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Dr Rebecca Zahn is Lecturer in Law at the University of Stirling.
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Introduction

This report examines and compares German and British trade union responses, in a European context, to the European Union enlargements in 2004 and 2007 which are unprecedented in the history of the European Union. The report is based on research carried out between 2007 and 2010 for a PhD thesis at the University of Edinburgh. It outlines a comparison of the responses of German and British trade unions to the challenges posed by the recent European enlargements, in particular the arrival of new Member State workers and the impact that they have had on trade unions in those countries. Germany and the UK were chosen primarily for the reason that their trade unions are facing similar problems following the recent European enlargements. They are both suffering from a decline in membership and a loss of influence in collective relations. In addition, trade unions in the two countries are adopting similar roles within their respective national labour law systems, as they respond to the problems which they are facing. Unions in both Germany and the UK are struggling to find ways to deal with the consequences of the recent European enlargements and, in particular, the arrival of new Member State workers. Their responses to these problems are producing different outcomes and it is argued that, given the similar problems which trade unions in both countries are facing, they could learn from each other's experiences and would benefit from a comparison. In terms of method, the report combines an analysis of law and policy in theory and in practice through an examination of the relevant literature with a focus on specific trade unions in order to provide a thorough examination of how trade unions are responding within their legal systems to the challenges of European enlargement. This allows for a determination of how trade unions can use law and the opportunities that law has to offer them to better respond to changing regulatory and opportunity structures existing at a national and European level and to successfully integrate migrants into their host labour markets following the European enlargements.

1. The 'new' Member States and the challenges of enlargement

In terms of labour law, a majority of the ten Central and Eastern European countries which acceded to the EU in 2004 and 2007 display a combination of weak domestic labour protection systems with a high proportion of workers and enterprises keen to take advantage of their free movement rights under the Treaty on the Functioning of the European Union (TFEU). In addition, these countries have attracted large amounts of foreign direct investment, largely as a result of two main characteristics: on the one hand, favourable industrialisation legacies, skill structures and a stable institutional environment; on the other hand, low wage levels and collective agreement coverage as compared to Western Europe. The Central and Eastern European labour law systems have undergone a process of enormous change since the end of the Cold War. Bronstein (2006: 194) explains that 'at the downfall of communism labour laws in all of these countries shared a number of patterns that related closely to the nature of the political and economic system.' Thus, labour law was structured around 'the assumption that the overwhelming pattern of employment was based on a subordinated, permanent and full-time employment relationship, and that the work was mainly organised within the framework of large production units or large administration' (Bronstein 2006: 194). However, by far the biggest difference between the labour law systems of Central and Eastern Europe and those of Western Europe could be seen in the field of collective labour relations. Thus, 'the shared pattern in Central Europe was the single-union structure. Union membership was quasi-compulsory, indeed necessary, for workers, given that unions were entrusted with the administration of a very large share of the welfare system' (Bronstein 2006: 194). As a result, unions were meant to 'act primarily as a mechanism for transmitting and implementing policies and decisions taken by the state-party structure' (Bronstein 2006: 194).

Since then the Central and Eastern European labour law systems have been subject to a wave of reforms designed to enrich the content of labour law and to liberalise industrial relations so as to establish:

> 'collective representation and collective bargaining structures [which reflect] the prevailing industry-based patterns in Western Europe. […] It should be observed, however, that such an approach has not yet been confirmed in practice, as in most Central European countries industry-based collective labour relations are insufficiently developed.' (Bronstein 2006: 199)

As a result, there are large discrepancies in labour protection between old and new Member States in the European Union (EU).

The Central and Eastern European enlargements have created a climate of fear amongst workers and trade unions in old Member States that their economic and social position is being threatened by those workers and enterprises who may avail themselves of their rights under the Treaty in order to engage in 'social dumping'. Due to the characteristics of the Central and Eastern European labour law systems, it was feared and expected that these countries' economic integration following the enlargements would lead to an intensification of competition that had not occurred after previous[1] enlargements. Kvist (2004: 305) argues that 'comparatively less wealth in acceding countries is seen as a push factor for migration, and the higher wealth of older Member States as a pull factor.' These fears were intensified by the fact that EU citizens have the right to move freely across borders.

1. For example, during the 'southern' accessions: Greece (1981), Spain and Portugal (1986). Member States at the time feared an influx of Greek, Spanish and Portuguese workers and, as a result, imposed transitional measures. However, these fears were unfounded. It should be noted that income differences between old and new Member States during the 'southern' accessions were not as great as during the 2004 and 2007 enlargements.

2. The legal framework – the transitional measures

Following the recent European enlargements in 2004 and 2007, most EU Member States restricted the right to free movement for workers from the new Member States with the exceptions of Cyprus and Malta. The legal basis for the restriction can be found in the Accession Treaties of 16 April 2003 regarding the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and of 25 April 2005 regarding the accession of Bulgaria and Romania which allowed 'old' Member States to enact national measures restricting access to their labour markets for the first two years following accession. The Accession Treaty of Cyprus contained no restrictions on free movement of workers. With regard to Malta, there was only the possibility of invoking a safeguard clause.

Germany enacted national measures which severely restricted the right of new Member State workers to move freely between their home country and Germany. German trade unions in particular lobbied extensively for the imposition of such measures as they feared that the arrival of new Member State workers would result in a reduction in wages and a rise in the already high unemployment rate in Germany. Under German law, most new Member State workers (EU8 and EU2) required a work permit in order to take up a job in Germany. There were exceptions for certain specific categories, namely students working during their holidays, managers and academics. For all categories of workers a work permit (*Arbeitsgenehmigung-EU*) had to be granted by the German Federal Employment Agency (*Bundesagentur für Arbeit*). The work permit was initially to be in the form of a temporary permit (*Arbeitserlaubnis*) and, after 12 months of uninterrupted access to the labour market, the worker would receive a permanent work permit (*Arbeitsberechtigung*) conferring a right of unhindered access to the labour market (i.e. not linked to the present employer).

Germany also had a large proportion of new Member State workers who entered the country as seasonal workers. These workers and their employers had to apply for a work permit from the Federal Employment Agency under a bilateral agreement signed between Germany and their home Member State. Germany has signed bilateral agreements with all new Member States. Permits of this nature were limited to six months. Posted workers from the new Member States working in construction and related branches, industrial cleaning and interior decoration could carry out their work in Germany only within the framework of a service contract procedure, administered by the Federal Employment Agency.[2]

2. For more details especially about the historical context of the regulation concerning posted workers see Faist *et al.* (1999).

Germany did not restrict access to self-employed persons who could move freely between the new Member States and Germany under their rights as EU citizens.

Apart from in Germany, a worker from one of the Member States that acceded in 2004 (apart from Cyprus and Malta) initially needed a work permit to work in all old Member States with the exceptions of Sweden, Ireland and the UK. Sweden and Ireland did not restrict entry to the labour market; the UK implemented a Worker Registration Scheme (WRS). While the UK economy 'appeared to be in need of foreign labour across a number of different sectors of the employment market' (Currie 2008: 34), there was a public fear that migrants would pose a threat to the benefits system and the labour market. The WRS sought to strike a compromise in attempting:

> 'to knit together the issues of employment, legal residence, and access to social benefits for EU8 migrants. The effect of the system is to make legal residence dependent upon being in employment and, in turn, access to social benefits is restricted to those legally resident, in other words, those in work.' (Currie 2008: 35)

Under this scheme, workers had to register if they wished to work for an employer in the United Kingdom for more than one month. The employment status of EU8 nationals was dependent on registration. In the same way, an EU8 worker was legally resident only once s/he had registered under the scheme. After a consecutive period of employment of 12 months, workers no longer needed to be registered and were treated in the same way as other European citizens to whom the scheme did not apply. Individuals moving as service providers were not affected by these provisions in the UK. They could avail themselves of their rights under EU law from the date of accession of their home country. Equally, 'posted workers', i.e. workers who are sent from one Member State to another for a limited period of time, could avail themselves of their rights under EU law.

In 2006, the Accession Treaties allowed the extension of these national measures for an additional period of three years. After that, an EU Member State that applied national measures could continue to do so for a further two years if it notified the Commission of serious disturbances in its labour market. Altogether, the national measures restricting access to the labour market could not extend beyond an absolute maximum of seven years. For the 2004 enlargements only Germany and Austria took advantage of this option to restrict free movement for the full period allowed which expired in May 2011. The UK decided to maintain its Worker Registration Scheme until that time. All other Member States lifted their restrictions between 1 May 2006 and 1 May 2009.

Similar measures were put in place for workers from Bulgaria and Romania following the 2007 enlargement. All 'old' Member States with the exceptions of Finland and Sweden limited access for Bulgarian and Romanian workers from the date of the enlargement. Since 2009, some Member States with measures in place have progressively lifted the restrictions; however Germany

and the UK still limit access for Romanian and Bulgarian workers. Romanians and Bulgarians wishing to work in the UK need to apply for permission from the Home Office before starting work. Low-skilled Romanians and Bulgarians may apply to work only as seasonal agricultural workers or in sector-based schemes. Highly-skilled EU2 nationals and those with specialist skills are admitted on the basis of work permits. After a 12-month consecutive period of employment, Romanians and Bulgarians are given the same full rights of free movement as other European citizens. Germany extended the restrictions in place for EU8 nationals to cover Romanian and Bulgarian workers.

Despite the transitional arrangements for *workers*, all EU *citizens* moving across borders benefit from the right to non-discrimination granted to EU citizens under article 18 TFEU. Moreover, they are entitled to the same rights of residence as EU citizens from 'old' Member States.

3. The effects of European enlargement

Prior to the enlargements, Germany and Austria received approximately 60% of immigration inflows from the countries which acceded in 2004. (See Table 1).

Table 1 **Foreign residents from the EU8 in the EU15, 2000 – 2009**

Host Country	2002	2003	2004	2005	2006	2007	2008	2009
In persons								
Austria	57,301	59,622	67,675	75,143	80,706	86,911	94,084	90,629
Belgium	15,071	18,033	34,860	53,024	47,247	41,609	51,218	51,078
Denmark	9,664	9,963	10,762	12,933	16,203	21,807	30,033	33,179
Finland	14,751	15,838	16,468	18,266	20,801	23,957	27,464	30,877
France	41,511	36,960	47,373	37,851	47,780	41,695	50,317	49,337
Germany	466,382	480,690	438,828	481,672	542,444	594,277	603,783	615,060
Greece	17,122	16,735	19,033	20,619	19,815	19,629	26,788	21,696
Ireland	15,715	26,861	23,046	46,762	118,773	156,055	189,705	178,215
Italy	41,431	55,593	67,755	79,819	94,215	117,042	128,813	137,306
Luxembourg	1,156	1,574	2,278	3,488	4,217	4,868	5,619	8,538
Netherlands	12,239	13,125	17,883	23,212	28,394	36,365	48,131	58,201
Portugal	650	866	1,081	1,297	1,512	2,565	2,502	2,843
Spain	34,076	42,672	55,735	70,576	103,190	126,971	137,068	139,237
Sweden	21,376	21,147	23,257	26,877	33,757	42,312	50,575	57,669
United Kingdom	102,805	142,653	180,817	283,890	448,571	711,587	806,581	814,736
EU-15	**851,250**	**942,321**	**1,006,851**	**1,235,429**	**1,627,625**	**2,027,651**	**2,252,681**	**2,288,600**

Source: Holland *et al*. (2011)

The prospect of unrestricted access to the German labour market following the enlargements led to fears among German workers and trade unions that 'social dumping' would occur if large numbers of Eastern Europeans availed themselves of their rights to free movement. The restriction of access through the imposition of the transitional arrangements was seen as a way to combat this fear. The German Federal Ministry for Labour and Social Affairs (*Bundesministerium für Arbeit und Soziales*) listed a number of other reasons in support of the imposition of transitional arrangements. First, Germany had a high rate of unemployment which particularly affected low-skilled and unqualified workers. As it was expected that primarily low-skilled and unqualified workers would arrive in Germany from the EU8 and EU2 states, the government foresaw increasing tension and falling wages in the labour

market due to increased competition. Also, the proximity between Germany and the EU8 countries led the government to predict a greater influx of EU8 workers to Germany than to more geographically distant countries. The restriction of access was meant to give Germany time to adapt its labour market to the challenges of an enlarged Europe. This involved lowering the level of unemployment and introducing a minimum wage to prevent the distortion of competition. On the other hand, it was argued that the time between enlargement (2004) and the lifting of the transitional arrangements (2011) would enable the new Member States of Central and Eastern Europe to improve their economic and social conditions so that they would no longer pose a threat to the labour markets of 'old' Member States, such as Germany.

