

# TRADE UNIONS AND NEW MEMBER STATE WORKERS IN GERMANY AND THE UK

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## A. Introduction

This article examines and compares German and British trade union responses to increased migration following the recent European enlargements. In terms of labour law, a majority of the ten Central and Eastern European countries which acceded in 2004 and 2007 combine weak domestic labour protection systems with a high proportion of workers and enterprises keen to take advantage of their free movement rights under the European Treaty. This has 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’. 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 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.”<sup>1</sup> A number of authors elaborated upon Ladrech’s definition thereby widening it to include the development of political networks at a European level<sup>2</sup> as well as “transnational influences that affect national systems”<sup>3</sup> 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,

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<sup>1</sup> R. Ladrech, ‘Europeanisation of Domestic Politics and Institutions: The Case of France’ (1994) *Journal of Common Market Studies* 69 at p. 69.

<sup>2</sup> T.A. Börzel & T. Risse, ‘When Europe hits home: Europeanisation and Domestic Change’ (2000) *European Integration Online Papers* 4.

<sup>3</sup> B. Kohler-Koch, ‘Europäisierung: Plädoyer für eine Horizonterweiterung’ in M. Knodt & B. Kohler-Koch (eds.), *Deutschland zwischen Europäisierung und Selbstbehauptung*, Campus, Frankfurt, 2000.

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 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.”<sup>4</sup> For the purposes of this article 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.

The reactions of the Member States to the enlargements have differed substantially. Following the 2004 enlargement, the UK opened its labour markets to new Member State workers immediately, whereas Germany placed heavy restrictions on workers from new Member States entering its labour markets. As regards the enlargement in 2007, both countries placed restrictions on Romanian and Bulgarian workers. Prior to the enlargements, the number of residents from the new Member States present in old Member States totalled 893,000; this increased to 1.91million in 2007.<sup>5</sup> Germany and Austria received approximately 60% of immigration inflows from the countries who acceded in 2004 prior to the enlargements. 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. By the end of 2007, new Member State workers made up about 1% of the population in the UK. However, despite the restrictions on access to its labour markets, Germany remains an attractive destination for new Member State workers.

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<sup>4</sup> T.A. Börzel, ‘Towards Convergence in Europe? Institutional Adaptation to Europeanisation in Germany and Spain’ (1999) *Journal of Common Market Studies* 573 at p. 574.

<sup>5</sup> All figures in this paragraph are taken from European Integration Consortium, *Labour Mobility within the EU in the context of enlargement and the functioning of the transitional arrangements*, Nuremberg 2009.

Trade unions in 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. In the UK, trade unions were initially slow to react to racist sentiments within the union movement towards migrant workers, the large majority of whom came from the former colonies. However, once the problem was officially recognised, the trade unions started adopting special policies against racism in order to secure equal treatment of all workers. In particular, British trade unions 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. ‘Self-organisation’ was successful in securing representation for migrant workers through so-called ‘black members committees’. German trade unions adopted a different attitude to migrant workers following the end of the Second World War. The large majority of migrant workers arrived as so-called *Gastarbeiter* (guest workers) under bilateral agreements between Germany and the workers’ home states.<sup>6</sup> The bilateral agreements ensured that the *Gastarbeiter* would respect standards set out in collective agreements. Instead of focusing on ‘self-organisation’ in order to combat racism and to give migrant workers a voice within the union, German unions sought to achieve equality between migrant and indigenous workers in order to ensure adherence to the applicable collective agreements. This traditional policy is now under strain as new Member State workers are likely to work in sectors not covered by collective agreements. Trade unions are therefore unable to prevent wage-undercutting by new Member State workers.

This article examines two case studies to explore how trade unions have responded to increased migration following the enlargements. Increased migration has created a number of problems for trade unions. First, there is a fear that new Member State workers may avail themselves of their free movement rights under EU Law to threaten the economic and social position of workers and trade unions in Germany and the UK by engaging in social dumping. Second, trade unions struggle to integrate new Member State workers into their structures and, as a result, new Member State workers frequently suffer from unfair employment practices. Finally, recent case law of the European Court of Justice<sup>7</sup> has led to a difficult

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<sup>6</sup> 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.

