



Posting of Workers

The German regulations on the Posting of Workers

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**Posting of Workers –
In search of a fair mode of social protection**

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The German regulations on the posting of workers

- Legal bases of postings to Germany
- The German construction industry in European competition
- German regulations on the posting of workers
 - Structure and content
 - Impact on the labour market
- Conclusion



Legal bases of postings to Germany

- Bilateral agreements with 12 Central and Eastern European Countries and Turkey
- The Maastricht Treaty and freedom to provide services within the EU.
- EU-Enlargement: Suspension of freedom to provide services for up to seven years



New forms of using foreign labor: Posting workers from abroad

Form of migration	Regulation of working conditions
Individual migration	Principle of territoriality; Inclusion in the full German system of collective agreements and the systems of social welfare legislation; Equality of status for all workers employed by German companies.
Posting by companies based outside Germany	In principle, no integration into German labour and social law; integration occurs only via special laws or generally binding collective agreements.



The German construction industry: Characteristics

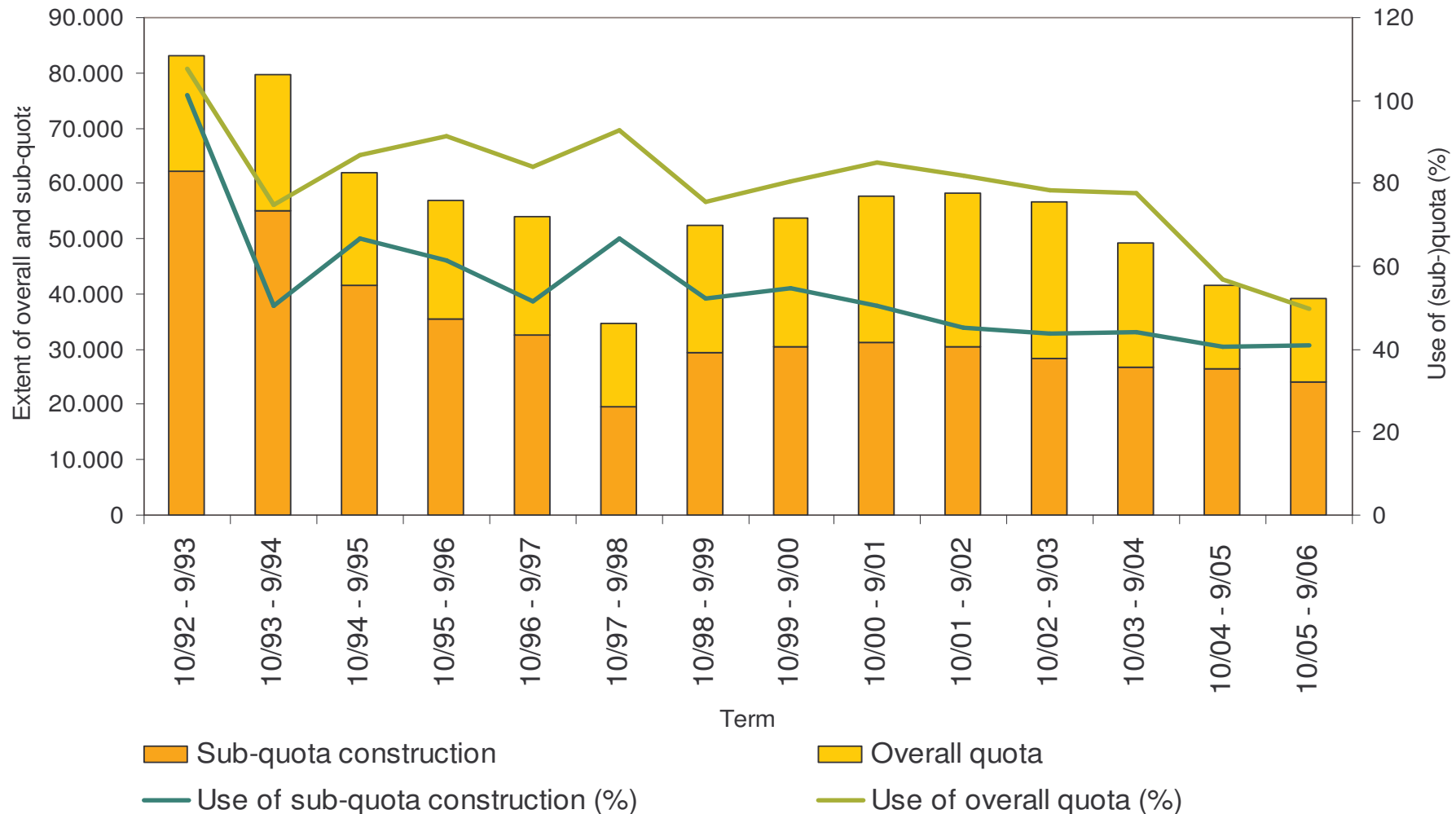
- Lengthy tradition of using foreign workers
- High percentage of low skilled work that does not require any language competence
- Highly divided working process on construction sites
- High wage level in relation to many other industries
- High percentage of wage costs in production costs