Following the enlargement in 2004 and the imposition of strict national measures restricting access to the labour market, Germany and Austria were replaced by the UK and Ireland as the main destination of migrants from the new Member States (see Table 1). Approximately 70% of migrants from the new Member States travelled to the UK and Ireland, making up, by the end of 2007, about 1% of the UK population (European Integration Consortium 2009). At the time of the enlargements, both the UK and Ireland were experiencing 'a labour shortage, particularly in sectors such as agriculture, construction, food-processing and hospitality that have a high share of labour-intensive, less-skilled occupations' (Krings 2009: 49). Even though workers who come to the UK from the new Member States were often highly educated, they were willing to 'downgrade' and to work for low wages in low-skill jobs thus making Ireland and the UK ideal host countries. Between 2004 and 2008, 1.24 million National Insurance Numbers were allocated to EU8 workers (Migration Advisory Committee 2009: 17). A total of 926,000 applications were approved under the Worker Registration Scheme. It has been suggested that these figures under-estimated the true position due to limited data availability. In addition, the data gathered on new Member State workers stems only from the Worker Registration Scheme. This does not cover those workers who have taken up work without fulfilling the registration requirements, nor does it include those workers who do not fall within the category of 'employed'. In addition, the Worker Registration Scheme does not record those workers who leave the UK. Nonetheless, this development has been described as 'almost certainly the largest single wave of in-migration [...] that the [UK] ever experienced' (Home Office 2007).

For the most part, new Member State workers have been positively received in the UK. In particular, employers have praised their 'strong work ethic' (EHRC 2010). There is 'relatively limited evidence that eastern European immigration has brought economic benefits, including greater labour market efficiency and potential increases in average wages' (EHRC 2010: 7). However, the Equality and Human Rights Commission (2010: 7) reported that 'the recent migration may have reduced wages slightly at the bottom end of the labour market, especially for certain groups of vulnerable workers, and there is a risk that it could contribute to a 'low-skill equilibrium' in some economically depressed areas.' Research by Anderson and Rogaly (2005: 7) found that some EU8 migrants were subject to such levels of exploitation that they fall within

the international legal definition of 'forced labour'. A Report by the Equality and Human Rights Commission (2010: 6) stated that 'in many cases the new migrants have precarious employment and housing arrangements, are vulnerable to exploitation, or lack support networks and access to information.' There have also been allegations of 'social dumping' in some industries and the arrival of large numbers of workers availing themselves of their rights under European law sparked debates on the provision of 'British Jobs for British Workers'.

The Lindsey oil refinery dispute provided the catalyst to this debate. In January 2009 workers at Lindsey oil refinery began unofficial strike action in protest against perceived discrimination against British workers. The owners of the refinery had awarded construction of a new unit at the plant to an American company who had sub-contracted part of the work to an Italian company. Workers at Lindsey oil refinery commenced unofficial strike action after learning that the sub-contractor would post its own permanent workforce of foreign nationals (Italians) to the refinery to complete the project rather than employing British workers. This illustrates the feeling, as evidenced by many of the placards bearing the then Prime Minister's Gordon Brown's pledge of 'British Jobs for British Workers', that British workers should be accorded preference over foreign nationals, in this case EU workers, in the allocation of employment contracts.

The dispute generated a large amount of publicity and illustrated the resentment felt by members of the public about the process of European integration. Trade unions, despite not directly supporting the unofficial strike action as to do so would have left them vulnerable to claims for damages, benefited greatly from the anti-European sentiments. They managed to generate a large amount of political and public support which they have been lacking in recent years. This was mainly due to the outcome of the dispute which resulted in the unions brokering a deal between the owner of the refinery and the workers which saw pledges to employ a certain number of British workers on the site. As a result, the unions really did win 'British jobs' for 'British workers'. However, the 'British Jobs for British Workers' debate is also a vivid example of how trade unions are struggling in their responses to migrant workers. By supporting 'British' workers, trade unions risk alienating migrant workers which then makes it harder to integrate them into their structures.

In response to the large numbers of migrants arriving from the new Member States following the 2004 enlargement, the UK restricted access to its labour market for Romanians and Bulgarians in 2007 to prevent the situation repeating itself. As a result, the numbers of Bulgarians and Romanians who have arrived in the UK since 2007 have been small compared to the migrant flows following the 2004 enlargements (see Table 2). The preferred destinations of Romanian and Bulgarian workers seem to be Spain and Italy due to the lightly restricted access to these countries' labour markets.

Table 2 **Foreign residents from the EU2 in the EU15, 2000 – 2009**

Host Country	2002	2003	2004	2005	2006	2007	2008	2009
Austria	24,817	26,339	27,598	28,422	28,301	35,282	41,356	64,106
Belgium	5,976	6,907	8,314	10,903	14,196	22,063	25,566	33,296
Denmark	1,730	1,822	1,941	2,135	2,255	3,209	5,277	7,397
Finland	873	887	909	970	1,089	1,388	1,663	1,891
France	13,870	21,550	30,727	24,649	52,333	48,176	65,733	67,111
Germany	131,098	133,404	112,532	112,196	120,399	140,896	157,984	178,468
Greece	32,394	31,880	41,491	46,890	48,467	56,405	69,666	92,182
Ireland	5,638	2,749	3,438	6,618	8,928	12,430	17,573	16,642
Italy	102,363	189,279	264,223	315,316	362,124	658,755	837,357	933,789
Luxembourg	477	498	545	700	871	1,333	1,678	1,438
Netherlands	3,720	4,413	4,944	5,082	5,427	11,272	16,446	19,458
Portugal	14,665	15,877	16,147	14,156	15,452	24,356	34,225	39,659
Spain	156,279	253,793	370,505	490,397	664,480	889,650	964,009	990,960
Sweden	3,123	3,148	3,170	3,205	3,080	6,280	9,191	10,913
United Kingdom	12,137	19,384	29,814	47,931	49,554	50,473	100,798	106,697
EU-15	**509,160**	**711,930**	**916,298**	**1,109,570**	**1,376,956**	**1,971,968**	**2,348,523**	**2,564,008**

Source: Holland *et al*. (2011)

Despite the restrictions on access to its labour markets, Germany remains an attractive destination for new Member State workers. As Krings (2009: 55) points out:

> 'Most people from the [new Member States] enter Austria and Germany as part of bilateral agreements signed with a number of [Central and Eastern European] countries in the 1990s to channel the rising migration flows into a more organized system. In Germany the number of these work permits, mainly issued to seasonal workers from Poland, has stayed around 350,000 per year.'

This seasonal migration has largely been positive for the domestic labour market. However, allegations of wage dumping resulting in the loss of local jobs emerged in sectors like the German meat industry, where there is evidence that service providers from the new Member States often pay their workers wages which are well below the rates paid to Germans (Czommer and Worthmann 2005). More recently, a German newspaper reported that the German national train company (Deutsche Bahn) was using workers from the new Member States to clear stations and tracks of snow while paying them below the industry standard (Ritter 2010). This development is part of broader allegations that new Member State workers circumvent the transitional measures by being sent to work in Germany as posted workers in those sectors where no restrictions apply. In response, there have been calls for the restrictions on posted workers to be extended to other sectors such as the meat industry (Czommer and Worthmann 2005). However, in total, the number of new Member State workers has not increased dramatically in Germany. As a result, the share of EU8 and EU2 workers has remained fairly stable there (see Tables 1 and 2).

In addition to allegations of 'social dumping' through posted workers, Germany has reported rapidly growing numbers of EU8 citizens who have registered as self-employed service providers, a step which has been interpreted as a means of circumventing the transitional arrangements. There were fears that, following the lifting of the transitional arrangements in 2011, large numbers of new Member State workers would arrive. Even though these fears can now be rejected as unfounded, trade unions have spent the time since enlargement looking to developments in the UK in order to prepare themselves for possible arrival of new Member State workers. This is examined in more detail in the case studies (below). Thus, both the British and the German labour markets have been affected by the recent European enlargements and both are struggling to accommodate the developments following the enlargements, despite restrictions (to varying degrees) on access to their labour markets.

It is argued in this report that the responses of trade unions are heavily influenced by the role that they adopt within their national legal system. The next section therefore sets out the national legal context to provide a framework for the analysis of the case studies which are expanded upon below.

4. The national context

4.1 United Kingdom

The rise of workers' associations in Britain dates back to the 18th century. Their utility was formally recognised in 1824 with the repeal of the criminal sanctions against combinations, and, from then on, tolerated by the common law which epitomised the *laissez-faire* attitude of liberal capitalism to both business and labour (Hepple and Fredman 1986). However, trade unions as associations were not fully legalised until the Trade Union Act 1871. The Act, in keeping with the British tradition of *laissez-faire*, did not introduce state control (apart from limited requirements to deter fraud and negligence), but instead set up a system of purely voluntary registration of trade unions. This approach, which remained the legal basis of trade union freedom for a century, embodied the typical British approach to labour law: it was based on the granting of immunities from judge-made common law doctrines, for example, restraint of trade, but did not 'confer positive rights with corresponding positive state controls over unions' (Hepple 1986: 208). As Otto Kahn-Freund (1954: 47) pointed out, 'there is perhaps no major country in the world in which the law has played a less significant role in the shaping of [labour-management] relations than in Great Britain.' This dichotomy is also recognised by Robson (1935: 195) who noted that 'England is the home of trade unionism; it was on her soil that the practice of combined bargaining first arose; yet here alone is the collective contract still denied the elementary right of legal enforcement in the courts of law.' By virtue of the non-intervention of the state in collective affairs, a lacuna was created in which collective bargaining could develop autonomously from the state. Kahn-Freund described this result as *collective laissez-faire*.

British trade unions thus initially won minimum labour standards without the aid of clear legislation, relying instead on their industrial strength which helped them in gaining important state concessions. One of the clear benefits recognised by both trade unions and employers' associations in the so-called abstentionist British system of collective relations was the flexibility it offered to the social partners in negotiating collective agreements, which could thus evolve dynamically to meet changing economic and social conditions. The absence of legal sanctions was perceived to be evidence of the 'maturity of collective industrial relations in Britain' (Kahn-Freund 1954:212).

However, as early as the 1950s there were signs that 'the social consensus which had sustained the traditional voluntarist framework was under strain' (Hepple and Fredman 1986: 57). The economic downturn resulted in less than

full employment, leading to increasing numbers of unofficial strikes which trade unions were unable or unwilling to control. This forced successive governments to adopt various laws, most notably on incomes policies, to attempt to influence the conduct of industrial relations. It is therefore from this period onwards that a clear involvement of the state becomes apparent in contrast to intervention by other means during the previous decades. However, while these policies encroached 'very directly upon the autonomy of collective bargaining' (Davies and Freedland 1983: 7), they did not reshape labour law itself and eventually all ended in failure.

A fundamental shift occurred with the introduction of Mrs. Thatcher's programme of economic deregulation and liberalisation, starting in 1979, which was 'designed to promote product-market competition and reduce the size of the public sector. Reform of industrial relations and restructuring of the labour market were central parts of this wider economic programme' (Deakin and Morris 2005: 30). Thus, the right to strike was curbed and trade unions were subjected to an unprecedented amount of external regulation and supervision. Legislation removed the blanket immunity from liability in tort and prohibited certain forms of industrial action, including a prohibition on taking secondary industrial action.

The reforms of the Thatcherite government led not only to a considerable reduction in strike activity but also to a rapid decline in trade union membership. This was due to a rapid deindustrialisation of the economy which meant that unions were deprived of their traditional strongholds. In addition, the number of workers in the service industry, which has always been difficult for unions to access, more than doubled, thereby adding to the decline in union membership. In contrast, employment in the public sector expanded between 1980 and 2004, which slowed the fall in membership figures. Nonetheless, the proportion of union members in workplaces with more than 25 workers fell from 65% in 1980 to 47% in 1990 and 36% in 1998. More recent data indicate a further decline in membership to a low point of 26.6% in 2010. For the sake of completeness, it should be noted at this stage that the Labour government which was in power from 1997 until 2010 did not restore the powers held by trade unions pre-1979 and instead insisted on the need for 'partnership at work', i.e. cooperation between labour and management to improve economic performance.

The unions have responded to these new challenges in a number of ways. There has been an increase in mergers amongst trade unions in the same sectors in order to avoid inter-union competition for recognition in the hope of strengthening the union's position vis-à-vis management. In keeping with the emphasis on 'partnership at work', unions have increasingly emphasised their shared commitment to the business interests, thereby indicating their willingness to cooperate as partners in introducing greater flexibility, whilst at the same time protecting their members' interests. There are thus signs that the role of trade unions in British labour law has shifted away from one of an adversarial nature to a role based on cooperation between labour and management.

The regulatory function of trade unions through collective bargaining has traditionally been the most visible, if not the most important, function of trade unions in the UK. However, in recent years, collective bargaining has receded, due to dwindling membership figures of trade unions and an increased view by the government that 'the role of trade unions in centralised collective bargaining on pay and conditions has declined, reflecting decentralised decision-making in many organisations' (DTI 1998). The trade unions' function in regulating the employment relationship is increasingly being achieved indirectly through legislation, which the trade unions play a part in securing. Thus, 'as the direct regulatory role of trade unions by collective bargaining retreats, so the importance of trade union political action increases' (DTI 1998). An increasing emphasis must therefore be placed on the government function of trade unions. Moreover, the growing role accorded to trade unions in the consultation on policy development and on the content of legislation indicates the increasing importance of a public administration function of trade unions. However, to date, trade unions have not been involved to the extent found at, for example, EU level where trade unions are formally incorporated into the legislative process through the social dialogue, or in other EU countries such as Germany. Nonetheless, there has been a clear shift in the functions of trade union, from regulation to government and public administration.