<sup>7</sup> 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, Byggettan, Svenska*

interface between free movement law and national labour regulation thereby increasing the complex legal framework within which trade unions act. The case studies combine an analysis of trade union publications with a number of qualitative interviews in order to examine trade union reactions. The findings of the case studies are used to undertake a contextualised comparison of trade union behaviour in responding to the changing regulatory and opportunity structures which present themselves following the enlargements. Account is taken of the role that trade unions adopt within their national legal systems as well as of the effects of the European Union's policy of Europeanisation on national trade unions. The article concludes by elaborating a number of recommendations based on the analysis.

## B. Case Study Methodology

The purpose of the case studies is to clarify the responses of two national trade unions to the challenges of European enlargement and to 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.<sup>8</sup> 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 Dienstleistungsgewerkschaft (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 professions 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.

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*Elektrikerföbundet* [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.

<sup>8</sup> A. Bryman, *Social Research Methods*, 3<sup>rd</sup> ed., OUP, Oxford, 2008 at pp. 435 – 471.

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 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 which yields an understanding of how trade unions are responding and whether they are fulfilling the objectives set for 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<sup>9</sup>; three with ver.di<sup>10</sup>; 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.

### C. UNISON

UNISON, the public service union, was founded in 1993 and is the largest affiliate of the Trades Union Congress. It is the result of a merger of several smaller unions. 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.”<sup>11</sup> 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

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<sup>9</sup> 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.

<sup>10</sup> These were conducted with the Europe Officer, the Migration Officer and a member responsible for advising and recruiting migrant workers (Interviewee 2).

<sup>11</sup> TUC History Outline, *The Union Makes Us Strong*, Part 5 1980-2000.

workers. It also aims to maximise its political strength by influencing government policies and by promoting its objectives within the European Union.

### 1. Responses to enlargement and the transitional arrangements

In terms of UNISON's responses to the European enlargements and the transitional arrangements one must distinguish its political responses which are statements in principle and which are broadly in line with the position of the TUC, from its 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 taken as 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 inherent in the EU Treaties and it 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, UNISON, like the TUC, is largely in favour of the European Union and of European integration. As the TUC 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."<sup>12</sup> Moreover,

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.<sup>13</sup>

As a result, neither the TUC nor UNISON support the transitional arrangements placed on Romanian and Bulgarian workers. Much of UNISON's work at a political level now involves representations to the UK government on decisions affecting them. 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.

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<sup>12</sup> TUC, *General Council Statement on EU Migration*, 7 September 2006.

<sup>13</sup> *Ibid.*

## 2. Responses to new Member State workers

The main challenges for UNISON following the EU enlargements arose due to the large numbers of new Member State workers that arrived in the UK after 1<sup>st</sup> May 2004. 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.<sup>14</sup> 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, 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.<sup>15</sup>

This is also reflected in UNISON's Annual Report 2008/2009 in which it claims that UNISON "needs to influence the political agenda."<sup>16</sup> 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."<sup>17</sup> 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 (GPF) towards policy development and campaign work with a view to increasing its political role.<sup>18</sup> 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.<sup>19</sup>

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<sup>14</sup> Telephone conversation, Head of Policy Development, UNISON, 29/7/08.

<sup>15</sup> UNISON, *Consultation for the review of political fund effectiveness* at p. 4.

<sup>16</sup> UNISON, *A Million Voices for Change*, Annual Report 2008/2009 at p. 33.

<sup>17</sup> *Ibid* at p. 13.

<sup>18</sup> *Ibid* at pp. 33 – 50.

<sup>19</sup> UNISON, *Consultation for the review of political fund effectiveness* at p. 6.

At a European level, UNISON has focused on close cooperation with the European Federation of Public Service Unions (EPSU), ver.di and increasingly with the All Poland Alliance of Trade Unions (OPZZ) in order to influence policy-making. UNISON has also conducted a review of the effectiveness of its 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.”<sup>20</sup> Money in the GPF is used to support local campaigns, national political campaigns and political advertising. 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.”<sup>21</sup> 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.”<sup>22</sup>

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, a report by the TUC Commission on Vulnerable Employment which looked at the circumstances in which workers are exploited at the workplace, made it clear that the new Member State workers that arrived in the UK after 1<sup>st</sup> May 2004 are often treated in the same way as non-EU workers.<sup>23</sup> 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.<sup>24</sup> At the same time, 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.”<sup>25</sup>

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<sup>20</sup> UNISON, *Review of political fund effectiveness* at p. 6.