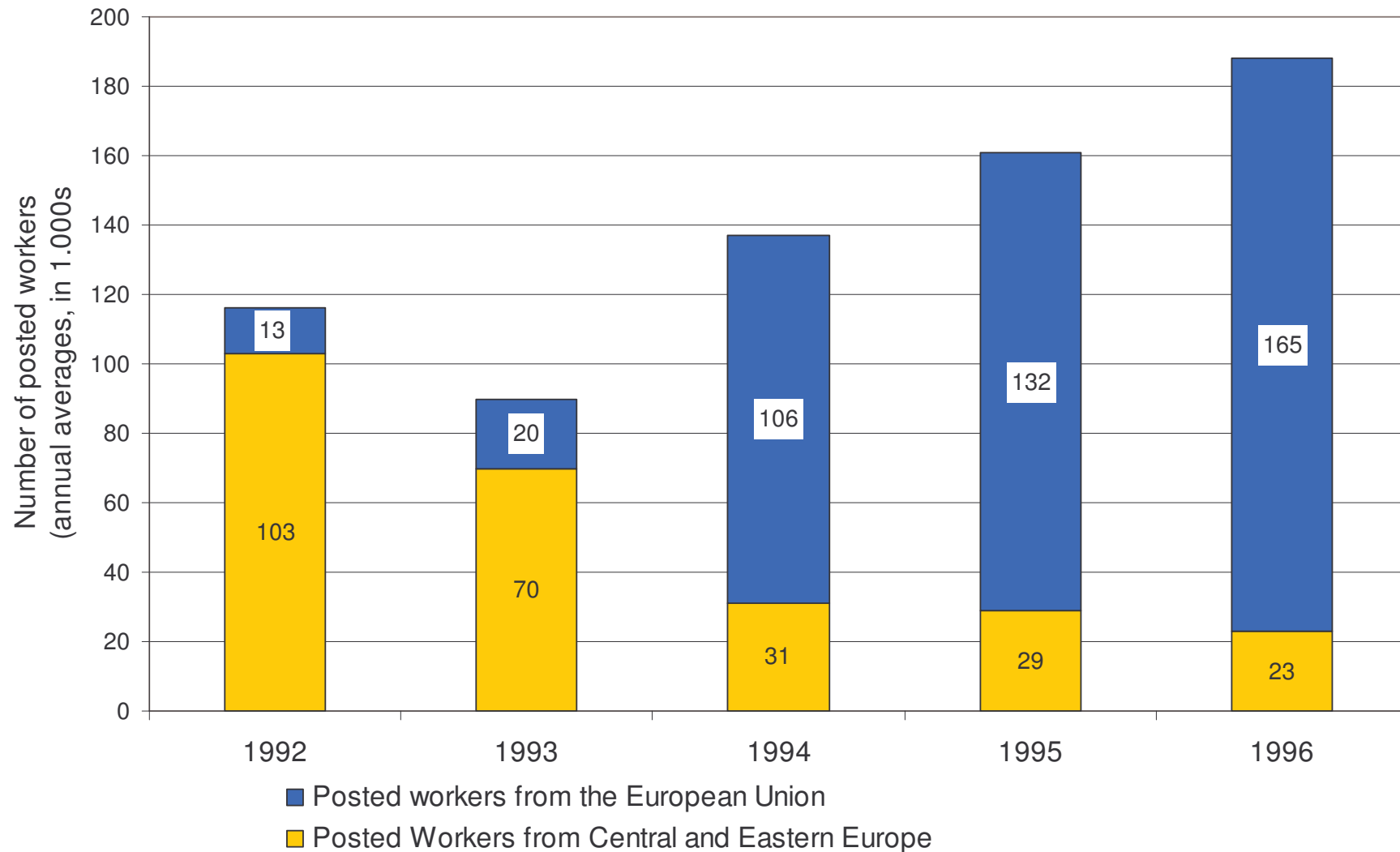
The German construction industry: Challenges by Postings

