

**Organised Labour and Migration in the Global Age:  
A Comparative Analysis of Trade Union Responses  
to Migrant Labour in Austria, Germany, Ireland  
and the UK**

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## **ABSTRACT**

### **Organised Labour and Migration in the Global Age: A Comparative Analysis of Trade Union Responses to Migrant Labour in Austria, Germany, Ireland and the UK**

**Torben Krings**

Trade unions face multiple challenges at the beginning of the twenty-first century, including increased inward migration. The accession of eight countries from Central and Eastern Europe to the EU in 2004 in particular has created a new dynamic of labour migration in Europe, sometimes raising concerns about social dumping and a 'race to the bottom'. In the context of the weakening of organised labour, the deregulation of national labour markets and the spread of rather precarious employment relationships, including irregular migrants, unions increasingly struggle to secure 'equal pay for equal work'. Attempts to organise migrants are made further difficult not only by language barriers, but also by the fact that migrants are over-represented in those sectors of the economy where union support is traditionally weak. Thus, contemporary labour migration poses many challenges to trade unions, including intra- and extra-European migration, an increase in precarious forms of migrant labour and the task of organising migrants.

This thesis seeks to examine how trade unions in four Western European countries, Austria, Germany, Ireland and the UK, respond to these challenges. With Germany and Austria on the one hand and the UK and Ireland on the other, two pairs of countries have been selected that are classified as coordinated market economies (CMEs) and liberal market economies (LMEs). Therefore, the thesis seeks to establish whether unions in CMEs respond differently to the challenge of contemporary labour migration than unions in LMEs, and if so, how possible differences can be accounted for. The main findings of the study suggest that there is considerable variation in union attitudes towards migrant labour. Broadly speaking, unions in LMEs like Britain and Ireland appear to be more open towards migrant labour than unions in CMEs like Germany and Austria. In particular labour market factors and the structure of collective bargaining in each 'variety of capitalism' appear to be of considerable importance in accounting for the variation in union attitudes towards migrants. However, while union policies are certainly influenced by such 'structural' factors, they are not wholly determined by them as unions have some agency in the way they frame issues such as immigration.

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## LIST OF ABBREVIATIONS

CEE	Central and Eastern Europe
CME	Coordinated Market Economy
DGB	Deutscher Gewerkschaftsbund
EEA	European Economic Area
EFBWW	European Federation of Building and Wood Workers
EFFAT	European Federation of Food, Agricultural and Tourism Trade Unions
EMU	European Monetary Union
EMWU	European Migrant Workers Union
ETUC	European Trade Union Confederation
EU	European Union
EWC	European Works Council
GATS	General Agreement on Trade and Services
GBH	Gewerkschaft Bau-Holz
HGPD	Hotel, Gastgewerbe, Persönlicher Dienst
ICTU	Irish Congress of Trade Unions
IG BAU	Industriegewerkschaft Bauen-Agrar Umwelt
IG Metall	Industriegewerkschaft Metall
ITUC	Interregional Trade Union Council
LME	Liberal Market Economy
MNC	Multinational Company
NGG	Gewerkschaft Nahrung-Genuss-Gaststätten
NERA	National Employment Rights Authority
NMS	New Member States
OECD	Organisation for Economic Co-operation and Development
ÖGB	Österreichischer Gewerkschaftsbund
PWA	Posting of Workers Act
PWD	Posting of Workers Directive
REA	Registered Employment Agreement
SIPTU	Services, Industrial, Professional and Technical Union
TGWU	Transport and General Workers Union

TMWP	Temporary Migrant Worker Programme
TUC	Trades Union Congress
UCATT	Union of Construction, Allied Trades and Technicians
UK	United Kingdom
USA	United States of America
USDAW	Union of Shop, Distributive and Allied Workers
VoC	Varieties of Capitalism

## Chapter One: Introduction

When Irish Ferries announced in autumn 2005 that it aimed to replace over five hundred of its mostly unionised Irish staff with cheaper agency workers from Eastern Europe, it sparked off huge public protests. At a ‘National Day of Protest’ organised by the Irish Congress of Trade Unions (ICTU) 100,000 people went to the streets of Dublin and elsewhere to protest against ‘exploitation’, ‘displacement’ and ‘a race to the bottom’. This dispute even threatened to derail the social partnership process in Ireland as the ICTU refused to enter negotiations for a new social partnership agreement until issues of employment standards were addressed (Flynn 2006). Similar transnational disputes involving workers from the new EU member states have occurred in other countries as well. In Vaxholm in Sweden, the refusal of a Latvian construction company to pay its workers the local rates prompted Swedish construction workers to initiate a blockade of a building site in 2004 (Wolfsoon/Sommers 2006). In Germany, allegations about underpayment and poor working conditions emerged in the meat industry where service providers from Poland paid their workers ‘poverty wages’ (Tenbrock/Wielinski 2007). What all these disputes had in common was that they involved migrant workers from the new EU member states (NMS) and trade unions from the ‘old’ member states. Among the latter these conflicts instilled fears about long-established labour standards and a ‘race to the bottom’.

Generally, trade unions have so far found it difficult adapting to contemporary processes of global change that have strengthened the position of capital *vis-à-vis* labour. While unions are still primarily organised at the national level, multinational companies are increasingly organised as global production networks that show little regard for national boundaries (Castells 2000). As a result of globalisation and EU enlargement, trade unions face a two-fold challenge. On the one hand they are confronted by the relocation of parts of production to Eastern Europe and Asia in the name of ‘competitiveness’ (or the threat of it to keep wages down). On the other hand, the inflow of migrant workers into service industries that cannot be ‘offshored’ can fulfil a similar purpose of reducing wage costs (Menz 2005: 198-200; Streeck 1997: 49-50). While the challenges that trade unions face in light of economic internationalisation and the growing mobility of

transnational companies features in quite a number of publications (cf. Ferner et al. 2006; Hoffmann 2002a; Rigby et al. 1999), little research has been carried out so far on the challenge that contemporary labour migration pose to organised labour. This may come as a surprise as ‘immigration is in important respects a matter of labour’ (McGovern 2007: 231).

### **1.1 Trade unions and migrant labour at the beginning of the twenty-first century**

Particularly in recent years immigration has acquired a growing importance in light of the internationalisation of labour markets. Processes of globalisation are not only characterised by an increase in cross-border flows of capital, goods, services, and information but also by more people crossing boundaries (Held et al. 1999). At the beginning of the twenty-first century it is estimated that 191 million people are on the move (IOM 2006: 21). Not only South-North migration is on the rise but also since 1989 and the demise of the Eastern Bloc, East-West migration (Castles/Miller 2003). Intra-European migration has further increased with the accession of ten countries from Central and Eastern Europe (CEE) to the EU in 2004, followed by Bulgaria and Romania in 2007 (European Commission 2008). These enlargement rounds have created a new dynamic of labour migration in Europe that has raised concerns about social dumping and a ‘race to the bottom’. In the past social dumping has been linked to low-tax policies by EU countries to increase their competitiveness and to the relocation of multinational companies to other member states to save labour costs. However, in the context of the recent EU enlargement it is now increasingly associated with inward migration from the NMS (Donaghy/Teague 2006: 657). Particularly trade unions in some Western European countries have expressed concerns about possible negative consequences on established labour standards as a result of increased East-West migration.

Traditionally, the main aim of trade unions has been to ensure that labour migration does not undermine wages and employment standards. This should ensure that migrant workers do not provide a cheaper alternative to indigenous

workers. During the period of post-World War Two labour migration, at the height of 'organised capitalism', unions were relatively successful in securing that migrants were paid in accordance with the prevalent wage rates (Castles/Kosack 1973). However, as a result of the weakening of organised labour, the deregulation of national labour markets and the '*informalization* of employment relations' (Beck 2000: 50), unions increasingly struggle to secure 'equal pay for equal work' for indigenous and migrant labour alike. Particularly in an enlarged EU characterised by significant wage differentials between the old and the new member states, migrants have an incentive to accept wages and work conditions that are poor by the standard of the host country, but good by the standard of the country of origin (Anderson et al. 2006). The difficulties that unions encounter are further compounded by the spread of agency labour, posted workers and a growth in the informal economy which are a particular challenge to the principle of equality of treatment.

From a trade union perspective, the best way to ensure that the inflow of migrant workers does not undermine the established terms and conditions of employment is to organise the latter. Such attempts have to be viewed in the context of a decline of trade union density in many countries and an erosion of collective forms of political activism (Hyman 1992). However, trade unions face some particular difficulties in organising contemporary migrant workers. These difficulties include, besides language barriers, the fact that migrants are over-represented in those sectors of the economy such as hospitality where union support is traditionally weak, the often only temporary stay of migrants and an increase in subcontracting arrangements (Schmidt 2006; Wills 2006). Thus, contemporary labour migration poses many challenges to trade unions, including intra- and extra-European migration, an increase in precarious migrant labour and the task of organising migrants.

This thesis seeks to examine how trade unions in four Western European countries, Austria, Germany, Ireland and the UK, respond to these challenges. With the UK and Ireland on the one hand and Germany and Austria on the other, two pairs of countries have been selected that are classified as liberal market economies (LMEs) and coordinated market economies (CMEs) (Hall/Soskice

2001). Therefore, in a first, more descriptive exercise the thesis seeks to establish whether unions in LMEs respond differently to the contemporary challenges of labour migration than unions in CMEs. However, as comparative research on industrial relations phenomena should aim to explain cross-national differences rather than just describing them (Poole 1986), in a second, more analytical step the aim is to establish how possible variation in union policies can be accounted for. Thus, the main research question of the thesis reads as follows: Do unions in LMEs respond differently to the contemporary challenges of labour migration than unions in CMEs, and if so, how can possible differences be accounted for?

## **1.2 Varieties of capitalism, institutional diversity and trade union policies**

One of the striking features of contemporary societies is that in spite of common challenges such as economic internationalisation there is so far little evidence to suggest that advanced capitalist economies have converged alongside a single adjustment path to globalisation. This is because domestic institutions condition the way countries adapt to contemporary social change (Amable 2003; Crouch/Streeck 1997; Hall/Soskice 2001; Hancké et al. 2007). In one influential account Hall and Soskice (2001) distinguish between two ‘varieties of capitalism’, liberal market economies and coordinated market economies. Whereas LMEs rely more on the ‘invisible hand of the market’ regarding the governance of the economy, CMEs rely more on non-market coordination.

What is of particular relevance to this study is whether the different institutional configuration in each ‘variety of capitalism’ impacts upon trade union policies. There is little doubt that unions in most countries increasingly face a challenging environment, including economic internationalisation, the rise of the service sector, new forms of ‘atypical’ employment and the erosion of collective forms of identities (Hoffmann 2002b; Hyman 1992). However, in spite of these similar challenges, there is so far little evidence to suggest that union policies have converged across Europe. This appears to be linked to the different institutional framework in each ‘variety of capitalism’ that provides ‘different types of constraints and opportunities’ (Frege/Kelly 2004b: 38) for unions.

In LMEs, unions have been significantly weakened by the deregulation of the economy and labour relations. In these countries employers have capitalised upon a conducive political environment to roll-back the influence of unions with the aim of restoring ‘managerial freedom’ (Thelen 2001: 99). In turn, a similar trend towards deregulation is not observable in CMEs where traditional bargaining institutions have proven resilient. Although unions have been similarly affected by membership loss, unions continue to exercise some considerable influence through the established institutions of collective bargaining (Frege/Kelly 2004; Thelen 2001). In the light of these different ‘opportunity structures’ (Frege/Kelly 2004b: 38), unions pursue different strategies in each ‘variety of capitalism’. Whereas unions in LMEs increasingly emphasise the organising of new groups of employees as a revitalisation strategy, unions in CMEs are more inclined to pursue traditional channels such as social partnership and collective bargaining to stem a decline in influence (Behrens et al. 2003; Heery et al. 2000). Thus, if unions in LMEs and CMEs respond differently to contemporary challenges such as a decline in union density, it is not implausible to assume that their responses to contemporary labour migration may differ too.

Therefore, differences in the institutional framework of the economy are likely to be of some importance in influencing union policies on immigration. However, it is unlikely that union policies are determined by ‘structural’ factors such as labour market institutions. Previous research found that unions which are in a similar institutional position do not necessarily respond uniformly to labour migration (Penninx/Roosblad 2000). As unions ‘are not bereft of independent influence’ (Heery/Adler 2004: 61), they have some agency on how they address issues such as immigration. This holds for the possibility that union policies may not only vary alongside the LME/CME typology but also within the same ‘variety of capitalism’.

### **1.3 Why compare trade unions and migrant labour in Austria, Germany, Ireland and the UK?**

The four case countries make for interesting comparison along several dimensions. These include different industrial relations systems, different trajectories of immigration and citizenship as well as union traditions. As already indicated, LMEs and CMEs are characterised by different industrial relations systems. Whereas the UK and Ireland have a voluntarist industrial relations system, issues such as union recognition and co-determination rights are put on a statutory footing in Germany and Austria (Ferner/Hyman 1998). Particularly in relation to collective bargaining the position of British unions has been more eroded than elsewhere as traditional forms of wage coordination have largely collapsed in the last two decades (Thelen 2001). Although Ireland is usually classified as a LME as well, unions remain in a more institutionally entrenched position through their involvement in the social partnership process (Donaghy/Teague 2007). In both Germany and Austria the system of industry-wide collective bargaining remains largely intact, in spite of a loss of political influence by unions in both countries (Blaschke 2006; Hassel 2007). Thus, what will be of particular interest to the study is whether the different industrial relations systems in each VoC, and the institutional position of organised labour in particular, influence union responses to migrant labour.

Another level of comparison is the different tradition and context of immigration and citizenship. Britain, Germany, and Austria are among those European countries that received significant inward migration in the second half of the twentieth century. The latter two initiated official recruitment programmes for foreign workers particularly from Mediterranean countries. These programmes were based on the assumption that migrants would work for a certain period of time in the host country in accordance with the requirement of the labour market and then return home. However, this assumption proved to be a fallacy as many ‘guestworkers’ did not return home but stayed and eventually transformed into settled ethnic minorities in the host countries (Castles/Miller 2003).<sup>1</sup> Although a

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<sup>1</sup> It is worth, though, remembering that the majority of foreign workers *did not* settle down at that time. For instance, among those 18.5 million foreign workers who arrived between 1960 and 1973 in Germany, 75 per cent returned to their home countries as envisaged in the guestworker



settlement process had undoubtedly taken place, this was not reflected in official policies in Germany and Austria where a view held sway that the latter two were not ‘a country of immigration’. This went hand in hand with a fairly restrictive understanding of citizenship, in spite of some recent changes in Germany (Herbert 2001; Wischenbart 1994).<sup>2</sup>

While Austria, Britain and Germany can look back to half a century of inward migration with profound socio-economic implications on each society, Ireland only transformed into a country of immigration in the 1990s. However, since then immigration accelerated significantly so that in recent years Ireland experienced one of the highest rates of immigration of all OECD countries (OECD 2008). What all four countries have in common is that among recent migration flows NMS nationals were over-represented. This East-West migration poses a particular challenge to trade unions in an enlarged EU characterised by significant differences in wages and living standards. Moreover, all four countries have recently seen a growth in the informal economy and a spread of subcontracting arrangements. Hence, in spite of different migration regimes and histories of immigration, trade unions across the four countries face similar challenges in relation to contemporary migration flows.

In relation to union traditions on immigration, there was considerable variation in the way unions across Europe responded to migrant labour in the past. In Britain, the Trades Union Congress (TUC) was rather hostile to the recruitment of foreign workers immediately after World War Two. However, it did not oppose the inflow of Commonwealth migrants as, in accordance with official government policy, the latter were not regarded as ‘guestworker’ but as UK citizens with equal

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programmes. However, the Government was ill-prepared for the remaining 25 per cent who stayed, brought their families over and eventually transformed Germany into a country of immigration (Martin et al. 2006: 87).

<sup>2</sup> While British (and Irish) citizenship was traditionally based on the principle of *ius soli* (law of the soil) that confers citizenship to all people born on the territory of the state, the German and Austrian tradition of citizenship is rooted in the principle of *ius sanguinis* (law of the blood) where citizenship is based on ethnic descent. In practice, however, most states nowadays apply a mixture of these two traditions (Hansen/Weil 2002). In Britain, citizenship is conferred to children when at least one parent is a citizen. Similar provisions are now also in place in Ireland since the Citizenship referendum in 2004 when Government proposals that qualified the ‘law of the soil’ were overwhelmingly approved. In Germany, legislative change in 2000 has moved citizenship laws towards *ius soli* by granting citizenship to the children of long-term foreign residents. Austria together with Switzerland remains the only country in Western Europe where the principle of *ius sanguinis* is still generally applied (Castles/Miller 2003: 247-248).

rights. Although it was official TUC policy to oppose discrimination, Congress was initially lacking practical initiatives to tackle the many disadvantages that immigrants were facing (Castles/Kosack 1973: 138-145). However, since the late 1970s the TUC and individual unions began to actively tackle issues like racism and discrimination and installed various support structures for black and minority ethnic members (Wrench 2004).

In Germany, there was initially some scepticism among unions when the Government announced plans to recruit foreign labour in the 1950s. However, after they had received assurances on equal pay and work conditions for foreign workers, unions consented to the recruitment of foreign workers.<sup>3</sup> Over time, unions increased their efforts to organise migrant workers and to integrate them into the workplace (Kühne 2000; Schmitter 1983). This has been facilitated by the reform of the Works Constitution Act in 1972 which accorded the right to immigrants to be elected into works councils. Significantly, the trade union movement acknowledged much earlier than the Government that Germany had transformed into a country of immigration and demanded policies aiming to improve the situation of immigrants. Thus, in Germany 'trade unions have actually been the major institutional force for integration, in the absence of adequate government policies in this field' (Penninx/Roosblad 2000: 197).

In Austria, unions pursued a less inclusive policy on immigration. Through their involvement in the social partnership process, unions traditionally had a considerable say in various socio-economic matters such as immigration. According to Gächter (2000) they used this influence to pursue a policy of 'protecting indigenous workers from immigrants'. This included, until the early 1990s, support for the 'guestworker' concept, in other words the assumption that foreign labour are only in Austria for a limited duration of time. In spite of a rather protectionist attitude towards immigration, many migrant workers became trade union members. However, Austrian unions failed to adequately represent the interests of their foreign members. Immigrants were effectively prevented from

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<sup>3</sup> German union officials did not only recognise the need for additional labour from abroad but the relatively favourable attitude of German unions towards the inflow of migrant labour has also been explained with an uneasy conscience about the treatment of foreigners during the Nazi-regime (Kindleberger 1967: 201).

playing a more active role in the workplace, a practice that was long tolerated, if not actively promoted by unions (Bauböck/Wimmer 1988). It should be noted, though, that since the 1990s gradual change occurred when unions began to demand the removal of such discriminatory practices that immigrants had to face as they recognised that the latter were ‘here to stay’ (Gächter 2000).

For Irish unions, the issue of migration in the post-World War Two era featured only insofar as it concerned the issue of *emigration*. It should be noted that historically, Irish emigrants played an important part in building the trade union movement in countries like Britain, the USA and Australia (Arnesen 2007; Swift 2002). Thus, it remains to be seen to what extent different industrial relations systems, immigrant incorporation and union traditions in the four case countries influence union responses to contemporary immigrant labour. To what extent union policies on immigration differ can only be established through comparative research.

#### **1.4 Research design and research methods**

As this thesis examines trade union responses to migrant workers in four countries, it is based on a cross-national research design. Such a research design has the benefits of illuminating a particular social phenomenon by studying and comparing it in different national contexts (Hantrais/Mangen 1996). By deploying the same research instruments to gather data across a number of countries, the aim of comparative research is to explore whether explanations hold across time and different places and, if not, what accounts for their variation (Bean 1994; Przeworski/Teune 1970). This is of particular relevance to the study of trade unions and immigration where cross-national research is still very much the exception (McGovern 2007: 231). Hence this study aims to explore what variation we can register in union responses to labour migration and how possible differences can be accounted for.

As this study compares trade union responses to migrant labour in four case countries, it represents a form of cross-national research where the nation-state is

the ‘context’ of analysis (Kohn 1989). As the four case countries share many common features as highly developed capitalist democracies in Western Europe, they represent a ‘relatively similar’ country design (Dogan/Pelassy 1984). By focusing on ‘relatively similar’ countries in a specific geographical area, researchers are enabled to carry out an in-depth analysis of the phenomenon under research and make generalisations ‘at a median level’ (Dogan/Pelassy 1984: 120). Thus, the systematic comparison of labour relations and immigration in Austria, Germany, Ireland and the UK should shed more light on what shapes trade union policies on labour migration in advanced industrial democracies in the contemporary ‘global era’.

As this thesis is based on a relatively small number of case countries, it deploys a qualitative research methodology. In comparative research, such a methodology is well-suited for a ‘small-N’ study (Moore 1966; Skocpol 1979). Whereas ‘large-N’ studies are more likely to utilise a quantitative methodology usually in the form of a secondary analysis of large-scale data sets to generate broad empirical generalisations, in-depth ‘case-orientated’ studies are more concerned about the complexity and context-bound character of the phenomenon under investigation. Moreover, ‘case-orientated’ studies are suitable to develop new concepts of social phenomena that remain under-researched (Ragin 1987; Skocpol 1979). This particularly applies to the study of trade unions and immigration where, as already mentioned, comparative research is still very much in its infancy.

This thesis is based on qualitative research carried out from February 2006 to May 2007. To gather empirical data on the subject of trade unions and migrant labour, I utilised qualitative research methods, in particular documentary analysis and qualitative interviews. Such a qualitative research strategy is suitable for a policy-focused study that aims to compare trade union responses towards processes of social change (Rigby et al. 1999), in this case, change associated with recent inward migration. Through the triangulation of research methods, in this case of semi-structured interviews and the analysis of documents, the confidence in the research findings is increased (Flick 2000). Besides qualitative research methods, I also draw on statistical sources such as EUROSTAT and the OECD to gather

quantitative data on the stock and flows of migrants in each country as well as other socio-economic indicators such as economic growth and unemployment.

This thesis compares trade union responses to labour migration in comparative perspective between Austria, Germany, Ireland and the UK. I deliberately focus not only on official policies as agreed at union conferences but also aim to include more *ad hoc* responses to labour migration as for instance expressed in press releases, statements and interviews. This should afford more flexibility in the process of reconstructing the different trade union responses to migrant labour. The main criterion is that the union policies and responses selected for empirical analysis represent the official view of the union. Therefore, the terms ‘union policies’ and ‘union responses’ are used interchangeably throughout the thesis.

In each of the four countries, the union confederation is of particular importance to the analysis of trade unions and migrant labour. These confederations differ in terms of their level of centralisation with the Austrian Trade Union Federation (ÖGB) representing the most centralised trade union movement in Europe, while the British TUC represents one of the most fragmented ones. In-between these two opposites, both the German Trade Union Federation (DGB) and the Irish Congress of Trade Unions (ICTU) somewhat occupy an intermediate position in terms of their level of centralisation (Ebbinghaus/Visser 2000). However, in all four countries it is usually the confederations which issue official policy positions as regards immigration that are deemed to be representative of the whole trade union movement in each country.

Besides the union confederation in each country, I also selected those unions for empirical analysis which cover sectors such as construction, manufacturing, food-processing, hospitality and agriculture that have a high share of relatively low-skilled occupations. The reason for focussing on union responses towards migrant labour in these sectors is two-fold. Although migrants are increasingly found in high-skilled occupations as IT professionals, business managers and financial analysts, the majority of migrant workers continue to be employed in relatively low-skilled, low-paid jobs (Böhning 1995; OECD 2007). Moreover, it is in these sectors where recent controversies about the underpayment of migrants have

arisen, sometimes accompanied by allegations of job displacement and social dumping (Anderson et al. 2007; Czommer/Worthmann 2005; Tamas/Münz 2006; NESC 2006). Absolute comparison between individual unions, however, is not possible due to different traditions of trade unionism.<sup>4</sup> While in the UK and Ireland general unions that cover a variety of industries are more widespread, in Germany and in Austria the principle of industrial unionism is more important (Ebbinghaus/Visser 2000).

In collecting documents, I mainly draw on primary sources emanating from trade unions across the four countries that are of relevance to the topic under research. Hence the focus is ‘on documents that have not been produced at the request of a social researcher – instead the objects [...] are simply “out there” waiting to be assembled and analysed’ (Bryman 2001: 370). These ‘inadvertent sources’ (Bell 1993) include documents such as union policy documents, statements, and speeches that are of relevance to the topic under research. Most of these documents have been accessed on the internet, but in some cases have also directly been obtained from trade unions. With regard to the analysis of documents three possible approaches can be identified: qualitative content analysis, semiotics and hermeneutics (Bryman 2001: 381-383). I utilise qualitative content analysis to identify the underlying themes of the assembled documents that are of relevance to this research, particularly in terms of union positions on the free movement of labour in an enlarged EU, non-EU immigration and integration, agency and posted workers, organising and undocumented migrants.

To further explore union responses to migrant labour, I carried out twenty-eight semi-structured interviews with trade union representatives from the four case countries (Table 1, for a full list of the interviews see Appendix 1). Through such semi-structured interviews researchers have a greater flexibility to pursue the topical issues that are deemed of relevance to the research and are also able to explore the meaning that union officials attach to their responses (Bryman 2001: chapt. 13; Connell 2001 et al.). Furthermore, interviews have the advantage of providing an insight into the internal decision-making process of a union

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<sup>4</sup> The only exception to this is perhaps the construction sector where all four countries have industry-specific construction unions. However, this sector is also covered by general unions in Britain (TGWU) and Ireland (SIPTU).

movement in contrast to policy documents which state only the outcome of a debate (Bieler 2005: 470). The interviewees were selected through purposeful sampling (Patton 2002). I usually approached the respective trade unions to enquire about the possibility of an interview with a union representative on the issue of migration. However, in a small number of cases I also directly approached individual trade union officials who were known for their involvement on the issue.

All interviewed union representatives were full-time officials who were either official spokesperson on immigration or were regarded as an authoritative union representative on the issue. As I had made clear that I would be mainly interested in union policies on the issue of migrant labour, the responses in these interviews are taken as representing the official union view on the issue.<sup>5</sup> In addition I carried out two more interviews with a representative of the European Trade Union Confederation (ETUC) and of the European Migrant Workers Union (EMWU) to find out more about the transnational dimension of labour migration in Europe.

In these interviews I further explored union policies on immigration with particular regard to EU enlargement and the free movement of labour, non-EEA immigration, the spread of subcontracting and the informal economy, irregular migration and the organisation of migrant workers. Additionally, these interviews provided me with the opportunity to elicit some background information on the issue of migrant labour. The interviews usually took place in union offices, but in some instances were also conducted on the telephone. All interviews that usually lasted for around half an hour were recorded, transcribed and then analysed.<sup>6</sup> This analysis was carried out with the help of the qualitative software programme NUD\*IST (N6) that enables researchers to code and retrieve data and as such facilitates the analysis of large chunks of qualitative interview material (Bryman 2001: chapt. 20). When analysing the interview data, it was generally found that the interviewed union representatives confirmed the policy positions in the documents that were assembled. However, the interviews were of particular value

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<sup>5</sup> In a very small number of interviews the interviewees questioned the official policy position particularly in terms of the debate about the free movement of labour. However, this was of particular interest as it gave some insight into internal debates particularly within union confederations.

<sup>6</sup> In two instances I received the answers by e-mails as it was not possible to organise an interview.

as they increased the understanding of the union position and enabled me to further explore certain topics of relevance to the research.

**Table 1** *List of interviewed trade unions*

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**Austria**

ÖGB *Österreichischer Gewerkschaftsbund*

GBH *Gewerkschaft Bau-Holz*

HGPD *Hotel, Gastgewerbe, Persönlicher Dienst* (now Vida)

GMT-N *Gewerkschaft Metall-Textil-Nahrung*

**Britain**

TUC *Trades Union Congress*

TGWU *Transport and General Workers Union* (now Unite)

GMB

UCATT *Union of Construction, Allied Trades and Technicians*

USDAW *Union of Shop Distributive and Allied Workers*

**Germany**

DGB *Deutscher Gewerkschaftsbund*

IG BAU *Industriegewerkschaft Bauen, Agrar und Umwelt*

IG Metall

Ver.di *Vereinigte Dienstleistungsgewerkschaft*

NGG *Nahrung-Genuss-Gaststätten*

**Ireland**

ICTU *Irish Congress of Trade Unions*

SIPTU *Services, Industrial, Professional and Technical Union*

Mandate

UCATT *Union of Construction, Allied Trades and Technicians*

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Only through a cross-national comparison are we able to take into account how the particular national context in each country impacts upon trade union policies and strategies (Frege/Kelly 2004b: 35). However, the comparative analysis is not confined to the national trade union movement in each country as I also aim to compare individual trade union responses to migrant labour across different



employment sectors. Hence Table 2 gives an overview of the sectoral affiliation of unions across the four countries. As already mentioned, absolute comparison is not possible, not least because some unions cover different employment sectors.

**Table 2** *Sectoral affiliation of unions across the four case countries*

	Construction	Manufacturing	Food-processing	Hospitality/Other Services	Agriculture
Austria	GBH	GMT/N	GMT/N	Vida	GMT/N
Germany	IG BAU	IG Metall	NGG	NGG/Ver.di	IG BAU
UK	UCATT/TGWU	GMB/TGWU	GMB/TGWU/USDAW	TGWU/GMB	TGWU
Ireland	UCATT/SIPT	SIPTU	SIPTU	SIPTU/Mandate	SIPTU

## 1.5 Structure of the thesis

This thesis focuses on trade union and migrant labour in comparative perspective between Austria, Germany, Ireland and the UK. With the former pair two coordinated market economies have been selected, whereas the latter two are usually classified as liberal market economies. Therefore, the study examines whether unions in CMEs respond differently to the challenge of contemporary labour migration than unions in LMEs, and if so, how possible differences can be accounted for.

Although comparisons are sometimes drawn with previous periods of labour migration, particularly the ‘guestworker’ era, the main focus is on trade union responses to contemporary forms of labour migration. While over the years the number of publications that examine trade union responses to immigration in the post-World War Two era has increased,<sup>7</sup> research on contemporary labour migration, particularly in the context of the recent enlargement of the EU is still very much in its infancy (for some exceptions see Fitzgerald 2006; Hardy/Clarke 2005; Kahmann 2006). Hence, a comparative analysis of this subject in the four

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<sup>7</sup> The analysis of trade unions and migrant labour features in a number of publications concerned with post-World War Two labour migration to Western Europe. Among them are Castles and Kosack (1973), Miller (1981), Edye (1987), Kindleberger (1967) and Vranken (1990). The most comprehensive analysis of trade unions and migrant labour so far is a comparative study by Penninx and Roosblad (2000) that analyses and compares trade union responses towards immigrants in seven Western European case countries from 1960-1993.

case countries should shed more light on what shapes trade union responses to migration in the contemporary era of EU enlargement and globalisation.

Although the thesis compares trade union movements in different national contexts, the national level is not the only level of comparison, as I also include individual trade unions in my analysis that cover a number of employment sectors, including hospitality, construction, manufacturing and agriculture. Therefore, while union policies on high-skilled migrants are of some interest too, the main focus is on union responses towards migrants in those sectors that have a high share of relatively low-skilled occupations. Not only is a majority of migrants located in these sectors, but it is also mostly in these sectors where recent controversies about the underpayment of migrants have arisen. This study examines trade unions and labour migration. It is sometimes, however, difficult to make a clear distinction between different migratory movements. For instance, people might arrive as asylum-seekers but become irregularised and enter the workforce as undocumented workers (Düvell 2006). Therefore, while the main focus is on migrant labour, union policy responses to other types of migration, particularly when they are linked to work and the labour market, are of interest too.

### ***1.5.1 Outline of the chapters***

To illustrate the particular challenges that contemporary migrant labour pose to trade unions, I will outline the changing context of labour migration in chapter two. In spite of assumptions that contemporary ‘post-industrial’ societies would no longer require additional labour from abroad, particularly of the low-skilled variety, I will argue that there is a continuous demand for migrant labour at all skill levels. However, contemporary forms of labour migration exhibit some novel features, including increased East-West migration, a more temporary character of migratory movements and an increase in precarious migrant labour that pose particular challenges to unions.

In chapter three I will outline the conceptual framework of the study. Across Europe, unions face similar challenges, including economic internationalisation, the rise in service sector employment, new forms of ‘atypical’ employment and the erosion of collective forms of activism. However, in spite of these same challenges, there are reasons to believe that union policy responses have not converged. This is in part linked to the institutional framework of different ‘varieties of capitalism’ that provide different incentives for unions to adapt to contemporary social change. At the same time, it is unlikely that union policies are determined by ‘structural’ factors such as labour market institutions. As unions are strategic actors, they have some agency on how they frame issues such as immigration. This holds for the possibility that union policies may not only vary alongside the LME/CME typology but also within the same ‘variety of capitalism’.

In chapter four I will examine trade union policies on the free movement of labour in an enlarged EU. This is of considerable interest as particularly Britain and Ireland have experienced large-scale inward migration from the accession countries since EU enlargement. Although Germany and Austria have restricted access to their labour markets, they continue to receive significant migratory flows from the new EU member states. In all four case countries recent inward migration from the NMS was accompanied by incidents of underpayment of migrants, which led to concerns not least among trade unions about its impact upon labour standards. However, as I will show, in spite of these common concerns, unions have not responded uniformly to the challenge of recent labour migration from the NMS.