<sup>21</sup> UNISON, *A Million Voices for Change*, Annual Report 2008/2009 at p. 44.

<sup>22</sup> UNISON, *Organising Migrant Workers*, UNISON Branch Handbook at p. 4.

<sup>23</sup> *Hard Work, Hidden Lives: The Full Report of the TUC Commission on Vulnerable Employment*.

<sup>24</sup> For more information see TUC, *New EU Members? Migrant Workers' Challenges and Opportunities to UK Trade Unions: a Polish and Lithuanian Case Study*, 2007.

<sup>25</sup> Trade Union European Information Project, ‘Unions the answer for migrant workers say TUC’ *European Review*, July 2004 at p. 3.



In addition, UNISON faces structural difficulties in organising new Member State workers. Migrant workers were historically represented within the category of ‘black workers’ as the majority of workers were of a black ethnic background. The term ‘black’ is now used by the union as a political term to reflect discrimination, rather than as a racial expression which reflects the ethnic origin of workers.<sup>26</sup> As a result of redefining the term ‘black’ to reflect discrimination rather than race, any disadvantaged worker could, in theory, consider themselves as a ‘black’ member. Hypothetically, women or gay workers could fall under the definition of a ‘black’ member. This was not deemed a satisfactory solution because women and gay workers struggle with issues which differ from those of black ethnic workers. UNISON has extended the principle of self-organisation to cover other groups of workers such as women, disabled and gay members. However, for migrant workers irrespective of their ethnic background, the first point of reference remains the ‘black’ workers/members committees. There is no general body responsible for migrant workers. This implies that a new Member State worker will fall under the ambit of the black workers/members committees. This is a concept which is difficult to convey to workers from the new Member States, the majority of whom are not of a black ethnic background. They also have different characteristics to the migrant workers who arrived in the UK from outside the EU for whom the black workers committees were originally set up. The International Officer at UNISON recognised this problem by focusing on the problem “that most migrants who come from Europe do not define themselves as ‘black’ so they do not fit neatly into the union’s structures.”<sup>27</sup> This was confirmed by the National Development Manager for Migrant Workers at UNISON who argued that “self-organisation is not seen as adequate for white migrants.”<sup>28</sup>

Instead, UNISON has responded to the new Member State workers by focusing on two main objectives:

1. organising migrant workers in UNISON; and,
2. encouraging them to be active.<sup>29</sup>

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

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<sup>26</sup> Interview, International Officer, UNISON, 28/5/2009.

<sup>27</sup> *Ibid.*

<sup>28</sup> Interview, National Development Manager for Migrant Workers, UNISON, 28/5/2009.

<sup>29</sup> UNISON, *Migrant workers participation project*, June 2008.

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.<sup>30</sup>

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 migrant 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 become 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, events designed 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 will already be there to act as mentors and role models.<sup>31</sup>

The workshops took place in different locations across the UK. The two-day workshop in Glasgow, attended by the author of this article 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 in 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.

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<sup>30</sup> *Ibid.*

<sup>31</sup> UNISON, *Migrant Workers Newsletter*, December 2008.

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 new Member State workers.<sup>32</sup> New Member State workers can only, therefore, get advice through the union's usual channels. However, as of December 2010, UNISON makes reference on its website to the Polish Legal Centre that offers initial advice on English housing, debt, family, employment and social security law.<sup>33</sup> 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 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.<sup>34</sup> 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 State, with the exception of Romanians and Bulgarians, as the network usually helps nurses with visa problems which is not a matter of concern for new Member State workers from countries that joined the EU in 2004.<sup>35</sup>

Finally, recruitment of new Member State workers is mainly undertaken at a 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.<sup>36</sup> Interviews at the Migration Unit clarified that targeted recruitment of new Member State workers is occurring.<sup>37</sup> In particular, UNISON commissioned the Working Lives Research Institute to try to map migrants.<sup>38</sup> However, the union does not keep a record of how many members are migrants so it is difficult to evaluate the success of measures.

