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False (Bogus) Self-Employment in East-West Labour Migration

Recent trends in the Swedish construction and road haulage industries
This report is based on ongoing research funded by the Swedish Council for Working Life and Social Research (FAS) Project Number: 2011-0338, East-West labour migration, industrial relations and labour standards in a Swedish-Baltic context, Svensk modell och baltisk rörlighet: harmonisering eller social dumpning? En studie av arbetsmigration mellan Baltikum och Sverige.
Abstract

The aim of this study is to discuss recent trends in false (bogus) self-employment in east-west labour migration in Sweden after the enlargement of the EU into the former Eastern Bloc. The study explores the reasons for using “self-employed” migrant workers in the construction and road haulage industries, how the workers are recruited and how the organised parties in the labour market have recognised and responded to this practice. The emphasis is on the intertwined relationships between self-employment as a mode of exploitation and as a strategy for survival in the labour market, which always has made false self-employment a complex matter for the trade unions to address. The analysis also relates to the current scholarly debate on dual labour markets. The study shows that the practice of false self-employment has increased in recent years in both industries. Yet there are other ways to avoid Swedish collective agreements and labour standards, for example by concluding “false collective agreements”. The study analyses the reasons behind this increase in a Swedish and international context. The discussion includes, among other things, how false self-employment is related to the use of long subcontracting chains, the infringement of the EU regulations on the cabotage traffic and the evasion of taxes and social fees in the host countries. It also includes why combating false self-employment has become a matter of converging interests and organised cooperation between the social partners in the road haulage industry, but as yet not in the construction industry.

False (bogus) self-employment, Sweden, social dumping, subcontracting chains, illegal cabotage traffic, labour market disturbances, A1/E101 forms.
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The Trade Union Vow

We do solemnly swear
That we will never
under any circumstances
work for lower wages
or under worse conditions
than we now promise
one another

We make this vow,
in secure knowledge
that if we all are true to our pledge
the employer will be forced
to meet our demands
False (Bogus) Self-Employment in East-West Labour Migration

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I: Introduction

The ultimate purpose of trade union movement has always been to curb competition between workers. Accordingly, the essential aim of the collective agreement is to release the workers from the choice between becoming unemployed or undercutting wages and labour standards.

In recent decades, wage dumping through the practice of false (bogus) self-employment has become an increasing labour market problem in the OECD countries (Harvey & Behling 2008; Jorens 2010; Pedersini & Coletto 2010; Bispinck & Schulten 2011). The notion of false self-employment refers to employment disguised as self-employment in order to circumvent collective agreements, labour laws, payroll tax and other employer duties implied in a regular contract of employment. This also means that workers engaged in false self-employment fall outside the rights and protection of employed workers. The main purpose behind this practice is to gain flexibility and competitive advantage by reducing labour costs. Thus, the phenomenon appears mainly in labour intensive industries, such as the building and construction sector, transport, agriculture and cleaning (Perulli 2003; European Commission 2006b; ILO 2003; 2006).

The aim of this study is to discuss recent trends in false self-employment in east-west labour migration in Sweden after the enlargement of the EU into the former Eastern Bloc in 2004 and 2007. The study focuses on the reasons for using foreign self-employed workers, how they are recruited and how the social partners have recognised and responded to the phenomenon. The study comprises two industries, namely construction and transport, more specifically the road haulage industry for long-distance truck transportation. The increasing share of self-employed migrant workers from the newer EU member states in these industries reflects a general trend in the east-west labour migration in Europe (Hägglund 2012; Jorens 2010; Galgóczi & Leschke 2012).

False self-employment is a phenomenon in the “grey area” of the labour market between the main categories of subordinate employment and independent (genuine) self-employment. In principle, there are no legal categories between these main forms of employment. In reality, however, there is a growing “grey area” of false self-employment and so-called dependent self-employment in the post-Fordist labour market. “Dependent self-employment” refers to workers who are classified as self-employed, but who are still economically dependent on a single employer. In such cases, employ-
ers have often contracted out work to their former employees in order to downsize their companies and thus gain flexibility and reduced labour costs (Mangan 2000; Pedersini 2002; Perulli 2003; Mühlberger 2007). A related phenomenon is regularly employed workers, often professionals or high-skilled craftsmen, who work independently in relation to their employers. In many cases, workers and employers have agreed on such an arrangement (Engblom 2003). When it comes to low-skilled employees, however, especially in low-paid service jobs, less serious employers can consciously transfer costs, risks and responsibilities to the workers (Thörnquist 2006; 2013).

The involvement of labour market intermediaries and the use of long subcontracting chains may also conceal the true employment status of workers, as well as who is the real employer (European Commission 2006b; Pedersini & Coletto 2010; Wears Hannan & Fisher 2012). In other words, there is a variety of contractual arrangements in the “grey area” which also means high risks for social dumping and labour abuse. Workers, who initially have a weak position in the labour market, such as unemployed and unorganised migrant workers, are more at risk of being abused.

In Sweden, workers who are formally self-employed but work in a similar state of dependence to a single employer/client as employed workers, should be legally regarded as employees and thus entitled to all the rights and obligations included in a regular contract of employment. The legal notion for workers in this position is “dependent contractors”. However, this is not a “third” legal category. As in most other EU countries, Swedish labour law does not include such a “third” category. In uncertain cases the employment status of a worker should be decided on a case-by-case basis with regards to the degree of subordination to the employer, economic dependence, and all other relevant circumstances (Ds 2002:56; Engblom 2009).

In a post-war historical perspective, atypical forms of employment appearing on the border between direct employment and genuine self-employment can be related to the trend towards “vertical disintegration” in the way companies are structured and production, work and other economic activities are organised in order to gain flexibility. This restructuring process started in the western world in the wake of the international industrial crisis in the 1970s, which also was the crisis of Fordism. Along with the new division of labour, the rate of self-employment in the non-agricultural and civic workforce has increased significantly in most countries in the western world, including Sweden, particularly in the service sector (Collins 1990). With the increase in self-employment, the category of self-employed workers has also become more and more diversified. While the share of genuinely self-employed workers has decreased, false and dependent forms of self-employment in the “grey area” have increased (Cranford et al., 2005; Frade & Darmon, 2005; Pedersini & Coletto 2010).

As in many other EU member states, practically all political parties in Sweden have promoted self-employment and the establishment of small enterprises in recent decades, especially among women and immigrants. In addition, the information and communication technology has considerably decreased the transaction costs for running a company (Sundin & Thörnquist eds. 2006; European Commission 2010).
The centre-right government that took office in Sweden in 2006 has initiated several tax reforms to make it easier to start and run a small enterprise. Among other things, a new F-tax reform that came into force in 2009 allows self-employed people to have only one client (Government bill 2008/09:62). However, this also means that a self-employed person may get into a state of strong dependence on a single client. In that way, the reform implies a risk for disguised employment as well.

In Europe, false self-employment is common particularly in countries with strong neoliberal trends and weak trade unions. The United Kingdom is maybe the most evident example in Western Europe. Among other things, a special tax system for construction workers has facilitated the use of false and dependent forms of self-employment (Merger & Bates 2004; Harvey & Behling, 2008; Simms 2011). Over the past decades, disguised employment has appeared more generally within the EU, also in countries with strong labour laws and an organised labour market (ILO 2006; Jorens 2010; Galgóczi & Leschke 2012). It should also be noticed that false and dependent forms of self-employment have become increasingly common also in the former Eastern Bloc, such as in Poland and the Baltic countries (Sula 2006; Roosaar & Nurmela 2009; Karnite, 2009; Blažienė, 2009). Disguised employment and various other forms of contract work are also a reality in the developing countries (see for example Fourie, 2008; Sundar, 2011; Ebisui 2012).

The extension of the “grey area” between the main categories of subordinate employment and independent self-employment undermines the “notion of employee”. This notion is the legal expression for the personal scope of labour law and the rights of workers implied in a regular contract of employment. Thus, labour laws and collective agreements apply in principle only to employed workers (Adlercreutz 1964; Engblom 2003). However, it has become increasingly common among unions in OECD countries to organise freelancers and other self-employed workers (Gumbrell-McCormick 2011; Ebisui, 2012). In Sweden, the Musicians’ Union is the only union within the Swedish Trade Union Federation, LO, that also organises self-employed workers. On the other hand, several unions within the Swedish Confederation for Professional Employees, TCO, organise self-employed as well.

In contrast to the contract of employment, which is regulated in labour law, the relationship between a self-employed person and a client is a purely commercial relationship governed by contract law. Thus this relationship is based on the rationales of free market forces and unlimited competition (Perulli 2003; Pedersini & Coletto 2010). Accordingly, the notion of employee is crucial for the legal rights and protection of workers, and for the whole system of industrial relations and welfare in Sweden, as well as in other countries with similar industrial relations systems based on collective bargaining and protective legal traditions (Adlercreutz 1964; Engblom 2003; 2009).

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1 The Swedish word for the “notion of employee” is arbetstagarbegröppet.
Consequently, preventing the undermining of this notion has always been an essential task for the trade unions.

False self-employment is thus also a form of “precarious employment” outside the protection of collective agreements and labour laws. In general, false self-employment involves a multiple variety of precarious employment and working conditions, including considerable work environment risks, especially when labour migrants from low-wage countries are involved (ESOPE 2005; Cranford et al., 2005; Keune 2013). This study adheres to the definition of precarious employment used by Lewchuk et al. (2003). The notion can thus be understood as “(...) a cumulative combination of atypical employment contracts, limited social benefits, poor statutory entitlements, job insecurity, short tenure and low wages” (p. 23).

As part of the broader labour market phenomenon of “social-dumping”, false self-employment also concerns political and socioeconomic relations between countries and within regions, such as the east-west labour migration in the Baltic area. As Bernaciak (2012) points out, the notion of social dumping has often been poorly defined and arbitrarily used. This means that the concept has been subject to misconceptions and conscious abuse as well. In this study, Bernaciak’s definition, based on the analogy between social dumping and trade dumping, is used. Social dumping is defined as: “(...) a conscious strategy involving the lowering of wage and employment standards, driven by companies seeking to gain a competitive advantage over other market participants, and indirectly involving their workers as well as home and host country governments” (p. 32).