Although in quantitative terms migratory flows from the new EU member states constitutes the most important form of labour migration into most Western European countries, all four case countries continue to experience significant non-EU immigration. Therefore, in chapter five I will examine trade union policies on immigrants from outside the EU. There is generally recognition among trade union movements that immigration from outside the European Economic Area is likely to continue. Moreover, there is some communality found in union preferences. If people enter the country, there is a clear preference for long-term

immigration based on equal rights as opposed to temporary labour migration. However, there remains continuous divergence on how immigration should be regulated. While some union movements have developed policy proposals in favour of a system of ‘managed migration’, others have adopted a more defensive approach to non-EEA labour migration.

Unions’ preference for a rights-based form of immigration during which migrants become integrated into the workforce on an equal par with domestic workers sits somewhat uneasily with a proliferation of subcontracting arrangements and the growth of the informal economy that the four countries have experienced in recent years, albeit to different extent. Hence, in chapter six I will examine union responses to the spread of precarious migrant labour. Particularly in recent years the spread of agency labour and posted workers has led to controversies about the remuneration of migrants, sometimes linked to the contentious ‘country of origin’ principle in the context of the EU freedom of services. Such a situation where migrants are no longer directly employed by the company for which they work causes considerable difficulties for trade unions.

Moreover, recent decades have seen a growing number of undocumented migrants engaging in irregular economic activities which posits a particular ‘dilemma’ (Wrench 2000a) to organised labour. Thus, a comparative analysis of trade union responses to precarious migrant labour should illuminate whether unions aim to establish a ‘level playing field’ by improving the situation of precarious migrants or primarily rely on state enforcement agencies to protect established labour standards. As I will show, while there is some communality in demanding that the principle of equality of treatment be applied to posted workers, agency labour and other subcontracting arrangements, what this exactly entails can differ, depending in no small measures on the capacity of unions to enforce collective agreements. Moreover, the structure of collective bargaining is also of some importance if it comes to irregular migrants. Broadly speaking, unions in countries that have a widespread coverage of collective bargaining appear to be more resistant in supporting illegal migrants. However, as some trade union movements have become more receptive to the rights of ‘illegals’, it is not only considerations for collective bargaining that shapes union policy responses to precarious migrants.

From a trade union perspective, the best way to preserve labour standards and to protect workers is to get migrant workers organised. This, however, represents no small challenge as migrants are over-represented in those sectors of the labour market where trade union support is traditionally weak, particularly in private services. Additionally, as migrants are often employed by a separate contracting company or employment agency, this may seriously diminish the possibility of collective action. Migrants may also not see the relevance of joining a trade union, particularly when they view their stay as only short-term (McKay 2006). Hence in chapter seven I will analyse to what extent the organisation of migrants features as part of a strategy of ‘union revitalization’ (Frege/Kelly 2004a). For unions as membership-based organisations, the organisation of new groups of employees is an essential requirement. Moreover, the organisation of migrant workers could also make an important contribution to prevent the emergence of a two-tiered workforce where migrants could represent a cheaper alternative to indigenous workers. However, as I will argue, the importance that unions attach to organising new groups of workers including migrants differs across the four countries, depending not least upon the institutional position of unions and the structure of collective bargaining.

In chapter eight I will evaluate the previous empirical chapters. What becomes apparent is that there is significant variation in trade union policies on labour migration. Broadly speaking, unions in LMEs like Britain and Ireland appear to be more open towards migrant labour, reflecting a buoyant economy at the beginning of the twenty-first century and significant labour shortages. While there is a demand for additional labour in CMEs too, unions here appear to be more wary about the impact of immigration in the light of more widespread coverage of collective wage agreements and, in the case of Germany, relatively high unemployment. Thus, labour market factors and the structure of collective bargaining in each ‘variety of capitalism’ appear to be of considerable importance in accounting for the variation in union attitudes towards migrants. However, while union policies are certainly influenced by these ‘structural’ factors, they are not wholly determined by them as unions have some agency in the way they frame issues such as immigration.

In chapter nine I will summarise the main findings of the study with regard to the main research question. Although trade union movements face similar challenges such as increased East-West migration, a spread of subcontracting arrangements and a more temporary character of labour migration, there is continuous divergence in how they respond to the inflow of migrant labour. This is accounted for in no small part by the different political, institutional and economic context in each ‘variety of capitalism’. However, in spite of the persistence of national differences, there is *some* communality in how unions respond to contemporary migration flows. Unions do not only acknowledge that labour migration is likely to continue in light of globalisation, European integration and the transnationalisation of labour markets but have also become more receptive to the human rights of migrants. I will conclude with a brief outlook on what appears to be the main issues for trade unions and migrant labour in the years ahead. I will explore in particular to what extent transnational forms of trade union mobilisations which have acquired a greater prominence in recent years (Erne 2008) are of relevance to ‘organised labour and migration in the global age’.

## **Chapter Two: Trade Unions and the Changing Context of Labour Migration**

In this chapter I will analyse the changing context of labour migration and the implications of such patterns for trade unionism. I will first outline the changing character of migration. Although unemployment has increased in many Western European countries over the last three decades or so, there continues to be a demand for additional labour from abroad at all skill levels. Contemporary migratory movements, however, have become more temporary and circular, reflecting the exigencies of an increasingly flexible European labour market. This is particularly visible in the context of intra-European migration which has significantly increased since EU enlargement in 2004. Moreover, in the context of the deregulation of labour markets and the spread of the informal economy, more precarious forms of migration have emerged, often leading to controversies about the terms and conditions of migrant employment. These new patterns of contemporary labour migration pose no small challenge to trade unions.

### **2.1 The changing context of labour migration**

While during the period of post-World War Two immigration, foreign workers were heavily concentrated in industrial manufacturing, labour migration now assumes more of a 'post-industrial form' (Held et al. 1999: 304). As already mentioned in chapter one, the oil crisis of 1973 and an ensuing recession brought the official labour recruitment policy to a halt. The following period of economic restructuring led to a decline in labour-intensive industrial manufacturing and a concomitant rise in service sector activities which often require higher-skilled workers. In light of these developments it is often assumed that in 'post-industrial' societies there is no longer a need for labour migration, particularly of the low-skilled variety (Roosblad/Penninx 2000: 202). However, since the 1980s the number of migrant workers, both legal and illegal, once again increased. The 1990s also saw the re-emergence of temporary migrant worker programmes across Europe, albeit not on the same scale as during the 'guestworker' era (Castles 2006).

As can be seen from Table 3, Germany and Austria experienced a major inflow of immigrants in the immediate aftermath of the collapse of state socialism and the ensuing political turmoil post-1989. As a result of this new wave of immigration that included asylum-seekers in particular, but also labour migrants (both legal and illegal) and, in the case of Germany, ethnic Germans (*Aussiedler*), the number of foreign residents in these two countries significantly increased in the 1990s. Britain has experienced a surge in immigration since the second half of the 1990s and particularly since EU enlargement in 2004. Ireland was traditionally a country of emigration and only transformed into a country of net immigration in the mid-1990s. However, since then inward migration hugely increased, so that Ireland's share of foreign nationals is now on a similar scale as in Austria and Germany. In terms of the labour force, Ireland even has the highest share of foreign workers of all four countries.<sup>8</sup> In general, however, in terms of the size of the immigrant population there are no significant differences recognisable between the four case countries.<sup>9</sup>

**Table 3** *Foreign population and foreign labour force in the four countries*

	<i>Foreign population</i>				<i>Foreign labour force</i>		
	1990	2000	2006	% of total population 2006	2000	2006	% of total labour force 2006
	Thousands				Thousands		
Austria	413	724	797	9.8	346	385	9.8
Germany	5,242	7,174	7,275	9	2,999	3,045	8.2
Ireland	80	94	419	9.8	59	278	13
UK	1,875	2,060	3,596	6	1,114	1,897	9

*Source:* Castles/Miller 2003: 81; EUROSTAT: Labour Force Survey 2006 ; CSO 2006 : 117

<sup>8</sup> These figures, however, may underestimate the employment rate of migrants as some surveys do not fully cover temporary migrant workers and usually do not include undocumented workers at all (Tamas/Münz 2006: 25).

<sup>9</sup> Generally comparative migration statistics have to be treated with caution due to different conceptions of what constitutes a 'citizen' and a 'foreigner' (Dobson/Salt 2004). For instance, one reason why in the UK the share of foreign residents is lower than in Germany and Austria is that Commonwealth migrants (and their descendants) who arrived in the 1960s and 1970s were British citizens. Also the children of Irish people and ethnic Germans (*Aussiedler*) born abroad as well as naturalised foreigners do not appear in statistics on foreign residents. Ideally migration statistics should be provided not only for foreign citizens and foreign-born people but also for the children of foreign parents. However, in Europe this is only common practice in The Netherlands and Sweden (Schierup et al. 2006: 33).



How can the continuous demand for migrant labour in advanced industrial countries be explained? Although many unskilled and semi-skilled manufacturing jobs have been exported to lower wage countries, there are limits to the export of low-skilled jobs as Castles (2006: 7) argues: ‘The manufacture of cars, computers and clothing could be shifted to China, Brazil or Malaysia, but the construction industry, hotels and restaurants, hospitals and many other service enterprises could not’. Thus, there continues to be a demand to fill jobs that often are shunned by indigenous workers.

### ***2.1.1 The continuous demand for migrant labour***

To understand why there is a continuous demand for migrant labour even at times of increased unemployment as experienced by many Western European countries since the 1970s (Crouch 1999), the dual labour market theory of Piore (1979) offers an interesting perspective. Piore’s main proposition is that modern economies are characterised by a dual labour market consisting of a capital-intensive primary sector and a labour-intensive, low-productivity secondary sector. Jobs in the latter sector are shunned by native workers as they are poorly paid, confer little prestige and do not offer much prospect of upward mobility. It is argued that wages cannot simply be raised for these jobs at the bottom of the labour market as this would undermine wage differentials which are important for maintaining the occupational hierarchy. This hierarchy is also critical for motivational reasons as people do not only work for income but also to acquire social status. Additionally, it may also be difficult to motivate indigenous workers in particular in those countries that have a generous welfare system, where they may prefer to be unemployed rather than taking on poorly paid jobs that confer low status and prestige (Piore 1979: 26-45).

At the core of the dual labour market theory is the assumption that ‘migrants provide a way in which workers in the native labour force are able to escape the role to which the system assigns them’ (Piore 1979: 42). Previously, women and teenagers have met the demand for low-skilled labour at the bottom of the job hierarchy. However, the former have lost their dependent status and increasingly

pursue career-orientated employment paths, while the shrinking availability of the latter is due to declining birth rates and longer education. Thus, in light of limited domestic supply there is a structural demand for immigrants to fill jobs in the secondary labour market (see also Massey 1993: 440-444).

Piore's distinction between primary and secondary labour markets is a useful analytical tool to explain the persistent segmentation of labour markets in advanced industrial economies. The fact that migrants fill jobs that are shunned by native workers may explain why even at times of increased unemployment Western European societies continue to rely on migrant labour. However, it is important to bear in mind that primary and secondary sectors are, to some extent, ideal types as in practice it is often difficult to make a neat distinction between both sectors (Massey et al. 1993: 458). Furthermore, assumptions about a dual labour market and a neat separation between indigenous people and immigrants cannot wholly account for the increasing differentiation among migrant workers with a growing demand not only for low-skilled migrants but also increasingly highly-skilled migrants. Moreover, the dual labour market theory has also been criticised for being too preoccupied with 'pull' factors to the negligence of 'push' factors and to be largely oblivious towards the micro level of the migratory process, for instance, in migration networks (Arango 2004: 25; Massey et al. 1993: 432).

Hence, the dual labour market theory with its macro-structural orientation should not be viewed as a general theory of international migration. There is increasing agreement among migration scholars that there is no single coherent theory and that the various theoretical approaches, such as network theory, economic theories of migration and historical-structural approaches, should be viewed as complementary as the migratory process is best viewed as an interaction of the micro- and the macro-level (Castles/Miller 2003: 27). As these theories have different levels of analysis, a complementary perspective could view migration on the micro-level as an initiative by individuals to maximise income (neoclassic economics) while such a decision is reached within households to minimise risks (new economics of migration). At the same time the decision to migrate is shaped by structural factors on the macro-level like globalisation and the spread of

capitalism (world system theory) and the requirement for cheap labour in advanced industrial societies (dual labour market theory) (Massey et al. 1993: 432-433).

While migration cannot be reduced to employment opportunities in the receiving countries and is based on the interaction of the macro (political economy, state relationships) and the micro level (in particular social networks), contemporary forms of labour migration are mainly market and demand-driven (Favell/Hansen 2002; Tamas/Münz 2006). Thus, from the perspective of the receiving society, the continuous demand for immigrants in spite of significant unemployment in some countries can be best conceptualised within the framework of dual labour market theory. The deregulation and flexibilisation of parts of the labour market in particular can act as a pull factor for migrants, both legal and illegal (Wallace 2001).

Therefore, scholars such as Sassen dismiss propositions that ‘post-industrial’ societies would only require highly educated ‘information workers’ and would no longer be in need of low-skilled workers. Instead she argues that there is a continuous demand for cheap workers as the spread of highly specialised services like finances industries generate not only highly-skilled jobs, but also low-skilled and low-waged jobs. Particularly ‘global cities’ like New York and London, and arguably Berlin, Dublin and Vienna, act as a magnet not only for global finance and business, but also for increasing numbers of migrant workers at different skill levels (Sassen 1991, 1996). Thus, while there is increasingly competition to attract ‘speciality labour’ (Castells 2000: 130) from abroad, ‘post-industrial’ societies continue to rely on foreign workers to fill labour-intensive jobs that are poorly paid, confer little prestige and are often shunned by domestic workers (Piore 1979; Sassen 1996).

### ***2.1.2 The regulation of migration in the ‘global age’***

Although migration is an indispensable part of contemporary processes of globalisation, it would be misleading to assume that people could move as freely

as capital as national labour markets remain heavily regulated. With the partial exception of the EU where a free movement regime for EU citizens has emerged, states have not relinquished their rights to control their borders and are unlikely to do so any time soon (Koslowski 1998). While international regimes for trade and finance exist, the regulation of immigration largely remains a national prerogative, with states remaining the most influential actors in shaping immigration policies (Freeman 1998). Indeed, a recent collection of essays by some leading immigration scholars found that ‘the nation-state is alive and well with respect to defending, sustaining, and expanding its own interpretation of inclusion and exclusion’ (Ozcurumez 2008: 280).

However, the autonomy and sovereignty of states to regulate migration has not been left untouched by the economic imperatives of globalisation, European integration and an emerging international human rights regime. That states are no longer wholly in control of the regulation of migration is particularly visible in the growing gap between the intentions and the outcome of immigration policies, as immigration has progressively increased in recent time, in spite of political pressure towards greater closure (Cornelius et al. 1994). As states increasingly aim to attract foreign direct investment, they have been prompted to liberalise migration rules in some areas. This has led to the introduction of new legislation such as Intra-Company Transfer schemes that are designed to facilitate the movement of employees of MNCs. Moreover, new transnational rules on the mobility of service providers have been adopted in the recently negotiated multilateral General Agreement on Trade and Services (GATS). The so-called ‘Mode 4’ of GATS allows for the ‘temporary movement of natural persons’. Although the exact scope of this provision still remains unclear, GATS is the first multilateral agreement that addresses questions of the movement of persons (Martin et al. 2006: 76-82). Furthermore, many states have relaxed immigration policies for highly-skilled migrants as they seek to be competitive in the ‘global race for talent’ (Boswell 2003: 31-32; OECD 2002).

In addition to processes of economic internationalisation, immigration policies in liberal democracies also have to take into account an emerging human rights regime which prohibits the arbitrary expulsion or maltreatment of ‘non-nationals’.

What is distinctive about this regime is that, unlike political and social rights, human rights are not confined to nationality (Sassen 1998: 70). This has led some authors to argue that a form of ‘postnational citizenship’ (Soysal 1994) has emerged where membership to a nation-state ceases to be the only source for the entitlement of rights. Domestically, liberal democratic institutions, such as constitutional courts have played a crucial role in extending rights to ‘non-nationals’ in particular with regard to family reunification. Internationally, a commitment to international human rights and refugee conventions limit the ability of states to impose more restrictive immigration policies. As a result of these developments, the position of individuals *vis-à-vis* nation-states has been strengthened (Hollifield 1992; Sassen 1998).

### ***2.1.3 The free movement of labour and EU enlargement 2004***

Perhaps the most significant example of an economic ‘spill-over’ effect has been the EU. In contrast to the global level where labour is still constrained and where an international migration regime is still a long way off, on a regional level an intra-EU migration regime based on the principle of free movement has emerged (Koslowski 1998). The main impetus for the fall of borders within Europe was economic as the free movement of labour was a corollary of the Single Market and the process of European integration (Schierup et al. 2006: 48). As early as 1957 the Treaty of Rome enshrined not only the free movement of goods, capital and services but also that of labour. While this right was initially confined to those moving for work, the Treaty on the European Union of 1992 extended the right to move and reside freely within the territory of the member states to all EU citizens (Geddes 2003: 129-130). As a result of this intra-EU migration regime, individual states can no longer regulate on who is a legitimate resident and who is not. This is a remarkable development as ‘the European nation-state’s supreme early twentieth-century control over migration and population dynamics was being voluntarily dislodged’ (Favell/Hansen 2002: 585).

The free movement of people is one of the essential principles of the process of European integration. Community Law guarantees that EU citizens are entitled to

take up employment in any other EU country. However, when eight countries from CEE acceded to the EU in 2004, most EU15 states restricted access to their labour markets for the new EU citizens.<sup>10</sup> Provisions in the accession treaties allowed the ‘old’ member states to impose ‘transitional arrangements’ for up to seven years in order to alleviate concerns about possible labour market disturbances. Such concerns were quite widespread in the EU15 as it was feared that significant differences in wages and living standards could lead to incidents of social dumping, exemplified in popular discourses about the ‘Polish plumber’ (Donaghey/Teague 2006: 653-657).

Of what became known as the ‘2+3+2’ formula, EU15 countries were given the option to either open the labour market in 2004 or to retain legislation controlling access to the labour market. Then, in 2006, states had to decide if they wanted to maintain or lift restrictions. After the end of a further three year period, it is generally expected that the transitional period should come to an end. Only in exceptional circumstances when serious labour market disturbances can be expected as a result of lifting the restrictions, states are permitted to extend the transitional period until 2011 (Donaghy/Teague 2006: 654). After the end of the first period in 2006, Finland, Greece, Portugal, Spain and Italy (July 2006) lifted the restrictions, an example followed by The Netherlands and Luxembourg in 2007 and France in 2008. In the meantime, Belgium and Denmark, and eventually also Austria and Germany have eased conditions for NMS citizens in some employment sectors, mainly high-skilled occupations such as engineering, without lifting the restrictions (EU 2007). During the most recent enlargement round in 2007 when Bulgaria and Romania acceded to the EU, all ‘old’ EU member states, with the exception of Finland and Sweden, restricted access to their labour markets.

Although such transitional arrangements represent a derogation from the principle of the free movement of labour, they are not unprecedented in the history of EU enlargement. When Greece, Portugal and Spain joined the EU in the 1980s, the freedom of labour was restricted for up to seven years. While during that enlargement round all member states (except Luxembourg) adopted a similar

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<sup>10</sup> No such restrictions have been put in place for nationals from Malta and Cyprus who also joined the EU on 1 May 2004.

policy on transitional restrictions, the positions of individual states differed to some considerable extent in 2004 (Kvist 2004: 311-312). Initially, seven states declared their intention to make use of the transitional period. However, as part of a ‘race to the top’ (Boeri/Brücker 2005: 8) other countries followed *en suite* so that in the end only Ireland, Sweden and the UK opened their labour market to citizens of the accession countries.

What was unusual about Eastern enlargement was that it created larger disparities in wages and living standards compared to previous enlargement rounds. At the time of Southern enlargement, the per capita income of Greece, Portugal and Spain in purchasing power parity (PPP) was around 65 per cent of the then EU average. In contrast, the average per-capita income in the accession countries from CEE was 45 per cent of the EU15 level in 2001, more resembling the income gap between Northern and Southern Europe during post-war labour migration (NESC 2006: 75). Furthermore, average unemployment in the eight accession countries in 2004 was 11 per cent, although this figure reached 19 per cent in Poland, whose population account for over half of all new EU citizens (Doyle et al. 2006: 63). Thus, there were some reasons to believe that in the context of this phase of EU enlargement an increase in East-West migration would occur because of powerful push factors (economic difficulties in the sending countries) and pull factors (demand for migrant labour in the receiving country).<sup>11</sup>

This is exactly what occurred in the aftermath of the enlargement round in 2004 when NMS migration hugely increased particularly into the UK and Ireland, with Germany and Austria the other two main destination countries (Table 4). However, it has to be stressed that the four countries operated a different migration regime. The former two were together with Sweden the only ‘old’ member states that opened their labour market to NMS workers in 2004.<sup>12</sup> However, whereas Sweden only received a relatively small number of NMS

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<sup>11</sup> Although, as already pointed out, push and pull factors are not a *sufficient* condition to account for migratory movements, as these are also mediated by social networks, such factors are certainly a *necessary* condition to trigger migration.

<sup>12</sup> Sweden was the only country that fully applied Community Law on the free movement of NMS citizens in 2004. The UK and Ireland, while opening their labour markets to workers from the new Member States, curtailed access to social welfare benefits (ECAS 2006).

migrants, both the UK and Ireland experienced large-scale inward migration from the accession countries.<sup>13</sup> Although Germany and Austria imposed a transitional regime, they continued to experience significant inflows of NMS migrants, although mostly on temporary work permits. It is likely that restrictions in countries like Germany and Austria, the traditional destination countries for migrants from CEE, have diverted some migratory flows to the UK and Ireland (Boeri/Brücker 2005: 14-16). However, the main dynamic behind the huge inflow of NMS migrants into the latter two countries was a labour shortage particularly in labour-intensive, less-skilled occupations in agriculture, construction, food-processing and hospitality.

**Table 4** *Resident/work permits to EU 10 2004 (-2005)*

Country of destination	Type of data	Reference period	Number
Austria	Work permit	2004-2005 Jun	100,714
Belgium	Resident permit	2004-2005	28,326
Denmark	Residence permit	2004	4,911
Finland	Residence permit	2004	1,651
France	Work permit	2004	9,916
Germany	Work permit	2004 May-2005 Sep	500,633
Greece	Residence permit	2004	3,711
Ireland	PPS numbers	2004 May-2005 Nov	160,583
Italy	Work authorisation	2004-2005 Sep	75,778
Netherlands	Work permit	2004-2005	39,036
Portugal	Residence permit	2004	43
Spain	Residence permit	2004	11,255
Sweden	Residence permit	2004 May-Dec	3,514
United Kingdom	Worker Regist. Scheme	2004 May-2005 Sep	290,695

*Source:* EU Commission (2006: 16), administrative data from member states. Figures for Austria, France, Germany and Italy refer to EU8 only. Note: as the figures refer to different data sources, they only allow for limited comparability. For instance, whereas EU10 nationals who receive a PPS number in Ireland or register with the Worker Registration Scheme in the UK have unlimited access to the labour market, migrants who enter Germany or Austria on a work permit only have

<sup>13</sup> The comparatively modest inflow into Sweden can be partially explained by the regulatory framework of the labour market, in particular the salience of collective agreements and, perhaps more importantly, 'general jobless growth' (Tamas/Münz 2006: 72).



temporary permission to stay, in most instances only for a few months. Nevertheless, the numbers give a good indication of which countries have been the main receiver of labour migration from the accession countries.

As both the British and Irish labour markets were able to absorb the additional labour, the available evidence suggests that unemployment among domestic workers has not, in any significant way, increased in the context of recent inward migration.<sup>14</sup> In both countries large-scale migration from the NMS has coincided with significant employment growth. While migrants account for a majority of the new jobs, the employment rate of the indigenous population has increased as well (Doyle et al., 2006; Gilpin et al. 2006; NESC 2006). However, there is some evidence to suggest that recent labour migration may have had a negative, albeit modest impact upon wage growth in low-skilled occupations where the majority of NMS migrants are located (Dustmann et al. 2007).

While there is little doubt that recent inward migration has benefited the British and Irish economy, this has been accompanied by incidents in which migrant workers have not been paid the prevalent rates and their employment rights have been violated. Anderson et al. (2006), for instance, found in one of the first studies of recent labour migration from CEE to Britain that migrants tend to work longer hours with relatively low earnings compared to the national average. Furthermore, only a minority reported to receiving non-wage benefits like paid holidays and sick leave. Particularly the spread of agency labour, and the use of migrant labour for such work, has been associated with a 'race to the bottom' where in some low-wage sectors, like food-processing and hospitality, agency workers often are on worse conditions than other workers (Hardy/Clarke 2005; O'Brien 2007a).<sup>15</sup> Thus, while the flexible British and Irish labour market facilitated the incorporation of a significant number of additional workers into the workforce,

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<sup>14</sup> Ruhs (2006), however, argues that more research is required to establish whether a modest increase in unemployment in Britain is linked to immigration since 2004. It should be noted at this stage that the very recent rise in unemployment in the context of the global financial crisis in 2008 is not considered in this thesis. There are few suggestions, however, that this increase is linked to recent immigration.

<sup>15</sup> Perhaps the most famous dispute involving agency labour was at Irish Ferries when the company decided to replace over five hundred of its staff with cheaper Eastern European agency workers (Flynn 2006).

concerns have arisen about the impact of inward migration on labour standards particularly in low-wage sectors.

As already mentioned, Germany and Austria were among the majority of EU15 states that imposed restrictions on the free movement of NMS workers. Both Germany and Austria, which share common borders with some of the accession countries, had been particularly outspoken in their demands for transitional arrangements. EU enlargement and in particular the free movement of labour was fairly unpopular in both countries. Opposition to the free movement of labour was not only justified on the grounds of geographical proximity and previous migration patterns but German and Austrian politicians argued that the labour market would not be able to cope with an unregulated inflow of migrant workers from the NMS countries (Jileva 2002: 694-695; Vaughan-Whitehead 2003: 435-436).

Nonetheless, in spite of the restrictions, Germany and Austria have attracted sizeable migratory flows from the accession countries post-enlargement. Indeed, in Germany, and to a lesser extent in Austria, migrants from CEE nowadays constitute the most prominent form of inward migration. The majority of people from NMS continue to enter Austria and Germany as part of temporary migrant workers programmes that remained largely unaffected by recent EU enlargement. Thus, by and large Germany and Austria have adopted policies towards NMS migrants that are 'restrictive in principle, but highly flexible in practice' (Tamas/Münz 2006: 122).

As there continues to be a demand for seasonal labour in particular, recent inward migration has been largely complementary to the domestic labour force in both countries. However, in the context of recent EU enlargement, both Germany and Austria have experienced an increase in posted NMS workers and bogus 'self-employment'. This has led to controversies about job displacement and wage dumping in sectors like the German meat industry where service providers from the NMS often pay their workers wages well below the local rates (Czommer/Worthmann 2005). Furthermore, whereas the open labour market policy in Britain and Ireland in 2004 provided an opportunity to illegal migrants

from the accession countries to regularise their status, transitional arrangements in Germany and Austria mean that irregular NMS workers continue to be a significant phenomenon in the labour market of the latter two countries (Tamas/Münz 2006).

Thus, in terms of intra-European migration there are different regimes of migrant incorporation into the labour market. As the UK and Ireland have operated an open labour market policy in 2004, it appears as if the ‘flexible’ labour market in LMEs possess a greater capacity to absorb additional labour from abroad, particularly at times of a buoyant economy as at the beginning of the twenty-first century. In turn, Germany and Austria have adopted a restrictive regime, suggesting that CMEs face greater difficulties in accommodating the inflow of migrant labour. Nevertheless, in spite of these different migration regimes, there are some similarities between the four countries. In all four countries there exist a demand for additional labour to fill labour-intensive, low-skilled jobs in particular that often are shunned by indigenous workers. Hence, NMS migrants are over-represented in sectors such as agriculture, food-processing, hospitality, construction and domestic services (NESC 2006; Tamas/Münz 2006).

#### ***2.1.4 Non-EU labour migration***

As already pointed out, whereas a free movement regime exists for EU citizens, in spite of transitional restrictions, the inflow of non-EU nationals remains heavily regulated. However, there is increasing recognition that Europe will continue to require inward migration from outside the European Economic Area (EEA)<sup>16</sup> not only for economic reasons but also for demographic reasons in light of an ageing EU population. At the European level, until recently, labour migration has been largely absent in attempts to forge a common EU migration and asylum policy (Geddes 2008: 212). However, with its 2005 ‘Policy Plan on Legal Migration’, the EU Commission has embarked on a new initiative to create a new framework for labour migration. Essentially, the plan proposes four EU directives covering different aspects of labour migration: highly skilled migrants, seasonal migrants,

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<sup>16</sup> Besides the EU countries, the EEA includes Iceland, Norway and Lichtenstein. In this thesis the terms ‘non-EU immigration’ and ‘non-EEA immigration’ are used interchangeably.

remunerated trainees and intra-corporate transferees (EU Commission 2005). Of these four, plans for a directive on highly qualified migrants, the so-called Blue Card, are at the most advanced stage (Guild 2007).

The aim of these directives is to facilitate temporary and circular migration. As such the proposal is indicative of certain developments at national levels that have seen a resurgence of temporary migrant worker programmes (TMWPs) that first emerged across Europe throughout the 1990s. TMWPs aim to meet the demand for additional labour, both skilled and less-skilled, while at the same time trying to prevent the settlement of migrants in light of significant opposition to new immigration. Although TMWPs are not on the same scale as earlier 'guestworker' programmes, they share some similarities with these programmes, notably an emphasis on the temporary stay of migrants (Castles 2006; Martin et al. 2006).

All four case countries have TMWPs in place, usually a number of smaller schemes than one large-scale programme as during the 'guestworker' era (Martin et al. 2006: 103). Germany concluded bilateral agreements with a number of CEE countries in the 1990s to channel the rising migration flows into a more organised system. These include programmes for seasonal labour, mainly for the agricultural sector, and project-tied programmes (*Werkverträge*) which mainly cover the construction sector (Rudolph 1996). In Austria the temporary employment of migrants is regulated by annual quotas which are set by the Ministry of Economic Affairs and Labour and cover employment sectors such as tourism, hospitality and agriculture (Tamas/Münz 2006: 115).

Britain has operated a new work permit system since the 1990s which mainly targets skilled migrants, and, to a lesser extent, lower-skilled migrants. Whereas the rights of the former were relatively advanced and included the right to family reunion and permanent residency after a number of years, the rights of the latter were much more restricted and precluded the right to permanent residency. TMWPs targeting the low-wage sectors included the Sector-Based Scheme which mainly covered hospitality and food-processing as well as the Seasonal Agricultural Worker Scheme (Salt/Millar 2006). Similarly, Ireland, since turning into a country of immigration, operated a two-tier employment permit system to

attract migrant labour from outside the EU. While work permits were mainly issued for less-skilled occupations particularly in the service sector, the Work Visa and Work Authorisation scheme was intended to be Ireland's 'skilled and highly skilled migrant worker programme' (in IOM, 2006: 31; see also Ruhs 2005).

Recently, both Britain and Ireland significantly overhauled their economic migration regulations with the introduction of a points-based system in Britain and a Green Card scheme in Ireland. Both schemes are deliberately aimed at attracting high-skilled migrants, while at the same time curtailing the inflow of low-skilled non-EEA migrants. This new 'managed migration' approach is linked to the decision of the two countries to open their labour market at the time of EU enlargement in 2004. Since then, the expectation among both governments is that future non-EEA immigration should be mainly of the high-skilled variety, whereas demand for less-skilled jobs should be met by migrants from within the enlarged EU (NESC 2006; Ruhs 2006).

Similarly, both Germany and Austria increasingly try to meet the demand for less-skilled labour from the NMS, without allowing for the free movement of labour. Moreover, in Germany, a new immigration policy was enacted with the Immigration Act in 2004. Although it maintains the recruitment ban for lesser-skilled migrants, for the first time it allows for the permanent immigration of certain categories of highly skilled migrants (Zimmermann et al. 2007). In turn, similar channels for the permanent immigration of the highly skilled are not in operation in Austria. Although highly qualified workers are entitled to bring in their spouses, the inflow of the former remains regulated by annual quotas, which have been criticised for being too restrictive (Biffl 2007: 10). In that regard Austria is somewhat of an exception as by and large the conditions for highly skilled non-EU/EEA migrants have become more relaxed in other EU countries (Boswell 2003).

Thus, whereas in quantitative terms, intra-European migration constitutes the most important form of contemporary labour migration, non-EU immigration continues to play a prominent role. This is further evidenced by EU Commission

plans to initiate new TMWPs for non-EU migrants at all skill levels. Hence, there is little doubt that both intra and extra-European migration will remain an essential part of contemporary processes of European integration and globalisation. However, there are some reasons to believe that contemporary migratory movements exhibit some characteristics that set them apart from earlier movements of people.