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<sup>32</sup> UNISON, *Migrant Workers Newsletter*, March 2009.

<sup>33</sup> UNISON, *Polish legal centre*.

<sup>34</sup> Interview, National Development Manager for Migrant Workers, 20/10/2008.

<sup>35</sup> Interviewee 1, 4/11/08.

<sup>36</sup> UNISON, *Organising Migrant Workers*, UNISON Branch Handbook.

<sup>37</sup> Interview, National Development Manager for Migrant Workers, 20/10/2008.

<sup>38</sup> *Ibid*.

To summarise, UNISON set itself a number of goals under the framework of the Migrant Workers Participation Project regarding the recruitment and organisation of new Member State workers. Many of these policies have been implemented at a practical level. Above all, 2009 witnessed a surge in the number of measures adopted to facilitate the recruitment, organisation and integration of new Member State workers. While UNISON has therefore begun the active recruitment, organisation and integration of new Member State workers into its structures, not all proposed policies have actually been implemented. For example, the advice scheme offered by the union is not yet open to migrants from the new Member States, despite the fact that UNISON defines a migrant worker as “someone who has come from abroad to work in the UK.”<sup>39</sup> Even though UNISON took the decision not to distinguish between workers from inside and outside the EU, it does so for the advice scheme.

#### D. Ver.di

Ver.di, a “multi-service trade union”<sup>40</sup>, was founded in 2001 as the result of a merger between five trade unions. It is one of the largest affiliates of the DGB.

Following a number of mergers among German trade unions between 1995 and 2001, ver.di was considered to be a unique experiment for the following reasons: it was a ‘mega merger’ of five rather than two trade unions which makes it the largest merger in German trade union history; it intended to create one trade union for the private and public service sector with a heterogenous 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”.<sup>41</sup> 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 that the structure has instead led to friction between the different sections of the trade union.<sup>42</sup>

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<sup>39</sup> UNISON, *Organising Migrant Workers*, UNISON Branch Handbook at p. 4.

<sup>40</sup> Ver.di, *Unity means Strength*.

<sup>41</sup> B. Keller, ‘Ver.di – quo vadis?’ *WSI Mitteilungen* 9/2007 at p. 467.

<sup>42</sup> *Ibid.*

The primary reason behind the merger of five trade unions was to create a large union that 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.<sup>43</sup>

The structure of ver.di is “anchored in the tradition of the trade union movement”<sup>44</sup> 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, it “provides consultancy, career assistance and training.”<sup>45</sup> Finally, it offers support and training to representatives of works councils and personnel boards.

### 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, for them, focuses too much on competition and social dumping. Ver.di does not feel that it can be supportive of a Europe of competition between Member States.<sup>46</sup> 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<sup>47</sup> 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

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<sup>43</sup> Ver.di, *Unity means Strength*.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> Interview, Europe Officer, 29/1/2009.

<sup>47</sup> DGB Bundesvorstand, AK Migration, *EU-Erweiterung: Arbeitnehmerfreizügigkeit, Dienstleistungsfreiheit, Grenzgängerbeschäftigung*, 25/5/1999 at p. 1.

guarantee all free movement rights to all states immediately upon accession. This could only be done once the new Member States have fulfilled all conditions so as to reduce the negative impact of freely moving workers upon the host Member State.<sup>48</sup>

More recently, according to the DGB, “at the beginning of the 21<sup>st</sup> century, large enterprises are benefiting from the internal market in order to play off workers against each other.”<sup>49</sup> 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.<sup>50</sup> 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.”<sup>51</sup> Furthermore, it states 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.”<sup>52</sup> 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.”<sup>53</sup> However, the internal market lacks a social dimension and ver.di therefore calls for the EU to orientate itself towards being a social market economy.<sup>54</sup> 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<sup>55</sup>. 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.”<sup>56</sup> 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”<sup>57</sup> thus again alluding to the lack of a

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<sup>48</sup> *Ibid* at pp. 3 – 4.

<sup>49</sup> *Ein europäischer Sozialvertrag für das 21. Jahrhundert*, Sechs Thesen von Michael Sommer, 7/4/2005.