A final emphasis must be placed on the service function. As Ewing (2005: 5) points out, 'a key motive of both Conservative and Labour governments since 1979 has been to reinforce the service function of trade unionism.' As a result, trade unions have increasingly expanded the services and benefits they offer, not least as a recruitment incentive. Trade unions now offer a wide range of services including legal and commercial services unrelated to work. In part, these functions have taken on an equally, if not more, important role than the regulatory function. Trade unions seem to be operating as service providers ensuring that members are offered benefits and services for life rather than just for work. This leads to the conclusion that there seems to be 'a shift in the level of regulation from the collective sphere to that of the individual relationship. This has been accompanied by a certain change of emphasis in the role of unions, from co-regulators of terms and conditions of employment to monitors and enforcers of employees' legal rights' (Davies *et al.* 2005: 333).

4.2 Germany

The first German trade unions date back to the middle of the nineteenth century, when workers, in line with earlier British examples, began to voluntarily organise themselves in order to counteract the economic superiority of employers and employers' associations. By 1890, in the wake of German unification, the majority of trade unions had joined together under an umbrella organisation to organise all independent trade unions in the General Commission of Trade Unions (*Generalkommission der Gewerkschaften Deutschlands*), which boasted over 2 million members in 1914. This organisation survived the First World War and the subsequent political upheavals to rename itself as the General German Trade Union Federation

(*Allgemeiner Deutscher Gewerkschaftsbund*) in 1919, whose membership reached a peak of 5 million in 1929. With the rise to power of the Nazis in 1933, all trade unions were dissolved and replaced with an industrial branch (National Socialist Factory Cell Organisation) of the National Socialist Workers Party which often participated in labour disputes but cannot, due to its ideological foundation, be classified as a 'trade union' (Hepple 1986: 320).

Following the founding of the Federal Republic of Germany in 1949, many of the pre-war trade unions reorganised around the German Trade Union Federation (*Deutscher Gewerkschaftsbund* - DGB). It worked closely with the German Federation of Career Public Servants (*Deutscher Beamtenbund* - DBB), the German White-Collar Workers' Union (*Deutsche Angestellten-Gewerkschaft* - DAG) and the revived Christian Trade Union Federation (*Christlicher Gewerkschaftsbund*). Following the Second World War, 'the civil law and the individualistic approach and assumptions of the Civil Code were recognized as not particularly apt in labour relations. Thus standard form labour contracts were balanced by the recognition of and guarantee of the freedom of association of Article 9(3) of the Constitution. … As an area of civil law, there is no direct intervention by the state in the conduct of industrial relations' (Foster and Sule 2002: 524). Despite belonging to the civil law tradition, German labour law therefore has a close similarity to the common law system of labour regulation as practised in the UK. Moreover, as Foster and Sule (2002: 527) point out, 'although case law is not recognised as a formal source of law in the German legal system, it is nevertheless generally observed in the area of labour law as binding law.'

In parallel to developments in the Federal Republic, in the German Democratic Republic, the Free German Trade Union Federation (*Freier Deutscher Gewerkschaftsbund* - FDGB), comprising fifteen individual trade unions, was established to represent workers' interests. However, in reality it was an integral part of the state's power structure (Grebing 2007: 200). Following German reunification in 1990, West German labour laws were adopted by Former East Germany with only minor exceptions in respect of pensions and retirement. The FDGB was dissolved but only relatively few of its members joined the DGB due to widespread disillusionment amongst Eastern German workers with worker representative structures, which continues to the present day. Overall since reunification, German trade union membership, after a brief peak in the early 1990s, has fallen steadily every year. In addition to high unemployment both in West and to a larger extent in East Germany, unions are facing increasing difficulties in recruiting young workers and employees in the growing private service sector. Unions also complain of a diminishing sense of solidarity amongst workers. The traditional unions have reacted by encouraging the concentration of union power within one organisation. This led to numerous mergers, culminating in 2001 with the merger of four unions affiliated to the DGB and the DAG into the *Vereinte Dienstleistungs - gewerkschaft* (ver.di), one of the world's largest trade unions, which marked a slight turning point in the fortunes of German trade unions. The DBB recently announced an increase in membership density, whereas smaller independent trade unions have been gaining in strength and importance following criticism

of ver.di's inability to counteract increasing calls by employers' associations and the government to improve labour market flexibility. The growing role played by smaller trade unions in German labour relations illustrates the tensions that have arisen within the trade union movement due to not only dwindling membership figures but also the differing reactions to the phenomenon of globalisation and the debates surrounding it.

Within the employment relationship, German trade unions perform a service function, a representation function, and a regulatory function. In the broadest sense, they also adopt a governmental and public administration function, however, this is less dominant than in the UK. Schroeder and Weßels (2003: 14) explain it in different terms:

> 'The function of trade unions should not be seen one-dimensionally. They are, first and foremost, organisations of solidarity and mutual security. They appear as an economic organisation vis-à-vis the employer with a view to representing collective interests. However, due to their high membership numbers, they are also political organisations, despite the clear distinction between them and political parties, who play a powerful role in the political system in Germany.'

The trade unions' regulatory role, by far the most important function of German trade unions, can be seen in the collective bargaining process. Most collective agreements are drawn up for special industries and districts. However, due to a shift in the locus of negotiation and regulation of German industrial relations to the workplace, collective agreements are increasingly 'coming to be framework accords whose substance is specified by the actors at workplace level who bear the responsibility for fine-tuning them to their own specific circumstances' (Keller 1998: 48). In terms of structure, collective agreements are bipartite in form. The first part regulates the rights and duties as between the parties to the collective agreement. The second part regulates, through binding legal norms, the relationship and hence the individual employment contract between employer and worker. The trade unions thus have a collective representation function, as well as a regulatory function, through the collective agreements. This is confirmed in §1 of the Collective Agreements Act (*Tarifvertragsgesetz*) which provides that collective agreements can be applied as normative law in respect of the regulation, formation, content and termination of employment contracts. Due to the absence of a statutory minimum wage in most German sectors, collective agreements play a vital part in setting the lowest common denominator.

Despite a fall in membership of trade unions to about a quarter of all employees, data from the Organisation for Economic Cooperation and Development's *Employment Outlook* suggests that up to 70% of workers are still covered by a collective agreement. This is largely due to non-union members benefitting from the incorporation of collective agreements into their employment contracts. Moreover, the collective agreement will be binding on all establishments that are members of an employers' association. Thus, while trade union membership may be higher in, for example, the UK, the coverage

of collective agreements there is far lower than in Germany. This system of collective bargaining accords a much greater role to the regulatory function of trade unions which goes far beyond a mere representational function as is the case in the UK.

In addition, at least half of all employees are represented on a works council. The coverage of works councils depends to a large extent on both the industry sector – workers in the production sector are more likely to benefit from a works council than workers in the service sector – and the enterprise size. Mandatory works councils are implemented under the Works Constitution Act (*Betriebsverfassungsgesetz*) in establishments employing five or more workers. While German works councils are formally independent of trade unions, in practice most are filled with union nominees, if not union members. Thus, it has been estimated that up to 85% of councillors in the industrial sector are union nominees (Jacobi and Müller-Jentsch 1990). Employers are often not opposed to this as they can expect 'competent, reliable and predictable bargaining partners' (Jacobi and Müller-Jentsch 1990: 140). The union therefore, again, plays a strong role in the regulation and representation of the workforce. The German works councils are excluded from negotiations over wages, an area reserved to the trade unions through collective bargaining. In exchange, they have extensive powers of information, consultation and co-determination regarding important aspects of a firm's operation and decision-making. The amended Works Constitution Act, introduced in 2001, increased the influence of works councils at an enterprise level. Even so, their major weakness remains, for works councils do not have the power to call strikes in order to voice their interests. Therefore, their effectiveness depends to a large extent on both the nature of the relationship with the employer and the support of the background trade union. While the two channels of worker representation – collective bargaining and co-determination – are formally separate, one often finds overlaps in representation, with the trade union playing a key role in the coordination of workers in both channels.

Trade unions also perform a governmental and public administration function. With the decline in membership of trade unions and the increase in emphasis on labour market flexibility, these functions may gain in importance as unions accept their changing role in the contemporary economic situation. German trade unions, unlike their British counterparts, act largely independently of any political party. However, German trade unions are involved in the legislative process through limited consultation on policy development and frequently in the implementation of policy initiatives. This latter role can be seen most clearly where EU policy initiatives are implemented by the social partners performing a legislative function in collective agreements. Trade unions thus adopt a number of different governmental and public administration functions, ranging from input into the legislative process to delivery of the results of this process. These functions have hitherto complemented the direct regulatory role that trade unions play through collective bargaining and co-determination. However, the strategic importance of the function of trade unions in the development and implementation of public policy which they have had a part in creating cannot be underestimated

in a climate where the role of trade unions is shifting from one of regulation to one of political partnership. This becomes particularly relevant when one examines and compares the responses of trade unions in Germany and the UK to European enlargement and the new Member State workers. As the role of trade unions in a national labour law system changes, so do their responses to external developments which impact on national systems. As the role of German trade unions becomes increasingly similar to that of their UK counterparts, there is greater scope for exchange between the two sides, particularly when it comes to the recruitment of migrant workers.

5. Trade unions and migrant workers

Trade unions in both Germany and the UK have a long history of responding to migrant workers. They have been particularly challenged by the recruitment of migrant labour following the end of the Second World War.

Wrench (2000) divides post-war immigration into the UK into two categories: European Voluntary Workers, and Commonwealth workers. Castles and Kosack (1973: 138) recognise a third category, namely, Irish workers, but, for a number of reasons, no special policy was adopted towards these workers who enjoyed full political and civil rights in the UK; they spoke English; and, they were accepted as part of the labour force.

The first category of post-war immigration, recognised by Wrench and Castles as well as by Kosack, arrived immediately following the war. The UK recruited European workers between 1945 and 1950 in the form of Polish ex-servicemen, other European migrants and so-called 'European Voluntary Workers' (EVWs). Castles and Kosack describe this category as 'the foreigners'. Trade unions were actively involved in the negotiation and execution of this migration policy and established strict conditions applicable to the workers. Thus, for example, EVWs were required to join the appropriate union and, in return, were covered by the applicable collective agreements. Under these agreements, the European workers received the same wages and working conditions as other workers. However, the remainder of the provisions were extremely restrictive. Thus, foreign workers were to be dismissed first in the case of redundancies and maximum quotas of foreign workers were set. Trade unions are often described as having been extremely hostile towards these groups of workers, leading even to their complete exclusion from some workplaces. This was particularly the case at a national level, for the TUC's concern was to convince its members that adequate safeguards were in place to protect 'British' jobs.

The second category of migrants was comprised of migrants from ex-colonies. These workers had the right to enter, work and live in the UK through Commonwealth citizenship. Trade union attitudes to these workers were very different. As Wrench (2000: 134) points out:

> 'Because of their former colonial status most of the post-war migrants to Britain were different from the 'guest workers' found in many other European countries. They had the same political and legal rights as the indigenous population. [...] Coming from former colonies they had a knowledge of the language and culture of their new home.'

Thus, in 1955, the TUC passed a resolution which affirmed the right of Commonwealth citizens to come and work in Britain, opposing any discrimination against them. It called, at the same time, for 'immediate steps to develop the resources of Commonwealth territories so as to establish balanced economies which would make it unnecessary for the native population to seek employment and security elsewhere.' The policy on non-discrimination of Commonwealth workers was reaffirmed at the 1958 Congress following the Notting Hill race riots[3], however, the 'opposition [to non-discrimination] was purely verbal – the TUC took no practical measures to fight discrimination or to tackle migrant workers' specific problems' (Castles and Kosack 1973: 140). As Radin (1966) explains, 'the official voice of the trade union movement saw no reason to give special attention to the migrants who were entering the country, the labour market, and the unions.' The TUC thus extended its traditional policy of 'laissez-faire' into the sphere of migrant workers. However, policies at a district, local and branch level differed from that at a national level. There is evidence that 'once in the union, black workers often had to fight to secure equal treatment and their membership rights' (Wrench 2000: 136). Racist sentiments within trade unions led to migrant workers receiving inferior treatment, lower wages and less job protection. Yet up until the early 1970s, the TUC clung to its policy of 'laissez-faire' which took no account of the specific problems that Commonwealth workers faced. Thus, the TUC consistently 'failed to recognise and accept white trade unionists' hostility towards black and Asian workers and claimed in contrast that tensions were due to the migrants' refusal or inability to integrate into a British way of life' (Lunn 1999: 78).

However, this stance changed in the early 1970s when the TUC started adopting special policies against racism. Miles and Phizacklea (1977: 32) describe the 1973 TUC Congress, where Congress called on the next Labour government to repeal the 1971 Immigration Act, as the 'turning point in the TUC's policy towards black workers in Britain'. This was in response to 'increasing organisation on the issue of racism by black and white trade union activists' (Wrench 2000: 138), the occurrence of open union racism towards striking black members, and 'the growth of extreme right-wing groups such as the National Front, who played on the divisions between black and white workers' (Wrench 2000: 138). The rise of fascist groups still produces strong reactions within trade unions today and trade unions adopt an active political role when it comes to combating right-wing parties such as the British National Party (BNP). In 1975 the TUC established an Equal Rights Committee and in 1976 the General Council announced a programme 'to promote equality of opportunity and good race relations in industry and in the community generally.' Increasingly, therefore, British trade unions have adopted equal-opportunities policies and anti-racist statements. This culminated in a debate on the advantages and disadvantages of 'self-organisation'[4] in the early 1990s.