False self-employment has also been related to the growing “informal economy” (Ødegård et al.). The informal economy often exists in symbiosis with the formal economy as: “(...) a set of flexible maximizing strategies by individuals and firms, and consumers and producers, as a result of growing inequalities in earnings and profit-making capabilities” (Sassen 1998: 18). In practice, there is no clear distinction between these sectors (Harding and Jenkings 1989; Castles & Miller 2003; Slavnic 2010). When it comes to false self-employment, however, it is important to notice that this practice occurs under the cover of regular self-employment in order to circumvent rules and regulations in the labour market. False self-employment is thus not equivalent to “undeclared work” carried out by a self-employed person, even though false self-employment may involve aspects of tax evasion (ESOPE 2004; European Commission 2006b).

False self-employment is not a new labour market phenomenon. Ever since the practices of collective agreements and labour laws were established, there have been attempts to evade these systems. Contractual arrangements in the grey area between regular employment and genuine self-employment have long been used both as a mode of exploitation and a strategy for survival in the labour market. The phenomenon has always been dependent on the organisation of work, but ultimately, it is related to the balance of power in the labour market. Like many other forms of precarious employment appearing in the labour market of today, such as day labour, cash-in-hand payment and various kinds of contract work, the abuse of self-employed workers rather
reflects old, pre-Fordist and sometimes even pre-capitalistic forms of exploitation in the relationship between capital and labour that have been revitalized within a new historical context. EU enlargement incorporating the former socialist states of Eastern Europe provides one exemplary context. As a survival strategy, self-employment has always involved a risk for false and dependent forms of self-employment, and thus also a risk for exploitation – and self-exploitation. The intertwined relationships between self-employment as a mode of exploitation and a strategy for survival have always been a complex issue for the trade unions to address, and never more so than in the most recent period (Thörnquist 2011: 104f).

The phenomenon of false self-employment has appeared, particularly in times, when union power has been weak due to mass-unemployment, labour market conflicts or radical structural transformation. Thus, in a historical perspective, false and dependent forms of self-employment should be regarded as both a pre-Fordist and post-Fordist labour market phenomenon. While post-Fordist developments have provided new impetus to false self-employment, the Fordist labour market regime, can in historical perspective be seen as an interlude period in which labour succeeded in imposing a degree of control in the labour market. It can therefore be seen almost as an ideal type characterised by a class compromise, which also provided the social basis of full-time and long-term subordinate employees in large and vertically integrated industrial firms, as well as organised interests and a relative balance of power in the labour market (ibid).

Theoretically, this study also relates to the current scholarly debate based on “dual” or “segmented” labour markets structured by gender, citizenship, ethnicity, status etc. According to this theory, the labour market is divided into two separate sectors: a primary sector with high wages, employment security, social rights and decent working conditions; and a secondary sector with low wages, short-term employment, work environment risks and poor legal and social benefits. While the workers in these sectors do not compete, the differences in wages and working conditions remain instead of equalising (Doeringer & Piore 1971). In his classical “Birds of Passage: Migrant Labor and Industrial Societies”, Piore (1979) used this theory to explain how labour migration is linked to structural changes in the capitalistic economy. Friberg (2012) has applied this theory at the company and workplace level, relating also to Atkinson’s equally classical discussion on the “flexible firm” (Atkinson 1984). Friberg has studied the effects of the significant increase in Polish migrant workers in the Norwegian construction sector after the eastward enlargement of the EU. He claims that the inflow of migrant labour has resulted in a divided labour market. However, the difference between the Norwegian and Polish workers is not in the first place structured by wages, but by the terms of employment. While the Norwegian workers to a large extent are permanently employed, the Polish labour migrants are short term employed, temporary agency workers or bogusly self-employed. The main relevance of the present study to this discussion is whether the current trends in false self-employment in the Swedish construction and transport industries indicate a similar process of labour market segmentation.
This study draws mainly upon in-depth interviews with trade unions, recruitment agencies, contractors, employers and juridical experts. The recruitment agencies and the employers, who use self-employed workers from the newer EU member states, have been identified in the trade union press and by direct contacts with the trade unions. It is for obvious reasons a delicate work to interview people who engage foreign self-employed workers in order to evade rules and regulations implied in a regular contract of employment. With regards to the subject, it was considered that the best method to use would be open interviews. It has been important not to push the informants towards disclosures. The first contact with the informants was arranged by phone. The main questions of the interviews were sent by e-mail around a week before the face-to-face interview took place. Some of the informants have been interviewed twice or even three times in order to follow up current cases discussed in the text. The length of interviews has generally been around an hour. Some of the interviews were carried out solely on the phone for reasons of convenience. The empirical material also includes official Swedish and EU statistics and public reports, as well as reports and press material from the social partners. The study also relates to the international scholarly literature on false self-employment.

It is of course not possible to draw too far reaching conclusions on the basis of a limited empirical investigation. The aim has rather been to explore recent trends in the use of false self-employment in the two industries and on the basis of concrete examples discuss how this practice is related to the east-west labour migration.

In the following chapters of this report (II–III), false self-employment in the construction and road haulage industries will be discussed in detail with a focus on recent trends in this phenomenon, the reasons for using bogusly self-employed workers from the newer EU member states, and the trade unions’ and organised employers’ response to this practice. In the concluding chapter (IV), the results will be discussed in a wider and comparative context.
II: The construction industry

How then has the phenomenon of false self-employment developed in the Swedish construction industry in recent years? Let us first take a brief look at the company structure in this industry.

As in other EU countries, the share of small and micro companies has traditionally been high in construction. According to the Swedish Construction Federation, *Sveriges Byggindustrier*, only 12 per cent of the around 23,000 companies in the building and construction industry have more than four employees (BI 2013). The share of own account self-employed workers was 21 per cent of the total labour force, or more than three times higher than the average level in the labour market (ibid, cf. Pedersini & Coletto 2010: 8). The comparatively high share of self-employment in construction can be related to the way of organising work. Traditionally, production in this sector has been project-based and to a varying extent dependent on subcontracting (Ekstedt 1999). Along with the increasing international competition, this structure has been reinforced. Above all, the use of long subcontracting chains has become more and more common (Brå 2007; BI 2011).

False self-employment and the eastward enlargement of the EU

In the years before the first enlargement of the EU into the former Eastern Bloc in 2004, a number of temporary employment agencies providing self-employed workers from Poland and the Baltic States appeared in the booming Swedish construction industry. These recruitment agencies, some of which were registered in the United Kingdom or in Ireland, operated mainly in the Öresund region, and around the metropolitan areas in central Sweden. According to an investigation made by local branches of the Swedish Building Workers’ Union, *Byggnads*, in the county of Skåne in 2003, 140 of around 400 visited working sites in construction were staffed mainly by underpaid migrant workers, many of whom were formally self-employed. Moreover, the unions found some 40 recruitment agencies mediating migrant labour (*Byggnads* 2004). *Byggnads* estimated that most of the formally self-employed workers were not genuinely self-employed. Like subordinate employees, they worked under the management and control of the employers, who provided them with tools, material, transport and housing. According to this report, but also reports in the liberal press, many of these labourers worked and lived under extremely poor conditions (*Sydsvenska Dagbladet* 22 and 28 June, 2003).

Some of the recruitment agencies were involved in the industrial conflicts that occurred in the construction sector in the years following the enlargement of the EU in 2004.

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2 The “building- and construction industry” refers to the Swedish Industrial Classification, SNI, 41-42, Statistics in Sweden (BI 2011).

3 The term “own account” refers to self-employed workers without employees.
2004. The agencies operated primarily in the building sector, but were also targeting other sectors, such as cleaning, agriculture and welding. The owners were mainly small Swedish entrepreneurs, some of whom had an immigrant background in Poland or the Baltic States. The customers were private persons and small companies, but in some cases also large and well-established firms (*Byggnads* 2004; Persson 2006).

The business of recruiting and mediating formally self-employed migrant workers was also related to the rules and regulations on labour migration. Before the enlargement of the EU in 2004, workers from the candidate countries were obliged to have work permits to work as employees in Sweden. For self-employed workers, on the other hand, there was no such requirement. According to *Byggnads*, the intermediaries used this “loophole” to recruit and mediate cheap labour from the candidate countries to Sweden. In the light of the extremely high unemployment rate in Poland and in Baltic states, wage differentials of around five times, and the upward economic trend in Sweden, many workers from these countries were prepared to take this opportunity to get a job (Thörnquist 2011).

When labour migration from the Central and Eastern Europe began in the years around 2000, the local union branches of *Byggnads* in Skåne and Stockholm had intensified their regular control and monitoring of payroll lists, piecework prices and employment conditions at the workplaces in order to forestall social-dumping. At the time, the local unions also worked in cooperation with the police and the migration authority to identify irregular forms of construction work. This was indeed a questionable method, which rendered *Byggnads* a lot of criticism. Some of the Baltic workers even contacted the Swedish Discrimination Ombudsman claiming that they were subject to ethnic discrimination (ibid.; Persson 2006; Frank 2009).

According to Frank (2009), *Byggnads* consciously labelled migrant workers as false self-employed in order to get them deported and in that way remove foreign competition from the Swedish labour market. The problem with Frank’s interpretation is that it reduces the issue of social dumping to a conflict between workers. In that way, it does not take into account the employers’ economic interests in breaking down collectively bargained terms and conditions by using bogusly self-employed migrant workers, including through the involvement of labour market intermediaries. In other words, it is an approach that neglects the fundamental conflict between capital and labour. However, this is not to say there was no tension between the Swedish and the foreign workers.

Migrant workers have sometimes not been aware of their true employment status when they have started working in Sweden. A labour market conflict in 2005 in Örebro, a larger town in Central Sweden, illustrated this problem very clearly (Thörnquist 2011). In this case, a small Swedish entrepreneur with an immigrant background in Latvia had recruited some 20 construction workers in Latvia to be used mainly for renovation projects in Sweden. When the workers were recruited in Latvia, they were told to sign a form, which they thought was a contract of employment. In fact, it was
an individual application to the Swedish Tax Agency on an F-tax certificate. Thus, the Latvian workers had to pay their own preliminary tax and social security contributions. This meant that their net payment was around 30 SEK. When two of the Latvian workers contacted Byggnads and the local tax authority to find out their true employment status, they were immediately fired. As a result, Byggnads put this company, as well as a labour market intermediary that also was involved in this conflict under a three month long blockade (ibid).