- Institutionalized orders of the labour market were undermined by free riders.
 - Most enterprises could not survive in competition by wage costs.
 - Unemployment and bankruptcy in construction could follow.
 - Construction industry would lose competence.
- ⇒ Weak basis for further innovation and development.

Extent of overall and sub-quota by Posting Agreements, 1992-2006



Posted workers in the German construction industry, 1992-1996





The German construction industry: Meaning of postings

- Most posted workers in construction industry
- Increasing number of Postings from low wage countries
- Pressure on working conditions and social standards
- Regulation system undermined

⇒ **Regulations on the Posting of workers**



Regulations on the posting of workers in Germany

Components of regulation:

- “EC Directive on the Posting of Workers”
- German “Posting of Workers Act”: Arbeitnehmer-Entsendegesetz (AEntG)
- Collective Agreements
- Declaration to be generally binding, Statutory Instrument



Regulations on the Posting of workers in Germany

- The “**EC Directive** on the Posting of Workers” allows member states to lay down minimum terms and conditions for posted workers in national laws.



Regulations on the Posting of workers in Germany

- The **German “Posting of Workers Act”** obliges all employers who supply construction services in Germany to apply the rules of collective agreements especially on minimum wages applicable in the German construction industry.



Regulations on the posting of workers in Germany

- **Collective agreements** on minimum wages.
- **Declaration to be generally** by the Minister of Labour on condition that it
 - applies to at least 50 % of workers in affected sector
 - is in public interest
 - is agreed to by the Collective Bargaining Committee (of social partners)



Regulations on the Posting of workers in Germany

- The **Statutory instrument** enables the Minister of Labour to declare a collective agreement to be generally binding without the consent of the Collective Bargaining Committee.



Regulatory content of the Arbeitnehmer-Entsendegesetz

- Registration of posted workers required
- Sanctions
- Monitoring
- General-contractor-liability
- Statutory-instrument authorisation
- Minimum wage via collective agreement