3. This describes a series of racially-motivated riots that took place in London in August and September 1958.

4. 'Self-organisation' brings together members from certain under-represented groups - women members, black members, disabled members and lesbian, gay, bisexual and transgender members. Self-organisation helps the union identify and challenge discrimination and build equality. It can be a way for members to become involved in the union, developing skills, expertise and confidence.

The debate led to the suggestion at the TUC national black workers' conference in 1992, which has been implemented in the TUC and its affiliate unions, that unions should create black members' groups at all levels in a union, with an annual black workers' conference where decisions are made by black representatives on issues of specific concern to black members. British trade unions thus traditionally follow a policy of 'self-organisation', giving migrant workers the opportunity to create special groups at all levels in the union in order to ensure that their voice is heard.

German trade unions adopted a different attitude to migrant workers following the end of the Second World War. Germany is not considered to be a classic country of immigration. The immigration of workers really started only with the arrival of the 'guest workers' (*Gastarbeiter*)[5] in 1955. As a result, trade union reactions to foreign labour were the subject of much discussion in the 1950s. Initially, the Confederation of German Trade Unions (*Deutscher Gewerkschaftsbund* – DGB) supported the Christian Democrat Party of Germany (CDU) in its proposal that:

> 'The last German worker should have a job before we can think about [recruiting foreign workers] and we ask the government to ensure first and foremost that our economy and industry goes to those parts of the country where there are still unemployed Germans.' (Herbert 2001: 203)

However, after the first bilateral agreement was signed with Italy in 1955 to enable *Gastarbeiter* to come to Germany, the DGB decided to support the recruitment of foreign labour and to adapt its policies so as to 'ensure equal rights for foreign workers at work and in social insurance.' Apart from the Gastarbeiter, most foreigners in Germany after the Second World War were:

> 'refugees and expellees from the former German territories in the East, and then German settlers from non-German territories in Eastern and South-Eastern Europe. In addition, up to 1961 when the border was closed, a large number of refugees and migrants came from the Soviet Occupation Zone or GDR. A total of 15 million people came to Germany by these means.' (Kühne 2000: 41)

The German settlers from non-German territories were admitted as '*Aussiedler*' with '*deutsche Volkszugehörigkeit*' (ethnic Germans) from 1950 onwards. They automatically received full citizenship rights, language tuition and assistance with needs such as housing. Even though they often did not speak German, they, like the refugees and expellees, were welcome as they

5. *Gastarbeiter* (guest workers) refers to those migrant workers who moved to West Germany, mainly in the 1960s and 70s, under bilateral recruitment agreements signed with their home countries to fill labour shortages. The agreements were signed with Italy (1955), Greece and Spain (1960), Turkey (1961), Morocco, Tunisia and Portugal (1963-1965) and Yugoslavia (1968). Turkish workers made up the largest group of migrants and, even though their stay was meant to be for a temporary period, many remained in Germany and were joined by their families.

filled the shortages in the labour market which were enormous following the Second World War.[6] As Herbert (2001: 195) explains, 'without the 'economic miracle' [of the 1950s], the smooth integration of refugees and expellees would not have been possible; without their additional labour supply and potential, the 'economic miracle' would not have occurred.' Refugees, expellees and particularly ethnic Germans also became politically important as Germany demanded that any 'Germans' could emigrate from the Soviet Union during the Cold War and be given refuge in Germany. However, the population movements were not sufficient to fill all of the shortages in the German labour market, especially following the closure of the border between East and West Germany in 1961, which deprived West Germany of Eastern German workers.

The shortages in the German labour market led to the very successful recruitment of labour through the *Gastarbeiter* scheme from Mediterranean countries between 1955 and 1973 when the scheme ended as a result of the first serious economic and employment crisis in post-war Germany. By 1973 *Gastarbeiter* made up 11.6% of the total number of employed persons in Germany. Under the scheme, Germany negotiated bilateral agreements with a number of Mediterranean countries. The agreements provided the legal framework for the recruitment of foreign workers and laid down their working terms and conditions which were meant, in theory, to be the same as those accorded to German workers. As a result of this guarantee of equal treatment, trade unions did not oppose the arrival of the *Gastarbeiter*. Also, according to Kindleberger (1967: 201), 'the trade union welcome to migrants seems to have had its origin in uneasy consciences about the Third Reich's treatment of foreigners rather than in close economic calculation.' The German Metalworkers' Federation (IG Metall) pointed out in 1966 that unions were positive towards immigration 'in the interests of full employment and continued economic growth.' Under the scheme, inter-state frameworks were set up which enabled employers to develop direct relations with the labour markets of the sending states so as to recruit labour abroad. Family members were not initially permitted to join the *Gastarbeiter*, as the workers were recruited on the principle of 'rotation'. Work permits were linked to the employment in Germany and were granted initially for one year. An extension of the permit was at the discretion of the issuing authority. *Gastarbeiter* were expected to return to their home countries and permanent settlement was discouraged. Indeed, permanent settlement was seen by the courts as a breach of the terms of the bilateral agreements. As the recruitment of *Gastarbeiter* was regarded as a temporary solution to the problem of labour shortages, no thoughts were given to integrating them into German society. However, towards the end of the 1960s work permits were increasingly being prolonged which led to the majority of *Gastarbeiter* becoming a core section of the workforce. From the 1970s onwards, family reunification was permitted, resulting in the majority of the *Gastarbeiter* remaining in Germany. From 1971

6. It should be noted that while ethnic Germans, refugees and expellees were integrated into the labour market, more recent evidence points to tensions in the integration of these groups into German society.

onwards, five-year work permits were also issued to those *Gastarbeiter* who had been in Germany for at least five years. This made it more difficult to force their return. Trade unions favoured the abolition of the rotation principle, as it made it easier to integrate workers into the workforce and the union if they were permitted to stay for longer periods. Following the end of the *Gastarbeiter* scheme in 1973, some workers did return to their home countries. However, the majority remained in Germany and integration into German society continued to prove difficult.

Unlike migrant workers from former colonies in the UK or the ethnic Germans who arrived after the Second World War, *Gastarbeiter* in Germany were not granted any political rights through which they could make their voice heard. As a result, trade unions focused on securing equality of rights at work for *Gastarbeiter*, on the basis that:

> '[T]his was in the interest of the majority of members who were German. In this way any doubts in the organisation about the employment of foreign workers were removed.' (Kühne 2000: 43)

Unlike in the UK, German trade union policy did not focus on the elimination of racism and discrimination; instead, 'trade union migration policy was essentially reactive, and therefore turned on the state of government policy' (Kühne 2000: 43). German trade unions have been described as having the position of a 'quasi-public corporation' and, as a result, they have been involved in formulating government migration policy. For example, they were able, through their role on the administrative board of the Federal Labour Agency, to influence the *Gastarbeiter* recruitment policy and to obtain complete equality for migrant workers in pay, labour and welfare legislation. The same policy was applied to posted workers who came to Germany in the early 1990s under the bilateral service agreements with the Central and Eastern European (CEE) states. Trade unions were in favour of the arrival of the workers only if they could be integrated into the labour market structure on terms equal to German workers. Otherwise, they were seen to pose a threat to German workers. In order to secure equal treatment of the workers, German trade unions were very active in the debate on the regulation of posted workers. They wanted to avoid the wage undercutting of German workers by posted workers from the CEE states, as this could threaten industrial peace and lead to racist sentiments against the foreign workers.

Thus, traditional trade union policy has always focused on securing equality of wages and treatment for German and foreign workers. As a result, German trade unions did not accord special rights to foreign workers within their structure, as racism and discrimination were not considered an issue. Castles and Kosack (1973: 130) argue that 'the German unions have probably done more than those of any other country to integrate the foreign workers into the labour force, and have even taken on welfare functions going beyond normal trade union tasks.' Thus, the composition of works councils was altered to reflect the diverse nature of the workforce. In addition, printed media in the languages of migrant workers as well as German language courses were made

available from 1973 onwards. Trade union legal protection was also extended to cover problems specific to migrant workers. However, with the exception of the IG Metall[7], German trade unions did not institutionally establish special structures similar to the black workers' committees in British trade unions. Instead, the focus was always on providing for equal treatment between German and migrant workers. What must, however, be questioned is whether these policies are adequate to recruit new Member State workers entering the labour market following the European enlargements.

7. The IG Metall established foreign worker committees at the local, regional and branch level from 1984 onwards.

6. The European influence

The recent European enlargements come at a time when old Member State governments are attempting to 'modernise' their labour and social security systems in order to combat the effects of an enlarged Europe within a globalised world economy and its associated phenomena such as 'social dumping'. The problems of changing economic and labour market conditions in an increasingly globalised world have been present in the European Union for some time. However, the increase in the free movement of workers and enterprise following the European enlargements has exacerbated these problems. Historically, the European Union has sought to counteract these fears by 'europeanising' certain aspects of national legal systems in order to alleviate competition. 'Europeanisation' has been defined broadly in the academic literature by various writers. One of the earliest conceptualisations of the term was given by Ladrech (1994: 69) who defined 'europeanisation' as 'an incremental process of re-orienting the direction and shape of politics to the extent that EC political and economic dynamics become part of the organisational logic of national politics and policy making.' A number of authors elaborated upon Ladrech's definition, thereby widening it to include the development of political networks at a European level (Börzel and Risse 2000) as well as 'transnational influences that affect national systems' (Kohler-Koch 2000) within the concept of 'europeanisation'. Following on from these definitions, 'EC political and economic dynamics' can be integrated into a Member State's organisational structure through either a 'top-down' or a 'bottom-up' approach. In certain areas of law, the 'europeanisation' of national legal systems has been very successful. A typical example often given is that of competition law where the European Union has achieved a near-complete harmonisation of Member States' legal systems. However, harmonisation was not the aim of the process; rather, it was achieved due to a gradual convergence of national laws. Such convergence has not been achieved within the sphere of labour law and particularly, collective relations. This is mainly due to the socio-cultural context within which the labour laws of the individual Member States have developed. As a result, a 'top-down' approach has often resulted in fruitless attempts at approximation of laws and practices. Similarly, one equally struggles to implement a 'bottom-up' approach across the European Union as a whole, as transnational influences are often difficult to reconcile with the socio-cultural context of labour relations systems. However, despite the lack of success of the top-down and bottom-up approaches, any definition of 'europeanisation' must take into account the two-way process that takes place in the 'europeanisation' of national labour law systems. As Börzel (1999: 574) points out, 'approaching europeanisation exclusively from a top-down rather than bottom-up

perspective may in the end fail to recognise the more complex two-way causality of European integration.' For the purposes of this research therefore, europeanisation is seen as a process of domestic change that can be attributed to European integration. This process of change can originate from the European and the national level. Europeanisation is, therefore, a two-way process.

In the area of labour law the europeanisation of national systems has largely been attempted under the banner of a so-called European Social Model since the early 1990s. The European institutions have adopted a key role in the development of the European Social Model. The European Community has enjoyed a limited amount of competence in the field of labour law since the adoption of the Single European Act in 1986. Apart from the provisions contained in the EU Treaties which enable the EU institutions to act in order to facilitate the free movement of workers, article 153 TFEU allows for the introduction of directives on working conditions, information and consultation of workers, and equality at work between men and women. Limitations on legislative competence operate in other areas of labour law and, as an alternative, soft law techniques must be used. The European Union repeatedly took advantage of the Treaty provisions to legislate in a number of areas in order to achieve a certain degree of harmonisation in the areas of labour law and social policy across the Member States. Particularly following the entry into force of the Maastricht Treaty in 1993, the European Commission, together with the social partners, pursued a social policy. However, Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community marked the culmination of almost a decade of active legislating in the area of social policy by the Commission and the social partners. Even though Directives on social policy are still sporadically negotiated, soft law mechanisms have, since 2002, taken over as the preferred method for achieving an approximation of labour standards across the EU.

A number of reasons have been put forward for this shift towards soft law mechanisms. Bercusson, for example, argues that the paucity of new 'hard law' is due to a lack of enthusiasm for social measures within the European Commission. According to Bercusson (2009: 554-555), the Lisbon Agenda does not encourage further social developments. Ashiagbor (2004: 313) argues that 'the resort to soft law [can be seen] as a means of finding a middle ground between legal and political interventions, [which is] particularly important whilst Member States continue to be so reluctant to sanction further inroads into their sovereignty.' In either case, the emphasis since 2002 has been on soft law mechanisms in order to achieve some sort of harmonisation of national labour laws across the European Union. At the same time, the European Court of Justice, which for a long time acted as a driver for social integration, issued three decisions in the *Viking, Laval* and *Rüffert* cases[8] which have led to a

8. C-438/05 *The International Transport Workers' Federation and The Finnish Seamen's Union v Viking Line ABP and OÜ Viking Line Eesti* ECR [2007] I-10779; C-341/05 *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avd. 1,*

difficult interface between EU free movement law and national labour regulation. Trade unions in Germany and the UK are struggling to deal with these effects of europeanisation on their national labour law systems.

Byggettan, Svenska Elektrikerförbundet [2007] ECR I-11767; Case C-346/06 *Dirk Rüffert, in his capacity as liquidator of the assets of Objekt und Bauregie GmbH & Co. KG v Land Niedersachsen* [2008] ECR I-1989.