According to Byggnads, many migrant workers in the construction sector are still not aware of their employment status when they arrive to Sweden, especially in cases where unscrupulous intermediaries are involved and the workers are engaged at the end of long subcontracting chains (interview with interpreter and regional union president, Byggnads Väst, August 2012; Interview with union representatives, Byggnads Mälardalen, July 2012). Ødegård et al. (2009: 466) have noticed the same problem among migrant workers in Norway. As we will see later on in this report, employers and recruitment agencies generally do not provide migrant workers today with forms for applications for Swedish F-tax certificates.

**False self-employment or false collective agreements?**

After the eastward enlargement of the EU in 2004, Byggnads assumed that the practice of false self-employment would decrease. In the wake of the Laval conflict, the trade unions focused mainly on the issue of posted workers. As Sweden, like the UK and Ireland, decided not to institute transitional restrictions for workers from the newer EU member states, the practice of false self-employment as a means of circumventing the regulations on work permits had become obsolete (cf. Tamas & Müntz 2006).

Moreover, other ways of evading Swedish collective agreements had become increasingly common, for example by using “false collective agreements”. In this study, as well as in a previous study, this term refers to the practice among foreign contractors/employers operating temporarily in Sweden to voluntarily conclude a Swedish collective agreement, but without following it (see also Thörnquist 2011:121ff.). In other words, the employers conclude a regular Swedish collective agreement for their employees in order to conceal the fact that they are practicing wage-dumping to gain competitive advantages. Thus, in these cases, the employers can use employed (posted) workers, who are formally covered by a Swedish collective agreement as cheap labour. When the trade union representatives visit these companies, the employers generally present perfect payroll lists and timetable schemes without a single hour of overtime work. In practice, however, the employers do not follow the agreements and the workers have to work substantial additional “off the record” hours. This means that in reality, there are two parallel agreements, an official one with Byggnads, and an unoffi-

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4 An F-tax certificate denotes that person who conducts business should pay his/her own preliminary tax and social insurance contributions.
cial one between the employers and the workers. One may say that the use of “false” or “double” collective agreements is a way of keeping the unions “away”. In other words, the purpose is to make the unions believe that the companies comply with Swedish labour standards. As these companies generally are not registered in Sweden and do not pay tax and social security contributions in Sweden, it is practically impossible for the Swedish trade unions or tax authorities to control their business (ibid).

The interviewed trade union representatives have all emphasised that this practice has become a most serious problem for the trade unions. For example, the former Latvian-speaking interpreter in Byggnads maintained that as far as he had experienced most of the foreign companies, which had concluded collective agreements with Byggnads, did not follow them (interview, Motala July 2012). Consequently, the very existence of a Swedish collective agreement is not always a guarantee against wage-dumping.

There were also other reasons for Byggnads to assume that Swedish as well as foreign companies working temporarily in Sweden, would have less interest in using bogusly self-employed workers from the newer member states as cheap labour. The outcome of the Laval conflict in terms of domestic wage-setting meant that it has become more difficult for the Swedish trade unions to require posted workers to be paid in accordance with the Swedish collective agreements. Union attempts to enforce Swedish labour standards through industrial action were contested by the employers, culminating in a Swedish Labour Court hearing and eventually a European Court of Justice land-mark ruling in the Laval case. This latter now historic judgement represented a significant setback for organised unions in their struggle against exploitative employers both at a national and European level (Woolfson et al. 2010).

However, even in cases where posted workers are paid the same gross salary as Swedish workers, their real payment may be considerable lower. In many newer as well as older EU countries, employees are obliged to pay part of the social security contributions. Byggnads claims that it has become more and more common that foreign employers working temporarily in Sweden deduct this sum from the actual Swedish wage level. In Sweden, on the other hand, the employers pay this fee on the top of the gross salary. This way of “shopping” between different national systems for taxes and social insurance contributions within the EU means unfair competition and social dumping (Jonsson 2013). According to the EU Regulation (EC) No. 883/2004, posted workers can be subject to the social security regulations in the sending countries up to two years when working in another member state (European Commission 2008). The Swedish law states one year, but even one year is a long time-period for temporary work in a construction project (interview with chief lawyer, Byggnads, February 2013). This is another “legal” loophole for wage dumping within the EU.

In addition, foreign employers can easily evade Swedish tax duties for their posted workers. Even though Swedish regulations require an employee resident in Sweden for more than six months to be registered under the Swedish tax regime, these regulations
can be circumvented by constant circulation of personnel between home state and Sweden (Woolfson et al. forthcoming).

**Labour market intermediaries**

Nevertheless, temporary work agencies recruiting and mediating self-employed migrant workers have appeared quite frequently in recent years. Some of them are big multinational companies mediating employed workers as well. Over the past few years *Byggnads* has been involved in conflicts especially with one of them. This firm is registered in Ireland and has subsidiaries all over Europe. The company recruits workers mainly from the newer EU states to be used as temporary labour in Sweden and in other older EU countries (*Byggnadsarbetaren*, 1 June, 2011; Norberg & Lund 2012). In addition, an increasing number of small recruitment agencies mediating self-employed workers from the former Eastern Bloc have appeared in Sweden in recent years (interview with interpreter and regional union president, *Byggnads Väst* August 2012 and union representatives, *Byggnads Mälardalen*, August 2012). The recruitment agencies identified in this study are small companies registered in Sweden and owned by Swedish entrepreneurs with or without an immigrant background in the newer EU countries. The agencies recruit the workers on the web, or through social networks in their home countries. In addition, foreign subcontractors, who are engaged for construction projects in Sweden, use self-employed workers from their home countries as subcontractors.

There are of course also reputable recruitment agencies mediating independent self-employed workers for construction jobs in Sweden. It should also be said that many genuinely self-employed craftsmen and service providers from the newer EU states are working in Sweden without any involvement of intermediaries. According to one of the employed Polish-speaking interpreters at *Byggnads*, Polish people working temporarily in Sweden are better off than workers who come from the Baltic States. Polish entrepreneurs have been engaged in Sweden since the 1990s, and many of those who are contracted in Sweden today have sufficient self-confidence not to accept hostile bids (interview with interpreter, *Byggnads Väst*, August 2012; interview with small entrepreneurs and craftsmen in construction, September 2012).

Nevertheless, in Sweden, as well as in many other EU 15 countries, the abuse of self-employed workers from the former Eastern Bloc is a reality. According to a review of self-employment and bogus self-employment in the construction sector made by Eurofound on behalf of the European social partners in the construction industry, the European Federation of Building and Woodworkers (EFBWW) and the European Construction Industry Federation (FIEC), dependent and false forms of self-employment increased in many member states in the latter half of the 2000s (Jorens 2010).
Reasons for using self-employed workers

According to Byggnads, the use of underpaid self-employed construction workers from the newer EU states has increased significantly in recent years. Today, this practice is also more visible at the construction sites (interview with chief lawyer, Byggnads, February 2013).

Ten years ago, the problem of false self-employment appeared mainly at small working sites in the outskirts of the cities or in the countryside. Over the past few years, however, we have discovered an increasing number of cases at larger sites in the cities (interview with union representatives at Byggnads Mälardalen, August 2012).

Self-employed as well as employed workers from the newer EU countries are also involved in a broader scope of work operations in the building and construction sector.

Previously the Polish and Baltic construction workers did the dirtiest and most dangerous jobs in Sweden. Now they have become more and more involved in all kinds of work, from destruction jobs to the most advanced and skilled jobs (interview with former interpreter at Byggnads, July 2012.).

Why then is the practice of false self-employment increasing in east-west labour migration, when there are other ways of evading collective agreements and labour standards in host countries such as Sweden. After the eastward enlargement of the EU in 2004 and 2007, labour mobility has increased, even though labour migration flows to Sweden have been comparatively low in an international perspective (Tamas & Müntz 2006; Gerdes & Wadensjö 2008; OECD 2011). The EU Directive 2006/123/EC on the free movement of services in the internal market aims at removing barriers and restrictions for EU citizens seeking to provide services in another EU country on a permanent or temporary basis. On the other hand, the Directive should not affect the right for the member state where the service is provided to assess the employment status of a person in order to avoid false self-employment (European Commission 2006a).

According to Byggnads, the main reason behind the increase in false self-employment is the frequent use of subcontractors in the construction sector. In many cases, this means long “subcontracting chains”. While self-employed workers are often engaged at the end point of these chains, it is easier to camouflage the practice of false self-employment (interviews with union representatives, Byggnads Mälardalen, August 2012 and Byggnads Väst, August, 2012). In Sweden, the main contractor has a legal obligation to negotiate with the trade unions before engaging subcontractors (SFS 1976:589, §38). However, the main contractor is not responsible for wages and working conditions in these enterprises.

An important prerequisite for the increasing exploitation of self-employed workers from the newer EU member states is the use of the so-called A1 (previously E101) form. This is a national certificate that is used within the EU to show that a worker
pays social security contributions in his/her home country (interview with expert at the Swedish Tax Agency, August 2012). However, it has become more and more common that labour market intermediaries provide self-employed as well as employed workers from the former Eastern Bloc with falsified A1 certificates or A1 forms from countries with lower social security rates than in their home countries, such as Cyprus and Ireland (ibid. see also Norberg 2012; Jonsson 2013). As a result, many self-employed migrant workers do not have a Swedish F-tax certificate. Thus, the use of A1 forms has made it easier and even more lucrative to engage foreign self-employed migrant workers as subcontractors. This is a most important aspect of the increasing use of self-employed – and bogusly self-employed workers – in east-west labour migration.

The main problem with the A1 designation, which is highly relevant for this study, is that it is in fact used to estimate the workers’ employment status. Yet, an A1 form says nothing about a worker’s true employment status from a labour law perspective. Nor does an F-tax certificate. This practice facilitates the spread of false self-employment as an attractive business model between the member states. According to the EFBWW and FIEC, a couple of judgements in the European Court of Justice have legitimated this practice when workers cross a national border (C-178/97 and C-2/05). Therefore, it is critically important that the proposed Enforcement of Directive 96/71/EC includes effective measures to combat this way of using A1 forms (Hägglund 2012). The social partners claim that the determination of a worker’s true employment status should be “(…) the legal responsibility of the country in which the work is done, which must decide whether subordination/control is apparent from the working circumstances and the contractual terms” (EFBWW & FIEC 2010).

