



social dumping in the construction industry

BUCHAREST
19 October 2017

Dirk Coninckx
and André Leurs,
ACV BIE

STOP SOCIALE DUMPING



Stop Social Dumping

**UITBUITING · SOCIALE FRAUDE · SCHIJNZELFSTANDIGHEID · KOPPELBAZEN
POSTBUSONDERNEMINGEN · DEREGULERING · STRAFFELOOSHEID VAN WERKGEVERS**

De EFMD roept de EU op om SOCIALE DUMPING van loon- en arbeidsvoorwaarden en sociale bescherming hard aan te pakken. We eisen: **GEPASTE PREVENTIE, DOELRIJKSE CONTROLE en EFFECTIEVE SANCTIES**. De toekomstige Europese Richtlijn richtlijn moet concrete maatregelen bevatten die helpen om elke vorm van sociale fraude, koppelbazen, schijnzelfstandigheid en postbusondernemingen volledig uit te roeien. De richtlijn moet ook garant staan voor **GEELKE RECHTEN en GEELKE LOON** voor gelijk werk.

Elke dag worden buitenlandse, gedetacheerde werknemers uitgehongerd door geprojecteerde vormen van onderbetaling, uitbuiting en discriminatie. Daarom eisen we dat de lidstaten meer verantwoordelijk gesteld wordt in geval van sociale fraude door één van zijn ondernemers, uitbuiters of detacheringbureaus.

European Federation
of Building
and Woodworkers





Social dumping, intro

At the beginning and still:

- market regulation = Europe (internal market) <-> social rights = member states (labour law remains territorial)
- Europe with six countries:
 - differences in wage levels and social protection were accepted as part of the internal competition
 - would lead to social harmonisation



Social dumping, intro

- EU law put the application of Belgian labour law under pressure as a result of:
 - free movement of employees, people and services
 - social competition between the member states
- seconded employees do not enter the labour market in guest country and consequently are not subjected to the ‘full weight’ of our labour law
- migrant workers *were drawn upon* through secondment and (bogus) self-employment (= free provision of services)



Social dumping, intro

- free provision of services is given preference: right of the employer to supply his 'services' across the border
 - integral application of the labour law in the guest country is a hindrance for the free provision of services (principle of the country of origin)
 - hindrance of freedom of movement through labour law is only permitted when:
 - overriding reasons of general interest
 - necessary and proportional
- fundamental contradiction: promotion of the free provision of services and (minimal) protection of employees



How can employers post people in Belgium?

- **Free movement of employees** from/to other EU member states
 - permanent recruitment
(complete equal treatment, so socially and fiscally too)
 - temporary posting (secondment)
- **Free movement of services** (who provides the service?)
 - companies, self-employed who offer their services



Secondment and social security.

- general rule: employee is covered by the social security system in the country where the work is performed
- exceptions: temporary posting with retention of the cover of the Social Security system in the country of origin
- mandatory secondment notification in the receiving country with an A1 form (formerly E101)
- what is temporary (max. 24 months)?
- what is 'normal working practice' in the country of origin?
- what is a 'minimum coverage' of the Social Security system in the country of origin? Is a single day sufficient?
- What is an organisational link between the employer and the employee in the country of origin (is it a legal fiction)?
- what is the importance of checking the country of origin?



Free provision of services

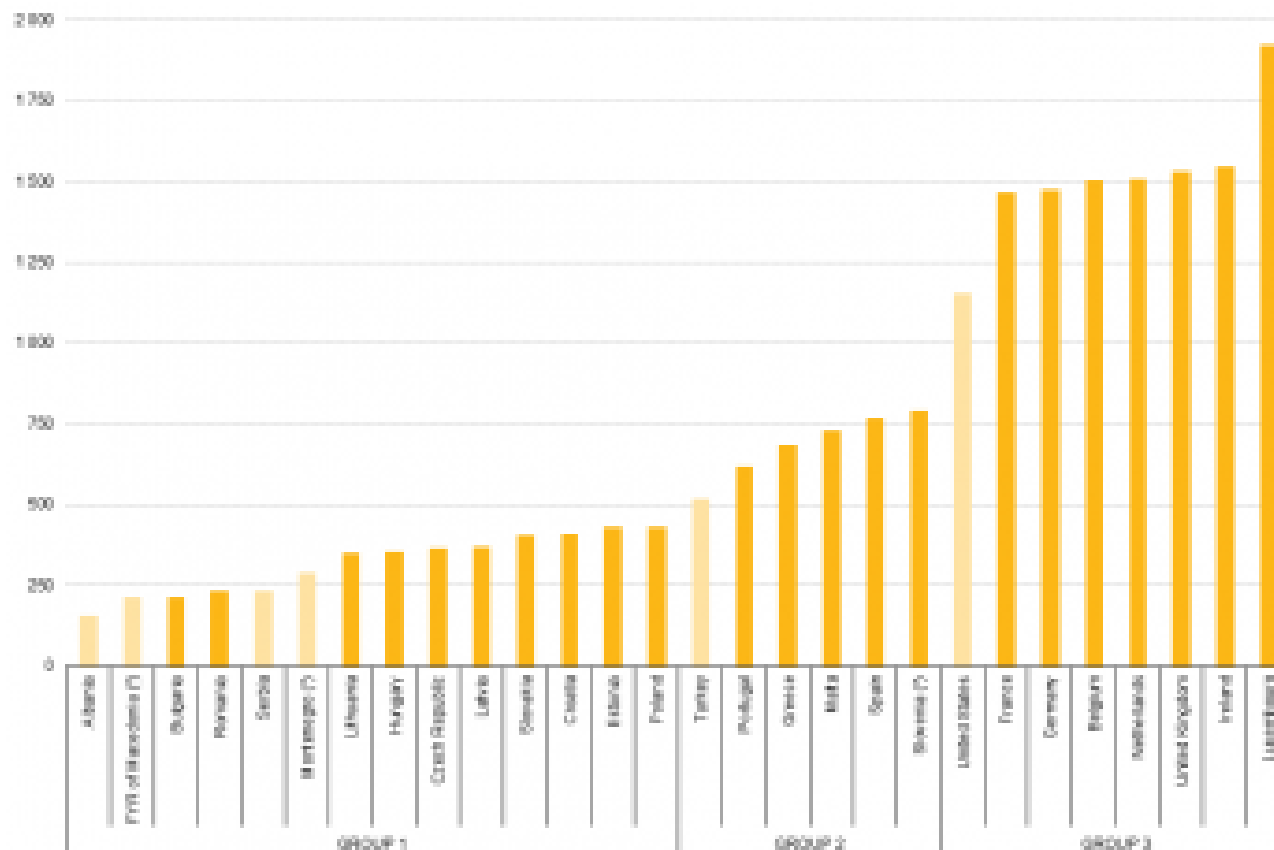
- cooperation with foreign self-employed who offer their 'services' on the basis of tenders (subcontracting)
- who is self-employed?
- cooperation with foreign services companies who offer their 'services' (temporary agency work too) on the basis of tenders/subcontracting: **the free provision of services has priority over the equality of rights for employees!**
- no 'disproportional' administrative limitations, like recognition, contact person,... (application of the Services Directive)



