Swedish building sites with scaffolding erectors. But the company does not pay tax in Sweden. It does not pay Swedish wages. They have not even registered the company in Sweden, but in the owner's home country, the Czech Republic.

Drawbridge s.r.o's website is in Swedish and English. It is not possible to find a Czech version, despite the company being registered in the Czech Republic. The website also provides information on the focus of operations: "Since 2004 Drawbridge has supplied Czech and Slovak labour and management to Scandinavian industry and the construction industry". The company's own reference list contains 85 projects in Sweden and five in Norway. None in the Czech Republic, none in Slovakia, none anywhere other than in Sweden and Norway. The operations are highly specialised. They supply scaffolders to various new construction and renovation sites. Their assignments have included working at the nuclear power plants in both Ringhals and Oskarshamn.

Pay in the Czech Republic

The crucial question here is: How can a company that operates almost exclusively in Sweden, with sales of SEK 33 million (2013) from these operations, avoid being registered in Sweden? Because they are not. The company does not pay employer's contributions in Sweden and does not withhold income tax for its workers. This is what the owner Vladimir Briza said in an interview about the matter:

"We currently have a workforce of 70 people, but there can be up to a hundred people employed. This depends on how many projects we have. Since we are a Czech company we pay tax and social security contributions for our employees in the Czech Republic.

This is truth with modification. The company's own annual reports say something quite different. There it states that Drawbridge has only had five own employees, year after year. At the same time they have purchased servic-

es for large amounts every year. And the company's website shows that there was a high sales turnover in the staffing operations. In 2014 the company supplied a total of 180 scaffolders for eight different projects around Sweden.

Gives a serious impression

It is never the actual client, or the main contractor at a building site that contracts Drawbridge. For all the projects the company is involved in there is another sub-contractor who has engaged Drawbridge. Then it is Swedish companies, such as IBS byggnadsställningar AB. But nor is Drawbridge the endpoint of the sub-contractor chain. Because despite the fact that the company is not registered as an employer in Sweden and does not have a Swedish F tax card, it is a member of the Swedish employer organisation, BI. In addition it pays fees to Swedish labour market insurance. So it looks like an established Swedish company.

"I have a contract with Drawbridge where they hire labour out to me. They have averred in writing in the contract that the workers are their employees. The company is a member of BI and gives a serious impression," says Daniel Asp, who is the managing director of IBS byggnadsställningar, in an interview.

Called to negotiations

Björn Petersson is a trade union official at the Swedish Building Workers' Union. He has been given other information.

"We have had a review meeting with the company at which they stated that their workers are "self-employed" people they hire in," says Björn Petersson. This is not something the Building Workers' Union accepts. The trade union regards the workers from Drawbridge as employed and since the company is a member of BI it must be covered by the Swedish collective agreement. Now the Building Workers' Union has called BI to a negotiation in which Drawbridge is to be discussed. But nothing is decided yet. But Drawbridge has thus been able to operate in Sweden for more than ten years. From the company's annual reports for these years it is possible to calculate sales of more than SEK 200 million. This is a matter of at least SEK 100 million being lost to the Swedish public treasury during these years, in taxes and contributions.

9. Two labour markets – or the FoodTankers example

Example: Two labour markets

In practice there are two parts of the labour market, for the same work, two parallel sets of rules. An outsider sees little or no difference. But within the company there are different rules depending on citizenship and origin. Different treatment due to nationality is unacceptable. Equal pay for equal work based on the rules of the country of work must again become the standard for the entire labour market.

SEK 20 per hour. That is what drivers from Estonian DinoCarrier earn when they drive for the Swedish FoodTankers AB in Karlshamn. The drivers would rather have subsistence allowance than wages, maintains the company's managing director.

DinoCarrier have operated in Sweden for 14 years. Despite that the company is not registered as an employer in Sweden. It does not pay tax or employer's contributions in Sweden either. According to their Swedish client, FoodTankers, DinoCarrier conducts international services continuously between Sweden, Norway and Denmark. But both drivers and employers are living a little dangerously. If the Swedish Tax Agency were to decide that the company had its main business in Sweden and if the employees' daily rest period is here, then yes that may also be taxable in Sweden.

For an outside observer it is difficult to tell the difference. If you walk around Karlshamn you will soon come across a tanker with the FoodTankers sign. And on the surface FoodTankers is an orderly company, with a collective agreement for its Swedish employees. But behind the wheel of the tanker there may well be an Estonian driver, without a collective agreement and a wage of only SEK 20 per hour. Looking at DinoCarriers' annual reports historically it can be seen that the reported wages swing on average between SEK 12 and SEK 33 per hour in the period 2000 to 2013. The most recently audited year, 2013, reported average wages of SEK 20 per hour.