This study of false self-employment in the Swedish construction and transport sectors indicates however that many self-employed migrant workers have neither an A1 designation nor a Swedish F-tax certificate. In such cases, they only have a document that shows that they have registered a company in their home country (Byggnads Mälardalen, August 2012; interview with expert at the Swedish Tax Agency, February 2013; see also chapter III).

Foreign entrepreneurs without a permanent establishment in Sweden are in principle not obliged to pay taxes in Sweden. According to the Swedish Income Tax Act, a business operation should generally be regarded as “permanent” if it is carried on for a time-period of more than six months. However, Sweden has also entered into tax treaties with other EU states. In most of the treaties concerning building sites, construction or installation projects the time period has been extended to one year (interview with expert at the Swedish Tax agency, February 2013). As a consequence, self-employed construction workers from other EU countries generally stay in Sweden for six months up to a year. After some time in their home countries, they may return to Sweden for another period of work. This practice makes it even more difficult to take action against tax evasion as well as social dumping through false self-employment. Over the past two years, the Swedish Tax Agency has strongly reinforced its control over foreign
self-employed workers. For example, if their main business is carried out in Sweden, the Swedish Tax Agency can require them to pay tax in Sweden (ibid.).

According to the chief lawyer at Byggnads, the increase in false self-employment within the EU in recent years is also related to the implementation of the Directive 2008/104/EC on Temporary Agency Work. This Directive, which applies only to employed workers, includes a statement on “equal treatment”. “The basic working and employment conditions applicable to temporary agency workers should be at least those which would apply to such workers if they were recruited by the user undertaking to occupy the same job” (European Commission, 2008). The Directive was included in the Swedish law on the 1st of January 2013. The chief lawyer fears that the implementation of the Directive will generate further increase in disguised employment in Sweden (Byggnadsarbetaren November 2012; interview with the chief lawyer, February 2013).

As was mentioned initially, false and dependent forms of self-employment are an increasing practice in the newer EU member states as well. Here, the governments promote self-employment, and it is easy to register an enterprise, also for temporary work as a self-employed in another EU country. Moreover, in the current process of economic restructuring and liberalisation, the employers often force their employees to work as self-employed instead of as employees in order to reduce labour costs and gain flexibility (Sula 2006; Roosaa & Nurmela 2009; Karnite, 2009; Blažienė, 2009; European Commission 2010). It is reasonable to assume that this development facilitates the recruitment and abuse of self-employed migrant workers in older EU countries, such as Sweden, as well.

**Small actors**

This study also indicates that one-man enterprises and small partnership companies operate, not only as subcontractors, but also as recruitment agencies and main contractors. Among them are high-skilled craftsmen and reputable businessmen. However, there are also less serious actors, some of whom seem to have little experience of construction work. Their business plan is to run a small enterprise with low fixed costs and without employees. In their efforts to reduce labour costs, many of them prefer to use low-paid migrant workers as subcontractors. Therefore, they often cooperate with small recruitment agencies with a similar business model (interview with small entrepreneur August 2012; interview with owner of a recruitment company, August 2012; interview with interpreter and regional union president, Byggnads Väst, August 2012).

Some of the recruitment agencies mediating self-employed migrant workers are involved in broader networks for business cooperation in the building and housing sectors. For example, over the past few years, a small recruitment agency (a one-man enterprise) in one of the larger cities in Central Sweden has worked in close cooperation with a well-established real-estate enterprise. This enterprise required the contract companies they engaged for refurbishment projects, or for new construction projects,
to use self-employed workers mediated by the recruitment agency as subcontractors. In practice, this meant recruiting “low-paid” self-employed workers from Poland and the Baltic states (interview with local union representatives, Byggnads Mälardalen, July 2012; interview with the owner of the recruitment agency, August 2012). In other words, to win a contract, the building companies must be prepared to contribute to social dumping.

In 2012, the real-estate enterprise engaged a larger local building company as the main entrepreneur for the renovation of a public building. This company had in turn engaged the owner of the recruitment company as a project manager. At the same time, he provided the building company with self-employed Polish workers, who he recruited with the help of a labour market intermediary in Poland. According to Byggnads, this was a clear case of false self-employment. Almost all of these workers had registered their companies in Poland shortly before they left to work in Sweden. They had no A1 forms that showed that they paid social security contributions in their home country. Nor had they F-tax certificates. There were also other factors that indicated that the workers were not independent self-employed craftsmen. As subcontractors they should be contracted for defined parts of the main contract of a project. Byggnads claimed that there where no such arrangements in this case. In addition, Byggnads considered that the “self-employed” migrant workers worked under the management and control of the contractor, who provided them with materials, tools and other equipments (interview with union representatives at Byggnads Mälardalen, July and November 2012; Byggnadsarbetaren, November 2012).

In other cases, large and well-established building companies engage subcontractors, who in their turn engage other subcontractors. At the end of these subcontracting chains, the work is often carried out by “self-employed” migrant workers, who in many cases have never run a company in their home countries. The critical problem from the unions’ point of view is that the main contractors have no formal responsibility for the employment and working conditions in the subcontracting chains (interview with interpreter and regional union president at Byggnads Väst, Gothenburg, August 2012). The issue of diffused and incoherent responsibilities within the contracting supply chain, especially for matters such as health and safety, is a perennial problem and is subject to active discussion in terms of the new proposed EU Enforcement Directive which itself is a response to social partner concerns over the abuse of the posting system in construction (European Commission 2012; EFBWW 2012).

Another reason why false self-employment is a problem in the construction sector is that many small contractors, who use self-employed migrant workers, provide services to private persons. In general, the trade unions cannot interfere in such cases (interview with local union representatives, Byggnads Mälardalen, July and November 2012).
Attitudes to labour migration

Finally, another aspect should be mentioned as a contributing factor to the increase in false self-employment, namely attitudes towards the use of cheap labour from the newer EU countries. The interviewed entrepreneurs have no moral qualms about how they conduct their business. They refer to “globalisation”, and sometimes more specifically to the EU regulations on the free mobility of services. They also emphasise repeatedly that they do not deal with undeclared work, as they themselves have an F-tax certificate. Moreover, they claim that they in fact help the migrant workers to find jobs and make money. In other words, they seek to legitimate the use of underpaid migrant workers. According to one of the owners of a small partnership company, the Baltic and Polish self-employed workers he recruits are paid “far less” than a Swedish self-employed subcontractor. Like many other entrepreneurs, who use foreign self-employed workers, he does not relate the workers’ payment and working conditions to Swedish labour standards but to the standards in their home countries.

I follow the EU regulations. These workers have the right to work here, and I have the right to hire them. I don’t abuse them either. I have an F-tax card. So, no one can say that this is undeclared work or something. In addition, they earn a lot more money here in Sweden than in their home countries (interview with small entrepreneur, August 2012).

Moreover, the entrepreneur seems to be very proud of “his” business model.

I can engage the workers when I need them, and I don’t have to bother about the LAS regulations. I don’t have to deal with the trade union either. As self-employed workers they also have to take responsibility for their mistakes. If something goes wrong with their work, they have to bear the costs. This is an important aspect for a small entrepreneur like me (ibid.).

This entrepreneur, as well as the interviewed owner of the recruitment agency, also claims that the incentive in using self-employed migrant workers from the former Eastern Bloc is not simply a financial one. “These workers work much faster and better than Swedish workers. One can rely on them and they do not complain”. This statement reflects the rhetoric of the “good worker” and the existence of a special “work culture” among migrant workers. However, stereotypes of migrant workers have often been used to conceal the fact that they are being exploited (cf. Mackenzie & Forde 2009; Friberg 2012).

In principle, attitudes to labour migration in the workers’ home countries may also make it difficult for the unions to curb social dumping and labour abuse. This aspect has been mentioned several times in the discussions with trade union representatives, including the interpreters. Among other things, it has been referred to as a reason why

5 The "LAS regulations" refer to the Swedish Employment Security Law.
it has been difficult to establish cooperation with the tax agencies and the labour market parties in the newer EU countries. As migrant workers also are potential consumers in their home countries, who may contribute to increasing demand and economic progress in these countries, governmental agencies, and even social partners, may be less interested in cooperating across the national borders to prevent social dumping. In other words, the union representatives fear that short-sighted economic interests are being prioritised over wider European social interests.

Responses to false self-employment

How then have the Swedish social partners in the construction industry responded to the practice of false self-employment in recent years? For the trade union movement, the fundamental problem of false self-employment is the erosion of the “notion of employee”. In concrete terms, this means the undermining of labour laws and collective agreements and thus social dumping as well. False self-employment may also lead to erosion of labour skills and competence in the industry (LO 2004; Byggnads 2004). In general, employers who contract out work to self-employed workers or engage temporary agency workers, have less interest in investing in training and capacity building (Bolder, Naevecke, & Schulte 2005; Arrowsmith 2006; Håkansson et al.).

After the enlargement of the EU in 2004 and the Laval conflict in 2004/2005, an important strategy for Byggnads in preventing social dumping has been to establish a working dialogue with migrant workers. This strategy was in line with LO’s policy program for “Orderliness in the labour market” adopted in 2004 as an “alternative” to the demand for the imposition of transitional restrictions from some member unions, among them those in construction and transport (LO 2004). Among other things, Byggnads launched the “Interpreter Project” in 2005. This meant that the union employed three Polish-speaking interpreters and one Latvian-speaking interpreter, who also spoke English and Russian, to mediate contacts between the union and the migrant workers from the new EU Member States. The interpreters were situated in Stockholm, Gothenburg, Malmö and Örebro, but they also served the local branches in the neighbouring counties. The overall aim of this project was to prevent social dumping, including exploitation of the foreign workers. The main task for the interpreters was to get in touch with migrant workers to inform them their rights and obligations as workers in Sweden, and to assist those who were in conflict with their employers. The interpreters were also entitled the right to sign collective agreements with foreign employers (Thörnquist 2011).

As Hardy et al. (2012) have shown, the Norwegian Fellesforbundet acted in a similar way after 2007. In Norway, the trade union also forced through a legal extension of parts of the collective agreements in the construction sector. This meant that a statutory minimum wage level was granted all workers – including also those who were not organised. This policy has decreased the wage gap between Norwegian and foreign employees and it has given the union a migrant friendly appearance. As a result many
migrant workers have been organised as well (see also Alsos & Eldring 2008; Eldring et al. 2012; Friberg 2012).