Core figures Belgian construction industry (Q4/2016)

- minimum wage
 - untrained worker cat. I: €13.59/hour
 - average wage worker: €14.96/hour
- employer's obligations
 - National Social Security Office contribution: 49.23%
 - sector social contributions: 28.20%
 - occupational accident insurance: 10.20%
 - other costs (clothing, transport,...)
- total hourly rate costs
 - minimum, **at least: €32.26/hour**

Minimum wages in Europe



(*) Denmark, Italy, Cyprus, Austria, Finland and Sweden: no national minimum wage

(*) January 2015.

(*) July 2016.

Source: Eurostat (online data code: wsm_mw_out)



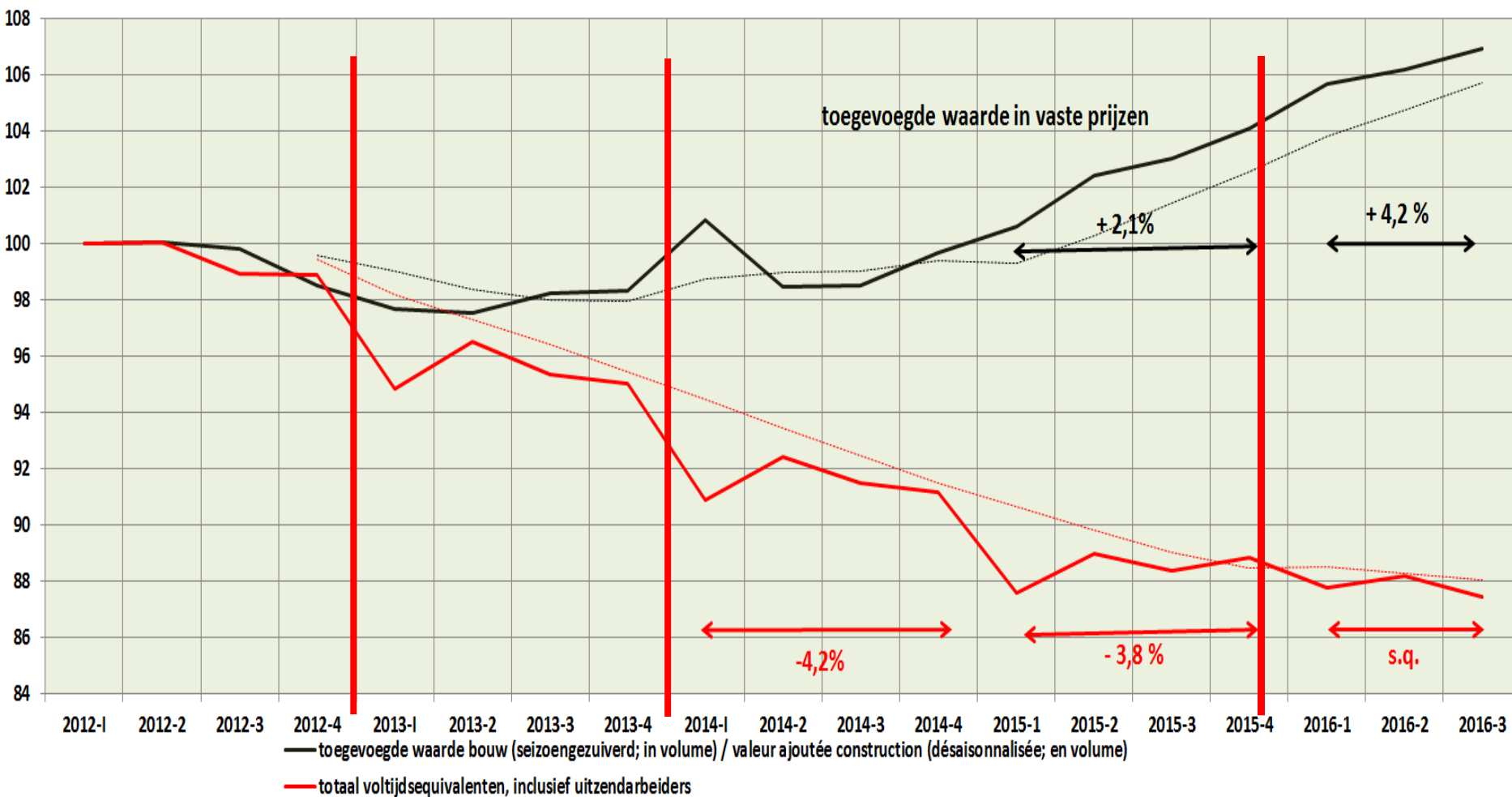
Evolution of employment in the Belgian construction industry