### ***2.1.5 Temporary, circular and transnational migration***

As migration is triggered less by a lack of development, but more by development itself, the internationalisation of production generated new migratory movements by incorporating formerly underdeveloped countries into a global economy (Massey/Taylor 2004; Sassen 1988). As with earlier periods of globalisation, the flows of capital, goods, services and information are accompanied by more people crossing borders.<sup>17</sup> Not only has the number of people on the move increased, but migration has also become more dispersed in that many receiving countries are host to migrants from a wide range of countries of what has been called the ‘globalization of migration’ (Castles/Miller 2003: 7).

There has not only been a quantitative increase in the number of people moving, but current forms of migration have also changed qualitatively. Facilitated by new forms of communication and cheaper travel opportunities, people are migrating to destinations further afield. Moreover, migration has assumed a more temporary character in that many of today’s migrants do not settle down in their host country, but often stay only for a limited period of time before returning to their country of origin or moving elsewhere. This new mobility has been characterised as ‘transnational migration’ (Pries 2003) in which migrants do not confine their allegiance to just one nation-state and frequently cross borders often in search for work.

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<sup>17</sup> Massey and Taylor maintain that a rise in the volume of migration after the end of the Cold War 1989 resembles earlier periods of migration particularly during the first wave of globalisation that preceded the outbreak of World War One (Massey/Taylor 2004: 373-374).

More transient forms of migration can be observed particularly in relation to East-West migration, even predating recent EU enlargement (Wallace/Stola 2001). As migration is often linked to some broader structural changes, the collapse of the Eastern bloc and the transformation of the former state socialist state countries into market economies virtually over night generated new migratory movements towards the West (Massey/Taylor 2004: 378-379). While in the immediate aftermath of the collapse of state socialism and the ensuing political turmoil many migrants arrived as asylum-seekers in Western Europe, since the mid-1990s East-West migration mainly takes the form of labour migration (Favell/Hansen 2002).<sup>18</sup> Particularly the accession of ten countries from CEE to the EU in 2004 has created a new dynamic of labour migration in Europe (Tamas/Münz 2006, Fihel et al. 2006).

In some important aspects, East-West migration resembles earlier labour migration from Mediterranean countries and former colonies during the period of post-war immigration. Then, as now, there was a significant income gap between sending and destination countries and migrants were over-represented in labour-intensive, low-paid jobs (NESC 2006: 75). However, while many migrant workers who arrived during the ‘guestworker’ era permanently settled down in the host society; current forms of intra-European migration appear to be more transient in character. Facilitated by geographical proximity and the possibility to frequently cross borders,<sup>19</sup> the inflow of people from CEE has adopted a more temporary and circular character in that many migrants do not settle down, but often stay only for a limited period of time. This has led to the emergence of ‘transnational social spaces’ (Pries 2003: 445) particularly in regions like Berlin-West Poland and Vienna-Bratislava where migrants frequently cross borders often in search for work. Some have even argued that this form of movement is better characterised as mobility rather than as migration (Wallace 2002). While Britain and Ireland do not share the same geographical proximity to the accession countries as Germany and Austria, recent inflows into the former two countries has shown a more

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<sup>18</sup> East-West labour migration is not confined to Western Europe. Some traditional emigration countries like Poland and Hungary transformed into immigration countries themselves throughout the 1990s as they became major destinations for migrants from countries further to the East such as Ukraine (Wallace/Stola 2001).

<sup>19</sup> One of the reasons why many migrants during the ‘guestworker’ era settled down in their host country is that if they would have left after the end of the official recruitment policies in the 1970s, they would not have been allowed to enter again as labour migrants (Martin et al. 2006: 19).

transient character too, facilitated in no small part by new and comparatively cheap travel opportunities, in particular air travel (IPPR 2008).<sup>20</sup> This trend towards more temporary migration also reflects the exigencies of a European labour market that is increasingly in demand for flexible and casual workers.

### ***2.1.6 Subcontracting, precarious work and the informal economy***

As already mentioned, the process of economic restructuring entailed a shift from Fordist industrial mass production towards post-Fordist ‘flexible specialisation’ (Piore/Sabel 1984). This led to the emergence of smaller, more flexible firms that increasingly require casual labour on a temporary basis in accordance with fluctuating demand. To fill these demands firms often rely on migrant workers, both legal and illegal, as the latter are easier to ‘hire and fire’ than native workers who often enjoy strong employment rights. This may explain why even in countries with comparatively high unemployment among indigenous workers there is a continuous demand for migrants, as the former are not competing with the latter for the same kind of jobs. This confirms the assumptions of the dual labour market theory (Wallace 2001: 54-55).

As previously discussed, one of the distinctive features of globalisation is an increase in non-standardised forms of work, facilitated in part by the deregulation of labour markets and the weakening of trade unions. Such ‘atypical’ work can include casual, part-time and temporary employment (including agency work), various forms of self-employment and multiple jobs (Anderson 2007: 3). This spread of ‘atypical’ jobs has been accompanied by an increase in precarious work (Rodgers/Rodgers 1989). Such work can be defined as involving ‘instability, lack of protection, insecurity and social and economic vulnerability’ whereby ‘[i]t is some combination of these factors which identifies precarious jobs’ (Rodgers 1989: 3). These jobs are often linked to the spread of subcontracting and agency labour, forms of work which are ‘archetypically precarious’ (Anderson 2007: 18).

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<sup>20</sup> For instance, by December 2007 there were flights from ten Polish airports to twenty-two destinations in Britain, with passenger numbers between these destinations reaching almost 385,000 in that month (IPPR 2008: 6).



Subcontracting is particularly widespread in sectors such as construction, hospitality and cleaning services where it has become an ‘ideal mechanism for the regulation of unregulated work’ (Cross 1998: 246). The spread of such subcontracting arrangements is linked to the deregulation of the economy and a new institutional framework for *temporary* labour migration which includes the ‘posting’ of workers as part of the EU freedom of services established under the EU Treaty of 1992. What set this temporary migration apart from previous labour migration is that the employment of these posted workers is in part no longer regulated by the labour and social welfare law of the host country, but instead by the country of origin of the service provider. As such it signalled a ‘paradigm change in the employment of foreigners’ (Dreher 2003: 25).

While in the past migrants were usually directly employed by the company for which they worked and paid in accordance with existing collective agreements, albeit at the lower end, posted workers ceased to be integrated into the workforce on an equal par with domestic workers. This adversely affected labour standards in the construction sector in high-wage countries such as Germany where employers throughout the 1990s increasingly preferred posted workers from other EU member states as well as contract workers from Eastern Europe to more costly domestic workers (Dreher 2003; Hunger 2000). In contrast, a similar situation was averted in Austria as the social partners agreed that posted workers would be paid in accordance with established collective agreements. Hence, there was less of an incentive for individual employers to recruit migrants as part of the cross-border provision of services (Menz 2005).<sup>21</sup>

Similarly, countries like Britain and Ireland have not been greatly affected by posted workers in the past. Indeed, both countries were more likely to be sending, rather than receiving countries of posted workers (EIRO 2003a). However, in recent years both countries have experienced an increase in agency labour in the context of inward migration from the new EU member states. As with posted workers, agency workers are not directly employed by the employer for whom they work and often are subject to worse conditions than other employees (Wills 2006; Ruhs et al. 2006). While the posting of workers and subcontracting

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<sup>21</sup> For instance, in 1995 there were over 130,000 posted workers on German building sites while it is estimated that in the same year only ‘a few hundred’ worked in Austria (Menz 2005: 181).

arrangements are not in violation of legislation, they represent precarious forms of work (Anderson 2007).

Such precarious employment often takes place in a grey zone between the formal and informal economy. The latter can be defined as ‘the sum total of income-earning activities that are unregulated by legal codes in an environment where similar activities are regulated’ (Portes 1995: 29). While irregular economic activities are by no means confined to migrants, the latter tend to be over-represented in the most vulnerable positions of the informal economy. Undocumented migrants are particularly emblematic of precarious employment as for them flexibility, vulnerability and the absence of rights is the norm (Castles/Miller 2003: 182).

In the contemporary era of globalisation the number of undocumented migrants has increased considerably. Some like Martin et al. (2006: xii) go as far as to argue that ‘there are more unauthorized than legal foreign workers in most industrial countries’. This is partially a result of more restrictive policies across Europe that have closed off avenues for legal immigration into the EU (Hollifield 2004: 13). However, the presence of undocumented migrants is also a response to demands for a particular type of work in the informal economy of advanced industrial countries; as Massey and Taylor (2004: 385) argue: ‘If there were no demand for their services, immigrants, particularly those without documents, would not come, as they would have no means of supporting themselves at the destination’.

The growing number of migrant workers in the informal economy is facilitated by a new institutional framework of the global economy that ‘encourages casualisation’ (Sassen 1996: 590). Thus, most observers tend to agree that the high numbers of migrant workers in irregular employment is less the cause but rather more the effect of the ‘*informalization* of employment relations’ (Beck 2000: 50, see also Hjarnø 2003). Wilpert (1998), for instance, argues that major structural transformations in the 1980s (e.g., technological change, the deregulation of the economy and a concomitant rise in part-time and temporary employment) preceded the arrival of a significant number of Eastern European migrants to Germany in the early 1990s. Similarly, Reyneri (2001) argues that the

underground economy as part of national labour markets has a long tradition in Southern Europe, where less regularised work like agriculture is usually more pronounced than in Northern Europe, and where the demand for irregular work can act as a pull-factor for migration. However, while the presence of undocumented migrant workers is not the cause of the informalisation of the economy, it certainly reinforces a trend towards more casual and precarious employment relations.

Generally, it may be assumed that coordinated market economies are less prone to informal economic activities than liberal market economies because of stronger labour market regulations and the capacity to enforce labour standards (Freeman 2004: 954). However, as can be seen from Table 5, not only has the informal economy increased in all four countries since the 1970s, but there is also no clear difference between CMEs and LMEs. While with Austria a CME has the lowest informal sector, the size of the ‘shadow economy’ in Germany, is higher than the one in the ‘liberal’ UK and similar to the one in Ireland at the beginning of the twenty-first century. This is perhaps a counter-intuitive finding, given that Germany with its corporatist structures has long been considered as the antithesis to the large informal economies of southern Europe (Schierup et al. 2006: 153). However, relatively high non-wage labour costs in the form of social security contributions together with a rather rigid labour market can provide an incentive for employers and employees alike to resort to informal economic activities (Freeman/Ögelman 2000: 118-122; Nonnemann 2007: 17). Furthermore, and rather paradoxically, in Germany a trend towards informalisation has been reinforced in recent years by measures aiming to deregulate the labour market which has seen, among other things, an increase in subcontracting arrangements (Wilpert 1998).

**Table 5** *The size of the shadow economy in the four case countries (in % of GDP)*

	1970	1980	1995	2004/05
Austria	2	3	7	9
Germany	3	11	14	15
Ireland	4	8	16	14
UK	2	8	13	10

*Source:* Schneider (2000: 19; 2007: 20) (numbers have been rounded)

As mentioned earlier, irregular economic activities are by no means confined to migrants. However, migrants tend to be over-represented in the most vulnerable positions of the informal economy. In terms of ‘illegal’ migration, a distinction is often made between migrants who have a legal residence permit but are working illegally (asylum-seekers, foreign students), migrants who have entered the country legally but became ‘illegal’ after their work permits has expired or their application for asylum has been rejected, and migrants who entered the country illegally and who work illegally (Düvell 2006: 15-16). It is generally assumed that most migrants who engage in informal economic activities fall in the first two categories. This also appears to be the case in the four case countries.<sup>22</sup> Regarding their sectoral distribution, the available evidence suggests that ‘illegal’ migrants are over-represented in low-skilled, labour intensive sectors of the economy, particularly in hospitality, construction, home care and agriculture. Furthermore, as with other forms of migration, undocumented migrants are increasingly coming from a more diverse range of countries (IPPR 2006; NCPA 2005; Quinn/Hughes 2005; Sinn et al. 2005).

In terms of figures for irregular migrants, these naturally have to be considered with some caution as they are usually based on estimates. As can be seen from the estimates in Table 6, all four countries have substantial numbers of ‘illegal’ migrants. What becomes apparent again is that CMEs (Germany and Austria) do

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<sup>22</sup> Particularly in countries such as the UK and Ireland that do not share any land borders with other countries it seems highly improbable that many migrants enter the country illegally, except perhaps through the Common Travel Area that the two countries share with each other (Quinn/Hughes 2005).

not differ significantly from LMEs (UK and Ireland) with regard to the size of the estimated irregular migrant workforce. If anything, it seems that the ‘coordinated’ economies (Germany and Austria) seem to have more ‘illegals’ than ‘liberal economies’.

**Table 6** *Legal and illegal foreign population in the four case countries (2006)*

	Foreign population (000s)	Estimated illegal migrants (000s)
Austria	797	250
Germany	7,275	500-1,100
Ireland	419	15-50
UK	3,596	50-500

*Source:* Düvell (2006: 17), EUROSTAT: Labour Force Survey; IOM (2006: 20)

Thus, contemporary forms of labour migration, both regular and irregular, and from within and without the EU, are highly demand-driven. In spite of assumptions that contemporary ‘post-industrial’ societies would no longer have a need for less-skilled workers from abroad, there continues to be demand for migrants at all skill levels. While LMEs such as Britain and Ireland experienced particular labour shortages in recent years, there also continues to be a demand for migrant labour in CMEs. While migrants increasingly occupy top positions in business and finance, the majority of migrants continue to be located in rather less-skilled occupations. The latter are often precarious, poorly paid, and have a low level of unionisation. Therefore, the issue of migrant labour is one of the challenges that trade unions have to face in the contemporary ‘global age’.

## 2.2 Conclusion

This chapter has outlined the contemporary context of trade unionism and labour migration. Trade unions have so far struggled to adapt to global changes that have strengthened the position of capital *vis-à-vis* labour. On the one hand, they are

confronted by the ‘offshoring’ of parts of production as a result of economic globalisation (or the threat of it to keep wages down). On the other hand, the inflow of migrant labour into service industries which cannot be ‘offshored’ can fulfil a similar purpose of reducing wage costs. As contemporary migration is an essential part of the transnationalisation of labour markets, a ‘zero’ immigration policy is no longer a realistic policy option for unions. Hence, unions face the task of ensuring that the inflow of migrant labour does not undermine established labour standards. Traditionally, the main trade union demand has been ‘equal pay for equal work’. However, as a result of the deregulation of labour markets and the weakening of organised labour, unions increasingly struggle to defend the principle of equality of treatment. This is compounded by the spread of subcontracting arrangements and irregular employment which also represents a serious obstacle to the organising of migrants. Thus, contemporary labour migration poses many challenges to trade unions. In the next chapter I will discuss why there are reasons to believe that unions across Western Europe do not respond uniformly to these challenges.

### **3. Trade unions, migrant labour and ‘varieties of capitalism’**

After having discussed the changing context of labour migration in the previous chapter, I will now examine its implications for trade union policies. Before I will identify the particular challenges that contemporary labour migration pose to organised labour, I will outline the changing context in which trade unions operate at the beginning of the twenty-first century. This is necessary to understand why unions have so far encountered difficulties in adapting to contemporary processes of social change, including increased cross-border mobility. Across Europe, unions face similar challenges, including economic internationalisation, the rise in service sector employment, new forms of ‘atypical’ employment and the erosion of collective forms of activism. However, in spite of these same challenges, there are reasons to believe that union policy responses have not converged. This is in part linked to the different institutional framework in liberal and coordinated market economies that provide different incentives for unions to adapt to contemporary social change.

If unions in LMEs and CMEs respond differently to contemporary social change, then it is not implausible to assume that their responses to contemporary labour migration may differ too. In relation to this, the institutional position of unions and the structure of collective bargaining in particular appear to be of considerable importance. However, differences in the institutional framework alone are unlikely to explain all variance in union policies. In order to gain a more dynamic understanding of union policies on labour migration, other factors including the unemployment rate and the changing context of labour migration have to be considered as well. Although union policies are influenced by these ‘structural’ factors, they are not wholly determined by them as unions have some agency on how they frame issues such as immigration. It is therefore not one single explanatory factor that can account for possible differences in union policies. Instead union agency interact with other factors such as labour market factors, the institutional setting and the context of migration in shaping policy responses to immigration that sometimes can lead to variation within the same ‘varieties of capitalism’.

### 3.1 Trade unions and contemporary social change

Traditionally, the emergence of trade unionism as a political force was inextricably linked to the development of the modern nation-state in Europe (Lis et al. 1994). As part of this process distinctive national trade union movements have emerged. As pointed out by Sturmfels (1953): 'In the process of growing from small sectarian groups into large mass organisations, the labour movements were inevitably "nationalized". They took on the characteristics, and with them, the diversities of the nations in which they developed' (in Ebbinghaus/Visser 1994: 235). In spite of a tradition of international solidarity, unions have been able to make most efficient use of their power resources such as collective bargaining and industrial action at the national level. Particularly after World War Two, unions became institutionalised in national societies and were seen as legitimate social partners across Europe (Ebbinghaus/Visser 1994; Teague/Grahl 1992). Thus, unions have been most influential when their organisational borders were largely congruent with the borders of the market. However, the globalisation of production, trade and finance has provided capital with 'new exit options' (Hoffmann 2002b: 120) with profound implications on national industrial relations.

Globalisation, understood as a multi-faceted process of growing global interconnectedness facilitated by new information and communication technologies, refers first and foremost to the emergence of a global economy (Castells 2000). As a result of processes of economic internationalisation, the position of capital *vis-à-vis* labour has been strengthened. While multinational companies (MNCs) are increasingly organised as global production networks that show little regard for national boundaries, trade unions are still primarily organised at the national level. Attempts by unions to match the growing transnationalisation of capital have proven to be difficult in light of the diversity of European trade unionism and the persistence of national traditions. As Smith argues:

Despite the best efforts of international union organizations, responses from national unions with regard to transnational restructuring have remained predominantly national in character, which has meant that the companies



have been able to use the threat of relocation in order to achieve work flexibility and cost cutting (Smith 1999: 11).

European economic integration, itself as much a response to globalisation as an expression of it, has a particularly profound impact on national economic policies and industrial relations (Hyman 2006). The creation of the European Monetary Union (EMU) and the Stability and Growth Pact in particular have constrained the regulatory capacities of nation-states by imposing financial austerity on member states that effectively rule out macro-economic demand-management policies (Streeck 1998: 443). At the same time no re-regulatory framework has emerged at the European level that could facilitate 'market correction' in the same way as the post-World War Two Keynesian security state could (Streeck 1998: 452-454). As the process of European integration has been very much about market-building through the removal of barriers to free trade of what has been called 'negative integration', its political and social regulation, understood as 'positive integration' (Scharpf 1998) has been lagging behind.

Thus, European integration with its 'inbuilt bias to market liberalism' (Hyman 2001c: 290) has undoubtedly contributed to the weakening of national trade union movements for whom the nation-state remain the main frame of reference after a century or so of integration into national societies with distinctive traditions of welfare and industrial relations (Ebbinghaus/Visser 1994). As Erne (2008: 198) argues, '[t]his does not necessarily reflect nationalist attitudes but, rather, the capacity of labor to make deals with governments or national employers' organizations'. Similar mechanisms for concertation are largely absent at the European level. Whereas at the national level the state often had the role of an intermediary between capital and labour, there is no similar intermediary at European level. This puts organised labour in a more disadvantaged position as employers can play the game more sharply in the absence of supranational state structures (Penninx/Roosblad 2000: 208).

It is worth bearing in mind, though, that it is not only external developments commonly associated with globalisation that pose new challenges to trade unions but also processes of economic restructuring within nation-states. As part of these processes, the service sector has become the dominant employment sector in most

economically advanced countries (Castells 2000). This has important implications for trade unions. While in the past the main constituency of trade unions was the male blue-collar worker in industrial manufacturing, the decline of manufacturing and the 'tertiarization' of employment have eroded this core membership (Klausen 1999). However, an increase in service sector employment has not been matched by a similar level of unionisation. Although union density is not generally low across the service sector, with relatively high rates of unionisation in public services, unions have encountered particular difficulties in organising workers in private sector services. As Dølvik and Waddington (2002: 362) argue, 'the most striking bias in union membership today is the under-representation of private service employees, especially among the less skilled'.

One of the distinct features of service sector employment is a more heterogeneous workforce that increasingly includes female, youth and migrant labour. Furthermore, such employment is often associated with an increase in 'atypical' work including casual, part-time and temporary employment (Dølvik/Waddington 2002: 358). While these 'atypical' jobs are not necessarily of an insecure nature, as Doogan (2003: 19) cautions us against 'lumping together part-time and temporary work as a common experience of the periphery within a polarised workforce', these jobs are less conducive to traditional forms of trade unionism. As the level of unionisation tends to be correlated with plant size, the usually smaller workplaces in the service sector have proven to be more resistant to workplace-centred unionisation. The growing diversity of the workforce, as well as new types of work in conjunction with the spread of relatively small and dispersed workplaces, has made it more difficult for unions to develop a collective identity at work. As Klausen (1999: 261-262) argues, 'with sociological diversity comes also diversity of interests and often increased conflict over strategy, aims, and style of interest representation'.

Thus, there seems to be nearly universal agreement that trade unions increasingly face a hostile environment. Not only the bargaining position of trade unions has been weakened in the context of contemporary global change, but also their organisational capacity, as union membership is in decline in most Western European countries. Across Europe, unions are confronted by economic

internationalisation and the changing role of the nation-state, the rise of the service sector, new forms of ‘atypical’ employment and the erosion of collective forms of activism. However, in spite of these similar challenges there is so far little evidence to suggest that trade union policies have converged. This is in part linked to the institutional framework in different ‘varieties of capitalism’ as I will discuss now.

### **3.2 Varieties of capitalism, varieties of unionism**

One of the important insights of the sub-discipline of comparative political economy is that in spite of common challenges such as economic internationalisation there is so far little evidence to suggest that advanced capitalist economies have converged alongside a single adjustment path to globalisation (Amable 2003; Crouch/Streeck 1997; Hall/Soskice 2001; Hancké et al. 2007). In one particular influential account Hall and Soskice (2001) distinguish between liberal market economies (LMEs) and coordinated market economies (CMEs). At the core of this ‘varieties of capitalism (VoC) approach lies the assumption that domestic institutions, understood as ‘a set of rules, formal or informal, that actors generally follow, whether for normative, cognitive or material reasons’ (Hall/Soskice 2001: 9), condition the way countries adapt to contemporary social change. Whereas LMEs are more prone to deregulate the economy in response to globalisation, the institutional configuration in CMEs reinforces rather than undermines non-market coordination in response to global change (Hall/Soskice 2001; Hancké et al. 2007).<sup>23</sup>

To some extent, a distinction between LMEs and CMEs represent ideal types as there are important variations within each ‘variety of capitalism’ (Hay 2005). Further, Hall’s and Soskice’s explication of the VoC approach has been criticised for putting too much emphasis on institutional complementarities and equilibria which obscures (changing) power relations and a renegotiations of the institutions

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<sup>23</sup> The VoC approach distinguishes another type of economy sometimes labelled as ‘Mediterranean’, which includes countries such as Italy, Spain and France (Hall/Soskice 2001: 21).

of CMEs in particular (Coates 2005; Menz 2005; Thelen 2001). Indeed, the absence of any analysis of possible conflict between different actors, employers and employees in particular, is seen as a shortcoming of the work (Howell 2003). However, even critics of the ‘varieties’ approach acknowledge that ‘[t]he VoC perspective poses the right question and start from the correct premise – the institutional variation amongst capitalist economies’ (Hay 2005: 120).

It has to be acknowledged that the main focus of the ‘VoC’ approach is on the firm. Specifically, Hall and Soskice have identified five spheres in which firms in LMEs and CMEs have developed distinctive forms of coordination. These spheres include industrial relations, vocational training and education, corporate governance, inter-firm relations and the internal structure of the firm (Hall/Soskice 2001: 6-7). However, in spite of this ‘firm-centered political economy’ (Hall/Soskice 2001: 6), there are reasons to believe that the different institutional configuration in each ‘variety of capitalism’ has important implications for trade unions too.

Throughout the 1980s and 1990s, the dominant strategy in LMEs such the USA and the UK has been one of economic liberalisation and deregulation. As part of this process, the influence of unions declined as coordinated bargaining largely collapsed. Although British unions recovered some political influence since Labour gained power in 1997, the latter ‘has not shown much interest in restoring organized labor to its previous position in the political economy’ (Thelen 2001: 98). Ireland is classified as a LME too, as its commitment to a low corporation tax, the encouragement of foreign direct investment and the privatisation of former state enterprises places it ‘clearly in the “liberal” category’ (Hardiman 2004: 39). However, whereas in Britain the Thatcher government pursued an anti-union agenda with the more or less explicit aim of marginalising organised labour, Irish unions gained a say in the socio-economic decision-making process of the country when the social partnership era took off in the second half of the 1980s (O’Donnell/O’Reardon 2000). Although recent social pacts are quite different from previous pacts across Europe in the 1960s and 1970s in that wage growth is no longer linked to productivity growth but instead to a ‘new coupling of wages

and competitiveness' (Pochet/Fajertag 2000: 15), the Irish case suggests that even in LMEs there is scope for some form of concertation.

Whereas in countries such as Austria and Germany no new social pacts have been concluded throughout the 1990s, corporatist arrangements remain relatively strong. It should be acknowledged that as part of an adjustment process to contemporary global change, CMEs are 'in the midst of a fundamental renegotiation of the terms of coordination' (Thelen 2001: 73). However, although the balance of power between employers and organised labour has shifted in favour of the former, labour market institutions have proven resilient. Although trade unions have suffered a decline in membership in both countries, they remain in an institutionally entrenched position, particularly through their involvement in sector-wide collective bargaining and statutory works councils. In Austria, the strongly corporatist system of social partnership remains intact, in spite of the fact that it has lost some importance outside of the area of collective bargaining (Traxler 1998; Blaschke 2006). German unions have been under considerable pressure in recent years in light of a significant loss of membership and a more aggressive stance by employers who increasingly demand more flexibility in relation to plant-level bargaining. However, generally the collective bargaining institutions remain intact as '[b]usiness largely does not want to abandon existing labour market institutions, preferring instead to push for changes that make institutions work in their favour' (Hassel 2007: 255).

Thus, as the impact of globalisation and European integration is mediated through distinctive national industrial relations systems, there is so far little evidence of a convergence of European industrial relations (Rigby et al. 1999). There is little doubt that unions in most countries increasingly face a challenging environment, including a decline in membership density. However, in the light of different 'opportunity structures' (Frege/Kelly 2004b: 38) there is continuous variation in the way unions respond to contemporary challenges such as a decline in influence. For instance, whereas unions in LMEs increasingly emphasise the organising of new groups of employees as a revitalisation strategy, unions in CMEs are more inclined to pursue traditional channels such as social partnership and collective bargaining to stem a decline in influence (Behrens et al. 2003; Heery et al. 2000).

Thus, the different institutional configuration in each ‘variety of capitalism’ is of considerable importance in shaping union policy responses. At the same time, institutions should not be viewed as determining union policies. As unions are strategic actors, they have some agency, understood as ‘an actor’s or group’s ability to make purposeful choices’ (Alsop et al. 2006: 10). While these choices are constrained by institutions, unions nevertheless can choose from a limited range of available policy options to respond to contemporary challenges such as globalisation or membership decline. Thus, the institutional context interacts with union agency in shaping policy choices that can change over time (Frege/Kelly 2004b).

What are the implications of this for the analysis of union responses to labour migration? It is a reasonable assumption that if unions in LMEs and CMEs respond differently to contemporary challenges such as a decline in union density, their policy responses to contemporary labour migration may differ too. At the same time, the institutional context alone is unlikely to determine union attitudes towards additional labour from abroad. Other factors, including union agency are likely to be important too which holds for the possibility that union policies may not only vary alongside the LME/CME typology but also within the same ‘variety of capitalism’. Before I will identify those explanatory factors that are likely to influence union attitudes towards migration, I will first discuss the particular challenges that migrant labour pose to trade unions.

### **3.3 Trade unions and migrant labour**

Generally, trade unions in the industrialised world have an ambiguous relationship with migrant labour that can be situated ‘on a continuum ranging from exclusion to inclusion’ (Kahmann 2006: 186). While the labour movement has a tradition of international solidarity, established workforces have often displayed hostilities towards the inflow of new workers (Milkman 2006: 118-119; Patterson 1967: 240). The economic rationale for such exclusionist attitudes is to limit the number of workers which was traditionally regarded as the most efficient tool of organised labour to keep wages high as ‘this ensured an artificial scarcity of their specific

category of labour so that the “higgling of the market” operated in their favour’ (Hyman 2001a: 7). On the other hand, a surplus of workers on which employers can draw tends to have a depressing effect on wages. Furthermore, an untapped pool of non-unionised workers weakens the bargaining position of organised labour. Thus, it is often assumed that an inflow of migrant labour inevitably strengthen the position of employers *vis-à-vis* organised labour (Avci/McDonald 2000: 118-119; Goldthorpe 1984: 330; Kindleberger 1967).

The recruitment of workers from abroad adds not only to the quantitative supply of labour but also brings about qualitative changes in the workforce. Historically, employers frequently deployed immigrants as strike-breakers which undermined the possibility of effective industrial action (Milkman 2006: 118). As many immigrants are from countries with lower wages and living standards, they tend to be more willing to accept lower wages which in turn could undercut the wages of indigenous workers or lead to some displacement effects. Furthermore, as a result of labour migration the workforce becomes more fragmented due to language and cultural differences between native and migrant workers. These differences can be exacerbated by the hostile behaviour among sections of the domestic workforce towards the newcomers. This may lead to a situation in which migrant workers who often come from countries with no strong tradition of trade unionism may be even less inclined to join trade unions (Castles/Kosack 1973: 128).

### ***3.3.1 Trade unions and immigration post-World War Two***

When most Western European countries began to recruit foreign labour in the 1950s, trade unions were generally concerned about this move. Penninx and Roosblad (2000) have identified three dilemmas that unions had to face. First, they had to address the difficult question as to whether they should cooperate with employers and the authorities during the initial recruitment of foreign labour or should resist these attempts. As unions are embedded in particular national contexts, they tend to represent primarily the interests of their respective national membership. On the other hand, trade unions and the labour movement have a tradition of international solidarity which would have been contradicted had

unions openly resisted immigration. Secondly, after migrant workers had arrived, unions were confronted with the dilemma of inclusion or exclusion of those workers. Trade unions were always aware that migrant workers had to be organised in unions as any unorganised section of the workforce would undermine the negotiating position of organised labour. However, on the other hand the organisation of migrant workers may be seen as a threat by their own membership. Thirdly, trade unions had to choose either between an 'equal treatment' approach or a 'special treatment' approach towards migrant workers after they became members. While the former ignores material inequalities between native and migrant workers, the latter may evoke some protest among the indigenous membership (Penninx/Roosblad 2000: 4-12).

Whatever the reservations held by many unions, it became obvious that resisting the inflow of immigrants was not a viable option. During the 'golden age' of post-World War Two capitalism most Western European countries experienced an acute shortage of labour at times of near full employment. As indigenous workers had growing aspirations at times of rising educational and living standards, they were less willing to take up low-skilled menial jobs. Hence the import of additional labour became a necessity to sustain continuous economic growth (Kindleberger 1967). It is against this background that unions in most countries transformed their initial reservations towards labour migration into a position that if immigration takes place, it should not harm labour relations and employment standards. Hence, one of the core demands of unions was 'equal pay for equal work' to ensure that migrants do not represent a cheaper alternative to indigenous workers. In most countries unions succeeded with this demand, often in the form of legislation (Castles/Kosack 1973: 128; Wrench 2000a: 318).<sup>24</sup>

While unions were vocal in their demands for equal work and pay conditions for migrant workers, the organisation of migrant workers into unions was pursued less urgently in most countries. This is, according to Wrench (2000b: 135) 'where

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<sup>24</sup> In reality, however, immigrants usually worked in the lower, or lowest segments of the labour market with little prospect of upward mobility. Nonetheless, their social rights in the workplace were often more advanced than their political rights particularly in countries like Germany where the reformed *Betriebsverfassungsgesetz* (Works Constitutional Act) of 1972 enshrined the principle of equal treatment regardless of descent, religion, nationality or ethnic origin (Hunger 2001: 42).



the variable of racism enters the equation'. Migrant workers did not only enter a racialised labour market in which employers often recruited foreign workers on the basis of their supposed 'racial' characteristics (Miles/Brown 2003: 132-141), but trade unions, in particular in the early days of labour migration in the 1950s and 1960s, also reflected widespread racial prejudices (Castles/Kosack 1973; Wrench 1987; Phizacklea/Miles 1992). Nonetheless, unions aimed in principle to organise migrant workers into their ranks as 'formal exclusion was not in conformity with union ideology, nor union interest' (Penninx/Roosblad 2000: 207).

After unions had started to include migrant workers into their ranks, they had to face the dilemma of equal or special treatment for migrant workers. Generally, unions are somewhat suspicious of special policies for certain groups as they aim to organise workers regardless of nationality or ethnic belonging. As Cachón and Valles (2003: 472) argue, 'Unionists' traditional reference to class and worker internationalism has led to an organisational matrix which is loathe to incorporate considerations of ethnicity'. The following statement of a trade union official from Britain in 1966 is emblematic of this 'colour blind' approach: 'There are no differences between an immigrant worker and an English worker. We believe that all workers should have the same rights and don't require any different or special consideration' (in Wrench 2000b: 138). However, when it became apparent that many migrant workers were 'here to stay', most trade unions, over time, adopted some special policies in recognition of the particular circumstances that the former have to face. These policies included a stronger commitment to oppose racism and discrimination, as well as the provision of various forms of assistance and advice, including language support (ETUC 2003; Wrench 2004).