When it comes to self-employed workers, however, they can not be protected by collective agreements unless their employment status is re-defined and they are formally considered as employees. Even though Byggnads employed only a few interpreters and they had very large districts to serve, this institution was – and still is – an important resource in the struggle against social dumping and labour abuse. Among other things, the interpreters have managed to get in touch with self-employed workers. Today, there are only two interpreters left in Byggnads. Since 2010 they have been permanently employed at the local union level (in Gothenburg and Malmö). The main reason why the system of interpreters has decreased is that the local branches of Byggnads have to bear the costs for their employment. Many local unions mean that they cannot afford these expenses in a time of declining union density. Instead, they use foreign born members, or they engage external interpreters as and when needed (interview with the former interpreter in Stockholm, July 2012).

Over the past decades, trade union density has declined in most LO member unions due to structural changes in the labour market. In 2007 and 2008, however, there was a most dramatic membership drop. The reason was that the new centre-right alliance government decided to require the union unemployment funds to pay a larger share of the unemployment benefits. As a result, the funds had to raise their fees, which meant a considerable increase in the total membership fee, especially for the LO unions (Kjellberg 2011: 49). Even though the membership decline is less dramatic today, many unions, among them Byggnads, are still facing the problem of a shrinking member base and financial strain. According to some of the interviewed union representatives, it can sometimes be difficult to explain to the members why the union should invest so much time and money in pursuing the rights of temporary migrant workers, who probably never will become members of the union.

Migrant workers themselves may not be willing to get in touch with trade unions, since they run the risk of being fired. As disguised self-employment sometimes is practiced in the short-sighted economic interests of both employers/clients and workers, there can also be a mutual interest between the parties in keeping the unions away. As such, the intertwined relationship between self-employment as a mode of exploitation and at the same time a strategy for survival has thus made false self-employment a complicated issue for the trade unions to handle.

According to the interpreters employed in Byggnads today, young migrant workers, especially those who come from Poland, are less afraid of speaking with trade unions. For example, there was no problem for the local branch of Byggnads mentioned above to approach the Polish “self-employed” workers, who the recruitment agency that collaborated with the real estate company had mediated. On the other hand, the workers were not prepared to accept any kind of intervention from the trade union. They claimed that they wanted to work as “self-employed” in Sweden. They also maintained
that there was no point in the union trying to combat the practice of using self-employed workers.

They said that if the company would be forced to employ them, or if they should have to leave, the recruitment agency will only provide the employer with new self-employed migrant workers (interview with union representatives, *Byggnads Mälardalen*, July 2012).

In the autumn of 2012, this case caused conflicts between the local branch of *Byggnads* and the construction company. The main problem for *Byggnads* was that the workers were not prepared to support the union’s interpretation of their employment status as bogusly self-employed workers (*Byggnadsarbetaren*, November 2012). In addition, the trade union felt that they had no support from the main employer association, *Sveriges Byggindustrier*.

In fact we have no support from the organised employers as regards the problem of false self-employment, even though we know that many small entrepreneurs in the building and construction sector are almost as worried as we are over this practice (interview with union representatives, *Byggnads Mälardalen*, July 2011).

In December 2012, the local branch of *Byggnads* and the building company met to discuss the problem together with the parties at the central industry level (a so-called central negotiation). Eventually, the construction company decided to terminate cooperation with the recruitment company. A driving force behind this decision was that the company ran the risk of being excluded from *Sveriges Byggindustrier* (*Byggnadsarbetaren* 19 December 2012). Even though the main problem for the employers’ federation seemed to have been whether or not the use of self-employed workers as subcontractors was legal in this case, the outcome of the central negotiations was deemed a great victory for the local branch of *Byggnads*. It was also an important step towards a dialogue between the trade unions and the organised employers on mutual interests in curbing false self-employment (interview with local union representative, *Byggnads Mälardalen*, December 2012).

As in many other EU countries, the Swedish trade unions and employers in the construction sector have launched joint campaigns in recent years in order to curtail the widespread problem of undeclared work and other forms of economic criminality. For example, *Sveriges Byggindustrier* initiated a project called the “Construction Sector in Collaboration” in 2005 (BRÅ 2007; BI 2012). Today, five unions and eight employer and industry associations in the construction sector cooperate in this project. For example, this initiative has led to use of identity cards (so-called ID06 cards) and

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6 The other blue collar unions in the construction sector are the Swedish Painters’ Union (*Målarna*) and the Swedish Electricians’ Union (*Elektrikerna*). The project “Construction Sector in Collaboration” also includes the Construction Managers (*Byggcheferna/Ledarna*) and the Union for Service and Communication, *SECO*. Apart from *Sveriges Byggindustrier*, seven employer and industry associations are involved in this cooperation.
attendance lists at the worksites. The parties also push for unannounced inspections by the Tax Agency. Even though joint efforts in this field did not specifically include the problem of false self-employment, it may of course have made it more difficult to conceal this practice. The aim of the campaign the “Construction Sector in Collaboration” is also to curb unfair competition and to ensure good working conditions.

In some cases, the social partners also cooperate within single companies. Among other things, the general president of Byggnads and managing director of Peab, one of the largest building companies in Sweden, have made a joint statement against the undercutting of prices, wages and working conditions in public procurements. Over the past few decades, it has become more and more common that municipalities engage foreign contractors for large public infrastructure projects. In many cases, however, the employers have ignored Swedish labour standards. In order to forestall labour abuse in public procurements, some LO unions, among them Byggnads and The Swedish Transport Workers’ Union, Transport, cooperate in a joint project called “White Jobs” (interview with union representatives and experts, LO, Stockholm, April 2012).

In 2010, the EFBWW and FIEC adopted a joint agreement on how to forestall and combat false self-employment in the member states. This agreement was a result of the investigation of self-employment and bogus self-employment in the EU countries, which the social partners had initiated (EFBWW and FIEC 2010). The aim was to find “a balance between promoting genuine self-employment and the free movement of services, and combating bogus self-employment and the exploitation of EU legal loopholes” (Jorens p. 4). In Sweden, however, the social partners have mainly focused on the problem of undeclared work. The main reason is probably that there is no consensus on whether false self-employment is a real problem in the Swedish construction sector. However, the outcome of the central negotiations in December 2012 related above seemed to have opened up new space for a dialogue between the parties.

At the same time, the issue “orderliness in the subcontracting system” became the main bone of contention between the social partners in the 2013 bargaining round. Byggnads required that the main contractor should be obliged to control that the subcontractors follow Swedish collective agreements and labour standards. The union also maintained that the system of subcontracting chains has been the main cause behind the increasing problem with serious work accidents, including many fatal accidents (interview with union representatives and experts, LO, Stockholm, April 2012).

In February 2013, the negotiations broke down. Byggnads cancelled the building agreement and announced industrial action, while Sveriges Byggindustrier replied by announcing a lockout (Byggnadsarbetaren, 28 February 2013). After the National Mediation Office had interfered in this labour dispute, the parties came to a compromise, which meant that they will jointly investigate the issue of the main contractor’s social responsibility when engaging subcontractors (Byggnadsarbetaren, 2 April 2013).

As we have seen in this chapter, the use of bogusly self-employed workers from the former Eastern Bloc has increased in the construction sector in recent years, even though there are other ways to circumvent Swedish collective agreements and labour
standards. The main reason for this increase is the frequent use of subcontracting chains, including the involvement of labour market intermediaries. The system of subcontracting chains has no doubt made it easier to conceal false self-employment employment, as well as other forms of social dumping. Another critically important factor behind the increase in false self-employment is that Swedish tax regulations, as well as EU regulations, facilitate the evasion of taxes and social security contributions. The use of A1 forms, even for the assessment of a workers legal employment status, is a big obstacle for the trade unions in their struggle to combat social dumping through false self-employment, in Sweden as well as in other EU countries.
III. The road haulage industry

On the 1st December 2012, a most unusual protest march took place in the central part of Gothenburg. Over 300 unionised truck drivers and organised road haulage companies had come together in a joint public demonstration against the widespread use of bogusly self-employed drivers from the newer EU states, as well as other forms of social dumping in the Swedish road haulage industry. The initiators of this manifestation were the local branch of the Swedish Transport Workers’ Union (Transport) together with the trade organisation, the Swedish Association of Road Transport Companies (Sveriges Åkeriföretag) and the Truckers International Association, TIA. To make their point, the drivers and the haulage companies assembled an impressive cavalcade of over 30 trucks, which rolled down Gothenburg’s central thoroughfare.

False self-employment has become an increasing problem in the Swedish road haulage industry, particularly in the long-distance carriage of goods. The share of self-employed persons in the Swedish road haulage industry is high, over 48 per cent. Only 15 per cent of the hauliers have more than five employees (Sveriges Åkeriföretag 2013). However, the workers engaged in false self-employment are mainly migrant workers from the former Eastern Bloc, especially from Poland. According to Transport, and the Swedish Road Transport Employers’ Association (Biltrafikens Arbetsgivarförbund), false self-employment has become something of an “epidemic” in this industry. In the autumn of 2012, the social partners estimated that there were around a thousand bogusly self-employed drivers, mainly from the former Eastern Bloc formally engaged as sub-contractors in Sweden (Transport 2012).

The cabotage traffic and the use of self-employed drivers

How then can the increasing use of self-employed drivers from the newer EU member states be explained? The problem of false self-employment in the Swedish road haulage industry reflects a general trend in east-west labour migration in the enlarged EU. In Sweden, the social partners and the trade organisation Sveriges Åkeriföretag are in agreement that the root of the problem rests mainly in weak compliance with the EU Regulation (EC) 1072/2009 on “cabotage traffic” (European Commission 2009). This notion refers to the right for non resident hauliers on export journeys to work temporarily on the so-called spot market for domestic carriage in the importing countries. Among other things, the aim is to reduce “empty journeys”, which are costly for the haulage companies as well as for the environment. However, the problem is that the drivers often stay for a longer time than allowed. According to Transport, Sweden has had a liberal attitude to infringement of EU regulations on cabotage traffic. Meanwhile, many hauliers from the older as well as newer EU member states have discovered a lucrative market. As a result, many foreign trucks on the Swedish roads are neither involved in regular export and import journeys, nor in legal cabotage traffic (Svensk Åkeritidning 5 June 2012; debate on question raised in Riksdagen 2011/12:441, M. Green (S); interview with vice president, Transport, May 2012).
In Sweden, this practice started in the early 2000s, and it increased significantly after the eastward enlargements of the EU. A contributing factor was the big storm Gudrun in 2005. This natural disaster caused an extreme demand for timber transports from the destroyed areas. As a result, the Swedish government allowed the forest owners to temporarily engage foreign hauliers to undertake timber transports. Many of these trucks came from the newer EU countries, particularly from Poland. Some of them continued thereafter to work temporarily on the domestic spot market for heavy goods carriage, especially on the sizeable spot market for container transportation contracts around the harbour of Gothenburg (Svenska Dagbladet 17 July 2005; Governmental report 2012).