There is a substantial amount of literature discussing the judgments. For different views on the judgments see, for example, Rönmar (ed.) (2008); Blanpain and Swiatkowski (eds.) (2009); and Barnard (ed.) (2008).

7. The case studies

The case studies[9] were undertaken to clarify the responses of two national trade unions to the challenges of European enlargement and to determine how their responses impact on new Member State workers. In order to delimit the scope of the case studies, purposive sampling was seen as an effective method to gather the appropriate data. By looking at, for example, the responses of trade unions within the Trades Union Congress (TUC) in the UK and the *Deutscher Gewerkschaftsbund* (DGB) in Germany, one can gather qualitative data from within the two largest national trade union confederations which, moreover, have a history of cooperation within the European Trade Union Confederation (ETUC).

Research into the affiliated unions within the national confederations led to the conclusion that the two unions upon which it is most appropriate to focus in order to gather the relevant data are the *Vereinte Dienstleistungsge - werkschaft* (ver.di) in Germany and UNISON, the UK public service union. This selection can be justified in a number of different ways: both trade unions represent large numbers of public service workers across a wide range of occupations in their respective countries; and both unions belong to national confederations that are members of the ETUC and thus cooperate at a European level. Moreover, both trade unions decided to take on a leading political role in responding to migrant workers following the recent enlargements. Finally, the respective policy papers of ver.di and UNISON indicate that their objectives and priorities are of a similar nature, therefore making them ideal candidates for comparable case studies.

Each case study is set out individually. In particular, three themes were identified which are the focus of the case studies:

1. responses to enlargement and the transitional arrangements;
2. responses to new Member State workers in principle and in practice; and,
3. level of cooperation across borders.

In order to effectively gauge the responses of trade unions, each case study first clarifies the objectives set by the trade unions for themselves, taking into account whether trade unions have changed and/or reassessed their objectives following the recent enlargements. The objectives are then used as a

9. A shortened version of these case studies has been published in Zahn (2011).

benchmark against which to measure actual trade union responses. Second, therefore, the case studies look in more detail at the actual reactions of the trade unions and this yields an understanding of how trade unions are responding and whether they are fulfilling the objectives they set themselves. The actual reactions of trade unions are gathered from documents such as newsletters and updates issued by trade unions, as well as interviews conducted with trade union officials as part of the case studies. Eight interviews were conducted in total: three with UNISON[10]; three with ver.di[11]; and two in Brussels, one of which was with the Confederal Secretary of the ETUC and the other with an official involved in the formulation of European social policy. It should be noted at this stage that the information gathered during interviews with trade union officials, as detailed below, reflects the comments of those officials and does not necessarily represent the views of the author of this report.

7.1 UNISON

UNISON, the public service union, was founded in 1993 and is the largest affiliate of the Trades Union Congress, the national organisation of British trade unions. It is the result of a merger of several smaller unions, including the National Union of Public Employees and the Confederation of Health Service Employees. The structure of the union represents the diversity of its members. It has been trying to shed the 'traditional white image' of trade unions by pursuing "proportionality', fair representation and self-organisation in the union's internal government.' Thus, it has organised sections representing the interests of its women, black, disabled, and gay and lesbian members. More recently, it has set up a Migrant Workers' Unit to cater for the special needs of migrant workers. Overall, UNISON has 1.3 million members who work for 'public services, private contractors providing public services and in the essential utilities.' Members also include 'frontline staff and managers working full or part time in local authorities, the NHS, the police service, colleges and schools, the electricity, gas and water industries, transport and the voluntary sector.' UNISON's objectives include: recruiting, organising, representing and retaining members; negotiating and bargaining on behalf of members and promoting equality; campaigning and promoting UNISON on behalf of members; and developing an efficient and effective union. It also aims to maximise its political strength by influencing government policies and promoting their objectives within the European Union.

10. These were conducted with the National Development Manager for Migrant Workers, the International Officer, and a member responsible for advising and recruiting migrant workers (Interviewee 1). A telephone conversation also took place with the Head of Policy Development.

11. These were conducted with the Europe Officer, the Migration Officer and a member responsible for advising and recruiting migrant workers (Interviewee 2).

7.1.1 Responses to enlargement and the transitional arrangements

In terms of UNISON's responses to the European enlargements and the transitional arrangements, it is necessary to distinguish between political responses which are statements in principle and which are broadly in line with the position of the TUC and practical responses which are taken at a union level and which focus on situations at work and are targeted at workers.

UNISON's response to the recent European enlargements was adopted in the form of a political decision and that decision was not altered between 2004 and 2007. According to this political decision, UNISON supports the principles of free movement enshrined in the EU Treaties and was in favour of the enlargements which took place in 2004 and 2007. In addition, although UNISON realises that there are certain shortcomings in the functioning of the European Union, such as the interpretation of the Posted Workers' Directive by the ECJ, UNISON, like the TUC, is largely in favour of the European Union and of European integration. As the TUC (2006) points out in relation to enlargement, 'expanding the European Union is a good thing for Britain because it produces more markets for our goods and services and more people to do the jobs the British economy and society need.' Moreover, in the same document, it is stated that:

> 'it is good for the people of Eastern Europe because it provides them with growth, better jobs and wages, and spreads and deepens European democratic values. Creating a common market means that workers must have rights as well as businesses, and there must be freedom of movement for workers as well as for capital, goods and services.'

As a result, neither the TUC nor UNISON support the transitional arrangements imposed on Romanian and Bulgarian workers. Much of UNISON's work at a political level thus now involves representations to the UK government on decisions affecting these workers. For example, UNISON was heavily involved in the debate surrounding the Gangmasters (Licensing) Act 2004 which seeks to avoid the exploitation of workers (including migrant workers).

At a union level, UNISON is responding to the practical implications of the enlargements, in particular, the arrival of large numbers of new Member State workers.

7.1.2 Responses to new Member State workers

The main challenges for UNISON following the EU enlargements and the transitional arrangements arose due to the large numbers of new Member State workers who arrived in the UK after 1st May 2004. A substantial part of the case study therefore explains the responses of UNISON to the new Member State workers, both in terms of statements of principle and their responses in

practice. The focus of the case study was on UNISON at a national level; the activities of individual branches were not looked at.

According to its publications, UNISON has established a number of objectives regarding new Member State workers. Despite the fact that UNISON is not active in those areas in which new Member State workers are particularly noticeable, the union felt, as the largest trade union in the TUC, that it should take on a leadership role in responding to new Member State workers particularly at a political level. This is also due to the fact that UNISON is keen to raise its profile across a whole range of issues in order to recruit and retain members. Moreover, UNISON argues in a consultation on its political fund that political engagement:

> 'can be key to protecting and improving members' jobs, pay and conditions, as well as bringing about the broader social and economic changes our members want to see. Through its political organisation and campaigning, the union can act as an important force for a more democratic society.'

This is also reflected in UNISON's Annual Report 2008/2009 where it claims that UNISON 'needs to influence the political agenda.' It plans to do this by 'influencing government policies, including those of devolved nations [and] promoting our key objectives within the European Union and internationally.' Thus, UNISON has been actively responding to government consultations, campaigning and collaborating with institutions such as the Association for Public Service Excellence, Compass and the TUC, and allocating substantial funding from its General Political Fund towards policy development and campaign work with a view to increasing its political role. It has also taken various steps to:

> 'improve its parliamentary influence – including prioritisation of objectives, developing relationships with ministers and special advisers, organising lobbying work around particular bills, briefing potentially friendly MPs, and improving lobbying at a regional level.'

At a European level, UNISON has focused on close cooperation with the European Federation of Public Service Unions (EPSU), ver.di, the French Public Services Federation (*Confédération générale du travail* – CGT) and increasingly with the All Poland Alliance of Trade Unions (*Ogólnopolskie Porozumienie Związków Zawodowych* – OPZZ) in order to influence policy-making. UNISON has also conducted a review of the effectiveness of its General Political Fund (GPF). The GPF enables the union to collect money from its members specifically to fund political campaigning work. The Review of the GPF recommended that UNISON 'needed to maximise its political influence [...] in order to protect and advance the interests of its members.' Money in the GPF is used to support local campaigns, national political campaigns and political advertising. Responding to new Member State workers by adopting a more active political role is one type of response. It also allows UNISON to promote its campaign against the British National Party (BNP). According to its Annual Report, 'the GPF played a key role in promoting UNISON's anti-

racism/anti-BNP campaigning work.' Moreover, a particular effort is made to 'engage Polish workers [in these campaigns], by advertising in Polish media and on Polish language websites and making direct contact with Polish community groups.' It should be noted in this context that one decision that was made early on was not to distinguish between migrants from within the EU and those from outside the EU, even though their legal status is different. Thus, UNISON defines a migrant worker as 'someone who has come from abroad to work in the UK.'

Prior to the enlargements in 2004 and 2007, EU workers were not perceived as a vulnerable group as they were mainly found in highly paid, skilled jobs. However, the new Member State workers that arrived in the UK after 1st May 2004 presented similar problems to non-EU workers. A report by the TUC Commission on Vulnerable Employment, set up in 2007, which looked at the circumstances in which workers are exploited at the workplace, made it clear that new Member State workers are often treated in the same way as non-EU workers. This is partly due to the type of employment that they occupy which is usually badly paid and low-skilled. However, in particular, workers from the new Member States were faced with problems of communication due to their often poor grasp of English. As a result, many workers from the new Member States report exploitation in the UK.[12] However, EU workers have also been hard to recruit into union membership. According to Brendan Barber, general secretary of the TUC, 'the challenge for unions is to find ways of recruiting migrant workers, offering them support and guidance so they become less exploitable and more aware of their rights.'

UNISON has responded to the new Member State workers in its statements of principle by focusing on two main objectives:

1. organising migrant workers in UNISON; and,
2. encouraging them to be active.

The aim of these objectives is to prevent exploitation and wage undercutting and to integrate migrant workers into the structures of the trade union. Moreover, organising and encouraging migrant workers to become active 'will also help build community cohesion by ensuring that migrants become active members of the community and the workplace thereby creating a virtuous circle.' UNISON has outlined a number of initiatives as part of its Migrant Workers Participation Project which it seeks to undertake in order to achieve these objectives. These initiatives include language support, training to familiarise workers with the union, mentoring by workers who are already active, establishing migrant worker activists networks, developing community links, and auditing the union's structures to ensure that migrant workers are as welcome as possible.

On a practical level, these initiatives have been implemented in the following way. First, UNISON set up a specialist unit (Migration Unit) to work with

12. For more information see, for example, TUC (2007).

migrant workers.[13] In addition, migrant workers were recognised as a separate category of workers with their own needs. Previously they fell under the ambit of black workers. The Migration Unit is staffed by three employees, one of whom has been seconded to UNISON from OPZZ. There is thus a focus, within the Migration Unit, on new Member State workers. This unit encourages migrant workers to get active in the union by publishing a regular migrant workers newsletter (the first issue was published in December 2008) in English, Filipino and Polish, by providing translations of important leaflets into Polish and by organising workshops which seek to encourage migrant worker members of UNISON to become active. In particular, the newsletter details information on events run by the Migration Unit which seek to develop community links to support migrant workers. Members of the Unit hope that this will lead to increasing numbers of migrants, especially new Member State workers, joining UNISON. Thus, for example, the workshops are:

> 'specifically designed to be accessible to everyone with a focus on doing and talking rather than lots of reading and writing. Some migrants who are active in the union already will be there to act as mentors and role models.'

The workshops took place in different locations across the UK. The two-day workshop in Glasgow which was attended by the author of this report as a non-participating observer attracted a number of new Member State workers. In line with UNISON's policy, they were treated in the same way as migrant workers from outside the EU. The content of the workshop focused on encouraging the migrants to become active in the union with a view to moving them to become shop stewards. Tactics on how to actively engage with other workers at their respective workplaces were also discussed. The sessions were chaired by different union representatives who spoke a variety of languages such as English, Polish and Tagalog. Participants were encouraged to exchange their views on topics such as rights at the workplace and anti-racism which the union proposed in advance. As the participants came from a wide variety of different backgrounds, an emphasis was placed on their different experiences in their home country and in the UK. The discussions were largely interactive with participants moving about the room to come into contact with other participants.

The Migration Unit has also set up a new advice scheme offered by UNISON to its members. The scheme provides free immigration advice by telephone to UNISON members. However, this is limited to migrants from outside the European Union. It is not available to EU8 and EU2 workers. New Member State workers can only, therefore, obtain advice through the usual channels of the union. Since June 2009 UNISON has also set up a course for its members who do not speak English as their first language. The absence of such a course was criticised by the head of the Migration Unit in an interview conducted

13. The information on the Migration Unit was gathered in an interview on 20/10/2008 with the National Development Manager for Migrant Workers who is the head of the Migration Unit which is based in UNISON Headquarters in London.

during the course of this case study in October 2008. The course targets migrant workers and is free of charge for UNISON members.

Second, UNISON observes structures like the Overseas Nurses Network, based in Glasgow, which provides support for migrants working as nurses. The network is not linked to any union and is therefore not actively supported by UNISON. Yet, individual members of UNISON have expressed an interest in supporting the network. This network is, in principle, open to new Member State workers; however, there has not been a high attendance by workers from the new Member States, with the exception of Romanians and Bulgarians, as the network usually helps nurses with visa problems which is not a matter of concern for EU8 workers. UNISON has also tried to forge closer links with ver.di on specific issues. This is examined in more detail below.