<sup>50</sup> *Ibid*.

<sup>51</sup> DGB, *EU Erweiterung*.

<sup>52</sup> *Ibid*.

<sup>53</sup> Ver.di, *Binnenmarkt-Strategie der Kommission*.

<sup>54</sup> *Ibid*.

<sup>55</sup> Ver.di, *Einem sozialen Europa Zukunft geben: Manifest zur Europapolitik*, October 2008.

<sup>56</sup> *Ibid* at p.1.

<sup>57</sup> *Ibid* at p. 33.

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.”<sup>58</sup> 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.

Since 2004, the DGB has set itself the goal of establishing close relationships with trade unions in the new Member States.<sup>59</sup> 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 with 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.

## 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 has not developed 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 they need to find ways of offering “advice, help and orientation”<sup>60</sup> to those new Member State workers that may come to Germany after the lifting of the transitional arrangements in May 2011. Yet at the moment,

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<sup>58</sup> DGB, *Mai 2004: Die EU wird größer*, 2004 at p. 16.

<sup>59</sup> *Ibid.*

<sup>60</sup> E. Hannack, ‘Mehr als traditionelle Gastarbeiter-Politik’, *Migration*, ver.di, November 2008.

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.

The only policy that has been visibly 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 especially with a view to the lifting of the transitional measures in 2011. A minimum wage is seen as a mechanism of defence to protect against social dumping by new Member State workers. 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. Ver.di now sees itself as the “driver” of the campaign for a minimum wage.<sup>61</sup>

A different perspective is given by the Migration Officer at ver.di who, in an interview, recognised that “increased numbers of new Member State workers have arrived in Germany since 2004 but it is difficult to estimate how many have come.”<sup>62</sup> 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”<sup>63</sup>, 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 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-

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<sup>61</sup> Interview, Europe Officer, 29/1/2009.

<sup>62</sup> Interview, Migration Officer, 29/1/2009.

<sup>63</sup> *Ibid.*



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.”<sup>64</sup> Second, the Migration Unit opened a drop-in centre (Migrar) in Hamburg in May 2008, which provides advice and support for illegal migrant workers.<sup>65</sup> The centre is staffed by volunteers and support from the union was initially lacking but 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.<sup>66</sup> Migrar offers advice in ten languages for those illegal migrants who have been deprived of their rights at their place of work. 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 have also had 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 did not historically distinguish between German and migrant workers, but it recognises that different groups of workers may have different needs. 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.<sup>67</sup> 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; and,
- 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. 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. Also, the Migration Officer interviewed at ver.di did not feel

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<sup>64</sup> For more information see Ver.di, *Epitome – Leben und Arbeiten in Deutschland*.

<sup>65</sup> Ver.di, *Migration*, November 2008.

<sup>66</sup> However, this only offers advice to domestic workers. Interviewee 2, 13/3/2009.

<sup>67</sup> E. Hannack, ‘Mehr als traditionelle Gastarbeiter-Politik’, *Migration*, ver.di, November 2008.

that trade unions should be offering language courses in the case of language problems.<sup>68</sup> For 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 their area of responsibility.

In their 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.<sup>69</sup> As the *Gastarbeiter* came from countries which had a trade union tradition, they were easy to integrate into German trade unions. 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 yet at the same time fighting for their 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.”<sup>70</sup> In April 2009, only 20 out of 3500 employees had a migrant background.<sup>71</sup> However, the union as a whole has not been active in changing the traditional policy of refraining from adopting special measures for migrant workers. The European Officer confirmed this in an interview and even the Migration Officer doubted the usefulness of special measures by clarifying that “the main purpose of a trade union was and is the achievement of equality within the workplace whether there are migrants involved or not.”<sup>72</sup> Thus, official trade union policy is not expected to change and there is only a very limited debate within ver.di as to the usefulness of the adoption of special measures for migrant workers.

## E. Level of Cooperation

### 1. Ver.di – UNISON

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<sup>68</sup> Interview, Migration Officer, 29/1/2009.

<sup>69</sup> 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.