The infringement of the EU regulations on the cabotage traffic has resulted in a downward pressure of prices and wages in road haulage industry. In addition, Swedish forwarding agencies, which mediate transport contracts between customers and hauliers, engage foreign hauliers from other EU countries. In many cases, these haulage contractors hire cheap labour from the former Eastern Bloc, but also from countries outside the EU such as Macedonia and the Philippines (Lundh 2012). As a large part of the costs in the haulage industry is wage costs, the profit margins are small and the companies are vulnerable to low price competition. In the Swedish road haulage industry, almost all customer contacts are mediated through forwarding agencies. Some of these companies have their own hauliers as well. The formerly leading national haulage companies, the partly state owned company ASG, and the company Bilspedition, which was owned mainly by the hauliers themselves, have merged into the big international combines, DHL and Schenker. This structural transformation has also contributed to the increased competitive pressure on the many small and medium-large companies in the Swedish road haulage industry (Transport 2012; interview with vice president, Transport, May 2012).

In the light of these developments, an increasing number of Swedish hauliers have tried to solve the problem of low-cost competition by replacing their directly-employed truck drivers with self-employed drivers from Poland and other countries in the former Eastern Bloc. Even though the practice of false self-employment has mainly appeared in the international truck traffic sector, it has also begun to spread into “the most exclusive” part of the road haulage industry, namely the regular route haulage traffic sector. The forwarding companies have also started replacing the hauliers working in regular route traffic with trucks working on the spot market. Consequently, the prices in the regular route traffic sector have been depressed as well. As a result, haulage contractors in this sector have also tried to reduce labour costs by using self-employed drivers from the newer EU states. According to Transport and the organised employers, this practice, as well as the illegal cabotage traffic, is undermining the whole Swedish trucking industry (Sveriges Åkeritidning no. 4, November 2011; interview with vice president, Transport, May 2012).
The recruitment of “external drivers”

In many cases, the Swedish road haulage companies use foreign recruitment agencies to mediate recruitment of self-employed drivers from the newer EU countries, but they also recruit them by their own hand. The hauliers also use employed drivers from these countries mediated through temporary work agencies. The problem of “false collective agreements” mentioned previously in this text is present also in the transport sector. However, the main trend in recent years has been to engage formally self-employed drivers, particularly from Poland but also from Hungary, Romania, Bulgaria and the Baltic States (interview with vice president, *Transport*, May 2012; Lundh 2012).

One of the larger Swedish haulage companies, with a fleet of over 100 trucks, recruits the self-employed drivers without involving middlemen. In this case, however, the company runs its own recruitment agency. The company has replaced practically all employed Swedish drivers with self-employed, “external drivers”, mainly from Poland. The company has also employed Polish-speaking road traffic controllers on its permanent staff. The expressed reason for employing a permanent staff of traffic managers with an immigrant background in the drivers’ home countries is to overcome language problems and thus facilitate road management of driver schedules (interview with Swedish haulier, August 2012).

According to the managing director, the drivers generally contact the company on their own initiative. “They have heard about our company from other drivers, who work or have worked for us” (ibid.). As in the construction industry, the self-employed drivers avoid staying for longer periods in Sweden. Otherwise, the Swedish Tax Agency could maintain that they are established entrepreneurs in Sweden, who should pay tax and social security contributions in Sweden. “They usually work here for six months. After two months in their home countries, they come back for a new period of work” (ibid.).

Reasons for using foreign self-employed divers

How then do the Swedish hauliers explain the use of “external drivers”? The managing director of the haulage company mentioned above declares quite openly that the aim of using foreign self-employed workers is to reduce labour costs. By using self-employed drivers, the company has no employer responsibility. Besides this, the company can engage drivers when necessary and thus gain numerical flexibility (interview with Swedish haulier, August 2012).

As in the construction sector, an important incentive for using foreign self-employed workers in the Swedish haulage industry is that the workers pay tax and social contributions their home countries. Thus, the foreign drivers generally do not have Swedish F-tax certificates, and in many cases, they have no national A1 certificates either. As a result, the labour costs can be further pressed down. The costs for a self-employed Polish driver are generally less than half the costs of employing a Swedish
driver who is paid in accordance with the collective agreement (interview with vice president, *Transport*, May 2012).

According to the interviewed managing director, this is the only way for this and many other Swedish haulage companies to survive in the face of increasing international low price competition. In other words, so it is argued by employers, many Swedish hauliers have been more or less forced to use “external drivers” as the large forwarding agencies continuously try to press down transportation prices, for example by engaging foreign haulage contractors (interview with Swedish haulier, August 2012, interview with former vice president, *Transport*, November 2012).

As a matter of fact we protect the domestic road haulage industry. We generate a lot of jobs and revenues here in Sweden as well. In our company, we buy Swedish truck tractors, we serve our cars and we buy diesel in Sweden. Moreover, we pay tax and social security contributions in Sweden. We also support local sport events and athletic associations, and a number of other associations – even a police dog association. Without our presence in this village, the local grocery shop would probably not have survived (interview with Swedish haulier, August 2012).

Another argument for using foreign self-employed drivers that was mentioned was that the “Swedish” drivers do not want to be on the roads for weeks at a time away from their families, whereas this seems to be a personal cost that East European self-employed drivers may feel they have to bear, whether or not they wish to. This may be regarded as another example of the rhetoric of the “good worker” and the existence of a special “work culture” among migrant workers (cf. Mackenzie & Forde 2009; Friberg 2012).

The “true” employment status of the “external drivers”

In Sweden, there is no definition of the concept of employee in labour law. Thus there is no statutory definition of a “self-employment” either. As several EU directives apply to both employed and self-employed workers, some legislative texts include a definition of the notion of “self-employed worker”. For example, the EU Directive on Road Transport Working Time 2002/15/EC includes a definition of “self-employed drivers”.

“Self-employed” driver shall mean anyone whose main occupation is to transport passengers or goods by road for hire or reward within the meaning of Community legislation under cover of a Community licence or any other professional authorisation to carry out the aforementioned transport, who is entitled to work for himself and who is not tied to an employer by an employment contract or by any other type of working hierarchical relationship, who is free to organise the relevant working activities, whose income depends directly on the profits made and who has the freedom to, individually or through a cooperation between self-employed drivers, have commercial relations with several customer (Goudswaard et al. 2006:50).
According to *Transport*, most of the formally self-employed drivers from the newer EU states engaged in the Swedish haulage industry are not genuinely self-employed subcontractors. The companies buy the drivers’ services, but the drivers do not work independently as self-employed subcontractors. Instead, they are subordinated to the employers’ management and control of the work. Moreover, the hauliers provide the drivers with cars, fuel, tools and sometimes even working clothes. As the drivers generally sleep in the trucks, the employer “provides” them with housing as well. The drivers are generally not contracted for special transport journeys. They are staying at the designated resting places on the road, or at the haulage companies’ stations, waiting for the next transportation.

Our trucks have full equipment. Each car has a coffee machine, a microwave oven and a refrigerator. The cars have also GPS, so that we can make sure that the drivers can park safely for the night. In addition, our company provides, of course, the drivers with working- and protective suits (quoted from a homepage, August 2012).

To sum up, the union maintains that the companies act as employers rather than clients, but the workers lack all the legal rights implied in a regular contract of employment (interview with vice president, *Transport*, May 2012).

**Responses to false self-employment**

As was mentioned initially, a critical problem for the trade unions in their efforts to tackle disguised employment is that it occurs under the cover of regular self-employment. Therefore, it is an important task for the European Transport Workers’ Federation and the national unions to spread information among workers, employers and customers on how to define and identify “false self-employment”.

Until 2008, the official EU definition of “fake self-employed drivers” was those who did not fall within the definition of “self-employed drivers” in the EU Road Transport Working Time Directive 2002/15/EC (European Commission 2002). In 2008, however, the European Commission suggested a “positive” definition of “false self-employed drivers” in order to bring these workers within the scope of the Directive. Apart from regularly employed workers, the directive should also include “(...) any person who is not tied to an employer by an employment contract or by any other type of working hierarchical relationship, but:

i. who does not have the freedom to organise the relevant working activities;

ii. whose income does not depend directly on the profits made;

iii. who does not have the freedom, individually or through a cooperation between self-employed drivers, to have relations with several customers” (IRU, 2010).

If a union suspects false self-employment on these grounds, and finds that a worker should be regarded as an employee, the union can try to solve the problem through negotiations at the local branch level or, as we saw in the previous chapter, demand
assistance from the central industry level, in so-called central negotiations. If these negotiations fail, it may result in measures being taken by the trade union including industrial action. Ultimately, the legal employment status of a worker should be decided by the Swedish Labour Court on a case-by-case basis. However, as in the construction industry, it is not common that foreign workers will contact the trade union in the haulage industry in order to rectify what they perceive as a legitimate grievance.

As self-employed workers they feel that their choice is to practice wage dumping or to get unemployed. If they should indicate that they are in touch with the trade unions, they would immediately get fired (interview with vice president, Transport, May 2012).