Finally, recruitment of new Member State workers is mainly undertaken at regional or local level. To help with recruitment, UNISON established a Migrant Workers' Organising Knowledge Bank which aims to share information and good practice amongst branches. Interviews at the Migration Unit clarified that targeted recruitment of new Member State workers is occurring. In particular, UNISON commissioned the Working Lives Research Institute to try to map migrants. However, the union does not keep a record as to how many members are migrants so it is difficult to evaluate the success of measures.

7.2 Ver.di

The *Vereinte Dienstleistungsgewerkschaft* (ver.di), a 'multi-service trade union', was founded in 2001 as the result of a merger between the German Salaried Employees' Union (*Deutsche Angestellten Gewerkschaft* – DAG), the Trade, Banks and Insurances Union (*Gewerkschaft Handel, Banken und Versicherungen* – HBV), the German Postal Workers' Union (*Deutsche Postgewerkschaften* – DPG), the Public Services, Transport and Traffic Union (*Gewerkschaft Öffentliche Dienste, Transport und Verkehr* – ÖTV), and the Media and Industrial Union (*Industriegewerkschaft Medien, Druck und Papier* - IG Medien). Following a number of mergers amongst German trade unions between 1995 and 2001, ver.di was considered to be a unique experiment for the following reasons (Keller 2007): it was a 'mega merger' of five rather than two trade unions which makes it the largest merger in German trade union history; it was intended to create one trade union for the private and public service sector with a heterogeneous organisational structure; it was meant to become a merger of equal partners rather than, as had been the case in previous mergers, an acquisition of a smaller trade union by a larger one; it was meant to become a trade union with multiple branches instead of following the traditional German model of 'one industry, one union' ('*ein Betrieb, eine Gewerkschaft*'); and, it has a matrix structure to reflect the principle of 'unity in diversity'. In particular, the matrix structure was supposed to enable ver.di to successfully represent the diverse interests of its members. However, it has been argued (Keller 2007) that the structure has instead led to friction between the different sections of the trade union.

Ver.di has 2.3 million members and is one of the largest affiliates of the national confederation of trade unions, DGB. The primary reason behind the merger of five trade unions was to create a big union which would be capable of responding to the challenges facing traditional trade union structures in the German labour market. Accordingly, ver.di aims to:

> 'use the united strength of the services sector itself [...]. Instead of wasting our energy competing with each other, we join forces in recruiting new members and profit from our joint experience and competence. Thus we draft, and fight for, modern answers to social change.'

In conducting this action, ver.di emphasises that it acts independently of political parties. The structure of ver.di is 'anchored in the tradition of the trade union movement' and consists of four levels (national, regional, district, and local) and 13 sectors. In addition, special interest groups such as women, youth, civil servants, and the unemployed, are grouped into their own organisational units. To date, migrant workers have not been recognised as a special interest group. Instead, they are given the opportunity of promoting their interests in working groups. In addition to providing support for members in the workplace, ver.di also offers help outside the immediate workplace. Thus, the union 'provides consultancy, career assistance and training.' Finally, it offers support and training to representatives of works councils and personnel boards.

7.2.1 Responses to enlargement and the transitional arrangements

Ver.di's official policy on the European Union and European enlargement largely follows that of the DGB. Most interviewees at ver.di did not, therefore, comment on this area. Only ver.di's Europe Officer stated that ver.di is in general in favour of the European Union but it is also increasingly sceptical towards the European Union which, in ver.di's view, focuses too much on competition and social dumping. Ver.di does not feel able to support a Europe of competition between Member States. In its statements, the DGB is in favour of the European Union and of European integration provided it accords a central role to a European social policy to counteract the perceived negative effects of the internal market. The DGB also made it clear as early as 1999 that it was, in principle, in favour of the European enlargements in 2004 and 2007. However, it recognised that it may not be possible to guarantee all free movement rights to all states immediately upon accession. This could only be done once the new Member States had fulfilled all conditions so as to reduce the negative impact of freely moving workers upon the host Member State.

More recently, according to the DGB (2005), 'at the beginning of the 21st century, large enterprises are benefiting from the internal market in order to play off workers against each other.' To counteract this development, the DGB calls for a European social contract (*europäischer Sozialvertrag*) but it realises,

that in order to achieve this, trade unions must europeanise their policies and fields of action. In practice, this europeanisation means according a more central role to European and cross-border issues. Similarly, the DGB is in favour of the recent European enlargements: 'despite all the problems associated with the enlargements, the positive elements outweigh the negative ones.' Furthermore, it clarifies that 'the German trade unions are in favour of European integration and are actively working towards their aim that all people should benefit from the enlargements.' Ver.di confirms, in a position paper, that trade unions 'have always been in favour of the internal market as it has created a framework for the continuing development of the European economy and society.' However, the internal market lacks a social dimension and ver.di therefore calls for the EU to adopt an orientation in favour of becoming a social market economy. There is no evidence that ver.di has started to europeanise its policies in line with the proposal by the DGB. The author of this study has, however, noticed an increasing number of position papers on topics related to the European Union. For example, ver.di, in October 2008, published a manifesto on a social Europe. In this manifesto, ver.di also confirmed that the European Union is growing in importance for European citizens; however, it is 'in desperate need of an alternative economic and social model.' Following the recent enlargements, ver.di lists a number of problems such as a lack of trade union structures in new Member States and the threat of large numbers of services providers and workers from the new Member States availing themselves of their rights under the European Treaties. However, it concludes that the reaction to the enlargements should 'not be less but more Europe but in a different form', thus again alluding to the lack of a social dimension to the European Union. In theory, therefore, ver.di seems to be in favour of the recent European enlargements. However, with regard to the transitional provisions a different picture emerges.

The DGB and ver.di were in favour of the imposition of transitional measures for the full period that is allowed under EU Law. According to the DGB, 'a harmonious assimilation of the different regions is necessary for the continued existence of the European Union so trade unions are in favour of the transitional measures in order to avoid social dumping.' Moreover, there was a fear that a lack of transitional measures would lead to large numbers of new Member State workers and service providers entering the German labour market. The DGB and ver.di did not feel able to effectively respond to these potential developments at the time of the enlargement. As a result, ver.di adopted a lobbying role to push for the imposition and continuation of the transitional measures whenever they were under review. According to ver.di's Europe Officer, there were disagreements between the government and the social partners as to whether the transitional measures should be extended following the initial period. Ver.di decided not to actively participate in the discussions but was not opposed to such an extension.

Since 2004, the DGB has set itself the goal of establishing close relationships with trade unions in the new Member States. Some founding members of ver.di were also in favour of such a policy. However, this has not been a priority for the union as a whole. There also seem to be indications that the different

founding members of ver.di have different opinions on this issue. One founding member, in particular, had strategically established strong contacts to Eastern European unions. Ver.di has not continued to develop these strong links and, as a result, they have dwindled. Only sporadic and individual contact is now made with trade unions in the new Member States, as and when it is necessary.

7.2.2 Responses to new Member State workers

Due to the existence of transitional measures in Germany which restrict access to the labour market for workers and certain service providers, ver.di did not develop an official policy on its response to the new Member State workers. According to the Europe Officer, ver.di does not yet know how to recruit new Member State workers as the union does not have any experience with such types of workers. Instead, it has said that ways need to be found of offering 'advice, help and orientation' to those new Member State workers that may come to Germany after the lifting of the transitional arrangements in 2011. Yet, at the moment, according to the Europe Officer, new Member State workers do not pose a problem for ver.di as there has not been an increase in the number of new arrivals in those sectors in which ver.di is active. The Europe Officer recognised that there may be a high number of irregular new Member State workers in the care industry where ver.di is the main trade union but, as there are no official figures, ver.di has not developed a strategy in this area. As a result, ver.di has not drawn up any statements of principle in its policy papers on the new Member State workers. The only policy that has been influenced by the European enlargements is that of a minimum wage. Germany does not have a statutory minimum wage and there has been an intense political debate as to the benefits and disadvantages of a minimum wage. The trade unions, and particularly ver.di, support the introduction of a statutory minimum wage. A minimum wage is seen as a mechanism of defence to protect against social dumping by those workers from the new Member States who can avail themselves of the free movement provisions in the Treaty on the Functioning of the European Union once the transitional measures have been lifted. Ver.di initially had great difficulty in supporting the idea of a minimum wage as it implied that collective agreements were no longer sufficient to regulate industrial relations. It also meant that ver.di had to accept state involvement in the sphere of industrial relations, an area where regulation is usually left to the social partners and the courts. However, due to the decline in trade union strength through falling membership numbers and the increase in industries that are not covered by a collective agreement, ver.di has recognised the importance of a statutory minimum wage and now sees itself as the 'driver' of the campaign in favour of such a wage.

A different perspective is given by the Migration Officer at ver.di who recognised in an interview that 'increased numbers of EU8 workers have arrived in Germany since 2004 but it is difficult to estimate how many have come.' A large number work as seasonal workers or service providers in industries that are not covered by the transitional measures. However, there are also indications that 'many work illegally for limited periods of time due to

the geographical proximity of Germany to the new Member States', thus making them harder to integrate into a trade union. As a result, the Migration Unit has started to pursue a number of strategies in practice.

First, ver.di's Migration Unit, which has existed since the founding of ver.di, has started to cooperate with the Migration Unit in UNISON on strategies for the integration of new Member State workers. It has also taken part in an e-learning initiative through the DGB with representatives from Poland, the Czech Republic, Latvia, France and the UK, which helps migrant workers to integrate 'into life and work in Germany.' Second, the Migration Unit opened a drop-in centre (Migrar) in Hamburg in May 2008, which provides advice and support for illegal migrant workers. The centre is staffed by volunteers and, while support from the union was initially lacking, it is now, following the success of the project, very strong. The centre was the first of its kind in Germany where a trade union offered advice to *illegal* migrants. Another centre has since opened in Berlin. Migrar offers advice in ten languages for those illegal migrants who have been deprived of their rights at their place of work. It does not offer immigration advice. Migrants who avail themselves of Migrar's service are then required to become members of ver.di. Migrar is mainly used by non-European nationals. Migrar is also prepared to provide advice to new Member State nationals even though they are not usually residing illegally in the country. However, due to the transitional measures in place, they often have difficulty enforcing their labour rights and, as a result, Migrar has offered its services to them.

It should be noted at this stage that ver.di does not generally distinguish between German and migrant workers [14], but it recognises that different groups of workers may have different needs. This has become particularly evident in the case of migrant workers in recent years. As a result, ver.di has recently accorded migrant workers a special status which recognises their interests within ver.di with a view to encouraging migrant workers to become more active in the union. Yet this falls short of granting them a separate group status.

Ver.di has included the following categories of people within their definition of a 'migrant':

— members who do not have German citizenship;
— migrants who have been naturalised as Germans;
— children of migrants where at least one parent was not born in Germany;
— migrants who are defined by law as 'ethnic Germans'.

According to the Migration Officer, the union tries to target their recruitment of these migrants by encouraging migrant members to become active.

14. Especially as the *Betriebsverfassungsgesetz* (Works Constitution Act) from 1972 allowed migrants to stand as candidates for elections to works councils. Prior to this, they had only the right to vote, not the right to be elected. The change in the law meant that migrant workers were equal to German workers in the workplace.

Moreover, ver.di particularly encourages young migrants to join the union and targets publications at groups of migrant workers. To date, the Migration Unit has not come across language problems in the recruitment of these workers. Nor did the Migration Officer interviewed at ver.di feel that trade unions should be offering language courses in the case of language problems. In the view of the Officer, ver.di is not a service provider but an organisation which represents the collective interests of workers. The provision of language courses does not therefore fall within its area of responsibility.

In its attitude towards migrant workers, ver.di has departed from the policy that it adopted in relation to the *Gastarbeiter*. The *Gastarbeiter* were treated in the same way and accorded the same rights as German workers.[15] As the *Gastarbeiter* were given easy access to the German labour market, they were employed in their industrial sectors in the same way as German workers. Moreover, the *Gastarbeiter* came from countries which had a trade union tradition and they were thus easy to integrate into German trade unions. The *Gastarbeiter* who stayed in Germany were also less problematic to organise in a trade union than the posted workers who came to Germany under bilateral agreements with the Central and Eastern European states in the early 1990s, as *Gastarbeiter* were usually in Germany on a permanent basis.

Current migrants, and especially those from the new Member States, do not have the same political background as the *Gastarbeiter* and are much harder to integrate into a trade union. As a result, ver.di is slowly deciding to adopt a different policy targeted specifically at migrant workers. This means recognising that their needs are different from German workers, while at the same time fighting for equal treatment with German workers. Granting migrants a special status within ver.di is a first step in this direction. There have also been calls for ver.di to employ more migrants in order to 'make migration visible.' In April 2009, only 20 out of 3500 employees had a migrant background.

7.3 Level of cooperation

7.3.1 Ver.di – UNISON

The third theme which was examined was the level of cross-border cooperation among trade unions. This was considered to be important as cooperation across borders may open up new possibilities for trade unions facing similar challenges. In the case studies, the main focus was on cooperation between ver.di and UNISON. The influence of the European Trade Union Confederation was also touched upon to explore whether it is trying to coordinate national trade unions and what role national trade unions perceive for the ETUC. The

15. This was decided as trade union policy by the DGB at a meeting in 1971 for all its affiliates: DGB Bundesvorstand, *Die deutschen Gewerkschaften und die ausländischen Arbeitnehmer,* 2/11/1971.