It is important, though, to stress that the extent to which these policies were pursued varied considerably across Europe. Whereas trade unions in some countries became one of the first institutions in the host society in which migrant workers could integrate into at a time when they were still excluded from full citizenship rights, other union movements pursued the integration of migrant workers less urgently (Cachón/Valles 2003; Vranken 1990; Wrench 2000a). However, as labour migration became permanent and 'guestworkers' transformed

into ethnic minorities, there has been a certain convergence in union attitudes insofar as trade unions increasingly aimed to recruit migrant workers as members and eventually also recognised the need for some special policies (Penninx/Roosblad 2000).

The official labour recruitment programmes came to a halt in 1973 at the time of the oil crisis and an ensuing economic recession. Notwithstanding expectations that the ‘guestworkers’ would return to their home countries, a sizeable section of them stayed, brought their families over and eventually settled down in the host countries (Castles/Miller 2003). Since the late 1980s there has been a surge again in migratory movements towards Western Europe. Not only South-North migration has increased but, particularly after 1989, East-West migration too. While in the immediate aftermath of the collapse of state socialism and the ensuing political turmoil many migrants arrived as asylum-seekers, since the mid-1990s intra-European migration mainly takes the form of labour migration (Favell/Hansen 2002; Wallace/Stola 2001). Since EU enlargement in 2004, East-West migration has further increased with a majority of labour migrants in Europe now originating from the new EU member states in Central and Eastern Europe (ECAS 2006). There are reasons to believe, however, that contemporary labour migration poses a particular challenge to trade unions.

### ***3.3.2 The contemporary challenges of labour migration***

#### **The Transnationalisation of labour markets and migration**

During the time of the ‘guestworker’ era the regulation of immigration was largely left to the respective nation-states in Europe. During this era the official recruitment programmes were often set up in cooperation between national governments and the social partners. As already mentioned, at that time unions agreed to the recruitment of foreign workers, provided that the latter would receive the same pay and working conditions. When an oil crisis followed by an economic recession brought the post-war boom to a halt, governments across Europe, with the support of trade unions, suspended the official recruitment

programmes (Penninx/Roosblad 2000).<sup>25</sup> Thus, in terms of immigration policies, as in other policy fields, the nation-state was, and remains, the main frame of reference for trade unions.

However, as a result of economic globalisation and the transnationalisation of labour markets, traditional forms of state sovereignty have been eroded. Although it would be misleading to assume that states have lost control in the area of immigration policy, their capacity to regulate the flow of people has diminished in some areas. This is particularly the case in relation to an intra-European migration regime where states have relinquished their right to control who is entering the country. Although states may be able to restrict access to their labour markets, as happened during EU enlargement in 2004 and 2007, these are only temporary measures which do not fundamentally alter the free movement regime. The free movement regime poses a considerable challenge to unions, particularly in an enlarged EU characterised by significant differences in living and wage standards.

Whereas a free movement regime exists for EU citizens, non-EU immigration remains heavily regulated not least through enhanced co-operation at the EU level (Geddes 2008). Nevertheless, as argued in chapter two there is little doubt that non-EU immigration will continue. The idea of 'Fortress Europe', promoted as much by its proponents as by its critics, is to some extent a myth in light of positive net migration flows since the late 1980s (Favell/Hansen 2002: 587). From this it follows that if the movement of people is an inextricable part of globalisation and European integration, than protectionist immigration policies become less of an option for unions. Indeed, such policies may even have the unintended consequence of fuelling the informal economy in light of continuous demand for additional labour (Avci/McDonald; Watts 2002). However, in light of the deregulation of labour markets and an increase in precarious forms of employment, unions increasingly struggle to achieve 'equal pay for equal work'.

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<sup>25</sup> Employers were less keen on the suspension of the recruitment programmes. Ever since its suspension some employer groups, particularly in hospitality and agriculture, demanded a resumption of these programmes (Castles/Miller 2003: 101).

## **Labour migration and challenges to ‘equal pay for equal work’**

Unions face the dilemma that for migrants, who often assess their situation on the basis of a ‘dual frame of reference’ (Waldinger/Lichter 2003: 40), relatively low pay in the destination country still appears as relatively high compared to their home country. Hence, the latter may be more prepared to ‘trade off’ (Anderson et al. 2006) harsh working conditions and infringements on their rights for short-term economic gains. This is, of course, not an entirely new development as labour migration was always fundamentally driven by inequality (Martin et al. 2006; Treichler 1998). However, during the ‘guestworker’ era, unions managed to ensure that the principle of ‘same pay for same work’ would apply in the context of labour migration. Although migrants usually occupied jobs at the bottom of the labour market, they were mainly paid in accordance with existing collective agreements (Lillie/Greer 2007: 555). However, as contemporary labour migrants tend to be over-represented in those sectors of the economy such as private services that have a weak union presence, or in other sectors such as construction and manufacturing where union density is in decline, unions face no small challenges to ensure that migrants become integrated in the workforce to the same terms and conditions as those that apply to domestic workers.

These difficulties have been compounded by an increase in the posting of workers and agency labour that has raised concerns about its impact on labour standards (Anderson et al. 2007; Hunger 2000). What is particularly problematic from a trade union perspective is that as a result of the spread of such subcontracting arrangements in some employment sectors (e.g., construction, hospitality and cleaning), a two-tiered workforce has emerged that runs counter to the trade union philosophy of ‘equal pay for equal work’ (Wills 2006). With the 1996 EU Posting of Workers Directive (PWD) a legal framework has been created that applies the principle of equal treatment to a core of employment standards. However, national peculiarities in industrial relations systems, weak compliance by some employers and a free market discourse that increasingly subordinates the PWD to the freedom of services in an enlarged EU have so far prevented its effective implementation (Cremers et al. 2007).

Particularly since EU enlargement controversies about the provision of services and the ‘host country’ principle, an essential part of the PWD, have increased as companies from the NMS make use of their ‘comparative advantage’, that is lower labour costs, when providing their services in other EU countries (Woolfson/Sommers 2006). In this regard, unions in Western Europe face the additional dilemma that sometimes their counterparts in the NMS are prepared to enter into agreements with employers to provide labour in the ‘old’ member states below the prevalent local rates (Donaghy/Teague 2006: 663). Most recently, in a number of controversial cases involving service providers from the NMS (‘Laval’, ‘Viking’, ‘Rüffert’ and ‘Luxembourg’) the European Court of Justice ruled that industrial action and the insistence on collective agreements constitute a restriction on the freedom to provide services. These rulings have caused considerable concern among the European trade union movement (ETUC 2008).

As already mentioned, the spread of subcontracting arrangements is sometimes linked to the informal economy and undocumented migrants. The growing number of migrants in irregular employment takes place in the context of the growing informalisation of the economy. However, it is also a result of the weakening of organised labour as illegal migrant employment was rare in the past in sectors, industries and firms with a high union density (Castles/Miller 2003: 182).<sup>26</sup> Thus, the spread of subcontracting arrangements and the growth of the informal economy are not only a result of the weakening of organised labour, but they also reinforce a trend towards deunionisation.

### **The organisation of migrant labour**

During the post-war period of labour migration, migrant employment was widespread in manufacturing sectors like the automobile industry that were heavily regulated and had a high level of union density (Castles/Miller 2003: chapt. 8). At that time, after some initial hesitation, unions in most countries made

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<sup>26</sup> This also becomes apparent when we look at countries such as Sweden and Denmark which have a comparatively small number of irregular migrants. In these countries the salience of collective agreements and the strong labour market role of trade unions and employer associations have so far prevented the spread of irregular migrant labour (Hjarno 2003, see also Freeman/Ögelman 2000).

some efforts to recruit migrants into membership and the latter joined unions in greater numbers. The organisation of migrant workers, however, was not necessarily an indicator for inclusive union policies. Although in Austria, for instance, union membership of immigrants was relatively high, they were largely consigned to a rather passive form of membership with unions making little effort to adequately represent the interests of their foreign members (Gächter 2000).

Thus, the available evidence suggests that during the ‘guestworker’ era the level of unionisation among immigrants did not differ significantly from the one of the majority population in Austria, Britain and Germany.<sup>27</sup> As former ‘guestworkers’ and post-colonial migrants settled down and transformed into ethnic minorities, they began to join trade unions in rising numbers. This has been facilitated by the fact that migrant workers were over-represented in those industries where union density was high, particularly in industrial manufacturing. Therefore, the experience from the period of post-war labour migration would suggest that immigrants are quite willing to join trade unions, particularly if they see their stay as long-term and work in employment sectors that already have a significant union presence. However, these conditions are not necessarily in place anymore.

In the context of economic restructuring, labour migration has assumed more of a ‘postindustrial form’ (Held et al. 1999: 304) as migrants are increasingly located in private service industries. As already pointed out, union density in these sectors is traditionally weak and unions have so far found it difficult to organise an increasingly heterogeneous workforce which includes the young, women, and increasingly migrants (Dølvik/Waddington 2002: 358). Furthermore, migration assumes more of a temporary and circular character which makes it more difficult for unions to organise migrants. Often the organisation of migrants is a question of time. Many migrants only become a member of trade unions if they are committed to a longer stay in their host country, as was the case during the

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<sup>27</sup> Up until the 1990s foreign workers had a union density of 34 per cent, broadly reflecting the average union density in Germany at that time (Kühne 2000: 55). In Britain some ethnic groups like Afro-Caribbeans (44 per cent) and Indians (38 per cent) had a higher union density than white employees (35 per cent), while some other groups like Pakistani (33 per cent) and African-Asian employees (28 per cent) had a slightly lower rate than the white majority population (Wrench 2000b: 137). In Austria, in spite of the rather protectionist policies by unions, foreign workers had a union density of 56 per cent in the 1980s, again broadly reflecting general levels of union membership (Gächter 2000: 76).

‘guestworker’ era when subsequently migrant workers joined trade unions in greater numbers (Penninx/Roosblad 2000: 194-195). However, a temporary stay in conjunction with a certain vulnerability of migrants may seriously diminish the possibility of trade union organisation. This is succinctly summarised by Schmidt (2006: 194):

[O]rganizing temporary migrants is not always an easy task since there is a high turnover of workers given that the workers are only in their host country temporarily. By the time workers are organized and integrated, they might already have to leave the country. They often do not know the language in the country of their temporary residence and may live in isolated settings near their workplace rather than in towns or cities where the unions are more visible. As a number of workers depend on obtaining a temporary job abroad each season, they might be afraid that they will be sacked or not be selected the following year if their employers find out that they are unionized or if they are seen to be active in unions.

In particular subcontracting arrangements like agency labour and the posting of workers may seriously diminish the possibility of collective action at work (Heery 2004). While in the past migrants were usually directly employed by the firm for which they worked, many migrants nowadays are employed and managed by a separate contracting company and tend to have a high staff turnover. As pointed out, such subcontracting arrangements have led to the emergence of a two-tiered workforce in some employment sectors such as construction and hospitality. According to Wills (2006: 6-7), subcontracting has

a devastating impact on trade union organisation. When a company directly employs the staff on whom they depend, there is the potential to negotiate over matters of work...But in relationships of subcontracted capitalism, those with real power over the contracting process – the ultimate employers of all those involved in any particular supply chain or business operation – are generally not accessible to the workers doing the work...Market forces as exercised through subcontracted employment have thus had a powerfully disciplining impact on workers, eroding the space for trade union organisation.

Thus, contemporary labour migration poses considerable challenges to trade unions, including an increase in intra- and extra European migration, the spread of subcontracting arrangements and the informal economy as well as the task of organising migrants. How, then, do unions respond to these challenges?

### ***3.3.3 Trade union responses to ‘new’ immigration***

It is often assumed that unions would be opposed to new labour migration as increased unemployment became a feature of many Western European countries since the 1970s. Penninx and Roosblad (2000: 189), for instance, argue that in light of an ensuing economic crisis an ‘alliance between governments and trade unions in favour of restrictive immigration policies since the mid-1970s seems to be a natural one’. However, some writers have recently challenged this ‘conventional wisdom’ (Watts 2002: 1) by arguing that in the contemporary era of globalisation and the transnationalisation of labour markets, unions are not necessarily predisposed towards restrictionism. As unions acknowledge that the movement of people is an inextricable part of the ‘global age’, they increasingly view restrictive migration policies as neither desirable nor feasible (Avci/McDonald 2000; Haus 2002; Watts 2002).

As unions are ‘value-rational organizations’ (Frege et al. 2004: 143), they are in part driven by ideological convictions that are open to change. Therefore, Haus (2002), for instance, argues that more inclusive policies towards immigrants are linked not only to processes of economic globalisation but also to the internationalisation of human rights. The latter have led unions to show ‘greater normative concern for the rights of migrants in their role as human beings than did their counterparts in the early twentieth century’ (Haus 2002: 37). These concerns for the rights of immigrants are not necessarily confined to migrants ‘at work’ as some trade unions have been increasingly critical of aspects of restrictive government policies on asylum-seekers as well (Kühne 2000: 53). Overall, unions have become more receptive to issues of racial discrimination which has led many trade union movements in Europe adopting policies on anti-racism and discrimination (Avci/McDonald 2000; ETUC 2003).<sup>28</sup>

However, it is not only ideational change within trade unionism that has led them to reconsider their immigration preferences. As trade unions are reflective actors who aim to pursue the best interests of their members, they have to make

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<sup>28</sup> However, Jeffery and Ouali (2007) point out that there is often a gap between these policies agreed on at the national level and the often only half-hearted implementation of them at the workplace level.



‘strategic choices’ (Kochan et al. 1986) to new challenges. This is why unions in some countries no longer believe that their interests are best served by restrictive immigration policies. Particularly in countries such as Italy and Spain which have a large informal economy, union officials increasingly view restrictive immigration policies as counter-productive as such policies could channel even more migrants into the informal economy (Watts 2002). This would have negative consequences not only for irregular migrants who often are in a particularly vulnerable situation, but also for indigenous workers as the growth of the informal economy undermines established labour standards.

Restrictive immigration policies which may channel migrants into the informal economy may not only negatively affect the terms and conditions of employment but may be also detrimental to the aim of organising migrants (Avci/McDonald 2000). As unions face the decline of their traditional core membership, they increasingly aim to organise new sections of the workforce that have not featured as prominently on the radar of the labour movement in the past. The organisation of workers in ‘atypical’ employment would not only increase union membership but would also contribute to the protection of the employment conditions of existing union members who may be threatened by the spread of precarious employment relationships (Heery/Abbott 2000). Among those groups of workers that tend to be over-represented in ‘atypical’ employment migrant workers feature quite prominently.

To make greater inroads into migrant communities, several writers have suggested that unions have to come up with new ways of organising. As migrants are over-represented in low-paid, non-standard forms of work such as agriculture, domestic work and hospitality, traditional forms of workplace-centred organisation by unions appear to be less suitable (Fine 2005; Heery/Abbott 2000; Holgate 2005). Instead an organising approach that goes beyond the individual workplace and focuses on occupations across the low-paid, low-skilled sector may be more promising. Such a form of ‘community unionism’ is not confined to work-related activities but also involves some extra-workplace activity such as linking up with migrant communities in an effort to reach out beyond traditional trade union constituencies. By pursuing a broader agenda that besides work-related issues also

includes other issues such as housing and education the ultimate aim is to ‘recast labour as a community wide movement’ (Wills 2001: 466; see also Fine 2005).

Thus, unions are in their greater emphasis on the organisation of migrant workers not only driven by normative concerns but also by self-interest: the organisation of migrant workers could stop a decline in union membership and offers protection against the further erosion of employment and labour standards. Previous assumptions about the ‘unorganisability’ of migrants have given way to the view that if unions adjust their organising campaigns to the needs of migrant workers, such campaigns can be quite successful (Avci/McDonald 2000; Bronfenbrenner et al. 1998; Haus 2002; Milkman 2006; Watts 2002).

These studies offer some important insights into why trade unions have changed their immigration preferences in light of globalisation and the transnationalisation of labour markets. This research, however, is mainly confined to the USA, France, Italy and Spain. While the former two are among those industrialised countries with the lowest level of trade union density, the latter two only have a recent history of immigration with a majority of migrants working in the informal economy. These distinctive characteristics somewhat limit the generalisability of the argument about changed immigration policies of unions. It is therefore necessary to extend the research to other countries as well (Haus 2002: 159-160).

To further explore if union attitudes to immigration have changed in the contemporary era of globalisation and European integration, this thesis examines trade union responses to contemporary migrant labour in four Western European countries, Austria, Germany, Ireland and the UK. Specifically, it compares their policy responses to the challenges of intra and extra-European migration, the spread of subcontracting arrangements and the informal economy as well as to the issue of organising migrants. With the UK and Ireland on the one hand and Germany and Austria on the other, two pairs of countries have been selected that are classified as liberal market economies and coordinated market economies. Therefore this thesis examines whether unions in LMEs respond differently to the contemporary challenges of labour migration than unions in CMEs, and if so, how can possible differences be accounted for?

### **3.4 Explaining the variation of union policies**

Whereas the comparison of union policy responses towards the contemporary challenges of labour migration is a relatively straightforward exercise, to account for possible variation in union responses is a more challenging exercise (Penninx/Roosblad 2000). Nevertheless, a number of explanatory factors can be identified in influencing union attitudes towards migrant labour. As argued earlier, it is likely that the different institutional configuration in each ‘variety of capitalism’ impacts upon union policies on migrant labour. However, it is unlikely that the institutional context alone can account for the variation in union policies. Other factors including labour market factors and the context of labour migration have to be considered as well. Finally, as unions are strategic actors, they have some agency on how they frame issues such as immigration. I will now discuss how these four explanatory factors are connected to the case countries.

#### ***3.4.1 Institutional position and the structure of collective bargaining***

One of the important insights of the VoC approach is to turn our attention to the industrial relations institutions (Thelen 2001). What is of particular importance is the structure of collective bargaining as it provides different incentives for trade union movements to adapt to contemporary social change (Clegg 1976; Heery/Adler 2004). It is not unreasonable to assume that unions which remain in an institutionally entrenched position are less likely to question traditional union strategies towards migrant workers than union movements whose influence has been more eroded. Moreover, in countries that have a widespread coverage of collective bargaining, unions may have particular concerns about the impact of migrant labour on wage agreements.

Whereas employers in CMEs are more likely to be organised in employer associations that tend to be quite supportive of collective bargaining with unions, employers in LMEs tend to be more fragmented, and less inclined to engage in collective bargaining with unions (Thelen 2001). Particularly in Britain the deregulation of labour markets has been accompanied by a collapse of traditional

forms of collective bargaining and a decline in the influence of the labour movement as a result of almost twenty years of anti-union policies by Conservative governments. Although New Labour has shown itself to be more amenable to trade unions, it has shown little willingness to restore the bargaining power of the latter (Thelen 2001: 94-98).

Although Ireland shares with Britain a tradition of industrial relations that is based on the principle of voluntarism, unions in the former remain in a more institutionally entrenched position through their involvement in the social partnership process (Donaghy/Teague 2007). Hence, collective bargaining coverage is likely to be more widespread than in Britain as company-level bargaining is complemented by national wage agreements. It is important, though, to stress, that national wage agreements which are negotiated as part of the social partnership are not legally binding in light of the voluntarist tradition of industrial relations (EIRO 2007a).

In contrast to LMEs, issues such as union recognition and co-determination rights are put on a statutory footing in CMEs such as Germany and Austria (Ferner/Hyman 1998). Particularly in Austria, and to a lesser extent in Germany, coordination mechanisms in the area of industrial relations remain relatively strong. In particular the system of industry-wide collective bargaining remains largely intact, in spite of a 'loosening of wage coordination' (Hall 2007: 69) in Germany. Although the balance of power between employers and trade unions has shifted in favour of the former who increasingly insist on more flexibility in the regulation of the labour market and in collective bargaining, business, by and large, remains committed to the existing labour market institutions (Hassel 2007). Thus, although unions have been similarly affected by membership losses, and, particularly in Germany, have suffered a decline in political influence, they remain in an institutionally more entrenched position. This becomes visible not least in more widespread coverage of collective bargaining which continues to cover a majority of employees in Germany and Austria (Table 7).

**Table 7** *Labour relations in the four case countries*

	Trade union density (%)		Collective bargaining coverage (%)	
	1980	2000	1980	2000
Austria	57	37	95	95
Germany	35	25	80	68
Ireland	57	38	NA	NA
UK	51	31	70	30

*Source:* Ailinger/Guger (2006: 140-141); there are no reliable figures available for bargaining coverage in Ireland, estimates vary from 40 to 66 per cent (EIRO 2004a; EIRO 2007a).

Thus, there is little doubt that unions in LMEs such as Britain have been significantly weakened by the deregulation of the economy and labour relations. In turn, a similar trend towards deregulation is not observable in CMEs where in countries such as Germany and Austria traditional bargaining institutions have proven resilient, in spite of a trend towards more flexibility recently. As differences in the institutional framework of the economy persist, there is some evidence to suggest that unions in each ‘variety of capitalism’ respond differently to contemporary social change (Frege/Kelly 2004a). What is of particular interest to this study is to what extent the different institutional configuration in each ‘variety of capitalism’ impacts upon trade union responses towards migrant labour.

However, it is unlikely that the different institutional configuration in each ‘variety of capitalism’ alone could account for possible variation in union policies. A sole focus on the institutional context would not be able to capture changes in union policies over time (Penninx/Roosblad 2000). To gain a more dynamic understanding of union policies on labour migration, additional factors such as the labour market and migration context have to be taken into account. Further, as unions are strategic actors, the possibility of independent union action has to be considered as well.

### 3.4.2 Labour market factors

One additional factor that is likely to influence union attitudes towards additional labour is the macro-economic context in each country and the level of unemployment in particular. In particular it seems likely that in times of high unemployment unions might be less inclined to accept additional labour from abroad. Conversely, unions might be more willing to agree to labour migration at times of low employment in conjunction with labour shortages.

Although it has been argued that open economies alongside the Anglo-American model might be better equipped to adapt to economic globalisation (Crouch/Streeck 1997), there is no systematic variation observable between LMEs and CMEs regarding their macro-economic performance in recent decades (Hall/Soskice 2001: 21). This seems to be borne out by the four case countries (Table 8). With Ireland, a LME performed best as regards both economic growth and a significant decline in unemployment in recent years. However, with Austria a CME performed reasonably well too, reaching similar economic growth levels as the UK, with even lower unemployment than the latter. Germany, on the other hand, is somewhat lagging behind the other three countries, particularly in terms of unemployment.

**Table 8** *Macro-economic indicators in the four case countries*

	<i>Unemployment rate in %</i>				<i>Real GDP growth rate in %</i>			
	1995	2000	2006	Average	1995	2000	2006	Average
				1995-2006				1995-2006
Austria	3.9	3.6	4.7	4.2	1.9	3.7	3.4	2.4
Germany	8	7.5	9.8	8.9	1.9	3.2	2.9	1.5
Ireland	12.3	4.2	4.4	6.5	9.6	9.4	5.7	7.6
UK	8.5	5.3	5.3	5.9	2.9	3.8	2.9	2.8

*Source:* EUROSTAT (Structural indicators, own calculations)

### ***3.4.3 The context of labour migration***

When examining union attitudes on immigration, the particular context in which migrant workers enter the labour market of the host country is likely to be another explanatory factor. What is of paramount importance for unions is that migrants do not undermine the established terms and conditions of employment. In other words, are migrants complementary to the indigenous workforce and are employed in accordance with the prevalent employment conditions in the host country or is there evidence of ‘social dumping’ and a displacement effect (Donaghy/Teague 2006; Kahmann 2006)? Should the latter occur, unions are more likely to object to future labour migration.

As already pointed out in chapter two, in terms of the overall immigrant population, there are no significant differences recognisable between the four case countries. However, in recent years LMEs such as Britain and Ireland experienced a higher inflow of migrant workers than CMEs such as Germany and Austria. In 2006, the UK experienced net migration (immigration minus emigration) of 316,100 whereas net migration in Ireland was 71,800. In comparison, in the same year net migration into Germany (74,700) and Austria (32,500) was significantly lower in relation to the population size of the latter two countries (CSO 2008: 4; OECD 2008: 228, 245, 287). This appears to be linked to a greater demand for additional labour in the former two countries where expanding service sector employment in conjunction with a building boom has led to considerable skill and labour shortages in recent years (NESC 2006; Tamas/Münz 2006). Britain and Ireland experienced large-scale inward migration since EU enlargement in 2004 as they decided to operate an open labour market policy. In the first four years since enlargement, around 845,000 citizens from the NMS arrived in the UK in what has been described as ‘almost certainly the largest single wave of immigration...that the British Isles ever experienced’ (Salt/Millar 2006: 335; see also Home Office/UK Border Agency 2008). Ireland, received an even higher proportional inflow in relation to its population size with over 400,000 migrants arriving in the same period (DSFA 2008).<sup>29</sup>

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<sup>29</sup> These figures that derive from the Worker Registration Scheme in the UK and Personal Public Service numbers in Ireland only refer to the inflow of migrants. The number of NMS migrants

In contrast to the open labour market policy in Britain and Ireland, Germany and Austria continue to operate a temporary work permit system for NMS migrants. Nevertheless, in spite of these restrictions both countries continue to attract sizeable migratory flows from the accession countries. In Germany the number of temporary work permits that are mainly issued to seasonal workers from Poland has largely stayed the same at around 350,000 per year. In Austria, the number of work permit holders from the NMS countries has slightly increased from 48,000 in 2003 to nearly 57,000 in 2005 (Tamas/Münz 2006: 114, 140).

Thus, what becomes apparent is that LMEs such as Britain and Ireland experienced a high inflow of migrants in recent years, reflecting a buoyant economy and significant labour shortages at the turn of the Millennium. However, the fact that Germany and Austria continue to receive significant migratory flows from within the enlarged EU in spite of transitional restrictions suggests that there is a continuous demand for migrant labour in CMEs too. As can be seen from Table 9, labour migrants in the four case countries tend to be over-represented in those sectors that have a high share of relatively low-skilled occupations such as hotels and restaurants, construction, manufacturing (including food-processing) and other services.

**Table 9** *Employment of foreign-born by sector, 2005-2006 average*<sup>30</sup>

	Agriculture and fishing	Mining, Manufacturing and Energy	Construction	Wholesale and retail trade	Hotels and restaurants
Austria	1.3	<b>21</b>	<b>10</b>	14.1	<b>12.6</b>
Germany	1.1	<b>29</b>	6.3	<b>14.7</b>	<b>7.6</b>
Ireland	2.3	<b>16</b>	<b>14.2</b>	11.8	<b>12.3</b>
UK	0.5	11.9	4.9	13	<b>8.5</b>
<i>(cont.)</i>	Education	Health and other community services	Households	Administration	Other services
Austria	3.8	<b>9.4</b>	<b>0.4</b>	3.4	<b>23.9</b>
Germany	4.5	9.9	0.8	2.9	23.1
Ireland	5.5	<b>10.8</b>	<b>1.1</b>	2.5	23.6
UK	8.1	<b>15.7</b>	<b>0.7</b>	5.3	<b>31.4</b>

actually residing in both countries is likely to be lower as some migrants only stay for a limited period of time (Tamas/Münz 2006).

<sup>30</sup> Once again, these statistics have to be treated with some caution as they do not include temporary migrant workers. However, Table 4 gives a good indication of the sectoral distribution of migrant labour in the four case countries.



*Source:* OECD 2008: 74 (The numbers in bold indicate the employment sectors in which the foreign-born are over-represented. Data for Germany refers to 2005 only).

It is largely in these sectors where recently cases of underpayment of migrants have occurred, involving both EU and non-EU migrants.<sup>31</sup> Particularly if such controversies involved agency labour and the ‘posting’ of workers, they have been accompanied by allegations of ‘social dumping’ and ‘displacement’ (Anderson et al. 2007; Donaghy/Teague 2006; Tamas/Münz 2006). Moreover, all four countries have seen a growth in the informal economy in the last two decades which includes many migrants (Schneider 2000, 2007; Freeman/Ögelman 2000). Thus, in spite of different migration regimes and histories of immigration, trade unions across the four countries face similar challenges. From a trade union perspective, what appears to be the single most important challenge is to ensure that labour migration does not undermine established labour standards. It remains to be seen whether a free movement regime in the Britain and Ireland or a restrictive regime in Germany and Austria is more conducive to achieving this objective.

#### ***3.4.4 Unions as strategic actors***

Whereas trade union policies are influenced by ‘structural’ factors such as the institutional framework, they are not wholly determined by these factors. Previous research on union attitudes during the ‘guestworker’ era found that unions in similar institutional settings do not necessarily respond uniformly to immigration (Penninx/Roosblad 2000). Although unions face external constraints in the environment in which they operate, they ‘are not bereft of independent influence’ (Heery/Adler 2004: 61). In other words, trade unions have some agency and can choose from a variety of policy options in response to contemporary challenges such as labour migration.

These ‘strategic choices’ (Kochan et al. 1986) are not only influenced by external factors but also by what can be termed union identities. If unions see themselves as the advocates of marginalised groups in society, they are likely to adopt a

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<sup>31</sup> Although migrants are not over-represented in agriculture, this sector has also seen incidents of underpayment of migrants (Anderson et al. 2006).

different stance on migration than if they see their primary task as protecting the labour standards of indigenous workers alone. While these union identities ‘produce path dependencies for union strategic decisions’ (Frege/Kelly 2004b: 39), they are not fixed and can change over time. Particularly at moments of crisis, unions ‘may be driven to choices (redefinition of interests, new patterns of internal democracy, broadening or narrowing of agenda, altered power tactics) at least partly at odds with their heritage. Identities can change’ (Hyman 1996: 63).

A sense of crisis may be found among unions in LMEs such as Britain where, as argued before, the institutional position of unions has been more eroded than elsewhere. This may be one of the contributory factors of why British unions increasingly see themselves as the advocates of marginalised groups such as migrant workers and have some of the most robust anti-discrimination policies among European trade unions (Avci/McDonald 2000; Wrench 2004).

In the case of the Irish labour movement, a sense of crisis is unlikely to be as profound as among their British counterpart as unions remain part of the social partnership process. However, what makes the Irish case interesting is the own history of emigration. While Austria, Britain and Germany can look back to half a century of inward migration with profound socio-economic implications on each society, Ireland only recently became a country of immigration and for the most part of the twentieth century was a country of emigration with equally profound, if different consequences on Irish society (MacÉinrí 2001). This raises the question as to whether the own experience of emigration impacts upon the way the Irish trade union movement frames issues such as immigration.

In CMEs such as Germany and Austria, unions remain in a more institutionally entrenched position. Hence, it may be assumed that they have less of an incentive to question traditional union identities. From this, however, it should not be inferred that union traditions in CMEs are necessarily protectionist or exclusionary. While it is true that Austrian unions supported the ‘guestworker’ concept until quite recently and pursued a policy of ‘protecting indigenous workers from immigrants’ (Gächter 2000), German unions pursued a more inclusive policy by demanding the integration of immigrants when the

‘guestworker’ idea was still largely uncontested in official German politics. This does not only illustrate that unions may not necessarily accept the dominant traditions, policies and discourses on immigration, but also that trade unions in similar institutional settings, in this case coordinated market economies, have some agency on how to respond to immigration.

This does not necessarily refute the ‘varieties of capitalism’ approach as long as institutions are understood in a non-deterministic fashion that can change over time (Hancké et al. 2007). Importantly, a sole focus on the institutional context does not sufficiently account for possible variation and change over time in union policies. To gain a more dynamic understanding of union policies on labour migration, other factors including the unemployment rate and the (changing) context of labour migration have to be considered as well. Whereas union policies are influenced by these ‘structural’ factors, they are not determined by them as unions have some agency on how to frame issues such as immigration. Thus, there is not one explanatory factor that can account for the variation in union attitudes towards immigration. Instead, union agency interacts with other factors such as labour market factors, the institutional setting and the context of migration in shaping policy responses to immigration that sometimes can lead to variation within the same ‘varieties of capitalism’.

### **3.5 Conclusion**

This chapter has outlined the contemporary context of trade unionism and labour migration. Trade unions, already under pressure by contemporary global changes that have strengthened the position of capital *vis-à-vis* labour, have so far found it difficult adapting to a more diverse workforce. However, in spite of common challenges associated with recent inward migration, there are reasons to believe that unions do not respond uniformly to contemporary labour migration. This is in part linked to the different institutional configuration in each ‘variety of capitalism’ that provide different incentives for unions to adapt to contemporary social change. Whereas unions in LMEs are more likely to emphasise the organising of new groups of employees as a revitalisation strategy, unions in

CMEs are more inclined to pursue traditional channels such as social partnership and collective bargaining to stem a decline in influence.

From this follows that if unions in LMEs and CMEs respond differently to contemporary challenges such as a decline in union density, it is not implausible to assume that their responses to contemporary labour migration may differ too. In particular it appears likely that the institutional position of unions and the structure of collective bargaining in particular may lead to different union responses towards migrant labour. However, it is unlikely that the different institutional framework in each VoC could account for all variation in union policies. To gain a more dynamic understanding of union policies, other factors such as the (changing) labour market and migration context have to be considered as well. Last but not least, as unions are strategic actors who can choose from a variety of policy options, their policy responses are not entirely determined by exogenous factors. In other words, unions have some agency on how they frame issues such as immigration. This holds for the possibility that union policies may not only vary alongside the LME/CME typology but also within the same ‘variety of capitalism’.