"I believed that they clearly were better paid than that," says FoodTankers' managing director Thomas Petterson in an interview.

"If I go into how it works in these countries the basic wage is very very low and then the subsistence allowances are maximised. The 30 kronor includes the subsistence allowance?"

No, who counts subsistence allowance as wages?

"The entire European transport world... wage setting as the drivers want... if we go and say to the drivers we are increasing their basic wage and... They always want to keep the highest possible subsistence allowance payment. It is the drivers who want it."

You are justifying a low basic wage. A basic wage that gives the drivers low sickness benefits and a low pension.

“No, I am not, but if the drivers themselves can choose they take the short-term solution. Having a lower basic wage and a higher amount in their hands.”

The subsistence allowance when an Estonian works abroad has been set by the Estonian tax agency at EUR 32 per day. And couldn't an Estonian driver have a higher wage and subsistence allowance at the same time? What do you think the rest of the world will think of FoodTankers having drivers that work for what is tantamount to a slave wage?

“I think we see this slightly differently. You just look at the wages and I look at what they receive every month.”

Does FoodTankers have a collective agreement?

“Yes, of course!”

Is that how you talk to the trade union... that our Swedish drivers want a lower basic wage...

“No, it's two different systems.”

How do you think it looks for FoodTankers that you have drivers who drive in this way? Does it not affect the way your company is regarded?

“We pay our sub-contractors better than the general market price. I know this because in many contexts we have problems with the competition situation, because others pay quite differently.”

That is the other side. But how do you think this will affect the way your company is regarded with DinoCarriers low wages?

“I don't think it will have any impact. What is interesting is: 1) How we ourselves perceive this. Is it a reasonable way of working? Is it reasonable from the drivers' perspective? The drivers, as I see it and those I have talked to, have a reasonable way of living. 2) What do our customers say? I would never agree to this if I knew we were exploiting the drivers. But they absolutely do not think so. That I can swear to.”

So an Estonian is worth 20 kronor but a Swede is worth a collectively agreed wage, you mean? That is making a distinction between people and people.

“You don't think in that way, everyone looks at what they get to take home. And then we are in a completely different situation. I understand exactly what you are saying, I can agree on those things. But the entire transport industry is built up in this way that the drivers want to be paid in that way. We can increase a basic wage but then we have to be aware that we will have to shut down many parts of our business. And I think we do this better than many of our competitors. What do I want then? If I was in charge in this world I would like the pay situation to be the same throughout Europe. Then everything would be much simpler and the competition situation would be completely different,” says Thomas Petterson.



Previously published in the series:

1. Sju fackliga betraktelser över den ekonomiska krisen, ISBN 978-566-2805-4
(Union reflections on the economic crisis, ISBN 978-566-2806-1)
2. Demokrati som hinder för EUs fria rörlighet, ISBN 978-566-2804-7
(Democracy as an obstacle for free movement within the EU, ISBN 978-566-2891-7)
3. Skyddet för den fackliga föreningsfriheten i olika internationella rättsakter och dess påverkan på EU, ISBN 978-566-2799-6
(Protection of trade union freedom of association in various international legal instruments and its effect on the EU, ISBN 978-566-2948-8)
4. När arbetskraftskostnaderna pressar priset, ISBN 978-566-2631-9
(When labour costs squeeze the price, ISBN 978-566-2949-5)
5. Vinnare eller förlorare, ISBN 978-566-2876-4
(Winners or losers, ISBN 978-566-2950-1)
6. Gäst i verkligheten, ISBN 978-91-566-2887-0
(Guest in reality, ISBN 978-566-2945-7)
7. För ett socialt Europa, ISBN 978-91-566-2959-0
(For a Social Europe, ISBN 978-91-566-2958-7)
8. LOs Europapolitiska prioriteringar 2014–2019, ISBN 978-91-566-2977-8
(LO's Key European Issues 2014–2019, ISBN 978-91-566-3058-3)
9. Bortom drömmar och tro – bilder av utstationering i praktiken och behovet av ett förändrat utstationeringsdirektiv, ISBN 978-91-566-3078-1

The reports can be ordered from LO-distribution:

lo@strombergdistribution.se

Telefax: 026-24 90 26

June 2015

ISBN 978-91-566-3077-4

www.lo.se

COVER PHOTO: Lars Forsstedt