ETUC, rather than EPSU, was chosen as it is involved in the European social dialogue and therefore has the potential to be influential in the European legislative process.

UNISON and ver.di signed a Memorandum of Understanding in October 2004 with a view to coordinating key aspects of their work. In particular, the unions believed that:

> '[b]y working more closely together [they] can considerably enhance the conditions of workers in both the private and public sector. The two unions will also work more closely on a range of policy issues, particularly at the European level, and intend to undertake joint action in a number of transnational companies engaged in the provision of public services where the two unions have members.'

Cooperation between ver.di and UNISON was meant to take the form of 'developing common policies for public services [...], joint recruitment activity, joint negotiating and bargaining and joint campaigning.' In practice, cooperation has taken place in a number of areas. There have been exchanges of a number of letters between the President of ver.di and the General Secretary of UNISON conveying support for their respective national campaigns. In addition, an interview with UNISON clarified that UNISON 'works very closely with ver.di on policy at an international level.' UNISON and ver.di also published a discussion document together on 'The Future of Public Services in Europe' and ver.di has invited the General Secretary of UNISON to its National Congress in the past. However, the practical work seems to have been limited to certain regions or to efforts conducted by means of cooperation in European Works Councils. More recently, ver.di has increasingly been citing the UK's approach to the minimum wage as an example for Germany.

In relation to migrant workers, there is limited cooperation between the Migration Unit at UNISON and the Officer responsible for migrant workers at ver.di. UNISON is very keen to expand cooperation in this area. In particular, UNISON is interested in the German trade unions' history of engaging with migrant workers during the period of the *Gastarbeiter* scheme as it feels that the German unions' experience may help it to integrate new Member State workers into UNISON. Ver.di is also interested in greater cooperation in the area of migration but is not sure how that cooperation should progress. There seem to be stark differences in the approaches to migrant workers between UNISON and ver.di and the Migration Unit at ver.di is unclear as to UNISON's position in this area.

7.3.2 Within and through the ETUC

The ETUC (2007) is in favour of: 'a Europe which is both 'more' and 'better'; a Europe which is integrated around rights and values including peace, liberty, democracy, fundamental rights, equality, sustainable development, full employment and decent work, social dialogue, the protection of minorities,

universal and equal access to high quality public services, and a successful economy which supports social progress and employment protection.'

However, in relation to the free movement of new Member State workers, the ETUC delegates to national-level affiliates as to whether the transitional measures are necessary. At the same time, it is of the opinion that (2005) 'such measures should not only be adopted or continued to 'buy time' and to postpone to a later date the moment at which free movement of workers will have to be a fact', as this means that Member States which have transitional measures are not able to 'properly analyse the underlying problems and to develop more sustainable policies to address them.' As was pointed out in interviews, 'the ETUC adopted a careful position [on the transitional measures]' as national trade unions could not agree on a common position. Moreover, the ETUC's Confederal Secretary emphasised that the ETUC is not against free movement *per se* but feels that the conditions are not present in all Member States to allow complete freedom of movement following the European enlargements. Above all, Germany and Austria were against the ETUC calling for a progressive abolition of the transitional measures, whereas the UK representatives supported the ETUC's position.

In addition, in its position on the transitional measures, the ETUC has repeatedly stressed the need to consult its national affiliates. The difficulty is, however, that the members of the ETUC are national confederations, rather than individual trade unions, so it is hard to judge whether consultation and information is passed on to a national level. Large cultural differences between members also make communication difficult. The ETUC does encourage and facilitate an exchange of good practice in terms of recruitment of new Member State workers, but this has not been easy as, according to an interviewee, 'a lot of trade union structures are too static. They are made for long-term relationships but increasingly workers fall outside this category.' Instead, there have been suggestions that unions could be more service-oriented.

From UNISON's point of view, the ETUC has not, so far, taken on a strong coordinating role in the area of migration. However, this is due to the different policies adopted at national level which make it difficult for the ETUC to adopt a single, clear policy. In other areas, for example the negotiation of the parental leave agreement, the ETUC actively consulted national trade unions. UNISON was very interested in this and felt it to be an effective process. Ver.di also recognises that the ETUC has attempted to coordinate national trade union policy in the area of migration and it welcomes the initiatives of the ETUC. However, there is scope for more to be done. In particular, the Europe Officer at ver.di was critical of the way in which ETUC positions and policies are usually based on the lowest common denominator amongst the affiliates. As a result, they are often not very effective. Again, this is due to the cultural differences between ETUC affiliates. The criticisms of ver.di and UNISON show that there is a desire for the ETUC to increase its level of coordination and consultation amongst national trade unions.

Following on from the overview of UNISON's and ver.di's responses as evidenced by the case studies, this report goes on to analyse and compare UNISON's and ver.di's responses to the European enlargements and the new Member State workers in light of the national and European legal structures within and across which they operate.

7.4 Analysis in the context of national legal frameworks

Initially, one would assume that the way in which trade unions respond within, across and around national and European legal frameworks, to the challenges of the enlargements would be determined by the role that they adopt in their national legal system. For example, a shift towards a political role in the UK could allow trade unions to adopt an active negotiating role between the government and migrant workers. Similarly, a focus on the greater involvement of trade unions in the legislative process in Germany could enable them to influence policy regarding migrant workers from the bottom up. Both examples illustrate how trade unions act within national legal frameworks in order to integrate migrants into their structures in order to ensure their representation and protection. This section considers whether the expectation that trade union responses are determined by the role which they adopt within their national legal systems holds true for both trade unions.

7.4.1 UNISON

As was explained above, the British labour law system has historically been characterised by a lack of state intervention in industrial relations. Particularly in recent years, trade unions have developed a service function and a government function within this system. The responses of UNISON to new Member State workers are heavily influenced by the role that they perceive for themselves in the British labour law system.

In its responses to new Member State workers, UNISON has focused on organising migrant workers, encouraging them not only to join the union but also to become active in it in order to prevent exploitation and undercutting. This has been attempted mainly through UNISON's Migrant Workers Participation Project. The goal of this project is to integrate migrant workers into the union structure. This is done by providing certain services to migrant workers such as language training and newsletters with information on available courses. This approach demonstrates the service function of trade unions in the British labour law system. The European Trade Union Confederation suggests that national trade unions should adopt a service function in order to adapt to the changing opportunity and regulatory structures in the labour markets. UNISON seems to realise this and the Migration Unit's move towards a service function is a step in this direction.

There is also a strong emphasis on providing migrants with information so that they can enforce their rights at the workplace. However, in its material for migrant workers the union does not mention its potential role in negotiating workers' rights through collective bargaining. While this may be an obvious role for the union to play, it is not 'advertised' to migrant workers whom UNISON wishes to recruit. Thus, in preventing exploitation and undercutting, UNISON focuses heavily on the services that it can provide to new Member State workers but it does not mention its regulatory function. Arguably, this is proof that there has been a 'change of emphasis in the role of unions, from co-regulators of terms and conditions of employment, to monitors and enforcers of employees' legal rights' (Davies *et al.* 2005: 333). UNISON places a lot of emphasis on reports, such as the report by the TUC's Commission on Vulnerable Employment which looked at the circumstances in which workers are exploited at the workplace, and uses these reports to strengthen its campaign for the enforcement of employment rights. Yet, again, no mention is made, for example in leaflets targeting migrant workers, of the union's potential to regulate terms and conditions of employment through collective bargaining. Thus, there has been a strong shift away from the trade union's regulatory role.

To an extent, one can see that 'as the direct regulatory role of trade unions by collective bargaining retreats, so the importance of trade union political action increases' (Ewing 2005: 15). Thus, UNISON decided, following the recent European enlargements, to take on a leading political role on new Member State workers even though it, as a public service trade union, is not as affected by new Member State workers as are other trade unions. However, UNISON is keen to raise its profile across a whole range of issues in order to recruit and retain members. Political engagement:

> 'can be key to protecting and improving members' jobs, pay and conditions, as well as bringing about the broader social and economic changes our members want to see. Through its political organisation and campaigning, the union can act as an important force for a more democratic society.'

As a prerequisite for political engagement on behalf of new Member State workers, UNISON clarified its position on the European enlargements as being in favour of the accession of the new Member States. On that basis, it went on to push for legislative measures to integrate new Member State workers into the British labour market. The Gangmasters (Licensing) Act 2004 which makes provision for 'the licensing of activities involving the supply or use of workers in connection with agricultural work, the gathering of wild creatures and wild plants, the harvesting of fish from fish farms, and certain processing and packaging; and for connected purposes' (Preamble), is a prime example of legislation resulting from such political activities. It also illustrates that trade unions can no longer rely on their regulatory function to prevent exploitation of workers. Instead, there has been a shift towards a government function where trade unions, and in this case UNISON, push for legislative intervention in order to achieve their goals. This would have been unheard of in previous decades, when trade unions in the UK were opposed to interference by the

state. Particularly in the sphere of migrant workers, trade unions tried to prevent state intervention. As Castles and Kosack (1973: 141) explain, in relation to discrimination of migrant workers:

> '[d]uring the second half of the sixties, evidence accumulated that discrimination in employment was not disappearing – that if anything it was increasing. The 'laissez-faire' approach had clearly failed, and there was growing pressure to extend the 1965 Race Relations Act to cover discrimination in employment. During this period, the policies of the TUC seem to have been less concerned with preventing discrimination than with keeping the Government out of its traditional sphere – industrial relations. [...] It may have been feared that to give way in one area might have opened the door for state intervention elsewhere.'

State intervention has become a dominant feature of British industrial relations and trade unions have to rely on other mechanisms to further their policies. The idea of 'partnership at work' has become increasingly important. Thus, unions need to find a way of achieving 'a recognised status within the workplace as the means for expressing collective employee 'voice'' (Deakin and Morris 2009: 39). With the decline in the strength of trade unions in the UK, the government function may become increasingly important for trade unions when responding to the changing regulatory and opportunity structures which have arisen following the enlargements.

At a practical level and in line with its 'new' function, UNISON regularly publishes press statements on political issues to demonstrate that it has taken on a leading political role on the topic of new Member State workers. The National Development Manager for Migrant Workers at UNISON also suggested that the trade union would be well placed to communicate between new Member State workers and the government. This may be one way in which UNISON could express a collective employee 'voice'. It could also help the union to 'bridge the gap between supranational economic spheres and national politics' (Mückenberger *et al.* 1996: 24), thereby taking on the position of a 'partner' at work. With the unions' regulatory role declining due to a lack of support for collective bargaining at a national level, a role as 'mediator' between workers and the government may be one way for unions to redefine their function in industrial relations. So far, UNISON has only had limited success in pursuing such a role when it comes to new Member State workers, but this may be one of the responses available to trade unions when reacting to migrant workers. Cooperation with ver.di through the Memorandum of Understanding which was signed in 2004 is also an example of the increasing importance of political action for UNISON at a national and European level. Keller (1998: 51) bemoans the fact that, hitherto, 'solidaristic trade union 'internationalism' has remained purely verbal, and the horizontal and vertical coordination needed to make it a reality is far from being realised.' Ebbinghaus and Visser (1997) argue that trade unions are too embedded in national-level political economic institutions. The Memorandum of Understanding could provide the framework for trade unions to act across national and European legal frameworks when seeking solutions to similar problems.

7.4.2 Ver.di

A similar picture to that of UNISON can be painted of ver.di's responses. Trade unions in Germany play a strong role at various levels in the regulation of the labour law system, ranging from collective bargaining to co-determination. Even though ver.di has not yet responded to the new Member State workers on the same scale as UNISON, its policies to date demonstrate that it is keen to maintain its regulatory function. For example, ver.di repeatedly emphasises that migrant workers must be integrated into a trade union in order to prevent the undercutting of collectively agreed wages. It also stresses that its power to negotiate collective agreements should not be undermined by new Member State workers. Ver.di's regulatory function is therefore central to any policy. This can be traced back to the historical German trade union position that migrants should be incorporated into a trade union but should not be treated any differently to German workers. However, this is slowly changing as ver.di recognises that migrant workers should be 'visible' and may have different needs to German workers. There is thus a shift to partial autonomy. The trade union's regulatory function may also be declining as evidenced by the campaign for a statutory minimum wage. If ver.di was able to effectively regulate wages through collective bargaining, then it would not pursue a statutory minimum wage with such determination.

Despite emphasis by the participants in the case study on ver.di that a trade union is not first and foremost a service provider but a representative of collective interests, the service function of ver.di is arguably increasingly at the forefront of its response to new Member State workers. Like UNISON, ver.di is recognising the need to widen its functions to include a service function in order to effectively respond to the European enlargements and the new Member State workers.