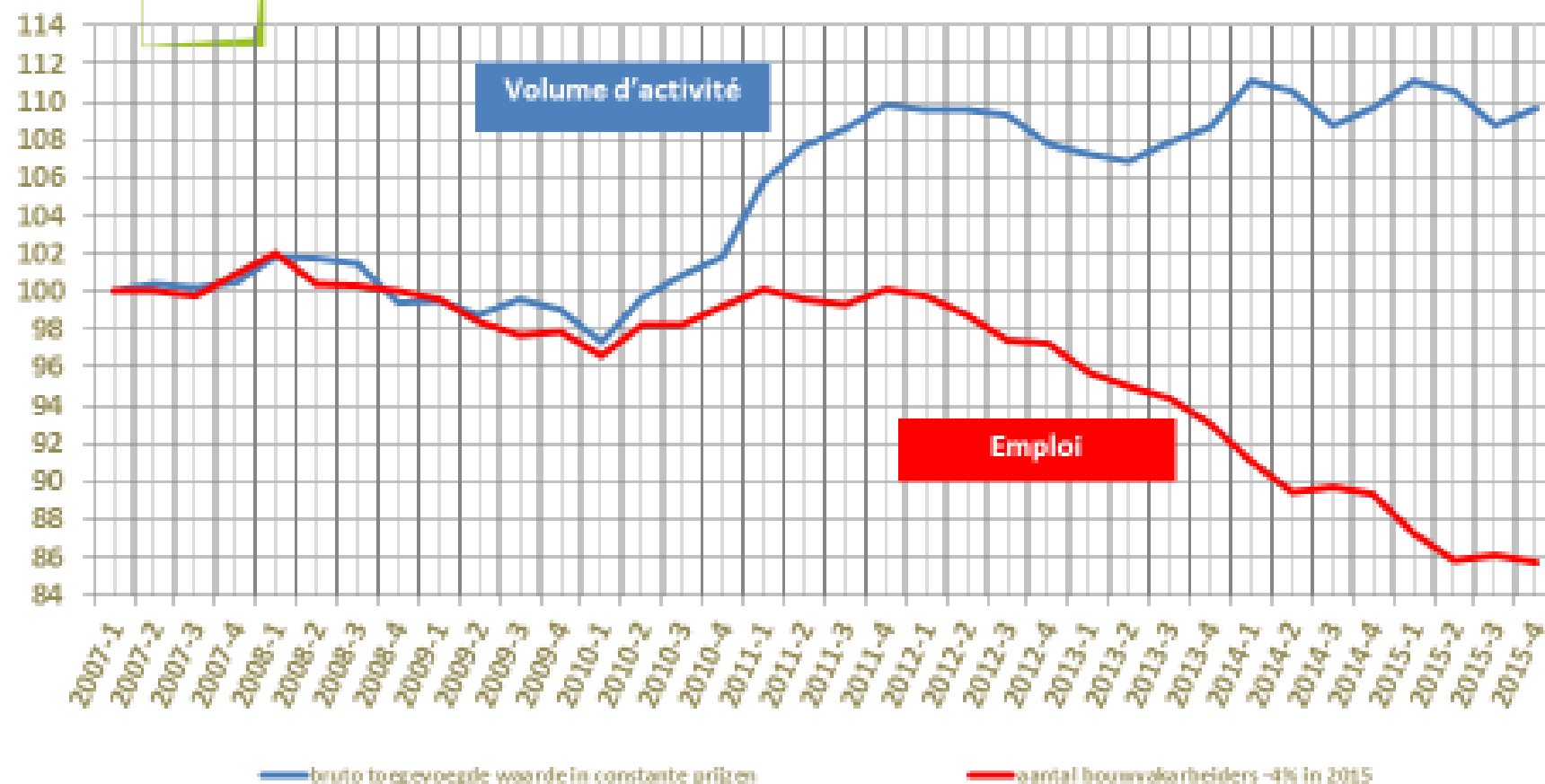
Building activity / employment

evolutie tewerkstelling en activiteitsvolume bouw 2012-1 = 100

(trendlijn = glijdend gemiddelde over de laatste 4 trimesters)