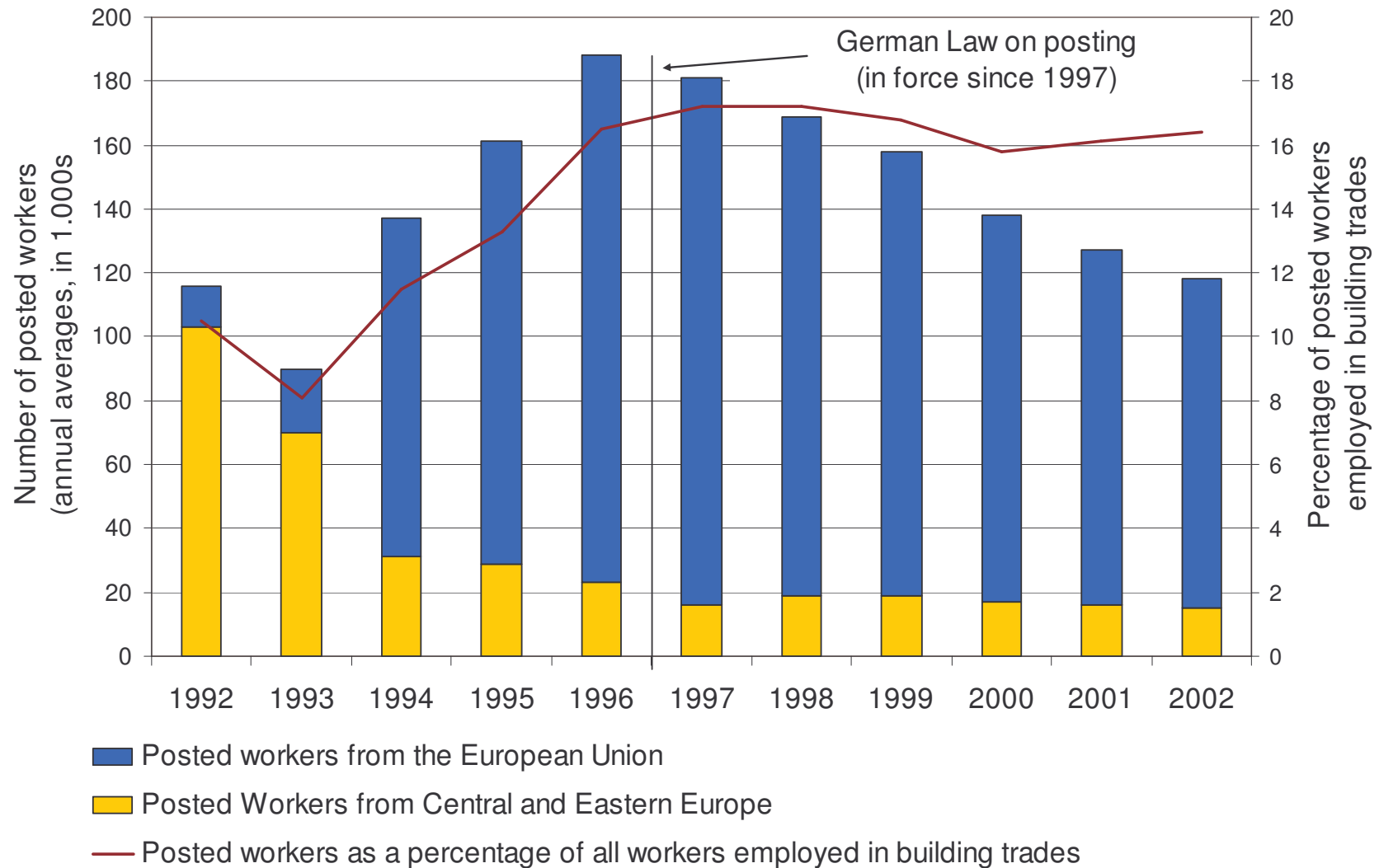
Minimum wages defined by collective agreements in German construction industry, 1997-2008

Date concluded	Declared generally vaild by	Term	Minimum wage level (TCAHW)			
			for unskilled workers		for skilled workers	
			West	East	West	East
02.09.1996	CBC	1.1.1997-31.8.1997	8,69	8,00	-	-
17.07.1997		1.9.1997-31.8.1999	8,18	7,74	-	-
26.05.1999	Statutory instrument	1.9.1999-31.8.2000	9,46	8,32	-	-
02.06.2000		1.9.2000-31.8.2001	9,65	8,49	-	-
		1.9.2001-31.8.2002	9,80	8,63	-	-
04.07.2002		1.9.2002-31.8.2004	10,12	8,75	-	-
		1.9.2003-31.8.2004	10,36	8,95	12,47	10,01
29.10.2003		1.11.2003-31.8.2004	10,36	8,95	12,47	9,65
		1.9.2004-31.8.2005	10,36	8,95	12,47	10,01
29.7.2005		1.9.2005-31.8.2006	10,20	8,80	12,30	9,80
		1.9.2006-31.8.2007	10,30	8,90	12,40	9,80
		1.9.2007-31.8.2008	10,40	9,00	12,50	9,80