The drop-in centre 'Migrar' that has been opened in Hamburg is one way in which ver.di is performing a service role. Equally, the e-learning initiative demonstrates that ver.di is building upon its service function in order to integrate new Member State workers into the German labour market. In its basic strategies, ver.di is not dissimilar to UNISON. Like UNISON, ver.di is seeking to redefine its role in the changing national labour market. It has until recently been protected from large numbers of new Member State workers entering the labour market through the transitional measures which it actively supported. However, ver.di faces similar structural problems to those of UNISON. For ver.di, migrant workers such as the *Gastarbeiter* had the same status in the workplace as German workers. Thus, special policies for their integration into the union were not needed. The posted workers that arrived in Germany under the bilateral agreements were very different from the *Gastarbeiter* and the trade unions concentrated on their political role to ensure that they would not undercut the wages of German workers. However, they did not develop a policy to integrate the posted workers into the trade union structure as they were in Germany on a temporary basis. The new Member State workers possess characteristics which are far more similar to the posted workers than the *Gastarbeiter*. However, German trade union structures still

provide for migrant workers to be treated in the same way as German workers. This approach does not cater effectively for the needs of new Member State workers. Therefore, if ver.di is to appeal to new Member State workers, it must reconsider its structures and policies for migrants. Even though ver.di and UNISON have very different structures, they face similar problems in that their structures for the integration of migrant workers do not meet the needs of new Member State workers.

There is evidence that the roles of the two trade unions are also becoming increasingly similar. Ver.di is starting to play a stronger governmental role following the European enlargements in 2004. Particularly with regard to the transitional measures, the German trade unions took on a political role by calling for the imposition of the measures. They repeatedly lobbied the government for the imposition of such measures. The campaign for a statutory minimum wage is another such example. The union has, for example, been gathering political support amongst politicians for legislation on a minimum wage. It has also generated considerable publicity on the benefits of a statutory minimum wage through posters and the participation of trade unionists in televised political debates. Finally, the union has commissioned research and held a conference on the advantages of a statutory minimum wage drawing on the experience of, for example, the UK. Due to the shifting role of trade unions in Germany from one of regulation to one of political partnership, as a result of the changing labour market, the political activities of ver.di are likely to gain in importance.

Overall, the case studies showed that trade unions in Germany and the UK are struggling to adapt to new Member State workers. New Member State workers are not benefiting from their employment rights in Germany and the UK. Trade unions have not so far been able to effectively integrate them in order to provide protection from exploitation. UNISON and ver.di recognise that their traditional methods of responding to migrant workers do not, for various reasons, result in the successful organisation of new Member State workers. In altering the way in which they respond to migrant workers, UNISON and ver.di seem to be moving towards each other. Thus, despite the inherent differences in the legal systems between Germany and the UK, ver.di's function in the labour market is beginning to resemble that of UNISON. Although ver.di still has a greater regulatory function than its British counterpart, both trade unions are focusing on their service and government functions in their responses to the European enlargements and the new Member State workers. As the roles and responses of both trade unions become increasingly similar, there is greater scope for exchange of information between the two organisations. There is evidence that some exchange of ideas is already taking place; however, this is not systematic.

At a national level, trade unions are already focusing on developing a strong political role for themselves. This helps them to influence policy and legislation and aids them in securing their position within the labour market. However, despite responding within national legal frameworks, trade unions are continuously faced with problems such as a decline in membership. Finding

an effective way to respond to new Member State workers by learning from each other would enable them to combat this phenomenon, as new Member State workers are an untapped pool of potential trade union members. Keller (2007: 469) describes this as organising in the 'trade union desert' ('*gewerkschaftliche Wüste*'). Trade unions recognise that they must reassess the roles which they have adopted at a national level in order to secure their continued relevance in the national labour law systems. UNISON suggests that trade unions could facilitate communication between migrant workers and the state. This example of trade unions acting around national legal frameworks is a sensible idea. As trade unions are present in the workplace, they have first-hand experience of the problems facing migrant workers. They also have the ability to interact with the government on issues of concern to migrant workers. This idea of trade unions acting as a link between migrant workers and the state could therefore be a starting point for a reassessment of the roles that trade unions can adopt at a national level in order to facilitate the integration of migrant workers in the national labour law systems.

7.5 The European influence

Europeanisation adds an extra layer of complexity to the environment within which trade unions act. For trade unions this means that they must take account of case law, policies and legal instruments that originate at a European level. However, they can also influence the process of europeanisation through active involvement at the national level in the drafting and implementation of EU legislation and soft law mechanisms as well as strong involvement in the European Trade Union Confederation. The role that trade unions already adopt at a national level could be influential in this regard.

Recently, UNISON and ver.di have focused much of their reaction to the effects of europeanisation on calling for a more 'social Europe'. Ladrech (2010: 154) writes that 'europeanisation involves interest groups' response to a perception that the EU level is or will generate potential changes in their specific operating environment.' The calls by the unions for a more 'social Europe' are an example of such a perception. As trade unions in Germany and the UK are struggling to maintain their influence in the social sphere in their national legal systems, they call for the involvement of the European Union in order to secure social rights. This development is not new. Historically, German trade unions were in favour of the European project, as European integration opened up new opportunities for German unions who were losing influence in their national political field (Schulten 2005: 23). Similarly, British trade unions, which, for a long time, had an ambivalent attitude to the EU, decided to support the UK's membership of the EU only once they began to lose influence in their domestic labour law system. As Hyman (2009: 26) has pointed out, 'the 'social dimension' of the EU became far preferable to the market liberalism of the Thatcher government.'

However, reacting to how one perceives the EU may change is not the most effective way of dealing with the consequences of europeanisation. The *Viking,*

Laval and *Rüffert* judgments of the European Court of Justice demonstrate that a European social contract which the DGB repeatedly calls for is not a realistic prospect. According to the General Secretary of the DGB, a European social contract would allow trade unions to 'socially regulate capitalism' in the European Union. European integration necessitates 'change in lifestyles and labour markets'. In order for workers to benefit from this change, 'European trade unions need to ensure that information and consultation in enterprises, as well as autonomous collective bargaining, become one of the pillars of a democratic and social European Union.' This implies that trade unions need to concentrate on strengthening their involvement in the process of the europeanisation of national labour law systems.

The DGB seemed to recognise this when it called for trade unions to europeanise their policies. If the definition of europeanisation outlined in this report is applied to the DGB's suggestion to europeanise policies, then it follows that trade unions must find ways to act within a process of domestic change due to European integration. As europeanisation is a two-way process, there are opportunities for trade unions to play a role at a national level through consultation on, and implementation of, European legislation, and also at a European level through involvement in the legislative process with the help of the ETUC. To date, such opportunities are not sufficiently utilised. Kriesi *et al.* (2007: 69) observe that 'the salience and accessibility of the decision-making process of the EU is much lower than that at the national level, which explains why they [domestic actors] are still predominantly focused on influencing the national political process.' This is the case, even though they could play a much more active role in the European process of decision-making. The necessity of this is recognised by Rödl (2009: 10) when he writes that 'there are two opposing models: either labour relations will continue to be a national matter or they will become a matter to be developed and structured in a European context.' However, this can be achieved only if trade unions leave behind 'the period of vague suggestions' (Rödl 2009: 14).

Trade unions should therefore adopt an active role in the process of europeanisation. At a national level, a strengthening of the governmental role of trade unions could secure a voice for trade unions in the implementation process[16] of Directives. Moreover, an interest and involvement in soft law mechanisms such as the Open Method of Coordination could provide trade unions with a role in the process of europeanisation. Without time constraints on implementation or enforcement mechanisms to ensure compliance, the OMC may not be as successful at europeanising national labour law systems as Directives which must be implemented in the Member States. Nonetheless, an exchange of best practice between trade unions in different Member States could provide answers to similar problems. The ver.di/UNISON Memorandum of Understanding is a first, formalised, step in this direction. Moreover, the sporadic cooperation between the Migration Units of both unions enables an

16. The social partners (trade unions and employers' associations) can play a role in the implementation of Directives at a national level through consultation or collective bargaining.

exchange of experiences. However, there still seems to be confusion as to what each union is doing and, despite regional cooperation between the unions on certain issues, a systematic exchange of information is not taking place. Increased cooperation between UNISON and ver.di could not only facilitate the integration of new Member State workers but also lead to transnational labour market coordination within the EU. The OMC could lay the groundwork for such coordination which would enable trade unions to effectively respond to the challenges of the European enlargement.

As Rödl (2009: 15) explains, 'transnational labour market coordination would be the way in which trade unions could facilitate an opening of national labour markets. This way, cross-border competition which leads to a lowering of labour standards, could be effectively combated. In addition, it could enable trade unions to strengthen their political role at a European level.'

Trade unions could also strengthen their political role at a European level through an active involvement in the ETUC. The difficulty that often arises is that trade unions, particularly in the UK, lack the strength at a national level to influence policy-making. There is thus limited scope for their involvement in the European decision-making process if they rely solely on their national strength. Yet this could be resolved if the ETUC were to take on a stronger role. As both ver.di and UNISON are large trade unions, they are powerful enough to have a strong influence within the ETUC. The case studies illustrate that both unions would welcome it if the ETUC were to take on a stronger negotiating and coordinating role, as it would provide them with a voice at a European level. As ver.di and UNISON are unsure about how to react to European developments, the ETUC could serve as the medium through which the unions influence the formulation of European policies and legislation. This role for the ETUC has been recognised in the literature by Mückenberger *et al.* (1996: 24) who encourage European trade unions to 'become organisations for discourse and communication in order to find general subjects of interest' which would, for them, be a positive development to ensure the survival of trade unions.

However, the ETUC has, to date, frequently been unable to coordinate national trade unions. In particular, the regular and ongoing consultation of national affiliates has been criticised for lacking depth and scope. Yet the European enlargements and the influx of new Member State workers are prime examples of situations where the ETUC could play an effective role in supporting national trade unions in their efforts to integrate new Member State workers into the labour market. The case studies show that the ETUC has begun to develop initiatives such as an exchange of good practice for the recruitment of new Member State workers; yet there is room for improvement on the part of the affiliates and the ETUC. The Confederal Secretary of the ETUC pointed out that large cultural differences between members makes communication between the unions difficult. Small-scale cooperation such as the Memorandum of Understanding between ver.di and UNISON, which could lead to regular and structured cooperation, may help to bridge the cultural differences between unions and, in turn, enhance the role of the ETUC.

There is thus a strong argument in favour of more consultation within, and a stronger role for, the ETUC. However, the effectiveness of the ETUC does not depend just on it consulting its affiliates; national trade unions must recognise the importance of trade union representation at a European level. The ETUC cannot be effective if it does not receive the active cooperation of its affiliates. Yet trade unions still seem to focus too much of their attention on the national level. Trade unions need to accord a central position to European affairs if they are to react effectively to the challenges of europeanisation. To date, European matters are dealt with by UNISON and ver.di as a sub-category of 'International affairs', even though the unions have the potential to play a much stronger role within the EU than at an international level. If trade unions were to accord greater importance to European and cross-border issues, they could work to strengthen their role, not only in the implementation process of European law at a national level, but also in their national labour markets as a whole. The best example of such a policy can be found in the British trade unions' attitude to the European Union under the Thatcherite government.

As Bercusson (2009: 17) explains, '[t]he doubtless unintended consequence of the UK government policy of decollectivisation of industrial relations at domestic level was the huge advance in collectivisation of industrial relations at EU level. Deregulation of collective bargaining in the UK produced regulation through social dialogue at EU level. While the British trade unions (TUC) and employers (CBI) were ignored in London, they were engaged in the process of negotiating EU-level collective agreements in Brussels.'

Yet, on the whole, trade unions are struggling to integrate the European dimension into their policies and actions. This is understandable as the European Union's policy of europeanising national labour law systems takes many different forms and has a number of effects on trade unions acting within their national systems. However, europeanisation also gives trade unions mechanisms which could aid them in responding to the new Member State workers and the European enlargements. As the effects of europeanisation are unlikely to disappear, trade unions would benefit from a reorientation of their policies and strategies in order not only to take account of the process of europeanisation but also play an active role in determining its outcomes.

8. Conclusion

Overall, trade unions are struggling to adapt to the changing opportunity and regulatory structures which prevail following the recent European enlargements. In responding, they have used strategies from past experience, but they have also attempted to develop new methods to cope with the unprecedented state of affairs following the enlargements. The roles that they adopt in their national legal systems strongly pre-determine their reactions to the new Member State workers and the enlargements. They have not yet managed to shift their attention from a purely national playing field to one governed by a complex legal framework of national and European influences. As a result, they are finding it difficult to respond to the European Union's policy of europeanising national labour law systems and are often unable to avail themselves of the mechanisms, such as an involvement in the consultation and implementation of European legislation, that europeanisation offers them. Trade unions in Germany and the UK could derive benefit from each other, as they are facing similar problems and have started to look for solutions in different ways. However, cross-border dialogue does not regularly take place, even though there are some positive signs that trade unions are indeed becoming more aware of the benefits of cooperation. The ETUC also has a potentially strong role to play in helping trade unions respond to the challenges of enlargement and it has begun to develop initiatives such as an exchange of good practice for the recruitment of new Member State workers. Yet there is also a desire amongst some affiliates for the ETUC to increase its level of coordination and consultation amongst national trade unions. This could enhance the role of the ETUC as a medium through which unions can influence the formulation of European policies and legislation, and would strengthen the political role which trade unions can adopt at a European level. For the most part, ver.di and UNISON have focused their attention on using the methods to which they are already accustomed. They thus concentrate on the roles that they adopt in their national legal system in order to respond to migrant workers, instead of availing themselves of the mechanisms that europeanisation provides. Consequently, trade unions struggle to integrate new Member State workers into their structures and their impact upon those workers has been somewhat limited.

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