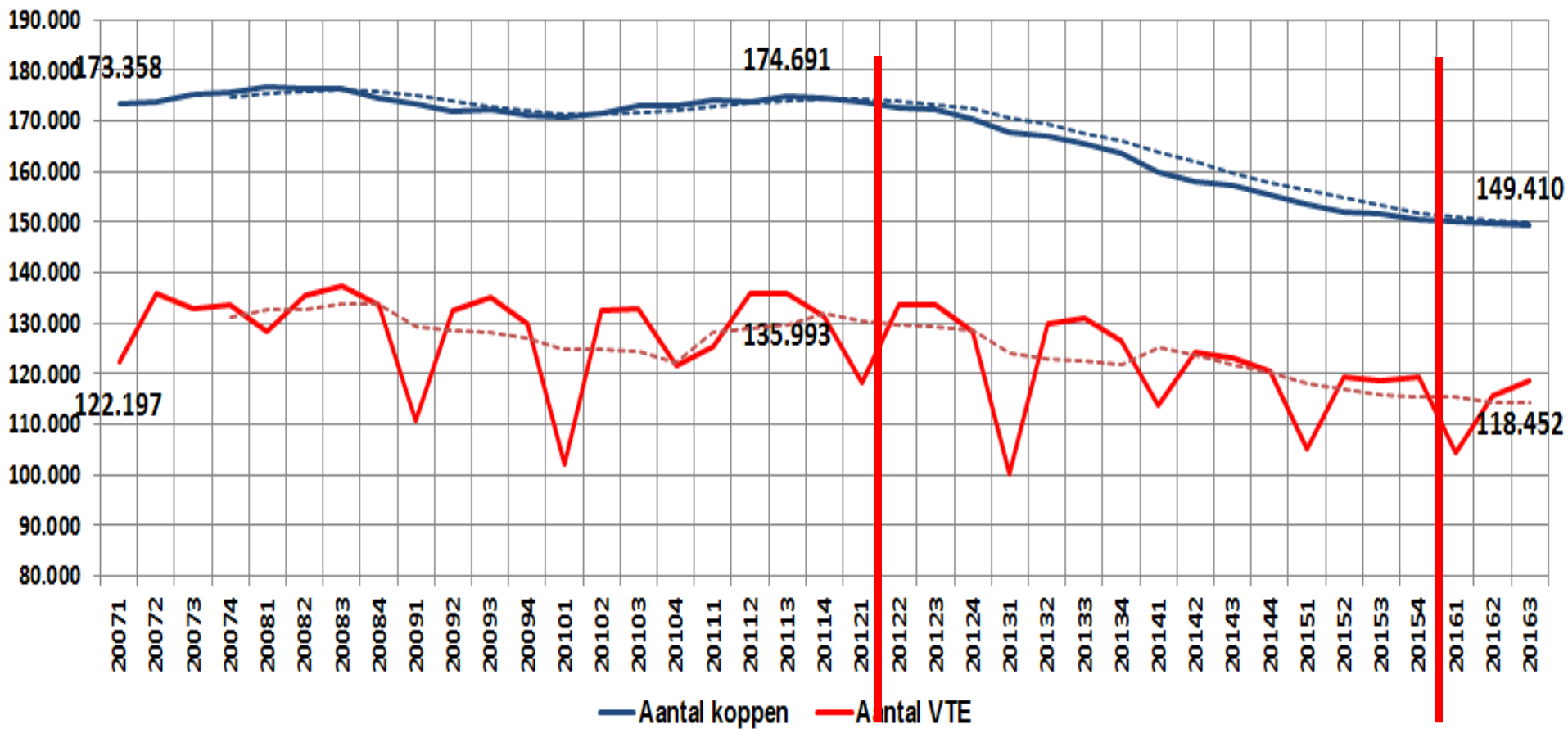


Impact de cette concurrence déloyale sur le secteur de la construction en Belgique