<sup>70</sup> S. Sayin in ‘Der Migration Gesicht geben’, *ver.di News*, 4<sup>th</sup> April 2009.

<sup>71</sup> *Ibid.*

<sup>72</sup> Interview, Migration Officer, 29/1/2009.

The third theme which was examined was the level of cross-border cooperation among trade unions. This was considered to be important as external factors have the potential to influence the way in which trade unions act. Moreover, 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.

UNISON and ver.di signed a Memorandum of Understanding in October 2004 with a view to coordinating key aspects of their work. 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.”<sup>73</sup> 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.”<sup>74</sup> 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<sup>75</sup> or through cooperation in European Works Councils.<sup>76</sup>

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.<sup>77</sup> In particular, UNISON is interested in the German trade unions’ history of engaging with migrant workers during the period of the *Gastarbeiter* scheme as they feel that the German unions’ experience may help them to integrate new Member State workers into UNISON. Ver.di is also interested in greater cooperation in the area of migration but it is not sure how that cooperation should progress. There seem to be

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<sup>73</sup> UNISON/Ver.di Memorandum of Understanding available at [http://www.unisonnw.org.uk/documents/general/Ver\\_di\\_Memo\\_of\\_understanding.pdf](http://www.unisonnw.org.uk/documents/general/Ver_di_Memo_of_understanding.pdf).

<sup>74</sup> Interview, National Development Manager for Migrant Workers, 20/10/2008.

<sup>75</sup> For example UNISON’s Greater London Region has set up a twinning agreement with Ver.di’s Berlin/Brandenburg region.

<sup>76</sup> Interview, National Development Manager for Migrant Workers, 20/10/2008.

<sup>77</sup> *Ibid.*

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.<sup>78</sup>

## 2. Within and through the ETUC

The ETUC 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.<sup>79</sup>

However, in relation to the free movement of new Member State workers, the ETUC delegates to national level affiliates a decision as to whether the transitional measures are necessary. At the same time, they are of the opinion that "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"<sup>80</sup>, 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."<sup>81</sup> As was pointed out in interviews, "the ETUC adopted a careful position [on the transitional measures]"<sup>82</sup> 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 it feels that the conditions are not present in all Member States to allow complete free 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.<sup>83</sup> 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

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<sup>78</sup> Interview, Migration Officer, 29/1/2009.

<sup>79</sup> ETUC, *The Seville Manifesto*, 2007.

<sup>80</sup> ETUC, *Towards free movement of workers in an enlarged European Union*, December 2005.

<sup>81</sup> *Ibid.*

<sup>82</sup> Interview, Confederal Secretary, 25/2/2009.

<sup>83</sup> ETUC, *Towards free movement of workers in an enlarged European Union*, December 2005.

encourage and facilitate an exchange of good practice in terms of recruitment of new Member State workers, but this has not been easy as

a lot of trade union structures are too static. They are made for long-term relationships but increasingly workers fall outside this category.<sup>84</sup>

Instead, there have been suggestions that unions should 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. 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 criticises that ETUC positions, and policies are usually based on the lowest common denominator among the affiliates. As a result, they are often not very effective. 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 article 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.

#### F. Analysis in the context of the national legal frameworks

One could assume that the way in which trade unions respond 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 for their representation and protection. This section

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<sup>84</sup> *Ibid.*

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.

## 1. UNISON

The British labour law system has historically been characterised by a lack of state intervention in industrial relations. Within this system, British trade unions, according to Ewing<sup>85</sup>, adopted certain roles. Particularly in recent years, trade unions have developed a service function and a government function. There has also been:

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.<sup>86</sup>

In its responses to new Member State workers, UNISON has focused on organising migrant workers into the union and encouraging them to become active in order to prevent exploitation and undercutting. 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. UNISON places a lot of emphasis on reports, such as that by the TUC's Commission on Vulnerable Employment, 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."<sup>87</sup> Thus, UNISON decided, following the recent European enlargements, to take on a leading political

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<sup>85</sup> K.D. Ewing, 'The Function of Trade Unions' (2005) *Industrial Law Journal* 1.

<sup>86</sup> P. Davies, K.D. Ewing & M. Freedland (eds.), *The Law of the Labour Market: Industrialisation, Employment and Legal Evolution*, Oxford University Press, Oxford, 2005 at p. 333.