To what extent unions in LMEs respond differently to labour migration than unions in CMEs can only be established through empirical research. Or in the words of Hyman, ‘comparison requires the deployment of cross-national evidence for purposes of systematic analysis’ (Hyman 2001b: 203). Hence in the following empirical chapters I will compare trade union responses to the contemporary challenges of labour migration, including the free movement of labour in an enlarged EU, non-EU immigration, the spread of precarious employment relationships and the task of organising migrants.

## **Chapter Four: Trade Unions, EU Enlargement and the Free Movement of Labour**

As already pointed out, East-West migration has become the main form of labour migration into Western European countries in recent years. However, when eight countries from Central and Eastern Europe joined the EU in 2004, most 'old' member states opted to impose transitional restrictions because of concerns about possible labour market disturbances. The free movement of labour in an enlarged EU proved to be particularly controversial among trade unions. While some trade union movements supported the free movement of labour, others favoured transitional restrictions in light of concerns about social dumping and displacement. This chapter examines how unions in the four case countries respond to this policy issue. I will first outline the various policy responses on the free movement of labour in the run up to EU enlargement. I will then examine trade union reactions to inward migration since 2004. This recent inflow of labour migrants has been accompanied by cases of underpayment of migrants that has raised concerns about the impact of recent labour migration from the NMS. However, in spite of similar challenges across the four countries, I will show that there is considerable variation in how unions respond to the free movement of labour in an enlarged EU.

### **4.1 Trade unions and the free movement of labour**

Generally, most trade unions in the EU15 were supportive of enlargement to the East, notwithstanding some criticism of the perceived neoliberal direction that the European project has taken in recent years. According to the European Trade Union Confederation (ETUC), enlargement 'will ensure peace and political stability in Europe and advance economic and social progress as well as the improvement of living and working conditions' (ETUC 2000: 87). However, the question of whether the free movement of labour should be immediately granted upon accession proved to be controversial. In particular, unions in those countries in close geographical proximity to the accession countries expressed concerns that enlargement could trigger off a new wave of migration with negative

consequences on wages and employment conditions. Other union movements, however, argued that the free movement of capital should be accompanied by the free movement of labour and that employment standards are best protected by the enforcement of rights, and not by restrictions. The ETUC eventually arrived at a position in support of the free movement of workers, provided that ‘it is based on the principle of equal wages and working conditions for equal work in the same territory’ (ETUC 2005a: 6). This position was in line with the policy stance adopted by the British and the Irish trade union movement.

#### **4.1.1 Britain**

As already mentioned, Britain and Ireland were, besides Sweden, the only countries that fully opened their labour markets at the time of EU enlargement in 2004. In the UK the decision to open the labour market was part of a government strategy of ‘managed migration’ that envisages sourcing labour for low-skilled occupations from within the enlarged EU while confining immigration from outside the EU to highly skilled labour (Ruhs 2006). However, this move proved to be controversial as the British Government came under pressure from the tabloid press and the Conservative Party regarding its intention to allow the free movement of labour. In bowing to public pressure, the British Government restricted access to social welfare benefits by introducing a Habitual Residence Condition. Moreover, workers from the NMS were obliged to register with the Worker Registration Scheme (Tamas/Münz 2006).<sup>32</sup>

Significantly, the British trade union movement supported the open labour market policy of the British Government. As one TGWU official put it:

We don’t give them a lot of credit these days, but we actually have been very supportive of the Labour Government positions in terms of not setting quotas and maximum numbers. There are no quotas in operation here as they exist, in France for instance, on the free movement of labour (interview, TGWU(2), 2006).

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<sup>32</sup> This registration entails the payment of a fee of £90 which may deter some migrants from registering (Tamas/Münz 2006: 77).

In Britain there was agreement among the social partners on the need for additional labour to sustain economic growth at a time of historically low levels of unemployment. Unions were keen to stress the economic benefits of migration as ‘without migrant workers our economy would slow and that it would make it harder to pay for public services and for pensions’ (TUC 2004a). However, it was not labour shortage alone that prompted unions to support an open labour market policy. British unions have over the years not only adopted some fairly robust anti-discrimination policies but have also increasingly opposed restrictive immigration policies (Avci/McDonald 2000; Wrench 2004). In terms of EU enlargement, the TUC argued that the free movement of capital should be accompanied by the free movement of labour: ‘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’ (TUC 2006a: 1). Hence the TUC adopted a rather principled stance in favour of the free movement of labour: ‘We didn’t want any transitional measures put in place...Generally speaking we are for workers having choices where they work.’ (TUC (1), interview 2006). This policy position was also promoted by the TUC within the ETUC, with some success. As already pointed out, the ETUC came out in support of the free movement of labour (ETUC 2005a).<sup>33</sup>

Individual unions, while arguing from pragmatic considerations rather than ideological beliefs, supported the stance of Congress on the free movement of labour. British unions did not only recognise that there was a significant shortage of labour but also argued that restrictions could have a detrimental effect by leading to an increase in irregular employment as only the free movement of labour, but not free movement as such, would be restricted (interview, GMB, 2006; interview, TGWU (3), 2007). Perhaps surprisingly, given the controversies about migrant labour in the construction sector, even the British construction union UCATT did not depart from the TUC stance on the free movement of labour. This was not only because of a significant labour shortage in the then booming British construction industry, but also because of the informal nature of large parts of the British construction sector where ‘bogus’ self-employment is widespread (Harvey 2001). Hence the main concern of UCATT is limiting the

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<sup>33</sup> This is likely to have been facilitated by the fact that the former General Secretary of the TUC, John Monks, has been elected as General Secretary of the ETUC in 2003.

spread of self-employment, rather than limiting the inflow of migrants. However, UCATT criticised the tendency for migrant workers to be used by employers as a short-term solution at the expense of investment in training schemes and apprenticeships (interview, UCATT, 2006)

Thus, among British trade unions there is a strong view that employment standards are best protected by the enhanced enforcement of labour standards, rather than by restrictions. To some extent this is linked to a re-positioning of trade unions as advocates of marginalised groups such as migrant workers, as I will elaborate in greater detail in chapter seven. In arguing the case for an open labour market policy within the ETUC, British unions received support from the Irish trade union movement which also supported the free movement of labour at the time of EU enlargement.

#### ***4.1.2 Ireland***

In Ireland, the free movement of labour was one of the contentious issues during a referendum on the Nice Treaty in 2002 when some of the opponents of the Treaty raised the prospects of ‘floods’ of Eastern Europeans coming to Ireland. However, the Irish Congress of Trade Unions (ICTU), campaigning for a ‘yes’ vote in the referendum, dismissed such suggestions as ‘crude scaremongering’ (Hennessy 2002). Union officials argued that EU enlargement and the free movement of labour would enhance the rights of migrant workers as they would be no longer ‘beholden’ to employers under the work permit system (Haughey 2002). Furthermore, as in Britain, unions recognised the need for additional labour from abroad to sustain a booming economy. Moreover, Irish union officials often recalled their own migration experience to account for their support for the free movement of labour: ‘Everyone in Ireland would have some family member who had to migrate for work, whether it be to Britain, America or indeed more recently into Europe in the early 80s and late 70s’ (interview, ICTU official (2), 2006).

At the time of EU enlargement on 1 May 2004, Ireland held the EU Presidency. ICTU marked this occasion with an event to which it invited all union



confederations from the NMS. Among other things, Irish unions tried to build up new contacts not least with a view to possible future labour migration from the accession countries (interview ICTU (1), 2006). While unions remained supportive of Ireland's open labour market policy, they retrospectively complained that this decision was primarily reached at the behest of the business community, that unions had no involvement in this and that no proper infrastructure was in place to account for an inflow of migrants (Begg 2006). A SIPTU representative complained that

[t]he Government didn't consult us, the unions, about opening the borders when the new accession countries came in. If they did, we would have insisted that they put in adequate measures to protect those workers and to protect Irish workers. But in the event they didn't and quite deliberately (interview SIPTU (2), 2006).

Nevertheless, in spite of these concerns, the Irish trade union movement has not withdrawn its support for the open labour market policy. Instead, unions shifted their main attention to improving compliance with labour standards. Here negotiations for a new social partnership agreement became the main forum for unions to seek a strengthening of the enforcement architecture for employment rights, as I will discuss in greater detail below. Moreover, the ICTU, and some individual unions such as SIPTU have started to make some noticeable efforts to reach out to the new migrant communities not least with a view to increasing union membership among them (Krings 2007). Thus, the Irish and the British trade union movement supported the free movement of labour at the time of EU enlargement in 2004, reflecting the majority view in the ETUC at that time. However, not all trade union movements shared this view as unions particularly in Germany and Austria remained opposed to the opening of the labour market for NMS nationals.

#### ***4.1.3 Germany***

Among European unions, the German trade union movement, together with their Austrian counterpart, were the most vocal supporters of transitional restrictions for NMS workers (Vaughan-Whitehead 2003: 437-438). German unions argued

that the labour market would not be able to cope with an unregulated inflow of migrants from the accession countries because of economic difficulties and high unemployment in Germany as well as a significant wage gap between the old and the new member states. According to the German Trade Union Confederation (DGB), 'the absorption capacity of the German labour market will be limited for quite some time in the face of 3.8 million unemployed and a silent reservoir of an additional 3 million' (DGB 2001a). Unions stressed that their opposition to the free movement of labour should not be viewed as 'anti-immigration' but that their main concern was the preservation of labour standards. As one IG Metall official argued, 'the IG Metall is not against immigration as such...The IG Metall was simply opposed to a competition of cheap labour...which could put pressure on our collective agreements in Germany if people from other countries work here for the bare minimum' (interview, IG Metall (1),<sup>34</sup> 2006). Regarding concerns about labour standards, union officials were also keen to emphasize that this is not simply an issue between native and foreign workers but also between long-term foreign residents and new immigrants. According to a Ver.di representative

[t]here are less 'Germans' being displaced, than to a large extent migrants who have worked here for many years...In terms of the less-qualified who work, for instance in slaughterhouses, on building sites etc., they (NMS migrants, T.K.) primarily displace those migrants who are already here for a long time (interview, Ver.di, 2006).

Such arguments about displacement are usually difficult to verify and it cannot be ruled out that a reference to long-time immigrants serves the agenda of some unions in opposing the free movement of labour. However, there is some evidence to suggest that among the domestic workforce, long-time immigrants are more affected by new immigration than native workers. This is because the former tend to be closer substitutes particularly in the low-wage sectors of the economy where most of the new migrants are located (Münz et al. 2006: 33).

Unions also pointed out that what is at stake is less the issue of immigration but rather that of temporary migration that often takes the form of commuter

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<sup>34</sup> All cited quotations from German and Austrian trade union officials as well as union documents have been translated into English by the author.

migration because of Germany's geographical proximity to the accession countries:

There is a huge willingness among employees from the bordering accession countries to take on work in Germany while remaining resident in the bordering regions. Hence wages which would not suffice to make a living at the place of work (*Arbeitsort*) still appear as attractive because they are much higher than at the place of residence. This has been our experience with illegal commuters from the bordering countries from CEE (IG BAU 2000: 5).

Moreover, there were particular concerns about the EU freedom of service provision which could lead to a situation where migrants were not paid the prevalent rates and, as such, could negatively affect labour standards (interview IG BAU, 2006; interview, NGG, 2007). Generally, as already mentioned, there is only limited evidence that immigration negatively impacts upon the employment opportunities of domestic workers. However, some recent labour migration involving the 'posting' of workers was 'unequivocally substitutional' (Hunger 2000: 207). Throughout the 1990s employers in the German construction sector increasingly preferred cheaper contract workers from CEE and posted workers from other EU countries to more expensive domestic workers (Schierup et al. 2006: 152-153).

Because of this experience, the construction union IG BAU was particularly vocal in its demand for transitional restrictions in light of concerns about 'islands of foreign law' (IG BAU 2000) where companies from the NMS could provide their services in accordance with the conditions of their home country. While within the DGB some individual trade unionists argued the case for the free movement of labour, the IG BAU was adamant that a transitional period was required, not least because the freedom to provide services can only be restricted if the freedom of labour is restricted. Furthermore, the construction union pointed to exceptionally high unemployment in their sector as another reason for their support of a transitional period. In their demand for a transitional period, the IG BAU received support from other unions such as IG Metall and NGG which also expressed concerns about the impact of (cheap) migrant labour on employment conditions (interview, IG BAU 2006; interview, IG Metall (1), 2006; interview, NGG, 2007).

As already mentioned in chapter two, with the EU Posting of Workers Directive (PWD) a legal instrument has been established that applies the principle of equality of treatment to a core of labour standards. However, unions argued that this only applies to legally enshrined employment rights but not necessarily to collective agreements that are agreed on by the social partners (*Tarifparteien*) (DGB 2006a: 6). Thus, because of legal uncertainties about the PWD, but in particular because of the experience with subcontractors from CEE in the past, not only the suspension of the freedom of labour but also the freedom of services in sensitive areas like construction became a key demand of German unions in light of fears about a ‘competition of displacement in sectors which are already characterised by high unemployment’ (DBG 2001b).<sup>35</sup>

#### **4.1.4 Austria**

Similar to its German counterpart, the Austrian Trade Union Confederation (ÖGB) explained its support for transitional restrictions by citing ‘problems concerning the labour markets in the new member states, huge differences in welfare and income between these states and Austria and a worsening of the labour market situation in Austria’ (ÖGB 2005: 2). As Austria shares two-thirds of its borders with four of the accession countries, unions were particularly concerned at the impact of commuter migration where NMS citizens would frequently cross borders in search for work while continuing to live in their home countries. For such commuter migrants, it was feared, the income gap (in 2000 on average 1:5 in current exchange rates) could provide a powerful incentive to accept wages well below the established rates in Austria (Arbeiterkammer 2005; ÖGB 2003a).

Because of these concerns the ÖGB initially even demanded that the free movement of labour should only be granted after the accession countries had reached between seventy and eighty per cent of the Austrian wage level, arguing that a fixed-term transition would not suffice (Vaughan-Whitehead 2003: 437-

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<sup>35</sup> Because of such concerns, Germany and Austria did not only suspend the free movement of labour, but also the freedom of services in sectors like construction, cleaning of buildings and interior decoration (Tamas/Münz 2006).

438). This position, however, was not tenable and the ÖGB subsequently dropped it in favour of support for a transitional period. As in Germany, unions rejected the charge that support for transitional restrictions equals an 'anti-foreigner' attitude: 'our problem is the undermining of work and labour law standards, if those are not undermined, we don't have a problem with foreign labour...by which we also want to clearly distance ourselves from xenophobia' (interview, ÖGB (1), 2007). Moreover, unions pointed out that 'regarding EU enlargement, we are rather protecting foreigners who are already here, as an immediate substitution would occur, if you like, of Yugoslavs and Turks by Hungarians' (interview, HGPD, 2006).

While within the Austrian trade union movement there was virtually no disagreement on the need for a transitional period, the construction union GBH was among those unions that were pushing most decisively for a transitional period (interview, ÖGB (1), 2007). Although there were not the same disturbances in the Austrian construction sector as a result of the inflow of posted workers as in Germany, in the run up to enlargement unions became more concerned about the spread of subcontracting arrangements particularly in construction (interview, GBH, 2007; ÖGB 2003a: 16-18).

Besides considerations about the labour market, unions also pointed to widespread concerns in the population about possible negative consequences of the EU enlargement. Particularly in Austria, the right-wing Freedom Party, a considerable political force in the electoral landscape, agitated against the enlargement process in general and the free movement of labour in particular (Vaughan-Whitehead 2003: 418). Thus, one ÖGB representative argued that the immediate opening of the labour market

would not have been feasibly politically. At the moment we have a national electoral campaign and we have two smaller parties, the FPÖ (Freedom Party of Austria) and the BZÖ (Federation for the Future of Austria)...who conduct their electoral campaign effectively up to 100 per cent with xenophobic topics. If there had been a bigger wave (of migrants, T.K.), leading to tensions in the labour market...there would have been even more resentments (interview, ÖGB (2), 2007).

Regardless, of such considerations, the main reason why the Austrian (and the German) trade union movement supported a transitional period were concerns about possible labour market disturbances regarding wage dumping and displacement. What has been the experience with a restrictive regime since enlargement in 2004? And, in the same way, how do British and Irish unions view the open labour market policy since their countries decided to open the labour market?

## **4.2. The experience with a free movement regime and transitional restrictions**

### ***4.2.1 Britain***

British unions, like most other political and social actors, did not anticipate the scale of migration that ensued after enlargement in 2004.<sup>36</sup> As already mentioned, while the flexible labour market was able to absorb the additional inflow of migrants, recent labour migration was accompanied by cases of underpayment and violation of migrant workers' rights. Such incidents, sometimes involving agency labour, more often occurred in low-wage sectors of the economy, particularly in food-processing, agriculture, construction and hospitality (Anderson et al. 2006; Hardy/Clarke 2005). Although, as already pointed out, so far inward migration has been largely complementary to the domestic workforce, this may not always be the case in the absence of an improved compliance regime. As Fitzgerald (2006: 8) argues, 'there is a real opportunity for employers to move from recruiting migrant workers because of current vacancies to preferring migrant workers'.

Although unions became increasingly concerned about the impact of labour migration in a lightly regulated labour market, they were keen to emphasize that 'employers and politicians, not migrant workers, should be blamed if migrants are hired on terms which undercut rates and conditions for British-based workers'

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<sup>36</sup> One study estimated that the UK would experience net migration of around 12,000 in the first two years since EU enlargement while Ireland would receive an annual net flow of around 3,000. These estimates, however, were based on a scenario of free movement all over the EU (Boeri/Brücker 2005: 14).

(UCATT 2007a: 13). In response to incidents of underpayment of migrants, unions demanded a stronger enforcement of labour standards to ensure that migrant workers would have the same rights as domestic workers. While unions are opposed to the exploitation of and discrimination against workers, it is also self-interest that drives such a policy stance: 'We know that we've got to get them exactly the same conditions of the people living here. One, because it is morally right and two, because they are used to undercut the conditions of the people who are already here' (interview, TGWU (1), 2006).

In the UK, where unions only have limited access to Government, the enforcement of labour standards has so far not featured as prominently as in other countries. If it comes to the enforcement of employment rights, the lack of a coordinated response has been identified as a major problem. The Citizens Advice Bureau, for instance, criticised that 'the UK remains the only EU country without an enforcement body charged with ensuring that employers comply with their legal obligations' (CAB 2004, in Fitzgerald 2006: 9). Such a lack of a proper enforcement strategy is often attributed to the Government's priority to accommodate the concerns of business and not to 'over-regulate' the British labour markets (Fitzgerald 2006: 9). However, there are indications that the issue of the enforcement of basic labour standards is gaining more prominence in Britain too. For instance, the Government-appointed Low Pay Commission recently recommended a more interventionist approach with regard to the enforcement of the minimum wage in those low-wage sectors where migrant workers are over-represented (Ruhs 2006: 26). Most recently, the Government agreed with employer associations and trade unions on equal treatment for agency workers after a period of 12 weeks of employment (EIRO 2008a).

When Bulgaria and Romania became the most recent countries to join the EU in 2007, the British Government changed its previous open labour market policy and imposed transitional arrangements. Although the TUC welcomed the announcement by the Government to become more active in pursuing the enforcement of labour standards with regard to 'rogue employers', they disagreed with the Government's policy change, arguing that such measures could have a detrimental effect on workers and employment conditions (TUC 2006c).

Individual British unions followed this argumentation. According to one TGWU official, ‘our concern is that this (restrictions, T.K.) would encourage the grey economy where workers, driven away from legitimate access to the workplace, would resort to other ways of keeping themselves together’ (TGWU, interview, 2007). Similarly, the construction union UCATT expressed concerns about an increase in ‘bogus’ self-employment, which is already widespread in the British construction sector, and demanded ‘employment rights’ for Bulgarian and Romanian workers’ (UCATT 2007b). British unions argued that transitional measures would not only divert people into the informal economy but would also be detrimental to the aim of organising workers as one TUC representative argues:

We believe that the door should have been opened immediately to Romanian and Bulgarian workers for both principled and pragmatic reasons because we know actually what will happen is that lots of workers will come in but they will come in on a self-employed status which isn’t regulated rather than on an employed status which would at least give us the chance of organising them (interview, TUC (2), 2006).

Thus, there is a strong view among British unions that labour standards are best protected by the enforcement of rights, rather than restrictions. Thus, a rather principled stance in favour of the free movement of labour can be read as a preference for NMS migrants arriving as dependent employees who can be organised, rather than as self-employed, posted workers or migrants who delve into the informal economy. This is linked to a move towards an ‘organising unionism’ (Heery et al. 2000) by some British unions which aims to reach out to previously untapped sections of the labour force, including migrant workers.<sup>37</sup> In that regard, unions have also intensified their co-operation with unions in the accession countries not least with a view to organising migrants from over there. This co-operation included the secondment of a Polish trade union official to the North West of England as well as the signing of a protocol between the TUC and two Polish trade union confederations, Solidarnosc and OPZZ with a view to improving the situation of Polish migrant workers in Britain (interview, TUC (1), 2006; TUC 2008).

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<sup>37</sup> I will return to this in more detail in chapter six.



#### 4.2.2 Ireland

As in Britain, unions in Ireland were taken by surprise by the huge inflow of NMS migrants after 2004. So far the available evidence suggests that this inward migration has been complementing, rather than substituting, the Irish workforce (Doyle et al. 2006; NESC 2006). However, concerns about possible negative effects of inward migration increased during the Irish Ferries dispute at the end of 2005. The decision by Irish Ferries to replace most of its Irish workforce with cheaper agency workers from Eastern Europe was met by widespread opposition. Although the protest marches that were organized by the Irish trade union movement had an inclusive outlook ('Equal rights for all workers'), individual union officials admitted that at the time of the Irish Ferries dispute, resentment towards migrants increased among some sections of the domestic labour force (interview, SIPTU (1), 2006).<sup>38</sup> To counter such tendencies, unions aimed to uphold employment standards and to prevent an 'Irish Ferries situation on land' (Begg 2006) as they feared that such a scenario could lead to huge social tensions and trigger xenophobia and racism.

The negotiations for a new social partnership agreement became the main forum for unions to seek a strengthening of the enforcement architecture for employment standards. Initially, the ICTU even refused to engage in any negotiations for a successor of 'Sustaining Progress' until they received assurance that these issues would be addressed (Flynn, 2006). After negotiations eventually commenced, the ICTU succeeded with its demands for a stronger enforcement regime. The partnership agreement *Towards 2016*, signed in 2006, contains a section on 'Employment Rights and Compliance', including stronger protection against collective dismissals to prevent an Irish Ferries scenario 'on land'. Among other legislative changes that will be enacted by the Government are the establishment of a statutory agency for employment rights, increased penalties for non-compliance with employment law, and a stronger regulation of employment agencies (Department of Taoiseach 2006). While the National Employment

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<sup>38</sup> In a poll conducted in the aftermath of the Irish Ferries dispute, a majority of respondents thought that the inflow of migrants makes it harder for Irish people to find jobs and that immigration exercises downward pressure on wages (Brennock 2006).

Rights Authority (NERA) has already been set up, the other provisions currently await ratification in the form of the Employment Law Compliance Bill 2008.

In addition to the partnership channel, Irish unions, in particular SIPTU, have begun to make some considerable efforts to organise migrants from the NMS by starting to hire union organisers from the new Eastern European migrant communities. Moreover, SIPTU has started to build contacts with union movements in Poland, Latvia and Lithuania with the aim of raising awareness among people deciding to move to Ireland regarding employment rights and trade unions (interview, SIPTU (1), 2006).

The Irish trade union movement never withdrew its support for the open labour market policy in 2004. However, as incidents of underpayment of migrants became more frequent, unions became increasingly concerned about the impact of large-scale inward migration from the NMS. These concerns led them support the decision of the Irish Government to restrict access to the labour market for workers from Bulgaria and Romania at the time of EU enlargement in 2007. Unions argued that Ireland, which had proportionally received more NMS migrants than any other country, would need more time to implement the enforcement architecture agreed on in the recent partnership agreement before the free movement of labour could be granted to the most recent accession countries (ICTU 2006; SIPTU 2006a). It remains to be seen if the enforcement of employment rights are best served by restrictions. As the access to labour markets, but not freedom of movement as such, is restricted for citizens of Bulgaria and Romania, this may lead to an increase in ‘bogus’ self-employment or feed the informal economy of which there already are some signs (O’Brien 2007b). Thus, Irish unions, while supportive of the decision to have an open labour market policy in 2004, have adopted a less principled stance on the free movement of labour than their British counterparts and changed their policy position in 2007.

### 4.2.3 Germany

As already pointed out, it is likely that transitional arrangements in Germany and Austria have diverted some migratory movements to the UK and Ireland. However, in spite of restricted access to the labour market, the former countries continue to be important destinations for labour migrants from the NMS. The majority of these migrants continue to enter Germany on temporary work permits as part of bilateral agreements between the latter and a number of countries from CEE that largely remained unaffected by EU enlargement. Although unions tend to favour long-term immigration over short-term temporary migration,<sup>39</sup> these temporary migrant worker programmes remain relatively uncontested from the trade union side. This is mainly because seasonal labour in agriculture in particular has been largely complementary to the domestic workforce as migrant and domestic workers do not compete for the same jobs in this sector (Tamas/Münz 2006).

However, in the context of recent EU enlargement there has been an increase in precarious forms of migration to Germany. As a result of increased competition from Eastern European service providers, there has been a displacement effect in sectors such as the meat industry, and even in the metal and electronics industry that until recently had not been affected by the posting of workers. As no legally binding minimum wage exists in these employment sectors, companies from the NMS are able to offer their services under conditions that are sometimes well below the local collective agreements (*Tarifverträge*) (Czommer/Worthmann 2005; Lippert 2006). While in other sectors such as construction and the cleaning of buildings the freedom of services for NMS companies has been restricted, these sectors have seen an increase in self-employed persons from the NMS, widely regarded as ‘bogus’ self-employment to gain access to the German labour market (interview, IG BAU 2006; Meyer-Timpe 2005). Moreover, trade unions have reported an increase in people from the NMS engaging in irregular home care work (interview, Ver.di, 2006).

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<sup>39</sup> This point will be discussed in more detail in chapter four.

Thus, from a trade union perspective the outcome of the transitional regime has been mixed. While it is likely that the restrictions have diverted some migration flows to the UK and Ireland, they may have also contributed to an increase in the posting of workers, ‘bogus’ self-employment and the informal economy. Indeed, some union officials within the DBG argued that such temporary migration, often to precarious conditions, is best opposed by enabling NMS workers to migrate individually through the free movement of labour:

With the free movement of labour we have exactly the tools with which we can strive together with our colleagues (from the NMS, T.K.) for equality and against discrimination...We can't do this now where they come to Germany as part of the freedom of services or perhaps even with a tourist visas. At the end of the day their stay is not illegal, but their access to the labour market is (interview, DGB (2) 2006).

However, such a view remains a minority position within the German trade union movement as there is broad agreement on the necessity of these measures to prevent major disturbances in the labour market. Hence the DGB demanded an extension of the restrictions beyond 2006 (DGB 2006a). Nevertheless, there is increasingly an acknowledgement of the limitations of these measures not least as the free movement of labour has to be granted in 2011 at the latest (or 2014 as in the case of Bulgaria and Romania). Hence the unions have intensified co-operation with their counterparts in the NMS in anticipation of a common European labour market. This work includes transnational co-operation in cross-border projects like the Interregional Trade Union Councils (ITUCs) that have been set up, for instance, in the Elbe-Neisse region between Germany, Poland and the Czech Republic. The role of these ITUCs is, among other things, to facilitate cross-border labour mobility in regions characterized by significant wage gaps and different socio-legal employment systems (Noack 2000). Already in the 1990s the DGB had initiated the *Migrationsdialog Ost-West* to facilitate discussion among trade unions from the ‘old’ EU and the accession countries on issues like the free movement of labour in the run up to enlargement. This East-West dialogue, however, was not without some disagreement as unions from the NMS would have preferred the right to the free movement of labour from day one of EU accession (DGB 1998; DGB 1999).

#### **4.2.4 Austria**

Whereas in Germany the number of NMS migrants entering the country on temporary work permits has largely stayed the same after 2004, Austria has actually experienced an increase in the inflow of workers from CEE in recent years, in spite of transitional restrictions (Tamas/Münz 2006: 109), much to the displeasure of the ÖGB which had demanded that these programmes should not be extended in the context of enlargement (ÖGB 2003b). Most of these temporary migrants enter Austria as seasonal labour in agriculture, but also in hospitality and tourism. Moreover, a significant portion of NMS work irregularly in domestic services and home care (Tamas/Münz 2006: 121).

Thus, as in Germany, many migrants from the NMS enter the country to rather precarious conditions. This has led to a situation in which union officials have reported cases of ‘wage dumping’ in which foreign employees have not been paid the prevalent local rates (Arbeiterkammer 2005: 30-32). Although, as pointed out, Austria has not been affected to the same extent by posted workers as Germany, it has experienced a significant increase in the number of self-employed persons from the NMS. For instance, in the construction sector in Vienna, Austrian nationals set up 120 new firms between May 2004 and September 2005. In the same period, Polish nationals set up a staggering 2340 new firms, most, of which not only trade unions suspect of, operating as ‘one person companies’. As with posted workers, this increase in ‘bogus’ self-employment can be regarded as a way of circumventing the restrictions (Tamas/Münz, 2006: 116-118). As East-West migration is to a large extent demand-driven, another unintended consequence of the transitional measures may be a growth of the informal economy. According to one ÖGB official, ‘there are huge numbers of illegally employed people, particularly in home care and in construction...This shows that the strategy of simply adopting restrictions for the transitional period is not necessarily working, because an underground economy is developing’ (interview, ÖGB (2), 2007).

In spite of such an assessment, there is broad agreement among Austrian unions that the measures have served their purpose as ‘no shock-like migratory

movements have taken place' (ÖGB 2005: 2). Indeed, unions sometimes referred to the migration experience of the UK and Ireland since enlargement as a retrospective justification of their support for a transitional period (interview Vida, 2007; interview GMT/N, 2007). Consequently, the ÖGB demanded a continuation of the transitional measures beyond 2006 (ÖGB 2005). However, there is also increasingly an acknowledgement of the limitations of these measures not least as the free movement of labour has to be granted in 2011 at the latest. According to an ÖGB representative, 'five years ago we would have said "we rely on those legal barriers that we have erected", however, nowadays we say "ok but this is not a panacea"' (interview, ÖGB (1), 2007).

Therefore, as in Germany, Austrian unions have intensified co-operation with their counterparts in the NMS in projects like the ITUCs between the Austrian *Burgenland* and West Hungary, an area where significant cross-border mobility takes place. This work includes providing support and legal advice to commuter migrants from Hungary, mostly seasonal labour, who sometimes are not paid the prevalent local rates and have seen their employment rights violated (Arbeiterkammer 2005: 29-30). It remains to be seen to what extent this cross-border collaboration can further develop in spite of ongoing disagreements about the restricted free movement of labour.

#### **4.3 Comparing union responses to the free movement of labour**

When comparing trade union policies on the free movement of labour, it becomes apparent that there is considerable variation in how unions have responded to this often controversial issue. Whereas British and Irish unions came out in support of an open labour market policy in 2004, German and Austrian demanded transitional restrictions for workers from the NMS. In the former two countries, there was broad agreement among the social partners on the need for additional labour from abroad to sustain a booming economy at the turn of the Millennium. Moreover, particularly among British unions there is a strong view that labour standards are best protected by the enforcement of rights rather than restrictions. Such a view led unions to continue to support the free movement of labour at the

time of the most recent enlargement round in 2007 when Bulgaria and Romania acceded to the EU. Thus, the British trade union movement has adopted a rather principled support for the free movement of labour which can be seen as a preference for NMS arriving as dependent employees which offers at least the possibility of organising them, rather than as self-employed or posted workers. The organising of these workers is thus seen as an important step towards the protection of labour standards.

Irish unions were quite favourably disposed towards the free movement of workers in the light of favourable labour market conditions, but also because of the country's own emigration experience. However, when cases of underpayment of foreign workers became more frequent following large-scale inward migration, unions became increasingly concerned about possible negative consequences for employment conditions. These concerns led them to reverse their policy stance in favour of restrictions for Bulgarian and Romanian workers, interestingly in agreement with the other main stakeholders in Ireland. For unions, negotiations for a new social partnership agreement became the main channel to address concerns about employment standards, although SIPTU started to make some noticeable efforts to organise NMS migrants.

In both Germany and Austria, unions supported a transitional period for workers from the accession countries at the time of EU enlargement in 2004 (and 2007). Unions in both countries, concerned about labour standards and collective agreements, argued that significant income differences and previous migration patterns demanded a transitional period. Particular concerns were expressed about commuter migration in light of the geographical proximity of both Germany and Austria to some accession countries. While there was little disagreement among unions, construction unions in particular were pushing most decisively for a transitional period. Particularly in Germany this was grounded in the experience of a new form of temporary labour migration in the 1990s during which posted workers from CEE (as well as Western Europe) were no longer integrated in the workforce on an equal par with domestic workers.