So, how has Transport approached the problem of bogusly self-employed drivers from the newer EU countries? The trade union works actively to spread information among workers, employers and customers about the abuse of foreign truck drivers. The union also supports foreign drivers who do contact the union. Over the past year, Transport has been involved in a longstanding conflict with the company mentioned above. This case concerns the employment status of a Polish driver, who earlier worked for the company and now lives in Sweden with his family. According to the driver, the haulage company had promised him a contract of employment before he started working in Sweden. Nevertheless, so he argues, the company expected him to register a company in Poland so that he could work as self-employed and pay tax and social security contributions in his homeland. The driver worked for the company for some months. Even though he was self-employed, he considered that he worked under employee-like conditions. As a result, he requested the haulier to pay him around 90,000 SEK for unpaid salaries (interview with a spokesman of the Polish worker, August 2012; Transportarbetaren 18 June, 12 August, 2012).

In the autumn of 2012, Transport took this case to the Swedish Labour Court. Eventually, the parties came to a deal, which meant that the haulier would pay the driver about 60,000 SEK. Transport also pursues a case in the Labour Court that concern the 135 other foreign drivers working for this company. In this case, Transport has sought to require the company to pay over 20 million SEK for breach of collective agreement (Transportarbetaren 28 November and 21 December 2012; 17 January 2013).

What then can be said about the cooperation between the social partners in the road haulage industry? How could this cooperation develop to the point that it even led to a public joint manifestation in the main street of Gothenburg? The primary reason is that Transport and the organised employers are in agreement that false self-employment is a severe problem in the industry. This also means that both parties have realised that false self-employment not only means social dumping and labour abuse. It also causes market disturbances and unfair competition in relation to serious entrepreneurs and employers. Moreover, this practice may erode labour-skills and overall competence and skills in the industry. The self-employed drivers’ poor working condition and long, and often unregulated, working hours, represents a considerable threat to road traffic
safety as well. Thus unions and employers have a common interest in combating false self-employment, as well as other forms of social dumping and unfair competition within the industry. This insight has no doubt been the main driving force for the organised social partners in the Swedish haulage industry to cooperate (Transport 2012).

The first manifestation of this cooperation between Transport and the organised employers was a joint comment on a government proposal in 2011 concerning a revision of the commercial road traffic legislation (Ds 2011 no. 20). Among other things, the social partners suggested that Sweden should make better use of the existing EU regulations on commercial road traffic, including the regulations on cabotage traffic. For example, as a member state Sweden should use its rights to formulate additional national regulations in order to promote fair competition in the haulage industry and to combat false self-employment and labour abuse. The two parties also required more rigorous control of the illegal cabotage traffic, as well as stricter sanctions for violation of the EU regulations on commercial road traffic in general (Transport 2012). The Social Democratic Party, SAP, supports this joint opinion and has raised the issue of social dumping in the haulage industry in parliament, Riksdagen (Parliamentary Bill 2011/12:T322; Transportarbetaren 1 December 2012).

The Swedish social partners’ main demand to the right-wing alliance government is that Sweden should introduce the so-called “Dutch Model”. This means that drivers without own trucks should be employed by the haulier they work for. However, the current centre-right government appears not prepared to make any changes to the existing regulations, claiming that the Dutch system is not compatible with EU law (Transportarbetaren 10 May and 30 November 2012).

Despite protests from unions and organised employers in haulage industry in many member countries, the European Commission plans to further liberalise the regulations on cabotage traffic. According to the European Transport Workers’ Federation, this would most likely mean increasing exploitation of migrant workers from the poorest parts of the EU. On the other hand, perhaps mindful of growing concern in certain member states, the European Commission is now taking Poland (along with Finland and Austria) to the European Court of Justice for failure to implement the obligation under the Working Time Directive to apply the working time rules to self-employed drivers thus “ensuring that professional drivers are protected against adverse effects to their health and safety caused by excessively long working hours, inadequate rest or disruptive working patterns” (European Commission 2013). The Directive stipulates “the absolute maximum weekly working time is 60 hours”. However the Commission’s action should be seen against the background of its previous attempt to waive the application of the Directive to self-employed drivers, a move only halted by the intervention of the European Parliament which in March 2009 refused to endorse this proposal, precisely on health and safety grounds.

In Sweden, despite the lukewarm response of the government to joint representations from the social partners, there have been some important initiatives taken within the state regulatory system. In the spring of 2012 the Swedish Tax Agency started a
project aimed at controlling foreign self-employed drivers including the hauliers who engaged them (Svensk Åkeritidning 25 June 2012; Swedish Tax Agency 2012). The Agency emphasises that drivers who do not own their own vehicles, and have become self-employed only to work in another country, should not be regarded as genuinely self-employed sub-contractors (interview with expert at the Swedish Tax Agency, August 2012).

The focus of the project is on hauliers with several trucks, but no employed drivers. After only a few months, the Tax Agency discovered over 300 bogusly self-employed foreign drivers and the number increased continuously during the year. By the end of 2012, the Tax Agency reported that most of the “self-employed” drivers identified had neither Swedish F-tax certificates nor national A1 forms. In such cases, the clients are responsible for paying the social costs. As a result, the Agency has decided to raise tax assessments for the haulers involved. For example, the Tax Agency now requires the large haulage firm mentioned above to pay around 10.5 million SEK in unpaid payroll taxes and penalties. This claim applies only to the year 2010. Consequently, the company runs the risk of being required to pay a lot more money. The company has appealed against this decision. Some of the self-employed drivers, who the Tax Agency considers as established in Sweden, will also be required to pay unpaid taxes (Transportarbetaren, 28 November 2012; 17 January 2013).

The organised labour market parties in the road haulage industry have also received support in their struggle against false self-employment from the one of the main domestic customers, namely the largest Swedish grocery chain, ICA. By the end of 2012, ICA decided to require the hauliers they intend to contract to declare whether or not they use self-employed drivers from other countries. According to ICA, the aim is to eliminate false self-employment from the transports (Transportarbetaren 28 December 2012).

In the struggle against false self-employment and other forms of social dumping, for example through temporary work agencies, it is critically important for labour market parties to raise awareness of the problem among the customers. Big customers, such as ICA, are indeed powerful actors in the road transport market. Thus, their position on the issue of orderliness in the transport sector can make a difference. If ICA manages to implement its policy, the company may well influence other customers in the transport sector. On the other hand, ICA says nothing about the use of temporary employment agencies as long as this practice is in line with the EU Directive on temporary agency work. However, the use of temporary agencies is indeed another critical problem in the transport industry that became the main issue in the 2013 bargaining round.

As we have seen, the organised parties in the road haulage industry have managed to establish a working cooperation in order to curb the prevalence false self-employment. This is exactly what Byggnads calls for in its efforts to combat this practice in construction. Thus, Transport and the employer organisations have clear common interests in curbing social dumping, even though this concept will probably not be included in the employers’ vocabulary as the following quote illustrates:
It was only when the problem was formulated in terms of “market disturbances” that we could start cooperating on this problem. So, this cooperation is kind of fragile, but nevertheless important (interview with former vice president, *Transport*, November 2012).

Consequently, combating false self-employment has become a matter of *converging interests* and organised cooperation between labour and capital in the road haulage industry, but not as yet in the construction industry. This is a paradox which will be discussed further in the final concluding section of this report.
IV: Concluding remarks

As we have seen in this study of recent trends in false self-employment in east-west labour migration, this labour market phenomenon has increased in the Swedish construction and road haulage industries after the enlargement of the EU into the former Eastern Bloc in 2004 and 2007. At first glance, this trend may be surprising. Since Sweden decided not to introduce transnational restrictions for workers from the new member states, there seemingly has been no need for recruitment agencies and/or workers to use false self-employment as a way of circumventing regulations on work permits. Moreover, there are other and maybe also easier ways to avoid Swedish collective agreements and labour standards, for example, by concluding “false collective agreements”. Many foreign contracting companies operating temporarily in Sweden conclude just such Swedish collective agreements for their employees in order to keep Swedish unions “away”. In practice, however, they do not follow these agreements, and the workers have to work overtime “off the record”. In that way these companies can conceal the fact that they are practicing wage dumping. Accordingly, a Swedish collective agreement is not always a guarantee against social dumping.

Nevertheless, this study shows that new recruitment agencies mediating self-employed workers from the newer EU countries in Central and Eastern Europe have appeared quite commonly in recent years, particularly in the construction sector. These agencies can be large international companies, which also mediate employed workers. However, many agencies are small companies, sometimes self-employed people, who recruit and mediate other self-employed people, mainly from Poland and the Baltic states. Even the clients are often self-employed or small partnership companies. Their business model is to run a small enterprise with low fix costs and without direct employees. The recruitment agencies operating in Sweden cooperate with agencies and/or informal networks across the former Eastern Bloc.

Moreover, this study shows very clearly that the practice of false self-employment is closely connected with the use of long subcontracting chains, especially in construction. Self-employed workers from the newer EU countries are often engaged at the end point of these chains. As the main entrepreneurs have no formal social or legal responsibility for the employment relationships among their subcontractors, the system of subcontracting chains makes it easier to conceal the practice of false self-employment. At every stage in this process, profit-making labour market intermediaries may be involved. As a result, this system also includes a risk for creating precarious employment, including considerable work environment risks. Workers at the end on these chains are often subjected to a diverse variety of precariousness.

In the road haulage industry, the main driving force behind the widespread use of bogusly self-employed truck drivers from the former Eastern Bloc is the problem of illegal cabotage traffic. In concrete terms, this means that the EU regulations on national transportation of goods carried out temporarily by non-resident haulage companies are often being infringed. In addition, the presence of foreign hauliers, who engage
cheap labour from the poorest EU countries, as well as from countries outside the EU, has increased in recent years. As a result, prices and wages have been pressed down dramatically. In the light of this development, many Swedish hauliers have begun to use self-employed workers, mainly from Poland, but also from Hungary, Romania, Bulgaria and the Baltic states. According to the social partners, as well as the Swedish Tax Agency, most of these drivers are not genuinely self-employed. The trade union Transport and the organised employers maintain that weak governmental control of compliance with the EU regulations on the cabotage traffic has contributed to this development. The Swedish hauliers, who use foreign self-employed drivers, claim that this is the only way for them to survive. In the haulage industry, as well as in the construction sector, the reasons for using low-paid self-employed migrant workers as subcontractors are to circumvent collective agreements and the employers’ legal social responsibilities and tax liabilities, and thus reduce labour costs and gain flexibility.