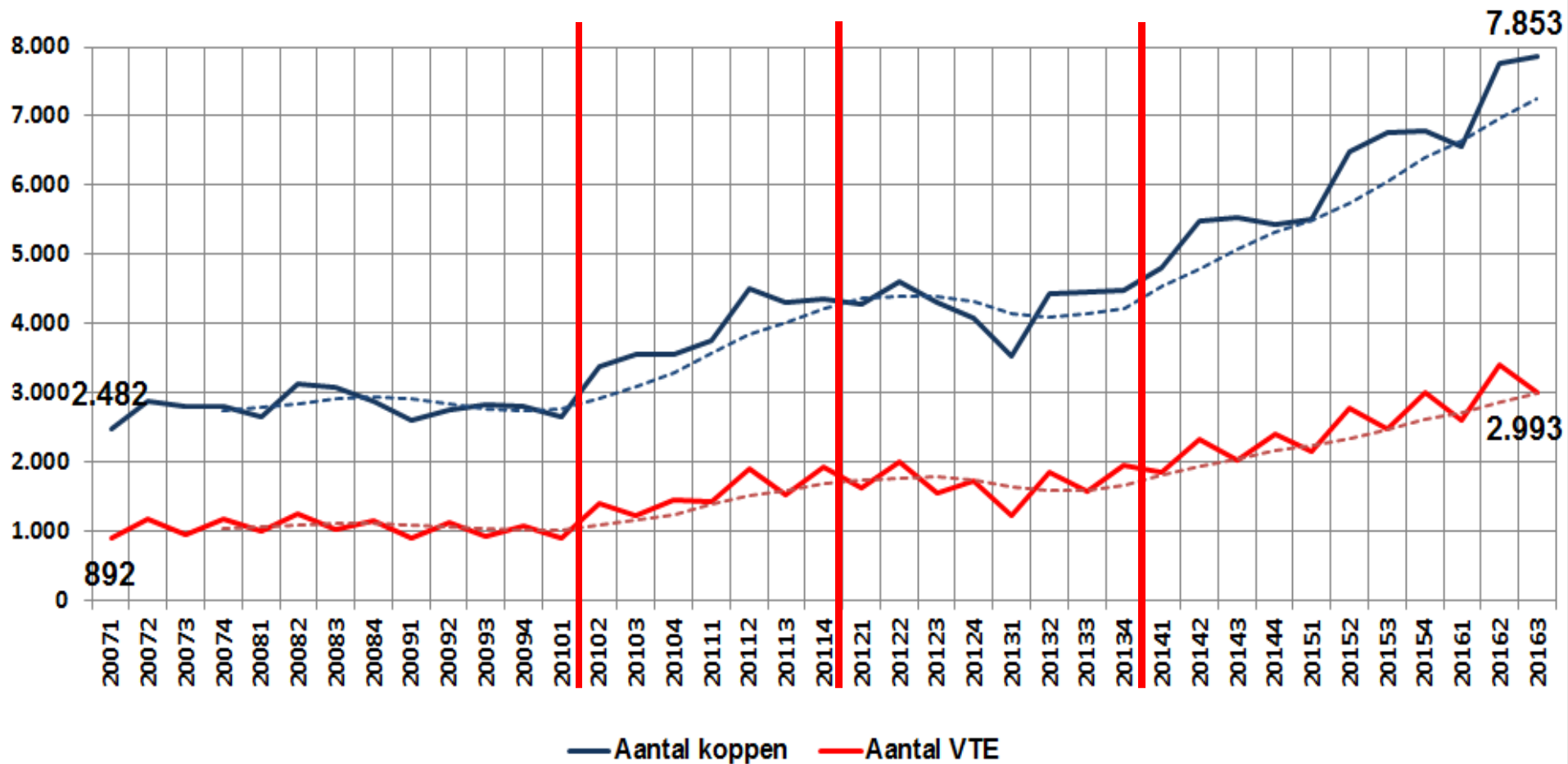
Evolution workers

evolutie aantal reguliere arbeiders 2007 - 2016
(trendlijn = glijdend gemiddelde 4 laatste trimesters)



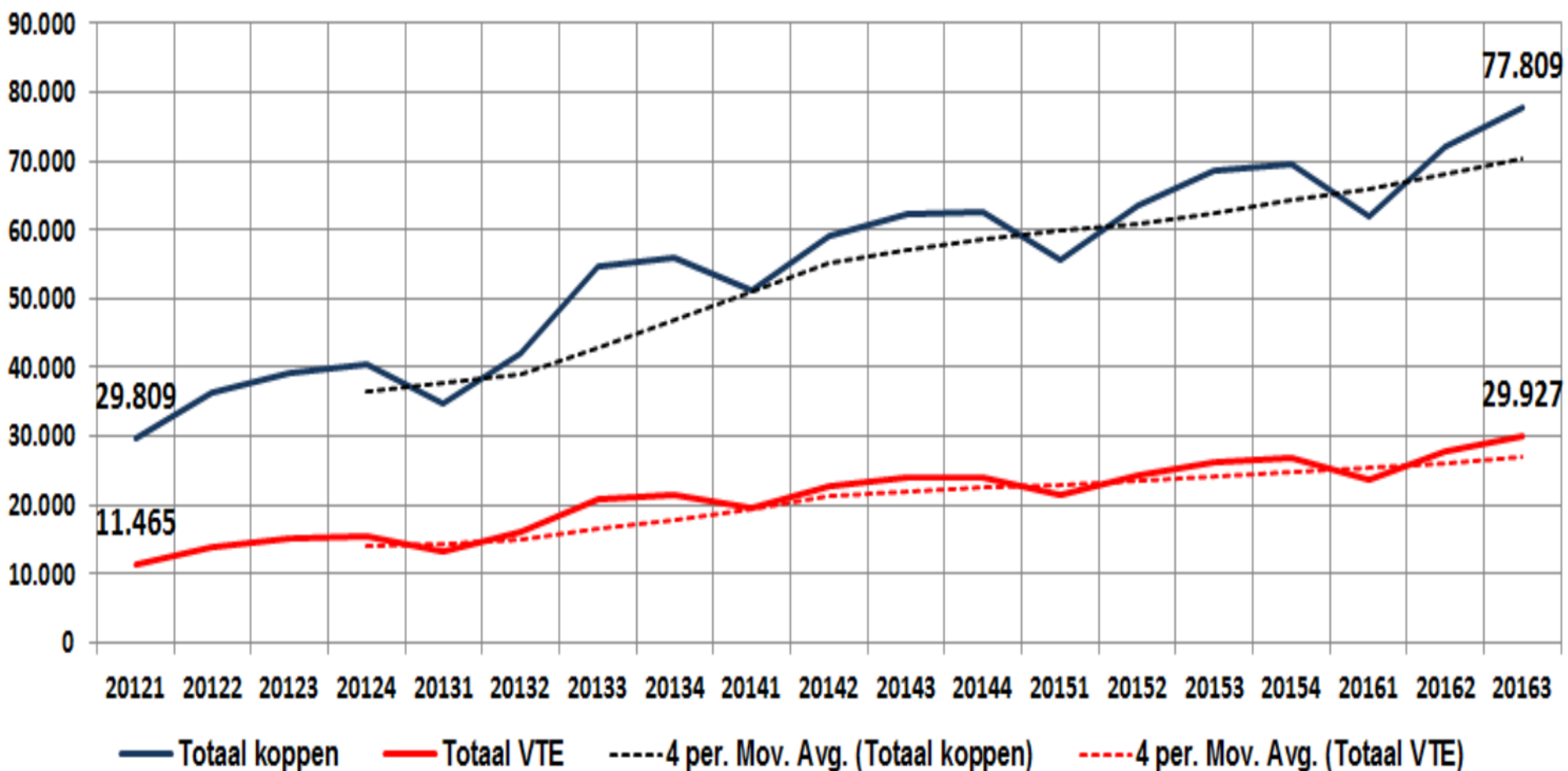
Evolution temporary workers

evolutie aantal uitzendarbeiders bouw 2007 - 2016
(trendlijn = glijdend gemiddelde 4 laatste trimesters)