Thus, what becomes apparent is that trade union movements in CMEs such as Austria and Germany have adopted a more restrictive stance on the free movement of labour, suggesting greater concerns about the impact of migration on collective wage agreements and, in the case of Germany, relatively high unemployment. In turn, unions in LMEs such as Britain and Ireland have adopted a more open attitude towards the inflow of NMS migrants, reflecting a buoyant economy and significant labour shortages at the turn of the Millennium.

Regardless of different policies on the free movement of labour, a major concern of unions across the four case countries is to ensure that migrant labour does not undermine wages and employment standards. So far, there is only limited evidence that labour migration from the NMS has had a negative impact on the employment opportunities of native workers. Although wage growth may have been held back in some low-skilled sectors, there has been no noticeable increase in unemployment in the context of recent East-West migration. However, in all four countries there have been incidents in which migrants have not been paid the prevalent local rates, raising fears about the impact of migration on labour standards. These controversies sometimes involved the posting of workers and 'bogus' self-employment in Germany and Austria. Hence transitional restrictions in these countries may have led to an increase in precarious forms of temporary migration including irregular work as alternative means of accessing the labour markets. On the other hand, the migration experience of the UK and Ireland suggests that the free movement of labour can lead to similar cases of underpayment of migrants if there is no proper enforcement of employment rights.

In spite of different policy positions regarding the free movement of labour, there is some commonality in union attitudes towards EU enlargement. All four trade union movements have been supportive of the process of enlargement, in spite of some reservations about the perceived neoliberal direction the European project has taken in recent years. Moreover, all four trade union movements have intensified co-operation with their counterparts in the NMS to ensure that cross-border mobility does not undermine established terms and conditions and in anticipation of a common European labour market in 2011 at the latest (and 2014 in the case of Bulgaria and Romania).



#### **4.4 Conclusion**

The free movement of people is one of the essential principles of the process of European integration. However, when eight countries from CEE joined the EU in 2004, most 'old' member states opted to impose a transitional period in light of concerns about possible labour market disturbances. The free movement of labour in an enlarged EU proved to be particularly controversial among trade unions. In countries like Germany and Austria that share common borders with some of the accession countries, unions argued that significant income differences and previous migration patterns demanded a transitional period as there were concerns that an inflow of NMS migrants would undermine labour standards and collective agreements.

In turn, British and Irish unions supported the open labour market policy of their Governments in 2004. There was not only broad agreement among unions on the need for additional labour at a time of low unemployment but British unions in particular argued that labour standards are best protected by the enforcement of rights, and not restrictions. Irish unions, while remaining supportive of the decision of the Irish Government to open the labour market in 2004, recently changed their position with regard to the accession of Bulgaria and Romania to the EU. Thus, trade unions have not responded uniformly to the recent inflow of labour migrants from the NMS. While in quantitative terms, intra-European migration has become the most important form of labour migration into the four case countries, non-EU immigration continues to be of relevance. Hence the next chapter compares union policy positions on non-EU immigration.

## **Chapter Five: Trade Unions, Integration and Non-EU Immigration**

As it has been argued in the previous chapter, migratory flows from the new EU member states constitutes the most important form of labour migration into Western Europe nowadays. Immigration from outside the European Economic Area, however, remains a pertinent issue, not only in terms of asylum-seekers who are fleeing war and persecution, but also in terms of labour migration. As pointed out in chapter two, there have been various policy initiatives in recent years to design immigration policies at the national as well as European level to attract highly skilled migrants as well as less-skilled migrants from outside the EEA. The latter, however, are usually accepted only upon the condition that their stay will be temporary.

This chapter explores the policy preferences of unions with regard to non-EU/EEA migration. While the main focus is again on labour migration, other forms of immigration such as asylum and family re-unification are also covered to illuminate what kind of immigration policies unions prefer, including the relevance they attach to integration policies. I will first analyse their policy positions with regard to non-EU migration. What will be of particular importance is under which conditions unions accede to the inflow of migrants from outside of the EEA. By comparing these policies I will show that there is some communality in trade union preferences. If non-EU immigration takes place, unions prefer a form of immigration that entails the option of permanent residence from the very beginning. However, there is continuous divergence on how to regulate labour migration from outside the EU. While some trade union movements actively support a system of ‘managed migration’, others have adopted a more defensive approach to non-EEA labour migration.

## **5.1. Trade union policies on non-EU immigration**

### ***5.1.1 Britain***

In Britain, immigration policy has been comprehensively overhauled with the introduction of a points-based system as part of the Government's 'managed migration' approach. The new system which came into force in 2007 is based on a five-tier framework. The first two tiers aim to attract highly skilled migrants who have unrestricted access to the labour market upon arrival and the prospect of permanent residency after two years as well as skilled workers with a job offer in the UK who may qualify for settlement after two years. In turn, tiers three to five (low-skilled workers, students, youth mobility and temporary migrants allowed to work for primarily non-economic reasons) are designed to foster temporary migration where migrants are expected to leave the UK after a certain period of stay (Home Office 2006).

The British trade union movement, while stressing that 'migrant workers make a major contribution to Britain's economic and cultural life', agrees that there is a 'need for an objective system for determining whether people are allowed to enter the UK to work, in the interests of migrant workers and the wider community' (TUC 2007a). It therefore supports a system of 'managed migration', but is adamant that such a system 'should ensure equal rights for people at work whether they are indigenous or migrant workers' (TUC 2005: 2). While welcoming parts of the new points-based system, Congress expressed concerns about those measures that are seen as counter-productive to a rights-based approach to migration. Particular concerns have been expressed about 'any managed migration scheme that restricts workers to a particular employer or sector as it may leave them more vulnerable than indigenous workers who have no such restrictions' (TUC 2005: 7).

Furthermore, the TUC has expressed concern about the distinction made between high-skilled migrants who are offered a route towards permanent settlement and low-skilled migrants who are allowed in only on a temporary basis under tier three of the new scheme. According to Congress, '[t]he condition that tier 3

workers should have no dependents is offensive – this is a “guest-workers” scheme – and contradicts concepts of family reunification’ (TUC 2005: 8). Such measures would ‘deter integration and contribute to a two-tier workforce’ (TUC 2005: 8). Instead, Congress demands ‘better measures to aid integration into the UK for migrant workers (TUCa 2005: 10) which should not be confined to non-EU migrants but should be also open to migrants from the new EU member states in particular. The latter may also require some support as ‘we must not assume that they are just on the way through, there are quite a few people who do stay’ (interview, TGWU(1), 2006).

In this regard, unions attach particular relevance to the issue of language training as John Hannett, General Secretary of USDAW, points out: ‘Improving language skills at no cost is without doubt one of the keys to fully integrating migrants into their workplaces and also into the wider community in which they and their family live’ (USDAW 2006). Hence, unions were particularly opposed to plans to scrap the availability of free lessons of English for Speakers of Other Languages (ESOL):

We have got a particular battle on at the moment about the languages that used to be automatically free to workers and the Government has just announced that will no longer be the case. We have been using ESOL and access to ESOL as part of our organising campaigns in that people need to be able to read about their rights in order to exercise them. So we are very concerned that the removal of that free entitlement will disadvantage especially lower-paid migrant workers (interview, TUC(2), 2006).

Thus, the issue of integration is often linked to work-related matters. It is perhaps less of a surprise that for trade unions the issue of integration and work feature quite prominently. This is not confined to migrant workers but also extends to other groups of immigrants such as asylum-seekers. At its annual conference in 2004, Congress agreed ‘to continue to press for asylum seekers to be granted the right to work legally in the UK while their applications are being processed. This right would bring valuable benefits to society and the economy, as well as to asylum seekers themselves’ (TUC 2004b). Furthermore, the TUC committed itself ‘to the human right of those fleeing persecution to seek refuge and condemns those governments, including the UK Government, who impose increasingly restrictive immigration and asylum legislation’ (TUC 2004b).

Thus, the British trade union movement advocates a rights-based approach to the management of migration and recognises that the UK will continue to require immigration at different skill levels due to a skill and labour shortage in some employment sectors. At the same time, however, Congress stresses that in some instances ‘the labour shortages which exist are due to the low levels of pay and conditions on offer’ (TUC 2005: 3). Thus, there is clearly a belief that if working conditions are improved, domestic workers would be quite willing to take on more jobs in the low-wage sectors which are currently difficult to fill. At the same time, unions are adamant that migration alone cannot be a solution to skill shortages in sectors such as constructions. According to a UCATT representative:

There has been an underinvestment in training in the UK workforce for a number of years, the apprenticeship scheme is not as strong as it was twenty to thirty years ago. We believe that this is contributing to the reason why construction companies are turning to migrant workers today. So we think it is a short-term solution, there can’t be a guarantee that the workers working in the UK today will be here tomorrow (UCATT, interview, 2006).

In spite of these reservations about *how* migrant labour is utilised by some employers to drive down working conditions or to abdicate training responsibilities, the British trade union movement has repeatedly stressed the benefits, economic and otherwise, that migration brings to the UK. Indeed, the TUC, in a joint statement with the Home Office and the Confederation of British Industries, emphasized that ‘we need the skills and enthusiasm of people from around the world who have chosen to make their homes here and to contribute to our economy and society’ (Home Office 2005). Thus, the British trade union movement recognises that the UK will continue to need immigration not only from within the enlarged EU but also from further afield. If migration takes place, unions prefer a form of migration that is based on equal rights for migrant workers to prevent the emergence of a two-tier workforce.

### **5.1.2 Ireland**

Ireland has recently seen a comprehensive overhaul of immigration legislation as well, pertaining to both economic migration and other aspects of immigration

including asylum and residency rights. With the 2006 Employment Permits Act Ireland has introduced a 'Green Card scheme' for occupations where, according to Minister Micheál Martin, 'we have strategically important high level skills shortages' (DETE 2007). At the same time, the new Act limits work permits to a restricted list of occupations. Thus, the expectation among the Government is that future non-EEA immigration should be mainly of the high-skilled variety whereas demand for less-skilled jobs should be met by migrants from within the enlarged EU (NESC 2006). Furthermore, in 2008 the Immigration, Residence and Protection Bill has been published which replaces previous immigration legislation and sets out the terms and conditions under which foreign nationals can enter the state, their entitlements as well as residency rights (DJELR 2008).

As trade unions had previously been critical of the absence of an immigration policy (interview, Mandate 2006), they were broadly welcoming of the attempt by the Irish Government to introduce a policy of 'managed migration'. At the same time, however, they criticized aspects of the proposed new legislation from a rights-based perspective. As unions had long demanded an 'end to the work permit system held by the employer, which is no better than bonded labour or slavery' (ICTU 2005: 5), they welcomed provisions in the Employment Permits Act which allows migrants to apply and reapply for their own permit.

In terms of immigration policies, unions have expressed support for 'a rational kind of green card system that would allow people (in) with specific skills on the one hand and then people, general workers, where there is a shortage of labour. That would allow them in on agreed numbers' (interview, SIPTU (2), 2006). In that regard unions have expressed disappointment that the two new pieces of legislation do not provide for a proper Green Card system. Although, as mentioned, the Employment Permits Act introduces a 'Green Card scheme', the ICTU notes that '[p]ermanent residence, on entry to the country, is the essential feature of a green card. There are no provisions whatsoever...to support the introduction of such a scheme' (ICTU 2008: 7).<sup>40</sup> Nevertheless, Congress welcomed the fact that the Immigration, Residence and Protection Bill provides for 'long term residency rights' if certain conditions are fulfilled. In this regard,

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<sup>40</sup> Under the Irish scheme, a Green Card is initially issued for two years after which a recipient has the right to apply for permanent residence.

ICTU demands to reduce the duration from five years to two years to apply for a long-term residence permit, mainly, it seems, to improve the situation of migrants at work and to make them less vulnerable:

It is likely that workers conscious of the need to remain in work on the permit, will cooperate with any and all request of the employer, no matter how unreasonable. Workers will be reluctant to speak out as their access to the Long Term Residence Permit will rely on the ongoing renewal of their employment permit (ICTU 2008: 8).

Thus, the Irish trade union movement favours immigration policies which offer the option of permanent residence for immigrants. This should be combined with an emphasis on integration where, according to a SIPTU representative, the Government

ha[s] to do a lot more to help people integrate into Irish society and make sure that they avoid ghettoising people...If they come, we should make every effort to make them welcome, to help them to integrate into Irish society, to help them with language skills and so on (interview, SIPTU (2), 2006).

In this regard, unions expressed some disappointment that the new Immigration, Residence and Protection Bill does not include provisions for family reunification. This would be important for a successful integration process as ‘immigration is fundamentally a human activity and the decision to admit migrant workers is closely associated to admitting family migrants’ (ICTU 2006: 7). The issue of integration has also acquired more prominence as part of the social partnership process. Not only have the social partners, notably the ICTU and the Irish Business and Employers Confederation (IBEC), been involved in initiatives such as the ‘Anti-Racism Workplace Week’ that aim to promote an intercultural workplace, but also the partnership agreement *Towards 2016* includes some integration measures such as the provision of extra language support teachers (Department of the Taoiseach 2006: 43). Furthermore, Congress demands easier labour market access for asylum-seekers:

The Irish Congress of Trade Unions strongly supports...the right to work after six months for asylum seekers whose applications remain unprocessed. To force human beings, who are strangers in need, to remain idle for an

indeterminate period of time is a denial of their fundamental human rights (in Irish Refugee Council 2001).

Thus, Irish unions promote a ‘rights based immigration system’ (ICTU 2008: 3) which includes, perhaps less surprisingly from a trade union perspective, the right to work. Furthermore, in terms of asylum-seekers, the ICTU has expressed concern that the proposed Immigration, Residence and Protection Bill may not be in compliance with Ireland’s obligation under the 1951 Geneva Convention on Refugees (ICTU 2008: 5-6).

There is an acceptance by Congress that Ireland will continue to require immigration not only from the NMS but also from further afield as ‘certainly now there is a recognition across Europe that Europe needs workers, Europe needs migrants. We are all growing old, someone has to be there to pay pensions...and our birth rates generally are not sufficient to fill that’ (interview, ICTU (1) 2006). However, unions are anxious that immigration should not be utilised by employers to drive down wages and employment conditions. In that regard unions demand a better system than the current labour market test to establish labour shortages. To ensure that employers do not prefer migrant to indigenous workers, Congress demands that the job to be filled is ‘advertised at the “going rate for the job” and with established conditions and skill levels’ (ICTU 2008: 4). Thus, migrant workers should only be recruited into those sectors that have a genuine labour shortage. This would require ‘sector-specific strategies to manage migration that involve trade unions, employers and Government’ (ICTU 2008: 4). The Irish trade union movement therefore promotes a system of managed migration that tries to open up possibilities for legal immigration from non-EEA countries while at the same time trying to ensure that migrants are not recruited to drive down conditions of employment. In this, unions try to balance the economic needs of Ireland with an emphasis on the human rights of migrants including those of asylum-seekers.



### 5.1.3 Germany

In Germany, trade unions were part of the Commission on Immigration (*Zuwanderungskommission*) which proposed a new immigration and integration policy at the turn of the century. In its final report, the Commission unambiguously stated that Germany has long been a country of immigration, in spite of official denials. It also found that Germany will continue to need immigration for both economic and demographic reasons (Süssmuth 2001). The proposals of the Commission for a new immigration policy, however, were watered down in the eventual 2004 Immigration Act. For instance, while the Commission on Immigration had proposed a points system akin to the one in Canada, the new Act only allows for the permanent immigration of some categories of highly skilled immigrants. Nevertheless, the Act marks a departure from previous policies in so far as '[f]or the first time in German immigration history, labour migration is viewed as an independent form of immigration with the prospect of permanent residence' (Zimmermann et al. 2007: 36).

While welcoming aspects of the Act, trade unions were critical that it does not herald 'a change of perspective in migration policies' (DGB 2004: 5). Unions were particularly critical that the new Act does not allow for a new politics of labour migration as it leaves the official recruitment stop of 1973 in place. At first glance, such a critique may come as a surprise, taking into account that at the time of the enactment of the recruitment stop, unions were one of its supporters. However, while unions continue to insist that the 'reduction of unemployment and further education have to have priority over the recruitment of labour' (DGB 2003: 2), there is increasingly an unease about the official recruitment stop. On the one hand, an analysis of the population development and the social security systems in Germany has led to a more open attitude towards new immigration in light of a declining working population (DGB 2001b). On the other hand, a DGB representative pointed out that the recruitment stop has increasingly proven to be impractical and ineffective:

The recruitment stop with its many rules of exception (*Ausnahmeverordnungen*) hasn't delivered on what we thought it would at that time. Instead the recruitment stop led to measures linked to the legal position of

foreigners which, we believe, are rather detrimental not least for trade unions...If you look at the options (for migration, T.K.) today, you will see that the main focus is not on the immigration of employees and their families, but on the temporary deployment of employees, whereby family reunification and a permanent stay is not possible (interview, DGB (1), 2006).

As the number of temporary labour migrants who entered Germany as contract workers, seasonal workers or as part of the EU freedom of services significantly increased during the 1990s,<sup>41</sup> the DGB increasingly talked about the ‘fiction of the recruitment stop’ (DGB 2004: 8). Moreover, what became an issue of particular concern to unions was that some of these new forms of labour migration, particularly the temporary posting of workers, were linked to incidents of wage dumping and job displacement (interview, IG BAU, 2006; interview NGG, 2006).

Thus, the experience of increased temporary labour migration, sometimes to precarious conditions and in spite of an official recruitment stop, in conjunction with the demographic development, led to a re-evaluation of the immigration preferences of unions. The outcome of this internal debate led trade unions to arrive at a position in favour of a new system of immigration which should replace the old recruitment stop (DGB 2003: 2). Such a new system, unions are adamant, has to be managed ‘to avoid negative consequences for the employment of domestic workers’ (*Arbeitsmarktinländer*), whereby the DGB defines domestic workers as ‘all persons who have equal access to the labour market, including, among others, German citizens, EU citizens and third-country nationals with a status of permanent residency’ (DGB 2001b). Trade unions are particularly anxious that employers do not utilise migrant labour from abroad at the expense of vocational training and qualification in Germany. To some extent, this can provide a dilemma to unions as one DGB representative reasons:

In light of significant unemployment and a lack of apprenticeship particularly for people with a background of migration, how do we get business to live up to its training responsibilities, and do not provide them with tools in the form of immigration through which they can compensate

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<sup>41</sup> As pointed out in chapter one, the number of these temporary migrants, who entered Germany as part of the *Anwerbestoppausnahmereverordnung* (Regulation on the exception from the recruitment stop), averaged 350,000 annually at the beginning of the twenty-first century (Tamas/Münz 2006: 140).

for a decline in vocational qualification in the domestic labour market (interview, DGB (2), 2006).

Hence, the main criteria for a system of managed migration should be the middle-to long-term prospect of the labour market as well as population development. To establish the number of labour migrants, it is suggested that the Government should consult with the social partners and the *Bundesrat*<sup>42</sup> whereas the selection of immigrants should be according to a points system (DGB 2003: 2).

Trade unions emphasize that those immigrants who are admitted should receive the right to a permanent stay from the very beginning: ‘The trade unions and the German Trade Union Confederation stand for a policy of managed immigration. They prefer regular, permanent immigration to the temporary deployment of posted employees’ (DGB 2001b). Thus, unions view a form of long-term immigration that offers the prospect of integration in the workplace and wider society as preferable to temporary labour migration during which migrants do not become integrated in the workforce on an equal par with domestic workers. Consequently, unions demand that immigration should be accompanied by measures that facilitate the integration of migrants, whereas integration is understood as ‘the comprehensive participation in political, social and working life’ (IG Metall 2007a: 6). The view that ‘immigration requires integration’ has been articulated in a joint statement by the DGB and the Confederation of German Employer Associations (BDA) in Germany (DGB/BDA 2004).

Unions are keen to stress that integration measures such as language training and educational and vocational support should not be confined to new immigrants but should be also open to long-term foreign residents. As regards the latter, unions demand that all migrants who have been in Germany for longer than five years, regardless of their status, should be granted permanent residence. As for those migrants who have been in Germany for longer than a year, they should be entitled to a limited residence permit ‘which should include equal access to the labour market’ (DGB 2004: 6). The DGB is adamant that this should apply to asylum-seekers as well and, consequently, demands that a general ban on paid employment for the latter group should be abandoned (DGB: 2003: 2).

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<sup>42</sup> The *Bundesrat* (Federal Council) is the second chamber of the German parliamentary system.

In terms of their policy position on asylum-seekers and refugees, unions argue that the need to continue to provide asylum to people fleeing war or political persecution should be viewed separately from any discussion on possible quotas for labour migration. As regards the former, unions demand that national and international regulations and conventions regarding the inclusion of asylum-seekers and refugees should not be restricted and that protection should be also offered in the case of non-state and gender-specific persecution (DGB 2003; IG Metall 2007a). Thus, the German trade union movement combines a relatively liberal policy on asylum-seekers and refugees with support for a policy of managed labour migration that should create opportunities for long-term immigration as opposed to the temporary posting of workers.

#### ***5.1.4 Austria***

In contrast to Germany, debate in Austria on a new immigration and integration policy has so far featured less prominently. In spite of a huge immigrant population which accounts for over 13 per cent of the population, Austria continues to see itself as not being a country of immigration (NCPA 2003). In terms of labour migration the Austrian ‘guestworker system’, based on the principle of ‘rotation’, was strongly defended by the Austrian trade union movement in the past. Only since the 1990s gradual change took place when unions increasingly recognised that a settlement process has taken place. This was also the time when unions began to talk about the need for integration measures, without necessarily pushing this issue to the top of their agenda in the social partnership process which has a considerable influence on the direction of the Austrian immigration policy (Bauböck/Wimmer 1988; Gächter 2000).

In recent years, unions have become critical of temporary labour migration programmes, arguing that such programmes are lacking an integration perspective. According to one representative of the HGPD, ‘we were extremely opposed to the seasonal labour rules because these do not facilitate the integration at the workplace. At a time when Switzerland has abolished the seasonal labour

rules, Austria has introduced them!’ (interview, HGPD, 2006). Unions argued that an extension of seasonal labour programmes would exert pressure on wages and employment conditions and would not be appropriate in times of rising unemployment, affecting both native and foreign-born domestic workers (GBH 2002; Vida 2008). Such sentiments have been echoed by the ÖGB when commenting on a set of new proposed EU directives on labour migration:

These regulations – geared towards temporary migration – could potentially lead to an increase in precarious employment relations. Models of migration which are based on the principle of rotation and only entail short- to middle-term residence stand in opposition to an effective policy of integration (ÖGB 2007a: 13).

Thus, as in other countries, Austrian unions are increasingly uneasy with temporary labour migration, arguing that such programmes are lacking an integration perspective. However, in contrast to other countries, the Austrian trade union movement has so far come up with few proposals on how to open up avenues for long-term immigration from outside the EU. While it is clear that unions have become more outspoken about the rights of long-term foreign residents, the impression remains that they have adopted a rather defensive approach towards new immigration. Unions are adamant that the training and qualification of the domestic workforce has to have priority over the recruitment of foreign labour and have therefore repeatedly rejected calls by employer associations to increase the quota for qualified labour from abroad: ‘To support and train Austrian labour has to be the first step to ameliorate the shortage of qualified labour, before an increase in the labour contingent from abroad can be considered’ (GBH 2006; Vida 2008). While unions agree that immigration is likely to continue, they have few policies in place on how to open up avenues for legal immigration beyond a recognition that it is likely that most of the future labour migration to Austria will be from the NMS (interview, ÖGB (1), 2007; interview, GMT/N, 2007).

In terms of policies on asylum, a representative of the ÖGB is adamant that ‘we don’t want “Fortress Europe”. We can have as many war ships in the Mediterranean Sea as we like to displace those guys from Senegal, that is not the solution of the problem’ (interview, ÖGB (1), 2007). Hence the trade union

confederation demands asylum and refugee policies that are in ‘accordance with humanitarian principles and the rule of law’, including easier access to the labour market for asylum-seekers (ÖGB 2007a: 19; see also EIRO 2007c). Thus, the trade union movement in Austria has become more receptive to the rights of long-term immigrants and asylum-seekers. Moreover, trade unions, in conjunction with employer associations have begun to develop quite comprehensive policy proposals on the integration of long-term immigrants (ÖGB 2008). This is quite an important development, taking into account that in ‘corporatist Austria’ the issue of foreign labour did not feature prominently on the social partnership agenda in the past (Bauböck/Wimmer 1988).

At the same time, however, the Austrian trade union movement has come up with few policy proposals that could open up possibilities for legal immigration for people from outside the EEA. While there is no longer an appetite for temporary ‘guestworker’ programmes which are seen as counter-productive to integration, there are few ideas on how to actively ‘manage’ a system of non-EU immigration. Hence, the impression remains that unions have largely adopted a defensive approach to new immigration.

## **5.2. Comparing union responses to non-EU immigration**

When comparing union policies on immigration, several common features emerge. Unions across the four countries accept that immigration is an inextricable part of contemporary processes of globalisation. Indeed, there is increasingly a recognition that even in the wake of EU enlargement and the free movement of labour, to be granted in 2011 at the latest (and 2014 in case of Bulgaria and Romania), countries will still require additional immigration, not only for economic reasons but also increasingly because of the demographic development in Europe. This view does not make them favour ‘open door’ policies. Instead their immigration preferences are perhaps best captured by the concept of ‘managed migration’ that opens up avenues for legal immigration from outside the EEA. Such a system should ensure that labour migration takes place in response to genuine skill and labour shortages to avoid a situation in which

employers could prefer migrants to domestic workers and abdicate their training responsibilities. This is a particular concern for unions in CMEs like Germany and Austria where traditionally apprenticeships have been quite important in developing industry-specific skills (Hall/Soskice 2001). However, unions in LMEs, particularly in the construction sector, share similar concerns as there is the view that employers increasingly utilise migrant labour at the expense of investment in vocational training and upskilling of the domestic workforce.

If migration takes place, unions prefer a form of rights-based immigration that should entail the option of permanent residence from the very beginning and should be accompanied by policies that facilitate the integration of the newcomers. The main rationale for this is that migrants who become integrated in the workplace and wider society are less likely to undermine labour standards and may be indeed more willing to join trade unions. Consequently, unions demand that immigration should be accompanied by family reunification and integration measures such as language training. Indeed, unions are adamant that such integration support should be also open to EU migrants and long-time foreign residents who sometimes are not included in official integration policies. Conversely, unions tend to be opposed to temporary forms of migration, be it as part of subcontracting arrangements, the posting of workers or temporary migrant worker programmes. The main reason for this, it seems, is that temporary migrants often have limited rights and indeed are more often linked to cases of underpayment and wage dumping. Furthermore, as argued before, the organisation of migrants is often linked to the length of their stay so that temporary migrants appear less likely to join unions. In their preference for long-term immigration trade unions, however, face the dilemma that there is a renewed commitment by policy-makers to temporary migrant workers' programmes at the national as well as the European level (Castles 2006; EU Commission 2005).

Another common feature is that trade union policies on immigration are not only shaped by labour market issues but also by considerations for the conditions of immigrants, confirming previous research that found that contemporary trade unions have become more receptive to the human rights of immigrants than some of their predecessor (Haus 2002). This becomes not only visible in union support

for equality and anti-discrimination policies, but also in their policy positions on asylum-seekers and refugees. Regarding the latter, unions in the four case countries have expressed concerns about the tightening of asylum policies across Europe and have demanded adherence to the various conventions protecting the rights of asylum-seekers and refugees.

It is important to stress that trade unions across the four countries do not campaign to the same extent for migrant worker rights, with the British trade union movement emerging as the one that most forcefully promotes a rights-based approach to immigration. However, even in a country like Austria where unions until recently had adopted a fairly restrictive stance on asylum-seekers (Gächter 2000: 85), there is now a greater responsiveness to the rights of the latter. Furthermore, there is broad agreement among unions to facilitate an easier access to employment for asylum-seekers. This underscores not only the importance that unions attach to work as an important part of integration, but can also be regarded as an attempt to curb the informal economy as some asylum-seekers, particularly those who are in the country for some years, are often thought to engage in irregular economic activities (Sinn et al. 2005).

Thus, there is some commonality in union attitudes towards non-EEA migration across Western Europe. Unions accept that immigration is an inextricable part of globalisation and have become more responsive to the human rights of migrants including asylum-seekers. Particularly in open economies like Britain and Ireland, unions recognise that immigration from outside the EEA is likely to continue, hence their support for a system of ‘managed migration’. However, similar support among German unions for a points-based immigration system shows that the issue of non-EU immigration straddles the LME/CME typology as CMEs may well agree to the inflow of migrant labour, provided that there are demonstrable labour shortages and that migrants are paid in accordance with the prevalent collective wage agreements.



### **5.3 Conclusion**

This chapter has examined trade union policies on non-EU immigration. It sought to illuminate under which conditions unions may accede to the inflow of migrants from outside the EEA. The chapter found that unions prefer a form of permanent immigration during which migrants become integrated into the workforce on an equal par with domestic workers. This is seen as the best way to ensure that migrants do not represent a cheaper option to domestic workers and do not undermine established terms and conditions. Whereas trade union movements in Britain, Germany and Ireland have developed policy proposals in favour of a rights-based system of ‘managed migration’, Austrian unions have yet to come up with similar proposals, leaving the impression that they have largely adopted a defensive approach towards non-EEA migration.

## **Chapter Six: ‘A Level Playing Field?’ Migrant Labour, Subcontracting and the Informal Economy**

As already pointed out, during the ‘guestworker’ era, one of the core demands of unions was that migrant workers should receive the same pay and working conditions as indigenous workers. This would ensure that migrant workers do not undermine established employment conditions and provide a cheaper alternative to domestic workers. In most countries unions succeeded with this demand (Castles/Kosack 1973: 128). Although migrants usually occupied jobs at the bottom of the labour market with only limited prospects of upward mobility, they were mainly paid in accordance with existing collective agreements (Lillie/Greer 2007: 555). For trade unions, in many aspects, a defence of the principle of equality of treatment is essential, as a member of the national executive of the DGB argued: ‘Trade unions are only able to pursue the interests of their members if there are equal conditions, e.g. with regard to income, working time and healthcare. That is the only way to prevent that employees are set in competition to each other’ (DGB 2006b: 20).

However, as a result of the weakening of organised labour, the deregulation of national labour markets and the ‘*informalization* of employment relations’ (Beck, 2000: 50), unions increasingly struggle to establish ‘a level playing field’. In particular practices of subcontracting, the posting of workers and the increasing deployment of agency workers have made it more difficult for unions to achieve ‘equal pay for equal work’. This is further compounded by the growth of the informal economy that includes many irregular migrants who are usually paid significantly less than the prevalent collective agreements or even the minimum wage (Anderson et al. 2007; Düvell 2006; Hunger 2001).

In this chapter I will explore the policy responses of unions with regard to the spread of precarious employment and migrant labour. I will first compare union responses to subcontracting arrangements such as posted workers and agency workers. Such arrangements, while perfectly legal, sometimes overlap with the informal economy which includes many irregular migrants. Hence in the second part I will examine union policies on migrants without proper documentation who

do not only tend to be in a particularly vulnerable position but also pose a particular challenge to unions. By comparing union policies on precarious migrant labour, I will show that unions everywhere demand that the principle of equality of treatment be applied. However, what this entails can differ between countries and sometimes between employment sectors, influenced in no small way by the structure of collective bargaining. Though, it is not only considerations for collective bargaining but also humanitarian concerns that influence union responses to precarious migrants.

### **6.1. Trade unions, migrant labour and the spread of subcontracting arrangements**

As mentioned in chapter two, processes of globalisation and the expansion of the service sector have been accompanied by a growth in ‘atypical’ forms of work, including casual, part-time and temporary employment, various forms of self-employment and multiple jobs (Rodgers/Rodgers 1989). While not all of these employment arrangements are of an insecure nature, particularly subcontracting arrangements like agency labour have been described as ‘archetypically precarious’ (Anderson 2007: 18). According to data provided by the European Foundation for the Improvement of Living and Working Conditions, agency workers now account for between one and two per cent of the labour force across the EU (European Foundation 2006). This also broadly reflects the share of agency workers in the four case countries according to the most recent figures available: Austria: 1.9 %; Germany: 2.4%; Ireland: 1.2%; UK: 2.6%.<sup>43</sup>

Unfortunately, there are no precise figures on the share of migrants among agency workers available. However, tentative evidence suggests that migrant agency workers are over-represented in low-paid, low-skilled employment sectors like hospitality and cleaning (TUC 2007b: 3; Wills 2006). Other subcontracting

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<sup>43</sup> These figures derive from the following sources: Bundesministerium für Wirtschaft und Arbeit (2007); Bundesagentur für Arbeit (2007); European Foundation (2006: 6). The percentage for Ireland, calculated on the basis of 25,000 agency workers, is likely to be an underestimate. For instance, Proinsias de Rossa, a Member of the European Parliament for the Labour Party and someone who has worked on this issue, estimates that there may be up to 100,000 people working for employment agencies in Ireland (Irish Times 2007).

arrangements include the cross-border posting of workers which is particularly widespread in the European construction sector. As with agency labour, there are no exact figures available on posted workers but it is assumed that this form of temporary labour migration has increased in recent years (EU Commission 2007). Other forms of atypical employment include self-employment, with an increase in the number of self-employed migrants observed in recent years (OECD 2007: 74-75).