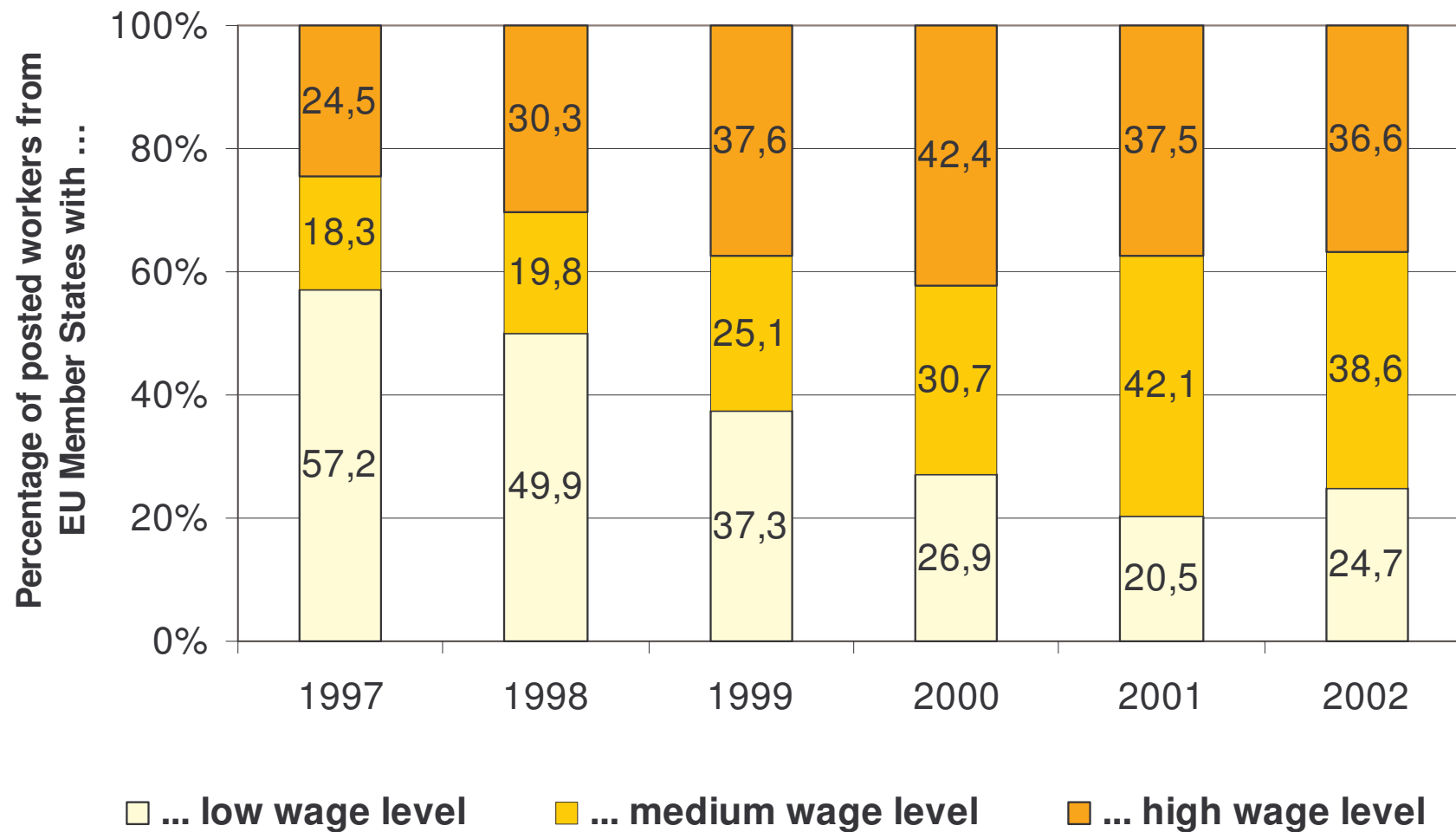
TCAHW: Total collective agreed hourly wage, CBC: Collective Bargaining Committee

Source: Federal Law Gazette, various references 16

Posted workers in the German construction industry, 1992-2002



Development of postings to Germany by wage level in posting country, 1997-2002





Illegal employment

- Relatively common in construction industry for decades.
- New forms of illegal employment in the context of Postings (partly as organized crime).
- Weak instruments to control Postings and to sanction offences.
- European common market without an equivalent in justice.



Conclusion

The German regulations on the Posting of workers...

- is based on regulations by the EU, the German legislator and the social partners in the affected sector.
- levels wage costs by generally binding minimum wages.
- prevents “free rider” strategies and destructive price competition.