This study also indicates that migrant workers from the newer EU member states, working as self-employed in Sweden today, generally do not have a Swedish F-tax certificate. Instead, they have a national A1 (earlier the E101) form, which denotes that they pay social insurance contributions in their home countries. The use of A1 forms to indicate also workers’ status as “self-employed” is no doubt an important factor behind the increase in false self-employment in the construction and transport sectors in recent years in Sweden, as well as in other older EU member states. However, this study also shows that many self-employed migrant workers have neither Swedish F-tax certification nor national A1 forms. They can prove only that they have registered an enterprise in their home country, often shortly before they started working in Sweden. In such cases, labour costs can be further pressed down, and the risks for labour abuse and social dumping are even higher.

Over the past year, the Swedish Tax Agency has increased control of self-employed migrant workers, especially in the road haulage industry. The social partners’ joint efforts to combat false self-employment in this industry have contributed to this increased activity. The Tax Agency recommends the contractors to require their foreign self-employed workers to have a Swedish F-tax certificate. However, there is no formal obligation that migrant workers should have such a tax certificate to work as a self-employed in Sweden (Skatteverket 2013). An F-tax certificate may help to curb tax evasion. It may also mean higher payment for migrant workers and thus less risk for wage dumping. However, the possession of an F-tax certificate is no guarantee against social dumping and labour abuse. The liberalisation of the Swedish F-tax regulations in recent years has also increased the risk for self-employed workers to be placed in a state of strong dependence on a particular client. In that way, the risk of false self-employment has increased as well. Moreover, neither an F-tax note nor an A1 form can provide an estimate of a worker’s true employment status from a labour law perspective.

In fact, judgements in the European Court of Justice have sanctioned the use of A1/E101 to estimate a workers’ status as “self-employed” in cross-border situations. In that way, the Court has also sanctioned the use of the forms as an evasion practice, and in
that way also contributed to the prevalence of false self-employment as a specific form of cross-border social dumping (Hägglund 2012). Thus, the Viking, Laval, Rüffert and Commission versus Luxembourg verdicts are not the only judgements of the Court that has made it easier to practice social dumping.

As false self-employment occurs under the cover of genuine self-employment, it is often difficult for trade unions and authorities to discover and combat this practice. This study shows that the workers’ own conception of their employment status is of critical importance for the trade unions chances to prove incidences of false self-employment and take action against the employers involved. Therefore, both Byggnads and Transport have realised that they must establish a working relationship with migrant workers and organise them wherever possible. This is one of the unions’ most urgent and complicated tasks today.

The related case from the construction industry showed that the workers were very reluctant to cooperate with Byggnads. It should be emphasised though that this may not be due only to the great risks of being fired. It also illustrates the complex relationship between those who exploit workers and those who are being exploited. Employers, labour market intermediaries and workers may all have short-sighted economic interests in the east-west labour migration process. The problem of false self-employment illustrates this reality very clearly. The intertwined relationship between self-employment as a mode of exploitation and a strategy for survival has always made false self-employment a complex issue for trade unions to address.

The social partners in the construction and transport sectors have been involved in joint campaigns against undeclared work and economic criminality. However, the road haulage industry is so far the only sector in which the labour market parties have jointly addressed the problem of false self-employment specifically, and even established an organised cooperation to curb this practice in the interests of both parties. Even though the trade union and employer federations in construction at the EU level, the EFBWW and FIEC, have initiated cooperation in the member states to combat false self-employment, there is no organised cooperation so far on this specific issue in the Swedish construction industry. The main reason seems to be that there is no consensus between the labour market parties about the problem of false self-employment. Whether an employment relationship should be regarded as regular or disguised can be a matter of economic interests between the parties. As false self-employment often is used at the end of long subcontracting chains, established companies in the construction sector may gain from this system without being formally responsible for this practice and its social consequences.

However, the outcome of the central negotiations on the use of self-employed Polish construction workers mentioned in this text may be a step towards a dialogue between Byggnads and Sveriges Byggindustrier. Moreover, it remains to be seen what will be the concrete result of the social partners’ joint investigation on the issue of “orderliness in the subcontracting chains”.
Why then, has it been possible to establish cooperation against false self-employment between the labour market parties in the transport sector? In the road haulage industry, the development of false self-employment has been more dramatic and evident than in construction. Transport, as well as the organised employers, realise that this practice has caused not only wage dumping, but also severe market disturbances that erode the whole Swedish trucking industry for international carriage. Moreover, the social partners fear that false self-employment undermines labour skills and competence in the industry. In addition, poor working conditions, including long working hours, means a threat to road traffic safety. Consequently, the social partners in the road haulage industry have realised that they have a common economic interest in curbing false self-employment. In a historical perspective, their responses to the problems in the industry can be related to the traditional Swedish labour market model that was based on cooperation and class compromise aimed at promoting economic progress and sharing productivity gains.

One may also say that social partners in the road haulage industry have become aware of the risks of “degenerative competition” (cf. Wilkinson 1981). Harvey and Behling (2008) have illustrated this process in the British construction industry over the past few decades. Among other things, they claim that “(…) the short-term cost advantage of false self-employment has become a major obstacle to long-term productivity gains through skills enhancement, and organisational and technical innovations” (p. 34). This logic was also emphasised in a well-known analysis of the European construction industry from 1993, the so-called Atkins Study.

This study about recent trends in false self-employment in east-west labour migration in the Swedish construction and road haulage sectors also indicates that attitudes to the use of underpaid migrant labour have changed in recent years. It seems to have become more common among entrepreneurs as well as clients and customers to consider the engagement of “cheap” foreign self-employed or employed migrant workers as a quite acceptable and “natural” consequence of the EU membership and the regulations on the free movement of labour and services and therefore something of an inevitability.

Moreover, it was highlighted in this study that the increasing use of dependent and false forms of self-employment in former Eastern Bloc may facilitate the abuse of self-employed workers in east-west labour migration. In addition, attitudes to labour migration in the newer EU countries may also make it difficult to curb social dumping and labour abuse. Migrant workers working temporarily in other countries are also potential consumers in their home countries, who may contribute to increasing demand and economic progress. Thus economic interests in these countries may complicate cooperation over the national borders on the issue of social dumping.

Another important question to be explored in the future is whether the use of false self-employment will increase in Sweden as a way of circumventing the EU Directive on Temporary Agency Work, 2008/104/EC, which in principle apply only to employed workers. The introduction of new regulations tends to generate new loopholes. For ex-
ample, an important argument against transitional restrictions for workers from the new EU countries included in 2004 and 2007 was the risk of false self-employment. The extended requirement on work permits applied only to employed workers (cf. Tamas & Müntz 2006; Cremers 2007; Cremers et al. 2007; Krings 2009).

Let us finally relate to the current discussion on dual or segmented labour markets. Are there any signs in this study that indicate that the use of bogusly self-employed workers from the newer EU member states is part of such a process of dualisation in the two industries studied? In the construction sector, self-employed migrant workers, who are involved in the practice of disguised employment, as well as those who are employed, have lower payment and inferior working conditions than their Swedish colleagues. However, in this study, it has been difficult to see a distinct division of labour between the Swedish workers and the migrant workers. The Polish and Baltic construction workers were mainly engaged in the same kinds of jobs as the Swedish workers. According to the interviewed union representatives, this is a current trend. Consequently, these migrant workers do compete with the regular Swedish workforce. Thus, it has not been possible to identify the same clear tendency towards a dual labour market as Friberg (2012) found in his study of the Norwegian construction industry. However, the conditions may vary between different sectors within an industry, and it takes a broader empirical study to explore this issue among labour migrants working in Sweden for longer or shorter periods.

In the road haulage industry, the prevalent use of bogusly self-employed drivers from the newer EU states in Central and Eastern Europe may be regarded as a segmentation process, at least at the company level. For example, the employed drivers in the company that figured in the text had been replaced by false self-employed workers from the former Eastern Bloc, while the foreign road managers and other people in the managerial staff were regularly employed. At the industry level, on the other hand, it is difficult to talk about a dual labour market in the classical meaning of Piore (1979). As in the construction industry, the self-employed migrant workers do indeed compete both with regularly self-employed and employed Swedish drivers. Nevertheless, the increasing use of false self-employment in east-west labour migration means labour abuse and discrimination, which helps to create segregation in the labour market. In both industries, the main reasons for using migrant workers are to reduce labour costs and gain numerical flexibility. Thus, these workers are not integrated on the same terms and conditions as regularly self-employed or employed workers in the Swedish labour market. Except for being bogusly self-employed, these migrant workers are generally also subject to a diverse variety of precariousness, such as low income, long working hours, work environment risks and poor legal and social protection.
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Interviews

Interview with union representatives and experts, LO, Stockholm, April 2012.
Interview with vice president, Transport, Uppsala, May 2012.
Interview with former interpreter (Polish-speaking), Byggnads, Stockholm, June 2012.
Interview with former interpreter (Latvian-speaking), Byggnads, Motala, July 2012.
Interview with union representatives, Byggnads Mälardalen, July 2012.
Interview with small entrepreneur in construction, July 2012.
Interview with interpreter (Polish-speaking) and regional union president, Byggnads Väst, Gothenburg, August 2012.
Interview with the owner of a recruitment agency in construction, August 2012.
Interview with Swedish haulier, August 2012.
Interview with the spokesman of a Polish self-employed driver, August 2012.
Interview with expert at the Swedish Tax Agency, August 2012.
Interview with small entrepreneurs and craftsmen in construction, September 2012.
Interview with union representatives, Byggnads Mälardalen, November 2012.
Interview with former vice president, Transport, Uppsala, November 2012.
Interview with union representative, Byggnads Mälardalen, December 2012.
Interview with chief lawyer at Byggnads, Stockholm, February 2013.
Today many foreign construction workers and truck drivers are engaged in Sweden as formally “self-employed” subcontractors. Yet they often work under an employee-like state of dependence on a single client/employer, but without all the legal rights employees are entitled to. This phenomenon, called false or bogus self-employment, refers to employment disguised as self-employment in order to circumvent collective agreements, labour laws and other legal and social employer duties implied in a regular contract of employment. Thus, in concrete terms, this practice means labour abuse, social dumping and market disturbances. This study of recent trends in false self-employment in east-west labour migration indicates that such contractual arrangements in the “grey area” of the labour market have increased in the Swedish construction industry, and even more in the road haulage industry for long distance transports after the eastward enlargement of the EU. The author discusses the reasons behind this development in a Swedish and international context, including also how the social partners have recognised and responded to the issue.

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