Traditionally, trade unions have been quite opposed to the emergence of 'atypical' work arrangements such as subcontracting and agency labour, fearful that these employment arrangements could undermine established terms and conditions and lead to the casualisation of work. However, recently unions have become more accommodating of non-standard forms of employment, increasingly recognising that 'atypical' employment has become a feature of the 'new world of work' (Heery 2004; Pernicka 2005). Nevertheless, the spread of subcontracting arrangements in particular poses no small difficulty to unions as spelled out by the ETUC:

the cross border provisions of services increasingly takes the form of subcontracting (especially in construction) and agency work (in many other sectors of the economy). By creating extremely complex networks of sub-contractors, main contractors can create easy ways to circumvent legal or collectively agreed labour-standards and working conditions (ETUC 2006: 3).

How then, do unions respond to an increase of subcontracting arrangements that profoundly challenges the trade union philosophy of 'equal pay for equal work'?

### **6.1.1 Britain**

In Britain the main challenge to the principle of equality of treatment at work comes from agency labour and self-employment. Particularly since EU enlargement in 2004 the issue of agency labour has acquired a growing prominence, often linked to controversies about the underpayment of migrants (Anderson et al. 2007). As the UK is only one of a few EU member states that has

not (yet) legislated for equal treatment of agency workers, these workers are often on worse conditions than directly employed workers. This, naturally, is an issue of utmost concern to unions. According to one TUC representative, 'agency and contract working is becoming synonymous with migrant workers...employers can hire migrant workers on agency contracts and get away with treating two workers doing the same job differently simply because of their status' (interview, TUC (2) 2006). Such a situation, it is feared, could lead to the emergence of a two-tier workforce which, in turn, could threaten social cohesion and spur racial tensions (interview USDAW, 2006; TGWU, (2), 2007). Therefore a TUC representative is adamant that 'we need a clear and simple message to both migrant and settled workers that the key goal has to be equal pay and treatment' (interview, TUC (2) 2006).

Besides agency labour, the growing number of self-employed workers particularly in the construction sector makes it increasingly difficult for unions to establish a 'level playing field'. It has to be emphasized that self-employment is by no means confined to migrants.<sup>44</sup> As with many indigenous workers, it is widely accepted that many of the 'self-employed' migrants in construction effectively work as dependent employees (Anderson et al. 2006). However, incidents of underpayment seem to be more widespread among self-employed migrants who sometimes have not been paid the prevalent National Working Rule Agreement in construction, and occasionally even less than the minimum wage (Lillie/Greer 2007: 571).

Naturally, the undercutting of wages and employment conditions is an issue of grave concern to unions. However, British unions are keen to stress that the main issue is the lack of employment protection and not the presence of migrant labour (interview, TUC (2) 2006; UCATT 2007a: 13). Furthermore, the main focus is on 'equal pay for equal work', rather than opposing new forms of 'atypical' employment *per se*.<sup>45</sup> Not only has the British trade union movement repeatedly highlighted the issue of agency workers from an equality perspective (TUC

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<sup>44</sup> It has been estimated that almost forty per cent of the British construction workforce may be self-employed (Anderson et al. 2006: 26).

<sup>45</sup> Perhaps an exception to this is the construction sector where unions have repeatedly expressed concerns about the spread of self-employment, arguing that this is usually a form of 'bogus' self-employment which puts workers quite often in a more vulnerable position (UCATT 2007b).

2007b; TUC 2007c; USDAW 2007a), but individual unions like the TGWU have initiated campaigns such as 'Equal Rights for Agency Workers'. A representative of the latter union emphasized that the main issue is the principle of equality of treatment:

We are not trying to ban agency working or turn all these agency workers into directly employed workers. What we are saying is that agency workers must be treated equally and only then will we stop seeing an attack on terms and conditions (interview, TGWU (3) 2007).

In addition to attempts to organise migrant workers (see next chapter), British unions demand better enforcement of existing employment rights particularly with regard to the minimum wage: 'We have a woefully inadequate number of wages inspectors, for example, in the agency contracting sector, we don't have enough' (interview, TUC (2), 2006). Moreover, in their efforts to establish a 'level playing field' between migrant agency workers and directly employed workers, British unions demand new legislation at the domestic as well as European level. Domestically, they prefer an extension of the Gangmasters Licensing Act which was enacted in 2004. So far this Act that entails a stronger regulation of employment agencies only covers sectors such as agriculture, food- processing and packaging. However, unions want other areas like the construction sector to be covered by the Act as well (TUC 2007d; UCATT 2008).

Furthermore, the British trade union movement strongly campaigned for an adoption of the EU directive on temporary agency workers which aims to establish the principle of 'non-discrimination' between agency workers and 'comparable workers' (European Foundation 2006; TUC 2007c). Until recently, unions found it quite difficult to achieve progress on this issue as the British government has been amongst the few governments that have blocked the ratification of the proposed EU Directive (interview, TGWU(3) 2007; interview, TUC(2) 2006). However, recently the British government and the social partners reached agreement on the issue of equality of treatment for agency workers after a period of 12 weeks, suggesting that the current Labour government is more

amendable to trade union demands than previous Conservative governments (EIRO 2008a).<sup>46</sup>

Unlike in Germany, the cross-border provision of services was not a major issue in Britain in the 1990s as the number of posted workers was fairly small. Indeed, the main reason why British unions supported the enactment of the EU Posting of Workers Directive in 1996 was because of concerns about posted British workers abroad, particularly in Germany (EIRO 2003a). However, recently unions have become more vocal in demanding the full implementation of the PWD in sectors such as construction ‘to outlaw foreign European Union nationals being employed on terms inferior to those set for the industry’ (UCATT 2007a: 13; see also TUC 2006a: 6). In other, more low-paid employment sectors such as agriculture, food-processing and hospitality, British unions increasingly use the statutory minimum wage as a tool to protect the employment conditions of migrants. According to USDAW, ‘[t]he right to the national minimum wage is especially relevant to migrant workers as they are likely to work in lower paid employment and may not be aware of their rights’ (USDAW 2007a: 9; see also TUC 2007d). Thus, the main response of British unions to an increase in ‘atypical’ employment within the context of recent inward migration has been an emphasis on equal treatment, be it through various EU directives, particularly the one on agency workers, improved domestic legislation and the proper enforcement of the minimum wage.

### **6.1.2 Ireland**

As in Britain, controversies about the underpayment of migrants have been sometimes linked to agency labour in Ireland, most famously during the Irish Ferries dispute in 2005 when over five hundred mostly unionised Irish workers were replaced by cheaper agency workers from Eastern Europe. In spite of the social partnership agreement *Towards 2016* that was signed in the aftermath of the Irish Ferries dispute and that heralded a new compliance regime, controversies about the underpayment of migrant workers, often in the context of agency labour, have continued unabated (ICTU 2008; SIPTU 2007a). SIPTU, Ireland’s largest

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<sup>46</sup> This development paved the way for agreement on the temporary agency workers directive at the European level.

union, went as far as describing the growing use of agency labour as ‘the most serious threat to the wages and living standards of ordinary people’ (SIPTU 2007b).

Particularly in employment sectors such as construction that are covered by a registered employment agreement (REA) which tends to be significantly above the national minimum wage, unions are concerned about the deployment of agency workers (interview SIPTU (2), 2006; interview UCATT Ireland, 2007). As the REA only applies to employees of construction companies, workers of employment agencies were exempt from these regulations. According to trade union officials some of these agencies ‘effectively operate as labour-only sub-contractors who say that they don’t come under regulations on paying conditions in the construction industry because their primary business is not construction but the supply of workers through an agency’ (interview, SIPTU (2) 2006). Hence, trade unions pushed for an extension of REAs as well as Employment Regulation Orders<sup>47</sup> to agency workers and posted workers in the partnership agreement *Towards 2016* (Department of the Taoiseach 2006: 106).

However, until recently the Irish trade union movement was less successful in achieving the principle of equal treatment for agency workers. In the light of mounting concerns, the Irish trade union movement made it unequivocally clear that the issue of agency labour could be a potential ‘deal breaker’ for a new partnership agreement. According to the ICTU ‘the agency issue (is) at the heart of our platform for any upcoming national talks’ (ICTU 2008). While some unions, in particular SIPTU, aim to ‘resist the introduction of agency workers and seek to have all new workers employed on regular contracts of employment by the beneficial employer’ (SIPTU 2007a: 11), the main political demand of the Irish trade union movement appears to be the principle of equality of treatment for agency workers. In this regard, Congress demanded not only domestic legislation but also strongly criticised the role of the Irish Government in blocking the proposed EU directive on temporary agency workers in the past (EIRO 2008b). When agreement was reached at the European level on the principle of equality of treatment for agency workers, the position of trade unions on the issue of agency

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<sup>47</sup> An Employment Regulation Order is a legally binding enactment of a Joint Labour Committee which sets up rates of pay and working conditions in usually low-paid employment sectors.



labour was invariably strengthened. However, it may take a few years until the directive is transposed into Irish law (EIRO 2008c).

As in Britain, Ireland has a statutory minimum wage that is utilised by the trade union movement in some low-wage sectors to prevent a 'race to the bottom'. For instance, during the Irish Ferries dispute, when it became clear that the company would proceed with its plans to 'outsource' its staff, one core demand of Irish unions was that the new agency workers from Eastern Europe would be paid the minimum wage and not the €3,60 an hour initially proposed by the company (Flynn 2006). However, as bargaining coverage tends to be more widespread than in Britain, as it takes place at the level of the company as well as in the form of national wage agreements,<sup>48</sup> Irish unions are adamant that

[w]e need to protect wages above the level of minimum wage; in particular our legislation needs to recognise the 'standard week remuneration' where this is above the level of minimum wage so that we can provide a legal guarantee for what's commonly known as the 'going rate for the job' (in EIRO 2006).

Such a demand could indicate a preference for a system of legally enforceable collective wage agreements more reminiscent of CMEs such as Germany and Austria. However, so far there is little evidence that the Irish Government, or, for that matter employer associations, would be willing to move away from a voluntarist system of industrial relations (EIRO 2006). Nevertheless, when demanding equal treatment between indigenous and migrant workers, Irish unions do not only utilise the minimum wage, but particularly in sectors such as construction are concerned about adherence to collective wage agreements as well.

### **6.1.3 Germany**

As already mentioned, Germany became an important destination for posted workers and other contract workers throughout the 1990s (Hunger 2000). This led

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<sup>48</sup> In contrast to the sector-wide collective wage agreements in Germany and Austria, national wage agreements in Ireland are not legally binding (EIRO 2007a).

to the emergence of a two-tier workforce in the construction sector which significantly weakened the bargaining position of the construction union IG BAU. Not only did IG BAU suffer a huge loss of members as a result of increased unemployment among German and long-term immigrant construction workers, but it was also forced to pursue a more defensive approach in collective bargaining negotiations (interview, IG BAU, 2006). Other unions were initially not affected to the same extent by this new form of temporary migration (Treichler 1998: 220). However, particularly since EU enlargement in 2004, other employment sectors such as the meat industry, transport, metal and electronics industries have experienced an increase in subcontracting arrangements too, involving both posted workers and self-employed workers from the NMS (Czommer/Worthmann 2005; interview Ver.di 2006; interview NGG 2007; Lippert 2006). What all these rather precarious forms of temporary migration have in common is that they make it more difficult for unions to defend the principle of 'equal pay for equal work'.

Generally, the trade union movement in Germany, as in most other countries, tends to be opposed to the spread of 'atypical' work arrangements. This, it is feared, could threaten the 'orderly labour market' and undermine collective agreements. As Berthold Huber, chairperson of the IG Metall, put it: 'We demand that precarious employment, particularly agency labour, should be limited and stemmed... We should not allow that agency labour further eats itself into standard employment. This threatens our collective agreements and in the long-term it threatens us all!' (IG Metall 2007b: 11). Within the context of posted migrant labour, the IG BAU promotes a similar line:

Trade unions should oppose the form of precarious posted labour and should demand the transformation of quotas for precarious posted labour...into individual migration quotas. We should draw a clear line between individual migration and unwanted posted labour that is to the conditions of the country of origin (interview, IG BAU, 2006).

However, in light of the transnationalisation of the European labour market, the profound political and social transformations in Central and Eastern Europe and a growing weakness of organised labour, trade unions were effectively lacking the political resources to curb an increase in the temporary posting of workers. As

trade unions increasingly acknowledged that they would not be able to prevent the spread of subcontracting arrangements, they began to put greater emphasis on demanding a 'level playing field'. According to Klaus Wiesenhügel, chairperson of IG BAU, 'the principle of "equal pay for equal work at the same location" has to be accomplished and secured in all sectors in which the posting of labour across borders or agency labour occurs' (IG BAU 2004: 12; see also IG Metall 2007b). This demand was also articulated within the context of recent controversies about the EU Services Directive where German unions, like most other unions in Western Europe, vehemently opposed the initial draft of the proposed directive with its contentious 'country of origin' principle. According to Ver.di, 'the provision of services...has to happen in accordance with the law of the country where the service is provided, as long as there are no unified European-wide rules. Therefore, let's do away with the principle of origin!' (Ver.di 2006, see also NGG 2005; interview IG Metall (2) 2006).

Thus, a defence of the principle of equality of treatment marks a cornerstone of union policies. However, in their endeavour to achieve a 'level playing field', unions have to increasingly acknowledge that the demand 'equal pay for equal work' does not always reflect political realities anymore. For instance, while IG BAU initially demanded that posted workers should be paid in accordance with German collective agreements, it had to make far-reaching concessions. As part of the 1996 Posting of Workers Act (PWA), primarily designed to prevent a 'race to the bottom' in the German construction sector, only the two lowest wage brackets were declared universally applicable (Menz 2005: 114-117). Nevertheless, with the PWA, which precipitated the EU Posting of Workers Directive, a legal instrument has been created that stipulates a minimum of collectively agreed pay rates and working conditions that are negotiated by the social partners.

However, in other employment sectors such as food-processing and hospitality that equally face wage pressure, unions are less capable of achieving a collectively agreed minimum wage. This is mainly because of a growing unwillingness among employer associations to negotiate collectively binding collective agreements in these sectors. Therefore unions like Ver.di and the NGG that cover these sectors increasingly demand the introduction of a statutory,

legally enforceable minimum wage to prevent the further segmentation of the wage structure (interview, NGG, 2007; interview Ver.di). Such a policy position is traditionally alien to the German *Tarifsystem* where collective agreements are negotiated between the social partners. However, the demand for a minimum wage is very much a recognition of new realities in Germany where collective bargaining has become largely decentralised in some employment sectors and unions are lacking the strength to enforce collective agreements. This has been openly admitted by Frank Birske, chairperson of Ver.di, who supports the introduction of a minimum wage not least with a view of future labour migration in mind:

I believe that for the foreseeable future we will not have the strength to prevent a 'race to the bottom' in those sectors with precarious employment relations and precarious wages. This is why the legal minimum wage which we have in nearly all Western European countries...becomes so important to stabilise the assertiveness of unions in the fight for wages that don't make people poor...I also say this with future labour migration in mind where fellow workers, under certain circumstances, may be willing to accept wages that are not only unimaginable but also unacceptable to us (Ver.di 2005: 23).

Such sentiments are shared by the NGG, which linked the debate about a legally binding minimum wage to the issue of the free movement of labour and demanded that 'as long as there is no legally fixed bottom line in form of a minimum wage in Germany, the full free movement of labour should be restricted for employees from Central and Eastern Europe until 2011' (NGG 2008).

It has to be said that the debate about a minimum wage initially caused some divisions among German unions (Czommer/Worthmann 2005: 9). Especially unions like the IG Metall that remain in a stronger position have expressed some scepticism about the introduction of a general minimum wage. This, it seems, is mainly due to the fact that the metal union still possess the organisational strength to negotiate meaningful collective agreements that are significantly above the €7,50 an hour that are flouted by Ver.di and the NGG as a possible statutory minimum wage. Therefore, while IG Metal is increasingly confronted with wage pressure as well within the context of cross-border provision of services, the union prefers the extension of the PWA to its sectors, rather than the introduction of a

general minimum wage (interview, IG Metall (2) 2006). Thus, there is no uniform response among German unions to an increase in precarious employment and migrant labour. Depending on their organisational strength and their capacity to negotiate meaningful collective agreements, unions either prefer the introduction of a statutory minimum wage or the extension of the PWA.

#### **6.1.4 Austria**

Until recently, the issue of posted migrant labour did not feature prominently in Austria in light of only a small inflow of such workers. As Austrian unions, in alliance with employer association, managed to secure that posted workers would be paid in accordance with established collective agreements, there was less of an incentive for individual employers to recruit migrants as part of the cross-border provision of services (Menz 2005). Nevertheless, particularly within the context of recent EU enlargement, subcontracting arrangements involving self-employed migrants and posted workers have become more widespread particularly in the construction sector, raising concerns among unions about possible adverse consequences for the labour market (Arbeiterkammer 2005; interview, GBH, 2007; interview, ÖGB (1), 2007).

As in Austria collective agreement still cover ninety-five per cent of employees (Aiginger/Guger 2006: 140), there are few differences in the responses of unions to an increase in subcontracting arrangements and incidents of underpayment of migrants. Virtually all unions demand that migrant workers should be remunerated in accordance with existing collective agreements (interview, GBH, 2007; interview, GMT/N, 2007). According to a representative of Vida, the transport and service sector union, ‘labour migration should not lead to different work and social standards. Everyone who works here, has to have the same rights as someone who is born here...The aim is to secure protection through collective agreements in each sector (interview, Vida, 2007). Thus, while the influence of Austrian unions outside of collective bargaining has declined in recent years, the fact that wage agreements still cover the vast majority of employees may explain

why, in contrast to the situation in Germany, demands for the introduction of a statutory minimum are largely absent in Austria.

Additionally, Austrian unions argue the case for improved domestic legislation with regard to main contractor liability, and improved control of the employment of posted workers and measures to curtail ‘bogus’ self-employment (ÖGB 2007b). In terms of EU legislation, unions increasingly demand the extension of the PWD to other employment sectors than just the construction sector (ÖGB 2003: 17-18). From a trade union perspective, this policy position seems to be a reasonable demand in light of an almost universal coverage of collective bargaining which should enable trade unions and employers to negotiate minimum wages that are then declared universally applicable as opposed to the introduction of a statutory minimum wage set by the Government.

As in Austria agency workers receive the same pay and working conditions as directly employed workers, this issue has been less controversial than in countries like Britain and Ireland (EIRO 2003b). However, recently concerns among unions about the principle of equality of treatment have resurfaced within the context of the proposed EU Services Directive (interview, GBH, 2007). Predictably, in a high-wage country like Austria, unions vigorously opposed the ‘country of origin principle’, enshrined in the initial draft of the Directive. According to the ÖGB:

To move away from the principle of origin is the only possible way to retain the social dimension of Europe. To avoid a ‘race to the bottom’, it is essential that service providers have to act in accordance with the rules and regulations of those member states in which they provide their services (ÖGB 2006: 5).

Thus, the preservation of collective agreements is the overarching policy objective of Austrian unions, be it with regard to posted workers, self-employed migrants or other cross-border services. Although in recent years incidents of ‘wage dumping’ have occurred, sometimes involving foreign subcontractors and self-employed migrants, the salience of collective agreements in Austria has so far prevented a scenario akin to that in the German construction sector in the 1990s when an increase in cross-border posting triggered a downward spiral in wages and working conditions. Nevertheless, Austrian unions continue to have an ambivalent

attitude towards posted workers. While formally demanding ‘equal pay for equal work’, it has been argued that the policy of Austrian unions mainly aims for the ‘protection of Austrian employees from any competition rather than the protection of posted workers from exploitation’ (EIRO 2003b).

#### ***6.1.5 A comparison of union responses to subcontracting arrangements***

Trade unions across the four countries are concerned about an increase in subcontracting arrangements, involving posted workers, agency labour and self-employed migrants. Although such ‘atypical’ work arrangements are by no means confined to migrants, there is some evidence to suggest that the latter are over-represented in these arrangements, particularly in employment sectors such as hospitality, food-processing, construction and agriculture. It is in these sectors where controversies about the underpayment of migrants and the emergence of a two-tier workforce have arisen. Traditionally, trade unions have been quite opposed to these often precarious work arrangements, and continue to have an ambivalent attitude towards them, particularly in countries such as Austria and Germany where industry-wide collective bargaining remains widespread. Nevertheless, there is increasing recognition that new forms of non-standard employment are a feature of the ‘new world of work’.

In response to an increase in subcontracting arrangements, trade unions across the four countries demand ‘equal pay for equal work’. This policy position entails a strong defence of the ‘host country’ principle in the context of cross-border posting of workers and the proposed EU Services Directive. Similarly, in the context of agency labour, the ideological baseline of unions is ‘equality of treatment’. Hence, demands for the ratification of the proposed EU directive on temporary agency workers which would legislate for equal treatment between agency workers and directly employed workers featured quite prominently on the agenda of British and Irish unions. Not surprisingly, recent agreement at the EU level on the directive was broadly welcomed by unions in the two countries and, indeed, across Europe. While both trade union movements also demand the full implementation of the PWD, the issue of posted workers has not received as much

attention as elsewhere, possibly in part because of the open labour market policy in the two countries. If it comes to the protection of labour standards, both trade union movements have with the statutory minimum wage a legal tool at their disposal to prevent a 'race to the bottom' in low-wage employment sectors. However, in the construction sector that is governed by wage agreements, unions are more concerned about adherence to these agreements.

Among German and Austria unions, the proposed EU directive on agency workers features less prominently, which may be due to the fact that both countries have already legislated for the equal treatment of agency workers. Here the challenge to the principle of equality of treatment in the context of migrant labour comes mainly from the cross-border provision of services. In response to this, Austrian unions prefer the extension of the PWD to establish legally binding minimum wages that are negotiated between employers and unions. In Germany, unions are more divided on this issue. While some unions in industries that have become quite fragmented increasingly advocate the introduction of a statutory minimum wage, not least with a view of future labour migration in mind, other unions which still possess the capacity to negotiate meaningful wage agreements, demand an extension of the PWA in response to rising wage pressure.

Thus, in response to an increase in precarious employment, trade unions everywhere demand that the principle of equality of treatment be applied. However, what this exactly entails can differ, depending in no small way on the capacity of unions to negotiate and enforce collective agreements. Traditionally, the main concern of unions in CMEs such as Austria and Germany has been to secure adherence to industry-wide collective wage agreements. While this is still the main policy position of Austrian unions in light of almost universal bargaining coverage, some German unions covering low-wage sectors have started to demand the introduction of a general minimum wage as they no longer possess the capacity to negotiate meaningful collective agreements. While collective bargaining in LMEs such as Britain and in Ireland is organised on a voluntary basis, trade unions utilise the statutory minimum wage in those low-paid sectors such as food-processing and hospitality where they lack bargaining power.



I have so far discussed union responses to an increase in subcontracting arrangements. While the cross-border provision of services and the deployment of agency workers is perfectly legal, such arrangements are often ‘a gateway for illegal employment’ (Wilpert 1998: 280). As already pointed out in chapter two, irregular employment and the informal economy has grown in all four countries. In the context of labour migration this poses a particular challenge to trade unions, as I will discuss now.

## **6.2 Trade unions and irregular migrant labour**

As discussed in chapter two, there are no clear differences discernible between our four case countries in terms of the size of the informal economy and the number of irregular migrants. On the whole, and perhaps counter-intuitively, CMEs like Germany and Austria have not been more successful in curbing the informal economy and deterring illegal employment among migrants than LMEs like the UK and Ireland have been. One possible reason for this could be that while German and Austrian unions possess considerable institutional resources, they do not exercise as much control in the workplace as, for instance, unions do in Scandinavian countries. Hence, a form of self-regulation whereby the social partners exercise control in the labour market is likely to be more efficient than reliance on state control in preventing the spread of ‘illegal’ migrant labour (Hjarnø 2003). What remains certain is that ‘illegals’, most of whom are likely to have entered the country legally, make up a sizeable minority of migrants in all four countries and as such pose a particular challenge to trade unions.

For unions, undocumented migrants pose a particular dilemma. If they defend the rights of these workers and try to organise them, they implicitly accept a group of workers who undermine employment conditions that unions have long fought for. On the other hand, exposing irregular employment to law enforcement agencies may lead to the deportation of undocumented migrants and could lead to the alienation of other migrants (Wrench 2000a: 329-330). There is some evidence to suggest that unions, particularly in countries like Spain and Italy which are host to a large informal economy, have recently become more supportive of

regularisation programmes. Through such programmes, it is hoped, illegal migrants can be brought back into the formal economy (Watts 2002). Nevertheless, as pointed out in chapter one, these countries have a distinctive history of immigration with the majority of migrants working in the informal economy. Therefore, the experience of these countries may not necessarily be generalisable.

In terms of policy options available to unions it makes sense to distinguish between a ‘controlling’ perspective that primarily views the issue of irregular migrant labour as a ‘law and order’ issue and a ‘rights’ perspective that demands the extension of a minimum of employment rights and other forms of social protection including possible regularisation programmes to illegal migrants (Sinn et al. 2005). These policy options, however, are not necessarily mutually exclusive as I will show now when exploring the responses of unions in the four case countries to irregular migration.

### ***6.2.1 Britain***

In Britain the debate about illegal migrant labour has acquired growing prominence in recent years not least in light of human tragedies like the one at Morecambe Bay in 2004 when twenty-three mainly irregular Chinese cockle pickers drowned (Morris 2006). Recently the debate about a regularisation programme has gained some currency particularly in London where, it is estimated, up to two-third of all illegal migrants work (Rajan 2008). Demands for an amnesty for illegal migrants are not only supported by NGOs, the churches, and individual politicians, but also increasingly by individual unions like the TGWU and the GMB which have adopted policy positions in favour of an amnesty for undocumented migrants (Labour Research 2005; GMB 2005: 5; TGWU 2006). How can we explain that British unions have increasingly moved away from a controlling perspective towards a rights-based approach that includes demands for the regularisation of ‘illegal’ migrants?

One reason for the rather lukewarm enthusiasm among British unions for a state controlling approach is that unions consciously avoid being associated with immigration authorities who deport people (Greer/Lillie 2007: 569). Furthermore, there is a growing scepticism among unions that more restrictive immigration policies would be the right tool to combat irregular migration. According to the TUC, 'most undocumented workers enter the UK legally and therefore even if borders were truly secured it would not have a decisive impact' (TUC 2007e: 10). Similarly, a representative of the TGWU argued that a 'crack down' on these migrants is neither desirable nor feasible:

there are hundreds of thousands of undocumented workers across the country. The Government cannot simply deport them, round them up...it can't deport them because it would bankrupt the country, trying to pursue such an activity. So it is a futile gesture politics, 'all those who are illegal will be rounded up and deported' (interview, TGWU (3), 2007).

Besides arguments about the impracticability of a 'crack down' policy response to illegal migrants, unions also view such an approach as creating an atmosphere of fear and distrust in the workplace. For instance, when the Home Office issued its document on 'Prevention of Illegal Working', the TUC opposed those measures that would require employers to carry out repeated checks on presumed 'illegal' migrants: 'The TUC believes these proposals would turn employers into the frontline of the immigration services both souring workplace relationships but also concentrating more power into the hands of would be abusers' (TUC 2007b). Such immigration control measures that focus on the workplace are also seen as detrimental to the aim of organising which, as pointed out in chapter three, features prominently as a 'revitalization strategy' (Frege/Kelly 2004a). Some unions like the TGWU increasingly aim to organise migrants, regardless of their legal status:

I have no idea how many members of the T&G are undocumented because we don't ask them, we just see them as workers. We want to encourage them to join the union and we tell workers that we will support them. There are limits to what we can do in terms of their status, but being in the trade union can help (that) they are safe in the workplace or workers who are treated better than (if) were they not in the union (interview, TGWU (3), 2007).

The TGWU, for instance, campaigned with the NGO *Kalayaan* on behalf of domestic migrant workers, many of whom with no legal status. As part of this campaign the TGWU managed to organise several hundred irregular migrant workers. To take into account the peculiar situation of undocumented migrants, the TGWU accepts union dues in cash as these migrants often do not have a bank account. Furthermore, the union accepts the address of a migrants' organisation as home address so that undocumented migrants do not have to expose their address details (Schmidt/Schwenken 2006: 45; Schmidt 2006: 203).

It has to be said that such campaigns still remain the exception among recent initiatives by British unions. Nevertheless, there is a relatively widespread scepticism towards restrictive measures in combating illegal migrant labour. In the construction sector the main problem that unions are facing is less illegal migrant labour but rather the spread of 'bogus' self-employment that often operates in a grey zone between the formal and informal economy (interview, UCATT, 2006). Hence in response to an announcement by the Home Office to tighten the rules on illegal immigration, Alan Ritchie, General Secretary of UCATT, stated:

This is as yet another high profile crackdown on illegal workers which fails to address the real problems that industries such as construction face. Rather than attempting to launch another crackdown on illegal workers, the Government should transform the casualised nature of the British workplace (UCATT 2007c).

Of particular concern to the TUC is the issue of employment rights for undocumented migrants. While, for instance, in Germany migrants are able to access the courts to reclaim wages regardless of their status, undocumented migrants in the UK do not have the same opportunities. According to Congress the situation that currently illegal migrants are unable to make a claim against employers who withhold their pay 'creates a market for such workers amongst the worst of employers' (TUC 2007e: 3). Being conscious that the enforceability of employment rights through the courts may pose some practical problems for illegal migrants, the TUC argues that the issue of employment rights should be separated from the legal issue status of any potential claimant (TUC 2007e). Thus, instead of a 'crack down' approach the British trade union movement increasingly

advocates a rights-based approach that aims to strengthen the position of undocumented migrants.

### **6.2.2 Ireland**

In Ireland the phenomenon of irregular migration is quite a recent one as Ireland only transformed into a country of immigration in the second half of the 1990s. Hence there is only limited knowledge of the extent of this phenomenon. As in the other three countries, it is likely that most illegally-resident migrants entered the country legally and became irregular while in Ireland. So far this issue has been addressed by a small number of NGOs like the Migrant Rights Centre Ireland and the Immigrant Council of Ireland who provide assistance to illegal migrants (Quinn/Hughes 2005).

Until recently the issue of illegal migrant labour was not an issue for trade unions (interview, ICTU (1), 2006). However, when the issue gained more prominence, the Irish trade union movement adopted an approach that aimed to combine a controlling approach that targets employers together with a rights-based perspective which entails the possibility of a regularisation programme. While unions are somewhat hesitant to recruit undocumented migrants into unions because of possible difficulties in representing these workers, SIPTU has provided assistance to those migrants who have become undocumented through no fault of their own when their respective employer did not renew the work permit. In such instances unions have assisted migrants to regularise their status again by negotiating a new work permit with the Department for Employment Trade and Enterprise (DETE) (interview, SIPTU (1) 2006).

In its approach to combating irregular working, the ICTU calls for the proper enforcement of those measures agreed on in the social partnership agreement *Towards 2016*. These include an increase in the number of labour inspectors and increased penalties for employers who are in breach of employment rights. Congress argues that curbing the demand for illegal migrants through proper enforcement of employment rights is more effective than curbing the supply side

through border controls: ‘The main focus of actions is to combat irregular employment by reducing the number of employers willing to take a chance on employing workers who do not have permission to work in Ireland’ (ICTU 2006: 7). Congress specifically calls for increased labour inspections to be carried out by the National Employment and Rights Authority that has been set up under the *Towards 2016* agreement. The fact that NERA targets employers, and not employees, is a distinction that is quite important in the discussion about illegal migrant labour, as I will further elaborate below.

Recently, the ICTU as well as SIPTU have put greater emphasis on a rights-based approach including a possible regularisation programme for undocumented workers. In a recent policy document Congress unequivocally stated that ‘undocumented workers must be guaranteed, in law, access to, and protection under, all employment rights law, including their trade union rights’ (ICTU 2007: 4). Furthermore, the ICTU argued that ‘some form of regularisation is unavoidable if a growing underclass of workers in an irregular situation, who are vulnerable to exploitation, is not to be created’ (ICTU 2007: 2). A possible regularisation process could include a ‘bridging visa’ that allows migrants to return into the formal economy without fear of deportation (interview SIPTU (1) 2006; ICTU 2007: 5). Thus, Irish unions try to combine a controlling perspective that targets ‘rough’ employers with a rights-based approach that offers undocumented migrant workers a perspective to regularise their status.

### **6.2.3 Germany**

In Germany the issue of illegal immigration became more prominent throughout the 1990s when the country experienced a new upsurge in immigration. Many of the new migrants who immersed into the informal economy were from Central and Eastern Europe, while others originated from countries such as Turkey and the former Yugoslavia, the traditional sending countries during the ‘guestworker’ era. Furthermore, many migrants from other parts of the world, whose appeal for asylum had been rejected, also became irregular (Sinn et al. 2005).

Particularly in the construction sector the presence of illegal migrant labour has been quite controversial. IG BAU estimates that there are at least 300,000 irregular workers in the German construction industry, although not all of them migrants, which may have led to the displacement of 180,000 legal jobs (IG BAU 2004). In light of a growing number of ‘illegal’ migrants, the construction union mainly responded with a state controlling approach based on co-operation with law-enforcing agencies. This included, for instance, a campaign under the slogan ‘There must be rules’ (*Ohne Regeln geht es nicht*) during which the union set up a hotline where anonymous callers could report perceived illegal work on building sites. This information would then be passed on to the authorities (EIRO 2004b). Although the construction union is adamant that such campaigns are primarily directed against the practices of employers and that the issue of irregular workers is not necessarily linked to nationality (interview, IG BAU 2006), inevitably, police raids on building-sites lead to the arrest and possible deportation of undocumented migrants.<sup>49</sup> Therefore, this campaign attracted some criticism inside and outside of the union.<sup>50</sup> Perhaps less so in response to this criticism, but more so because the phenomenon of illegal migrant labour persisted in spite of increased police raids, the IG BAU complemented its controlling approach with a more inclusive strand through the foundation of the EMWU which also aims to reach out to migrants without proper documentation (interview, EMWU, 2006).