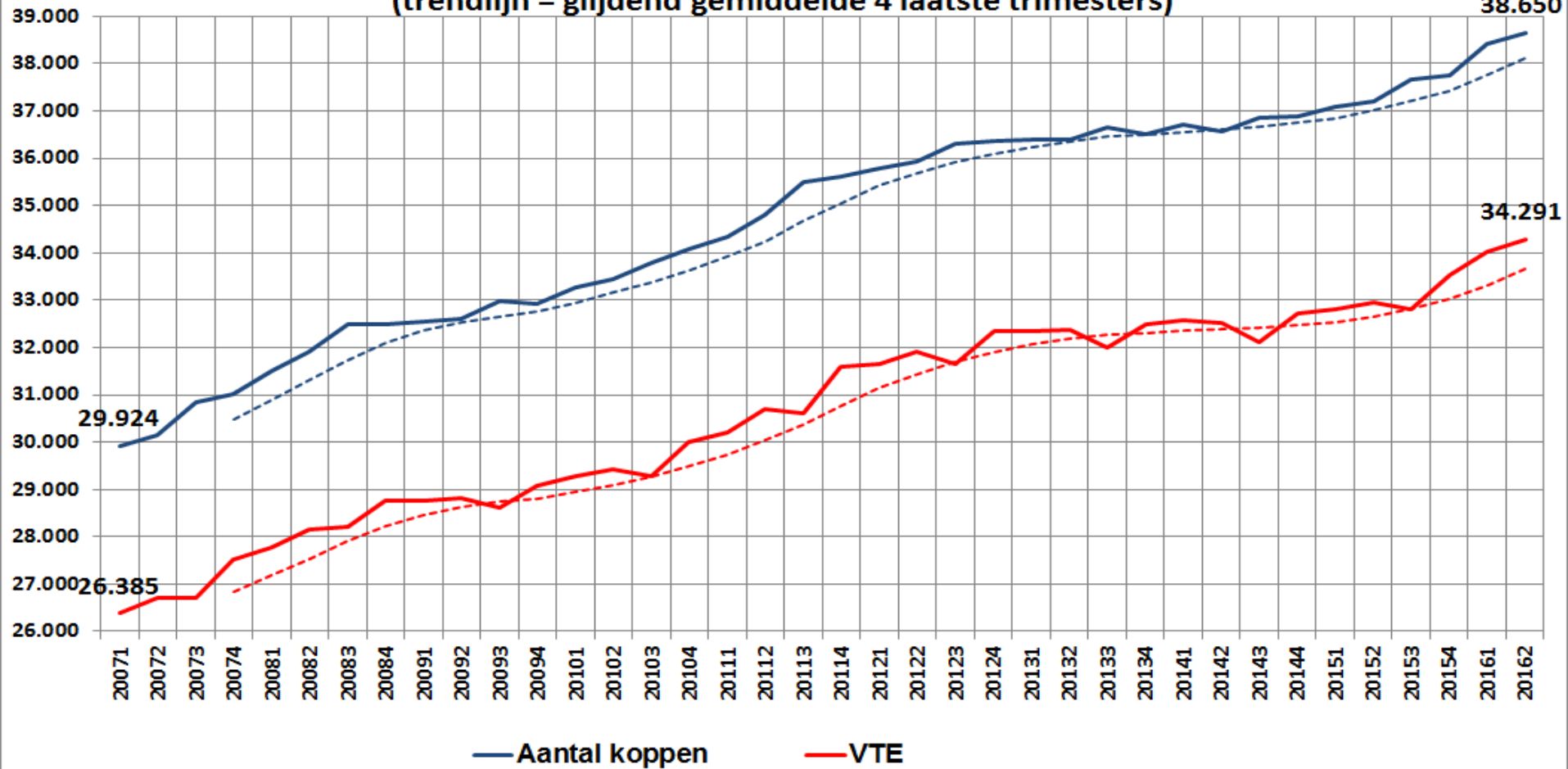
Evolution seconded workers

evolutie aantal gedetacheerden (arbeiders + zelfstandigen)