<sup>87</sup> K.D. Ewing, 'The Function of Trade Unions' (2005) *Industrial Law Journal* 1 at p. 15.

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 other trade unions. UNISON is also keen to raise its profile across a whole range of issues in order to recruit and retain members. Moreover, 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.<sup>88</sup>

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. This 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 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.<sup>89</sup>

State intervention has become a dominant feature of British industrial relations and trade unions have to rely on other mechanisms to further their policies. Thus, unions need to find a way of achieving "a recognised status within the workplace as the means for expressing

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<sup>88</sup> UNISON, *Consultation for the review of political fund effectiveness* at p. 4.

<sup>89</sup> S. Castles & G. Kosack, *Migrant Workers and Class Structure in Western Europe*, Oxford University Press, Oxford, 1973 at p. 141.

collective employee ‘voice’<sup>90</sup>. With the decline in the strength of trade unions in the UK, the government function of unions may become increasingly important.

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.<sup>91</sup> 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”<sup>92</sup>, 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. Cooperation with ver.di through the Memorandum of Understanding is also an example of the increasing importance of political action for UNISON at a national and European level. Keller bemoans 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.”<sup>93</sup> 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.

## 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. German trade unions have mainly adopted a service, regulation and representation role, whereby the regulatory function is by far the most important. This is also evidenced by the results of the case study. Even though ver.di has not yet responded to the new Member State workers on the same scale as UNISON, their

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<sup>90</sup> S. Deakin & G. Morris, *Labour Law*, 5<sup>th</sup> ed., Hart Publishing, Oxford, 2009 at p. 39.

<sup>91</sup> Interview, National Development Manager for Migrant Workers, UNISON, 20/10/2008.

<sup>92</sup> U. Mückenberger, C. Stroh & R. Zoll, ‘Einleitung: Die Modernisierung der Gewerkschaften in der Europäischen Union’ in U. Mückenberger, E. Schmidt & R. Zoll (eds.), *Die Modernisierung der Gewerkschaften in Europa*, Verlag Westfälisches Dampfboot, Münster, 1996 at p. 24.

<sup>93</sup> B. Keller, ‘National Industrial Relations and the Prospects for European Collective Bargaining – The view from a German standpoint’ in W. Lecher & H-W. Platzer (eds.), *European Union – European Industrial Relations? Global challenges, national developments and transnational dynamics*, Routledge, Oxford, 1998 at p. 51.



policies to date demonstrate that they are keen to maintain their regulatory function. For example, ver.di repeatedly stresses that their power to negotiate collective agreements should not be undermined by new Member State workers. However, this regulatory function may 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 of 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 their response to new Member State workers. The drop-in centre 'Migrar' which was 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. Like UNISON, therefore, ver.di is recognising the need to widen its functions to include a service function, as the ETUC suggests, in order to effectively respond to the European enlargements and the new Member State workers.

There is also evidence that the roles of the two trade unions are becoming increasingly similar. Ver.di is starting to play a stronger governmental role following the European enlargements in 2004. Particularly with regards 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 a great deal of 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 illustrate that trade unions in Germany and the UK are struggling to adapt to new Member State workers. 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. As the case studies show, there is evidence that some exchange of ideas is already taking place; however, this is not systematic. UNISON and ver.di 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. 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.

#### G. The European dimension

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 ‘top-down’ approaches such as case law, policies and legal instruments that originate at a European level. However, they can also influence the process of Europeanisation from the ‘bottom-up’ through an active involvement at the national level in the drafting and implementation of EU legislation and soft law mechanisms as well as a 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 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.”<sup>94</sup> 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

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<sup>94</sup> R. Ladrech, *Europeanization and National Politics*, Palgrave, Basingstoke, 2010 at p. 154.

who were losing influence in their national political field.<sup>95</sup> Similarly, British trade unions, who, for a long time, had an ambivalent outlook on the EU, only decided to support the UK's membership of the EU once they began to lose influence in their domestic labour law system. As Hyman writes, "the 'social dimension' of the EU became far preferable to the market liberalism of the Thatcher government."<sup>96</sup>

However, reacting to what one perceives the EU may change, is not the most effective way of dealing with the consequences of Europeanisation. Recent judgments of the European Court of Justice<sup>97</sup> 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"<sup>98</sup> in the European Union. European integration necessitates "change in lifestyles and labour markets"<sup>99</sup>. 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."<sup>100</sup> 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.<sup>101</sup> If the definition of Europeanisation outlined in the introduction to this article 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.

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<sup>95</sup> T. Schulten, 'Gewerkschaften und europäische Integration – Aktuelle Facetten eines ambivalenten Verhältnisses' in J. Beerhorst & H.-J. Urban (eds.), *Handlungsfeld europäischer Integration*, VSA-Verlag, Hamburg, 2005 at p. 23.

<sup>96</sup> R. Hyman, 'Trade Unions and "Europe": Are the Members out of Step?' *LEQS Paper* No 14/2009, November 2009 at p. 26.

<sup>97</sup> 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, Byggettan, Svenska Elektrikerförbundet* [2007] ECR I-11767; Case C-346/06 *Dirk Ruffert, in his capacity as liquidator of the assets of Objekt und Bauregie GmbH & Co. KG v Land Niedersachsen* [2008] ECR I-1989.

<sup>98</sup> DGB, *Ein europäischer Sozialvertrag für das 21. Jahrhundert – Sechs Thesen von Michael Sommer*, 2005 at p. 1.

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid* at p. 4.

To date, this is not sufficiently utilised. Kriesi et al. 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.”<sup>102</sup> 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 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.”<sup>103</sup> However, this can only be achieved if trade unions leave behind “the period of vague suggestions.”<sup>104</sup>

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<sup>105</sup> of Directives. Moreover, an interest and involvement in soft law mechanisms such as the Open Method of Coordination (OMC)<sup>106</sup> 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 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, it could 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 explains,

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<sup>102</sup> H. Kriesi, A. Tresch & M. Jochum, ‘Going Public in the European Union: Action Repertoires of Western European Collective Political Actors’ (2007) *Comparative Political Studies* 48 at p. 69.

<sup>103</sup> F. Rödl, ‘Bleierne Zeiten für die Arbeitsbeziehungen’, *Mitbestimmung* 3/2009 at p. 10.

<sup>104</sup> *Ibid* at p. 14.

<sup>105</sup> 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. For more information see, for example, P. Watson, *EU Social and Employment Law*, Oxford University Press, Oxford, 2009 at chapter 5.

<sup>106</sup> The OMC originated under the EU’s Employment Strategy and “combines processes of common target setting by member states, cross-country benchmarking and periodic review.” See P. Marginson, ‘Europeanisation and Regime Competition: Industrial Relations and EU Enlargement’ *Industrielle Beziehungen*, 2006 at p. 103.

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.<sup>107</sup>

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. who encourage European trade unions to “become organisations for discourse and communication in order to find general subjects of interest”<sup>108</sup> which would, for them, be a positive development to ensure for the survival of trade unions.

However, to date, the ETUC is often not able to coordinate national trade unions. In particular, the regular and ongoing consultation of national affiliates has been criticised for lacking depth and scope. However, 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 illustrate 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

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<sup>107</sup> F. Rödl, ‘Bleierne Zeiten für die Arbeitsbeziehungen’, *Mitbestimmung* 3/2009 at p. 15.

<sup>108</sup> U. Mückenberger, C. Stroh & R. Zoll, ‘Einleitung: Die Modernisierung der Gewerkschaften in der Europäischen Union’ in U. Mückenberger, E. Schmidt & R. Zoll (eds.), *Die Modernisierung der Gewerkschaften in Europa*, Verlag Westfälisches Dampfboot, Münster, 1996 at p. 24.

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 just depend 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 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.<sup>109</sup>

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

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<sup>109</sup> B. Bercusson, *European Labour Law*, CUP, Cambridge, 2009 at p. 17.

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 to play an active role in determining its outcomes.

## H. 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 they 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 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 positive signs that trade unions are 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. However, the ETUC has not, so far, managed to adopt such a role. For the most part, ver.di and UNISON have focused their attention on using the methods which they have become accustomed to. Thus, they 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.