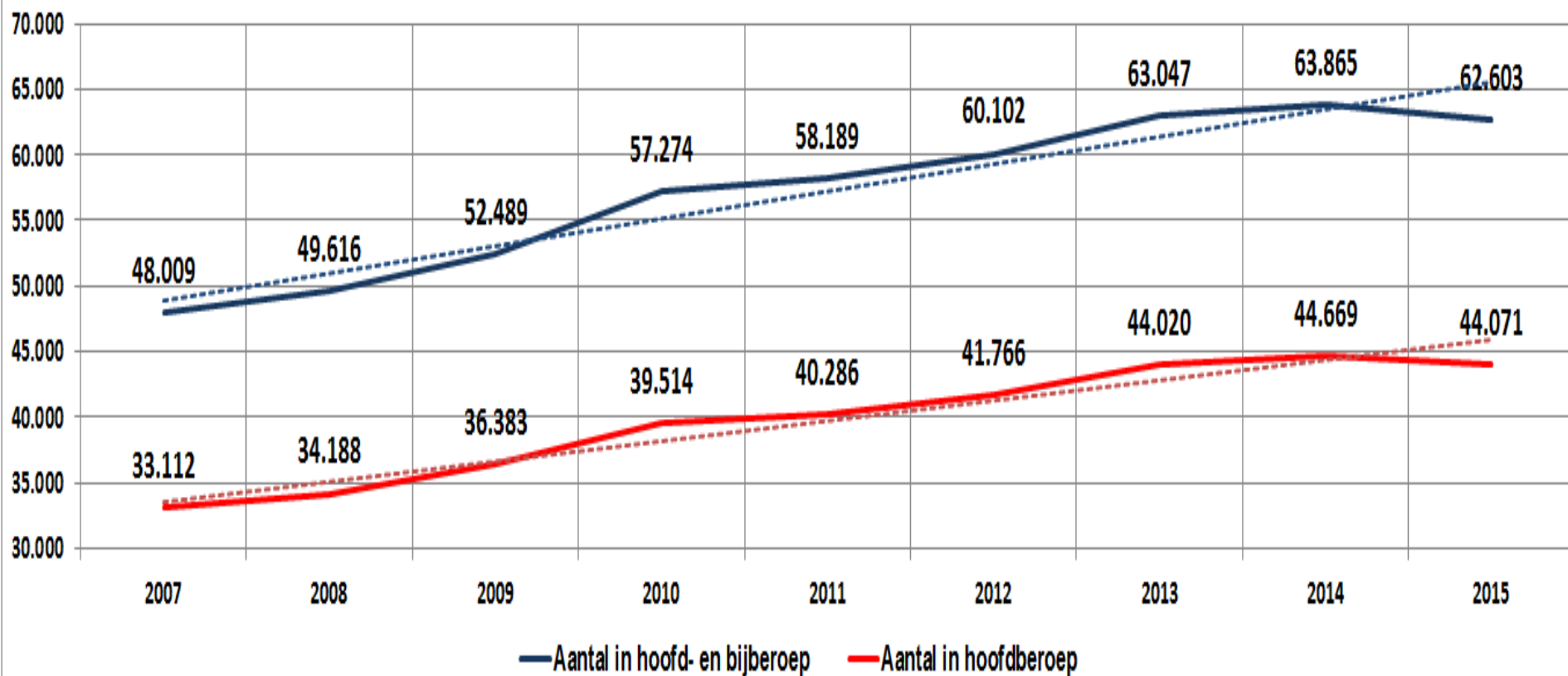
Evolution white-collar staff

evolutie aantal bedienden bouw 2007 - 2016
(trendlijn = glijdend gemiddelde 4 laatste trimesters)

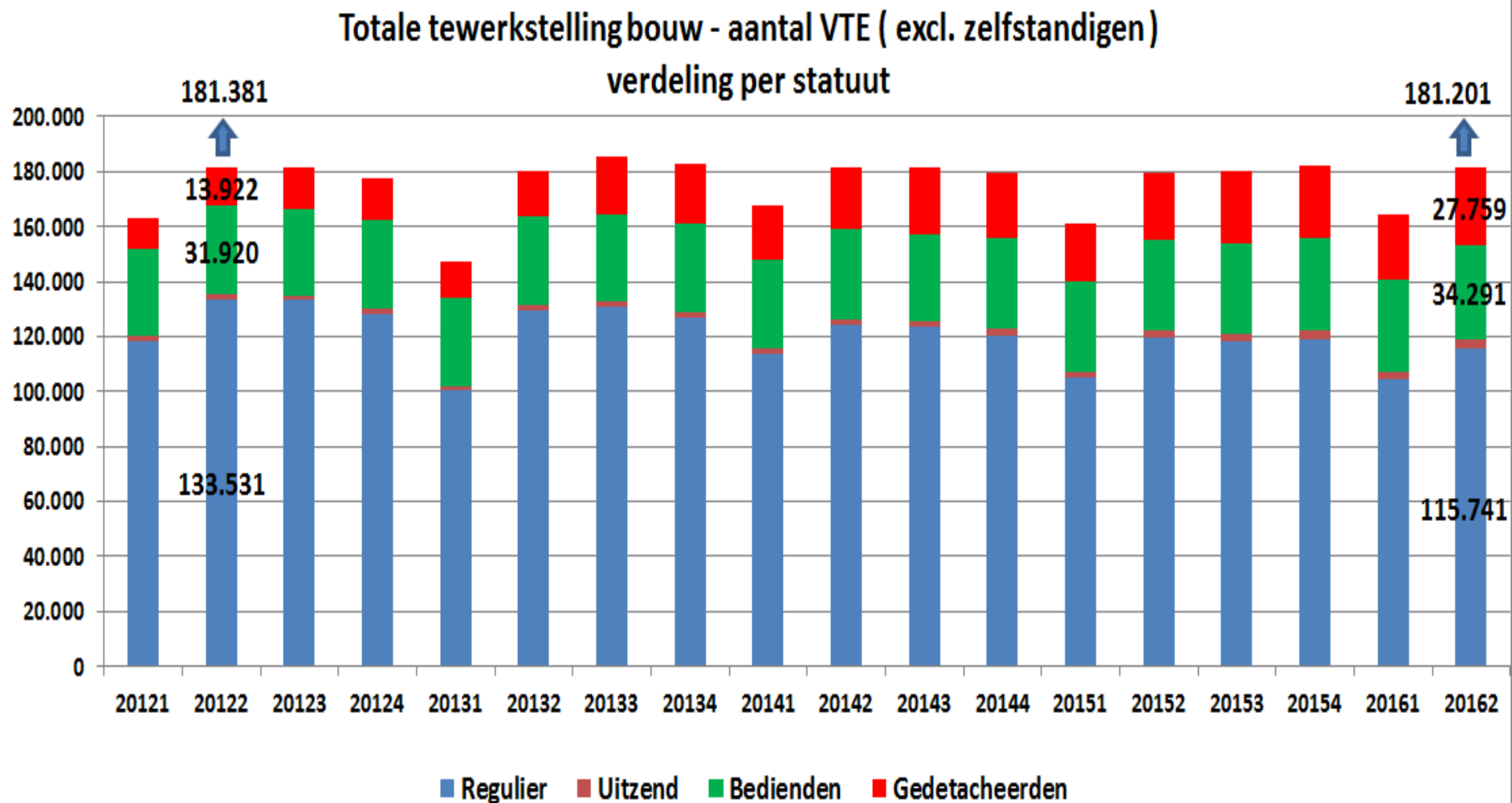


Evolution self-employed

evolutie aantal zelfstandigen bouw 2007 - 2015
(telkens op 31/12 van het jaar)



Total employed





Sore points secondment

- economic factors weigh more heavily than protection in law
- not against foreign employee. Monitoring is the problem (inspection + social rights remain national)
- problem is at its worst in the construction industry and transport sector
- there is a tradition in the construction industry of it operating with subcontractors (specialists) but this has left the door wide open for 'bogus self-employment' (abuse of secondment)
- secondment is the subject of complex constructions (PO box companies, trans-national employment, labour-only subcontractor who pays no national insurance contributions or taxes, double nationalities,... => impunity)

Secondment structure



1. Works in Belgium
2. PO box in Cyprus
3. Lives in Romania
4. Dutch secondment agency
5. German contractor
6. Sister company in Poland



Practices on construction sites

- Foreign employees work 6/7 days a week
- work days of 10 to 12 hours (double shifts)
- no respect for daily/weekly rest
- forced to work as bogus self-employed
- unsafe working conditions, no suitable attire or materials (or they have to pay for them!)
- communication problems (multiple languages, no NL or FR)
- never receive the correct wage (often looks that way on paper)
- cost of transport, accommodation, food is deducted
- deployed to replace Belgian employees



Practices on construction sites

- non-payment of collective wage agreement benefits (collection of contributions through National Social Security Office) or foreign companies claim 'equal benefits' (including loyalty stamps)
- physical threats (intermediary) if they stand up for their rights (or teams are switched)
- overnight stay on campsites, barracks, caravans occurs less often
- foreign employees are the victims (employer is a PO Box and the boss is a cell phone number)



Social dumping leads to a political stalemate!

1. Secondment creates unequal competition based on wage and working conditions
2. Posting of Workers Directive is subordinate to the free provision of services (this is confirmed by the legal precedence HvJ)
3. The seconded employee is not the problem:
 - lack of monitoring (remains national, time-consuming)
 - no (limited) European-wide social rules
 - insufficient sanctions (political will)
4. Secondment creates an East-West movement (EU 15).
Member states oppose each other (no unity)



New monitoring measures

- **Attendance registration on construction sites (1 April 2014)**
- **tackling bogus self-employment**
- **Joint and severally liable**
 - client is liable for his (sub)contractor's wage debts (already promised in 2004).
- **More cross-border monitoring**
- **Conversion Enforcement Directive (2014/67/EU 15 May 2014)**
- **Labour mobility pack Marianne Thyssen (March 2016)**



New monitoring measures

- public tenders: directive 2004/24, Belgian law from 12 May 2016 + regional implementation decree
- basic principles:
 - other criteria than price
 - possible exclusion grounds (mandatory and optional)
 - rules in the case of an 'abnormally' low price
 - regulation for chain of subcontractors
- Transposition by Belgium is minimal
 - no exclusion in the case of infringement of social rights and environmental law. No automatic exclusion.
 - determining price: which benchmarks and how to verify?
 - subcontracting: maximum 2 levels for each specialisation



Plan for trade union approach

- not against migration but tackle abuse
- need for clear legal framework that is sufficiently dissuasive: monitoring, high chance of detection and sanctions
- approach is both National and European (social Europe!)
- informing and raising awareness of foreign construction workers on our sites
- providing foreign workers with services:
- tackling illegal circuits and exploitation through strengthened cooperation between inspection services (Social Europol)
- Always paying SS contributions in the country in which the work is performed + mutual settlement between the country in which the work is performed and country of origin.



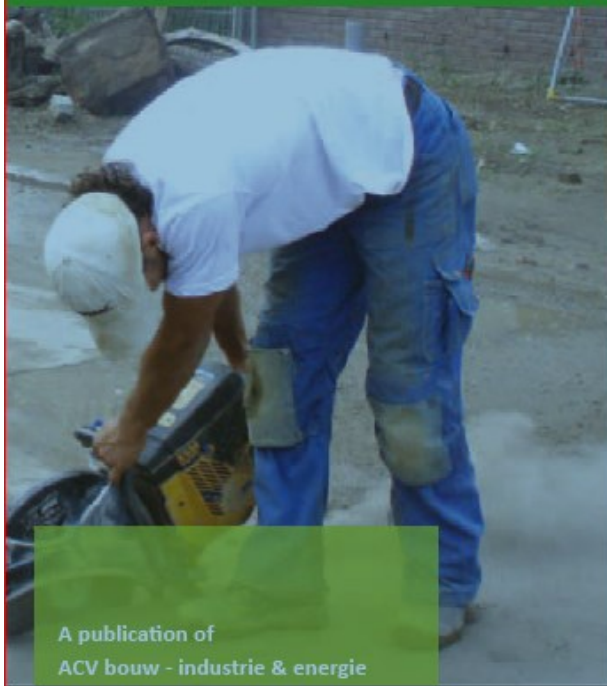
Transport sector: currentity

- Video

<https://www.vrt.be/vrtnws/nl/2017/09/06/slovakije-transportsector/>

<https://www.facebook.com/appeltants/videos/1649564801762821/>

Working in the construction sector in Belgium PC 124



A publication of
ACV bouw - industrie & energie
Trierstraat 31 - 1040 Brussels
T 02 285 02 11
acvbie@acv-csc.be
www.acvbie.be
November 2012

Nederlands

Français

English

Deutsch

Espagnol

Język polski

Romanian

Bulgarian

Portuguese

Russian

Serbo-Croatian