In other sectors like agriculture, hospitality and domestic work the employment of irregular migrants, while certainly an offence, has been less controversial, partly because migrant and indigenous workers are not in direct competition for these jobs (Hunger 2001: 53). In fact there is some evidence to suggest that there is a growing acceptance in society regarding the employment of illegal domestic workers in particular (Sinn et al. 2005: 11). While unions like the NGG and Ver.di would certainly be opposed to any form of irregular employment, they have not paid as much attention to this issue as IG BAU has, not least because their

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<sup>49</sup> Hjarnø (2003: 96) points out that in 1994 alone, there were over 78,000 inspections of German employers who were suspected of employing irregular migrants. Particularly when controlling construction sites, inspectors often obtain the support of the local police.

<sup>50</sup> Some IG BAU members, for instance, criticised that the unions’ co-operation with law-enforcing agencies has largely proved ineffective as an increase in the number of police raids has not improved the situation on building-sites. Furthermore, these raids would reinforce a perception among migrant workers that the union is their enemy. Instead these trade unionists suggest putting a greater emphasis on organising migrants as an alternative to police raids (Harning/Maurer 2004).

constituents have not been directly affected to the same extent by illegal migrant labour. In the case of domestic work migrant and indigenous workers are not in direct competition with each other and this sector traditionally is regulated in an informal way (interview, Ver.di, 2006). The same could be said about work in smaller restaurants in particular, often involving migrant labour, both legal and illegal, where the NGG effectively has no presence (Treichler 1998: 205).

In contrast to trade union movements in other countries like Italy and Spain (Watts 2002), the German trade union movement has so far not openly called for the regularisation of illegal migrants.<sup>51</sup> According to a DGB representative such a policy in favour of the legalisation of migrants is not easily transferable from one country to the other. In contrast to the situation in Spain, for instance, German employers would not be interested in a legalisation programme for irregular migrants. Nevertheless, the DGB maintains that ways have to be found to regularise the status of migrants who have become ‘illegal’ (interview, DGB (1) 2006).

Thus, German unions have adopted a ‘dual perspective’ that aims to complement a ‘state controlling’ approach with an emphasis on the human rights of irregular migrants (Sinn et al. 2005). For instance, all chairpersons of German trade unions have signed a ‘Manifesto on illegal Migration’ that points to the shortcomings of a sole ‘law and order’ approach and puts greater emphasis on the humanitarian aspects of irregular migration including the provision of basic health care, protection against exploitation and the needs of affected children (Katholisches Forum Leben in der Illegalität 2005). Nevertheless, such a dual approach may also constitute a ‘dual dilemma’ (Pape 2005: 12) as these two strategies may conflict with each other. As mentioned earlier, from the perspective of unions which primarily represents the interests of their members who in their vast majority are in legal employment, it may make sense to co-operate with law-enforcing agencies. However, this may lead to a situation where illegal migrants perceive unions as part of the ‘system’ that detects and deports people.

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<sup>51</sup> The exception remains IG Metall which has adopted a policy position in support of the legalisation of undocumented migrants (IG Metall: 2007a: 9). This position, however, is largely driven by humanitarian concerns and is not linked to the labour market situation of irregular migrants. In fact ‘illegal’ migrants are rare in those employment sectors that are covered by IG Metall (metal and electronics industry).



#### 6.2.4 Austria

In Austria, as in Germany, a sizeable section of the irregular workforce is made up of NMS migrants who have been denied access to the labour market in 2004. Furthermore, the irregular workforce includes many legal foreign residents from the successor states of the former Yugoslavia (Tamas/Münz 2006: 118-119). The issue of undocumented migration is mainly addressed by NGOs, welfare institutions, churches, and the media. In turn, trade unions have so far not paid a great deal of attention to the topic (National Contact Point Austria 2005). It has been argued that Austrian unions mainly view the issue of irregular migration as a threat to established labour standards as illegal migrants may accept pay rates that are below the negotiated collective agreements (PICUM 2003: 39-40). Hence unions have mainly adopted a 'controlling' approach to this issue that primarily aims to target and criminalise firms who employ undocumented migrants.

A 'law and order' approach is particularly prevalent among the strategies of the construction union GBH. In its endeavour to combat illegal employment, the GBH almost entirely relies on a 'state controlling' approach by co-operating with the Central Task Force for the Prevention of Illegal Employment (*Kontrolle Illegaliterer Arbeitnehmerbeschäftigung (KLAB)*). This co-operation also includes reporting perceived incidents of irregular employment to state authorities. While such an approach is also found in Germany, in contrast to IG BAU the GBH does not have initiatives in place that go beyond a controlling approach.

There is general agreement among Austrian unions on the need for co-operation with law-enforcing agencies to combat the informal economy and to protect the established terms and conditions of employment. However, there is also a recognition among some union representatives that a 'law and order' approach to the issue of illegal migrant labour may have its limitations:

In the area of illegal employment it is usually the case that foreign workers are deported, and this does not increase the likelihood that they defend themselves against exploitation...We need incentives to help these employees (irregular migrants) to escape from the illegality. If they don't have these (incentives), then we almost inevitably glue them together with the employers' (interview, GMT/N 2007).

Nevertheless, such a position does not represent a majority view within the ÖGB which usually formulates the policy positions of Austrian unions in the area of immigration. The trade union confederation has shown some flexibility on this issue in the past when it supported a regularisation programme for Bosnian refugees in the mid-1990s who had fled the Civil War in the former Yugoslavia. However, as there is the impression that this attracted new migrants into the informal economy, the Austrian trade union movement currently does not have a policy position in favour of a regularisation programme (interview, ÖGB (1) 2007). There was only one exception to this in recent years when the ÖGB and Vida supported a limited amnesty for illegal private care workers, most of them NMS migrants, not least because private care is a sensitive area (interview Vida, 2007). However, generally the issue of illegal migrant labour does not feature prominently on the agenda of Austrian unions who continue to view the presence of migrants without proper documentation as a threat to collective agreements and labour standards.

#### ***6.2.5 Union policies on irregular migration in comparative perspective***

Across the four countries, irregular migration has become a significant phenomenon in recent years. For trade unions, migrants without proper documentation pose a particular dilemma. On the one hand unions aim to protect all workers from exploitation, regardless of their nationality or status. On the other hand undocumented migrants are usually employed on worse conditions than other workers and as such may undermine established work conditions that unions have fought for long and hard. In spite of this common challenge, there is some variation in union policies on illegal migrant labour.

When comparing union policies on this issue, it becomes apparent that British unions have been the strongest supporters of a rights-based approach. Unions here have been outspoken in their demands for employment rights for undocumented migrants. Such an approach is viewed as more effective to protect and improve labour standards than a 'crack down' approach. Furthermore, some individual unions like the TGWU have openly called for a regularisation programme to

enable migrants to return to the formal economy. In Ireland, unions aim to combine a controlling perspective that aims to target employers who employ illegal migrants with a rights-based approach that supports the possible regularisation of migrants who have become undocumented. Particular faith is put in increased labour inspections by the new National Employment Rights Authority.

A body such as NERA that mainly controls employer practices is quite different from those law-enforcing agencies that are in charge of controlling workplaces in Germany and Austria. As in the latter two countries workplace inspections are carried out by custom officials, sometimes in co-operation with the police, illegal migrants are inevitably targeted. It has to be said that in Germany unions have recently become more receptive to the rights of undocumented migrants. However, such support sits somewhat uneasily with the continuous support for a state controlling policy that includes police raids on construction sites. In Austria, in spite of some flexibility on this issue in recent years, unions, particularly the GBH, primarily pursue a state controlling approach to tackle the issue of illegal migrant labour.

Therefore, unions in CMEs such as Germany and Austria are more inclined to pursue a controlling approach to the issue of irregular migration, whereas unions in LMEs such as Britain and Ireland appear to be more supportive of a rights-based approach. Particularly in the former two countries, unions view illegal migrants as a potential threat to sector-wide collective wage agreements that continue to cover the majority of employees. In the absence of similar collective agreements in Britain and Ireland, unions, particularly in the former, have openly campaigned for 'illegals'. A 'law and order' approach to this issue is viewed less favourably, partly because of a belief among British unions that increased immigration controls in the workplace could interfere with their organising agenda that, as I will elaborate in more detail in chapter six, is increasingly seen as an important strategy to regain 'bargaining power'. However, institutional factors such as the structure of collective bargaining should not be regarded as the only factors in shaping union policies on illegal migrant labour. Even in Germany,

albeit less so in Austria, unions have recently shown a greater responsiveness to the issue of illegal migrant labour.

### **6.3. Conclusion**

This chapter has explored how trade unions respond to an increase in precarious work and the growth of the informal economy in the context of recent labour migration. Traditionally, the main demand of unions in response to labour migration has been ‘equal pay for equal work’. However, as a result of an increase in subcontracting arrangements and the growth of the informal economy, unions increasingly struggle to establish a ‘level playing field’. In response to the spread of precarious employment relationships, trade unions demand that the principle of equality of treatment be applied. Nevertheless, what exactly ‘equality of treatment’ exactly entails, can differ.

Traditionally, unions in Germany and Austria viewed ‘equal pay for equal work’ as meaning adherence to collective agreements. While this is still the dominant view in Austria in light of almost universal bargaining coverage, some German unions have shifted attention towards the introduction of a statutory minimum wage in those low-wage sectors of the economy where they increasingly lack bargaining power. Such a minimum wage is already in existence in Britain and Ireland where unions utilise it to prevent a ‘race to the bottom’ in employment sectors such as hospitality that have seen a huge inflow of recent migrant workers. Thus, the preferences of unions are influenced in no small part by the structure of collective bargaining across the four countries, and sometimes across different employment sectors in each country.

The coverage of collective bargaining also seems to be of some relevance in accounting for the variation in union responses to illegal migrant labour. Broadly speaking, unions in CMEs appear to be more resistant to supporting illegal migrants as they are concerned about the impact of the latter on collective wage agreements. In turn, while unions in LMEs would share concerns about employment standards, they appear to be more likely to also demand employment

rights for irregular migrants. In the next chapter I will explore whether the different institutional configuration in each ‘variety of capitalism’ provides a different incentive for unions to organise contemporary labour migrants.

## **Chapter Seven: Trade Union Policies and Practices on Organising Migrants**

The organisation of new groups of employees is an essential requirement for trade unions not only because unions are membership-based organisations, but also because any section of the workforce that remains outside of the remit of unions undermines their bargaining position. This reasoning also informs their approach towards migrant labour. While trade unions may sometimes oppose the inflow of foreign labour, after the latter have entered the country it is essential to organise them. This is not only for ideological reasons (workers' solidarity) but also self-interest as unionised migrants are less likely to undercut established terms and conditions of employment. This reasoning also informed the approach of most trade unions towards immigration after World War Two. Irrespective of earlier reservations about the recruitment of foreign labour, after the 'guestworkers' had entered the country, most trade unions started to include them into their ranks (Penninx/Roosblad 2000).

However, as mentioned in chapter two, unions are less able to organise an increasingly fragmented and heterogeneous workforce and have suffered a decline of membership in most Western European countries (Ebbinghaus/Visser 2000). Therefore attempts to organise migrant workers have to be viewed in the context of a decline of trade union membership and an erosion of collective forms of political activism (Hyman 1992). However, unions face some particular challenges in recruiting migrant workers into membership, including a more temporary character of labour migration and, as pointed out in the previous chapter, the over-representation of migrants in rather precarious employment relationships.

In this chapter I will examine how trade unions respond to the challenge of organising migrant workers across the four case countries. I will first outline the different context of union organising in each country. On this basis, I will show that in spite of similar challenges, particularly in terms of a decline in membership density, unions have not accorded the same importance to the issue of organising new groups of employees including migrant workers. While unions in some

countries have moved towards an ‘organising unionism’ (Heery et al. 2000), unions in other countries have not prioritised the organising of ‘atypical’ employees to the same extent, relying more on their institutional resources such as industry-wide collective bargaining and statutory works councils.

### **7.1 The challenges of organising contemporary migrant labour**

As mentioned earlier, trade unions in contemporary Western European societies generally aim to recruit migrant workers into union membership, at least as an aspirational goal. This, of course, does not mean that they would necessarily attach any great importance to this issue but there is little evidence to suggest that they would be actively opposing the inclusion of migrant workers into trade unions. Whereas unions managed to organise a considerable section of the migrant labour force during the ‘guestworker’ era, they face more difficulties in organising their contemporaries. To some extent, these difficulties are linked to the broader weakness of trade unions in those employment sectors where migrant workers are over-represented, particularly in private service sectors and agriculture as acknowledged by trade union officials (interview DGB (1), 2006; interview, SIPTU (1), 2006; interview, TGWU (1) 2006). However, trade unions report some particular problems in organising contemporary migrant workers.

The most obvious problem is language barriers that often inhibit meaningful communication between unions and migrant workers, particularly if the latter only arrived recently. Most trade union movements nowadays provide some translation services, be it in the form of information and recruitment material or legal advice (ETUC 2003). However, in light of the ‘globalization of migration’ (Castles/Miller 2003: 7), many receiving countries are now host to migrants from a wide range of countries which makes it more difficult for smaller unions to catch up with the rising demand for translation services (interview, GBH, 2007; interview, Mandate 2006; interview USDAW, 2006)

As the organisation of migrants is often a question of time, the more temporary character of intra-European migration in particular poses some difficulties for

unions. Indeed, some union officials maintain that if migrants are regularly employed and see their stay as long-term, they are not more difficult to organise than native workers, and, after some years, may even have a higher union density rate than the native population, provided that unions take into account some of the particular needs of migrants (Schmidt-Hullmann/Buntebach 2006: 54). However, as many contemporary labour migrants often view their stay as only temporary, unions face some considerable difficulties in organising these workers. Even when unions manage to organise them, the high turnover of migrants makes it often difficult to keep them in membership (interview, IG BAU, 2006; interview, UCATT Ireland, 2007; interview, USDAW, 2006). Moreover, it has been argued that temporary migrants, particularly those who are dependent on obtaining a work permit, may not want to be associated with trade unions because of fears about their jobs (Schmidt 2006: 194). This is based on the experience of some migrants who were threatened with dismissal if they joined trade unions (McKay 2006).<sup>52</sup>

As pointed out in chapter two, endeavours by unions to organise migrants is made more difficult by the spread of subcontracting arrangements. While in the past migrants were usually directly employed by the company for which they worked, this is no longer the case with agency labour and posted workers. Worryingly, from a trade union perspective, this has not only led to the emergence of a two-tiered workforce in some employment sectors like construction and hospitality, but it has also made the organisation of migrant agency workers infinitely more difficult (Wills 2006). Thus, an increase in such rather precarious employment relationships is not only a result of the weakening of organised labour, but it also reinforces a trend towards deunionisation.

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<sup>52</sup> While it is difficult to establish to what extent such concerns reflect a real threat to the job prospects of migrants, there certainly have been cases in which migrants have been intimidated because they joined trade unions or complained about their treatment at work. In the case of the Turkish Gama workers in Ireland, for instance, some workers who had engaged in industrial actions in Ireland, received intimidating letters from the Turkish company (Flynn 2006: 269). On other occasions, worse was to follow. Some Polish construction workers who complained about their treatment at work in Newcastle in England, were violently attacked (Fitzgerald 2006: 11). Similar incidents have been reported of Romanian workers who were posted to Germany and who were, in some cases, subject to violent attacks after complaining about working conditions (Schmidt-Hullmann/Buntebach 2006: 56).



IG BAU was initially quite hesitant to organise posted workers in Germany where subcontracting arrangements already became widespread in the construction sector in the 1990s (Erne 2008: 92). However, when the construction union adopted a more open attitude towards organising posted workers, they soon realised that traditional forms of trade union organising did not work, not least because of the often temporary stay of migrants: 'Until we managed to build up contacts (with posted workers, T.K.), which can take several weeks or even months, the work placement was nearly over already' (interview, IG BAU, 2006). Similar experiences have been reported from the meat industry that has seen an increase in posted workers since EU enlargement in 2004. Unions face considerable difficulties in approaching these workers, as posted workers are not directly employed by the company for which they work, (interview, NGG, 2007).

While Britain and Ireland have not similarly been affected by posted workers, they have experienced an increase in agency labour in recent years, particularly in agriculture, food-processing, hospitality and cleaning. Similar to posted workers, agency workers are not employed directly by the company for which they work which may seriously diminish the possibility of collective action (O'Brien 2007; Wills 2006). Union officials readily admit that the organisation of these workers poses a serious challenge as agency workers often have a high workplace turnover and tend to be employed on worse conditions than directly employed workers (interview, SIPTU (2), 2006; interview TGWU (2), 2007; USDAW 2006).

Furthermore, in the British and Irish construction sector an increase of self-employed migrant workers has been observed recently which, as in the case of agency workers, makes it very difficult for unions to organise: 'By nature, if you are self-employed then the union is not involved in negotiating your wages or the terms and conditions and you are your own little boss. It kind of makes it more difficult to organise those workers' (interview, UCATT, 2006). Union officials, are, however, keen to emphasize that an increase in 'bogus' self-employment is by no means confined to migrant workers as many indigenous construction workers also operate as 'one-person' companies (interview, UCATT Ireland, 2007).

In addition to these factors, there is an assumption among trade union officials that migrants from Central and Eastern Europe in particular are somewhat reluctant to join trade unions. This is usually attributed to the experience of migrants in the former Eastern Bloc where unions were closely associated with the state (interview, ICTU (2), 2006; interview, IG Metall (1) 2006; interview, Vida, 2007). In comparing contemporary labour migrants to earlier generations of immigrants, a representative of Ver.di contended that

people who arrived in Germany during the guestworker era, they came from countries with a historical experience of trade union movements and for them, you could say, it was natural to become organised as an employee. Migrants of the 21st century are much more heterogeneous, and they don't naturally bring with them this culture anymore ...You have to say that many people from Central and Eastern European countries have extreme reservations towards trade unions and they are not familiar with the function of trade unions in Western countries (interview, Verdi, 2006).

At first sight, such assumptions seem to be borne out by some statistical data. For instance, in the UK, according to the 2005 Labour Force Survey, migrants from the new EU members states have a union density rate of 3.6 per cent, which is not only far below the average unionisation level of 26 per cent, but also significantly below the union density of 22 per cent of other foreign-born workers (Anderson et al. 2007: 3). It cannot be ruled out that ideological preconceptions about trade unions are contributing to the low union density of NMS migrants. However, it seems that other factors are more influential. As already pointed out, recent migrants are over-represented in those sectors of the labour market that traditionally have a low union density. Furthermore, the more recent nature of East-West migration is likely to be another factor as union membership is often a question of time.

Thus, it seems to be less the perceived characteristics of migrants but rather the circumstances of contemporary labour migration in conjunction with a general weakening of trade unionism that may explain why the unionisation levels of contemporary labour migrants seem to be lower than the one of previous generations of migrant workers. Indeed, recent research in Britain among NMS migrants found that of those migrants who participated in a survey about working conditions and trade union membership, over fifty per cent declared an interest in

joining a trade union (Anderson et al. 2007).<sup>53</sup> Therefore, in spite of all the difficulties that trade unions face, it seems to be at least possible to increase current levels of membership levels among migrants. It is likely, however, that this would require some special policies and a new approach towards organising. I will now analyse and compare to what extent trade unions in the four case countries have such policies and initiatives in place.

## **7.2 Trade union policies and initiatives across the four countries**

When comparing official union statements on migrant labour, it becomes apparent that all four trade union movements declare the organisation of migrants to be an important objective. The ÖGB, for instance, states that ‘migrant labour (is) an important target group whose unionisation would make an important contribution to the stabilisation of the labour market and the improvement of precarious labour relations’ (ÖGB 2007a: 19). Similarly, the TUC committed British unions to ‘continue to develop and strengthen initiatives aimed at recruiting, organising and representing migrant workers’ (TUC 2006a: 5). According to SIPTU, ‘[the recruitment and organising of migrant workers into the Union is the first step to protecting workers rights, both Irish and non-Irish, and helping to create workplaces which respect diversity and are based on equal treatment for all’ (SIPTU 2006b: 18). IG BAU goes as far to argue that ‘for trade unions it is an existential question regarding their future whether they manage to organise migrant workers into their ranks’ (Schmidt-Hullmann/Buntenbach 2006: 56).

Thus, unions generally aim to organise migrants, at least as an aspirational goal. However, as I will now show, union policies and initiatives across the four countries, and sometimes within these countries, differ to some considerable extent. As I will argue, this is linked, in part, to the different national context of organising and the different importance that unions attach to the issue of organising. Particularly in those countries where the institutional position of

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<sup>53</sup> Incidentally, in another non-representative survey among posted workers from CEE in Germany, again over fifty per cent of respondents declared that they would be willing to join a trade union if their particular concerns were taken into account (EIRO 2004b).

organisational labour has been eroded, unions have a greater incentive to prioritise the organising of new groups of ‘atypical’ employees like migrant workers.

### **7.2.1 Britain**

As mentioned earlier, in LMEs like the USA and the UK the institutional position of unions has been more eroded than elsewhere, particularly in terms of collective bargaining coverage. It is in this context that the TUC and individual unions have put greater emphasis on organising activities in recent years. Influenced by developments in the USA, the British TUC underwent a formal ‘relaunch’ in the mid-1990s and began to pay greater attention to the organising model that seems to fit well with the British tradition of workplace unionism (Heery et al. 2000). As part of this move, the TUC set up an ‘Organizing Academy’ that aims to train specialist union organisers who have then taken up positions in unions such as the TGWU, GMB and UCATT (Heery et al. 2003b: 11).

Such an ‘organising unionism’ (Heery et al. 2000) is based on the idea of organising and empowering workers with the aim of promoting self-activity in the workplace. This organising model is sometimes counterposed to a ‘servicing unionism’ where the role of the union is seen as delivering services to a largely passive membership. The reasoning behind the organising approach is succinctly summarised by Jack Dromey, Deputy General Secretary of the TGWU: ‘unless you build strong, fighting, self-confident and self-sustaining workplace organisations, you do not win, you do not grow and our hard-pressed officers are run ragged servicing a fragmented and declining membership’ (TGWU 2005). Inspired by social movement mobilisations, the concept of an ‘organising unionism’ very much relies on political campaigning that is recasted in the language of ‘human rights’ and ‘justice’ (Heery et al. 2000; Wills 2005). To what extent does a greater emphasis on organising inform the approach of British unions towards migrant workers?

As already pointed out, since the 1970s the British TUC has not only adopted some fairly robust anti-discrimination policies, but has also increasingly opposed

restrictive immigration policies (Wrench 2004). There is not only an increasing recognition among unions that migration is an inextricable part of globalisation, but migrant workers and ethnic minorities are also viewed as a potential new source of organisational strength. Unions have opposed in particular those policies that are seen as being detrimental to organising in the workplace and fuelling the informal economy (Avci/McDonald, 2000).

This reasoning also informed their policies on the free movement of labour in an enlarged EU as discussed in chapter three. One of the reasons why the British trade union movement supported an open labour market policy at the time of EU enlargement was linked to the belief that it is preferable if workers enter the UK as dependent employees rather than on a self-employed basis which would rule out the possibility of organising these workers (interview, TUC (2), 2006). Thus, attempts to organise new groups of employees like migrant workers is very much part of a strategy to regain bargaining power. As one TUC representative put it:

We want to organise as many people as we can within the workplace ...We don't have some sort of constitutional position like in Austria where free collective bargaining is written in their constitution. We don't have any great privileges that you could find in some other European countries. Power comes from size and unity and obviously we don't achieve things through legislative rights but through free collective and voluntary bargaining. And it is very hard then to sit down with an employer and bargain effectively if you only have ten percent of his workforce (interview, TUC (1) 2006).

Organising is also viewed as the best way of preserving working conditions in an open economy like Britain that is likely to continue to experience labour migration. Furthermore, as concerns have mounted among some sections of the British workforce about possible negative effects of migrant labour, unions also regard the organisation of migrant workers as a tool of preventing the emergence of a two-tiered workforce and diffuse possible tensions at work: 'We are actively organising migrant workers so that they are treated no differently in the workplace than the resident workforce so the resident workforce will not see them as having a detrimental effect on their terms and conditions' (interview, USDAW, 2006). Such sentiments are echoed by a representative from the TGWU:

there are concerns about well the company introduced this whole badge of agency workers, migrant workers who are kind of undercutting our terms and conditions ...We have to accept that this is a legitimate issue. But actually the approach to this is by organising the migrant workers not by shunning them (interview, TGWU (2), 2006).

An emerging topic of discussion among British unions is that traditional ways of organising have their limits when it comes to migrant workers:

We have found that the traditional ways of recruiting in the workplace don't work. We need to gain trust and respect and go to the communities. There have been instances where unions have gone to community halls or pubs in order to recruit (interview, GMB, 2006).

Thus, in accordance with the philosophy of 'organising unionism', there is an increasing emphasis on some extra-workplace activities that includes linking up with migrant community organisations. There is now a growing recognition among most unions that such links with community organisations are an essential requirement to approach and organise migrant workers (Fitzgerald 2006).

Furthermore, some British unions like the TGWU, the GMB and USDAW that cover many of the low-wage sectors that have seen a recent inflow of migrants have started to recruit organisers from some of the new migrant communities particularly from Eastern Europe. This takes place against the background of language barriers that have been identified by all unions as a significant impediment to the recruitment of migrant workers. However, the importance of such organisers goes beyond just facilitating communications at the workplace as they are seen as an indispensable part of building new contacts with migrant communities in an effort to build trust and increase union membership (interview GMB, 2006; interview, TGWU (1), 2006, interview, USDAW, 2006). In their attempts to organise migrants, unions such as the TGWU which have been most influenced by the philosophy of the 'organising model', emphasize that the aim is not just to recruit new members for the sake of it but to empower them:

Our way of organising is to get into the workplace, find out what the workers' concerns are and work with them on those campaigns so that they build their own union structures within their workplace rather than a centralised model where we hand down a campaign to workplaces (interview TGWU (3), 2007).

Examples of recruitment campaigns that have been inspired by the ‘organising model’ include the recent London-based *Justice for Cleaners* campaign of the TGWU. As part of this campaign, the TGWU built up a team of organisers that included migrants from those countries where most of the cleaners were from, in particular from Africa and Latin America. Furthermore, the union linked up with some community organisations like faith groups and churches as part of this campaign. Strategically, the aim of the campaign has been to make visible a ‘moral scandal’ by exposing the huge gap in wages that exists between business managers and cleaners in the financial districts of London (Policy Studies Institute 2006: 14; TGWU 2007: 8-9).

Such organising campaigns, however, still remain the exception among recent initiatives by British unions. While there is certainly a stronger commitment to organising new groups of employees and more resources are devoted to this than ever before, there is still an unevenness in the adoption of the organising model (Heery et al. 2003a). It is often difficult for those unions which are committed to the ‘organising model’ to find a balance between the need for organising new groups of ‘atypical’ employees like migrants, which can be quite time-consuming, and the need for servicing existing members in times of scarce resources. This sometimes can lead to a situation where national union policies on recruiting and organising migrants are not always implemented by local union officials on the ground, less so out of opposition but rather because of time constraints and the need of servicing existing members (McKay 2006). Thus, while to some extent the British tradition of workplace unionism and its reliance on shop floor mobilisation might be better suited to move towards an ‘organising model’ than, for instance, the German and Austrian tradition, it is often beyond the resources of unions to organise migrants in a systematic way in the workplace (Lillie/Greer: 575).

Nevertheless, although the claim to have moved towards an ‘organising unionism’ does not always reflect the reality on the ground, the British trade union movement is probably devoting more time and resources than any of the other three trade union movements to the organising of new groups of employees like migrant workers. The TUC not only provides information on living and

employment conditions in the various languages of recently arrived migrants, particularly from the NMS, as well as web-based resources,<sup>54</sup> but it has also collaborated with individual unions like the GMB, TGWU, UCATT and USDAW in various organising initiatives that aim to recruit migrant workers.<sup>55</sup> This greater emphasis on organising, as I have argued, reflects the institutional position of the British trade union movement. In light of a decline in collective bargaining coverage and an erosion of political influence, unions have a greater incentive to prioritise organising than other trade union movements that can rely more on their institutional resources.

### ***7.2.2 Ireland***

Although Ireland as a LME shares with British a voluntarist tradition of industrial relations, the trade union movement remains in a more institutionally entrenched position through its involvement in the Irish system of social partnership. Hence, Irish unions do not have the same incentive to move towards an ‘organising unionism’ as their British counterparts have. Correspondingly, an emphasis on the organisation of new groups of ‘atypical’ employees has so far not featured as prominently as a ‘union revitalization strategy’ (Frege/Kelly 2004a) as it has in Britain. Nevertheless, SIPTU, Ireland’s largest unions, began to dedicate greater resources to this issue in 2004 when it set up an ‘Organising Unit’ that aims to target low-paid workers, including migrants, in sectors such as private services and construction (Donaghy/Teague 2007: 25-26).

One reason why the organisation of migrants has, until recently, not been on the radar of the Irish trade union movement is, of course, the fact that Ireland only transformed into a country of immigration in the second half of the 1990s, as the

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<sup>54</sup> There are so far two websites provided by the TUC in Polish (<http://www.pracawbrytanii.eu>) and Portuguese (<http://www.trabalhareinounido.org/>) that inform about living and working conditions in the UK.

<sup>55</sup> For instance, in the North East of England, the TUC and the construction union UCATT initiated a recruitment campaign among recent arrivals from Eastern Europe while in the North West of the country the TUC and some individual unions lined up with an organiser from the Polish Solidarnosc union to specifically organise Polish migrants (Fitzgerald 2006; PSI 2006: 13). Furthermore, the TUC and some individual unions have held courses and workshops on organising migrants (TUC 2007f, USDAW 2007b). As mentioned earlier, individual unions like the TGWU, the USDAW and the GMB have started to employ migrants as organisers.



historical experience has been one of people leaving the country.<sup>56</sup> When inward migration into Ireland increased significantly, particularly since the late 1990s, it took unions some time to come to terms with the rapidly changing workforce. This is not surprising as unions quite often are a reactive force that can be slow in adapting to change.<sup>57</sup> It is noteworthy, however, that Irish unions did not oppose the inflow of migrant workers and have cooperated with the authorities, employers and NGOs on this issue (Krings 2007).

As incidents of underpayment of migrants became more frequent, and labour disputes like the one at Irish Ferries in 2005 raised the spectre of displacement, the ICTU and SIPTU adopted a more pro-active approach towards migrant labour (Donaghy/Teague 2007: 25-26). To ensure that migrants do not represent a cheaper alternative to indigenous workers, unions essentially pursued a two-fold strategy. On the one hand, the enforcement of employment standards became arguably the most important issue for the Irish trade union movements in negotiations for a new partnership agreement in 2006.<sup>58</sup> On the other hand, the organisation of migrants, although perhaps pursued less urgently, acquired greater relevance for unions not least as it became obvious that labour migration was likely to continue for the foreseeable future. In this regard, unions do not only view the organising of migrants as important in protecting employment conditions but also as facilitating integration in the workplace:

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<sup>56</sup> Among those who left Ireland, some have been centrally involved in building the trade union movements in their new home countries as one SIPTU official recalled: 'For generations Irish people have been leaving this country to go to America, to go to Canada, to go to Australia. In fact if you look at the history of the trade union movement in those countries, it will be the history of Irish immigrants (interview, SIPTU (2), 2006).

<sup>57</sup> For instance, in the case of the mostly unionised Turkish Gama workers, it was Joe Higgins, Socialist Party TD, and not unions, who brought attention to the underpayment of these workers. This case clearly illustrated the challenges that contemporary migrant workers pose to unions, but also the shortcomings of the initial responses by unions. The Gama workers were not directly employed by an Irish company but were posted by a foreign subcontractor, a practice that is particularly widespread in the European construction industry (Balch et al. 2004). Although many of the Gama workers were enrolled as SIPTU members, the unions' initial response was quite muted. However, SIPTU eventually became more actively involved through its new organising division by facilitating meetings with its migrant members and intervening on their behalf (Flynn 2006: 267-269).

<sup>58</sup> Initially, the ICTU refused to engage in any negotiations for a successor agreement to *Sustaining Progress* until assurances were given that issues of compliance and enforcement of labour standards would be addressed. Union officials argued that unless this issue was resolved it would be only a matter of time until an 'Irish Ferries situation on land' would occur (Begg 2006).

People talk about integration of workers into the labour force and I think one of the best indicators if you like of that integration over the years may become trade union membership ... if we are successful in that, and it is a challenge as I said, it can also have a great effect in terms of dealing with the exploitation levels that we talked about (interview, ICTU (1), 2006).

For a start, the organisation of migrant workers would require some special initiatives such as the translation of recruitment and information material into at least some of the foreign languages of Ireland's new migrant communities. In this regard the ICTU and SIPTU started to make some considerable efforts. SIPTU not only translated some of its recruitment and information material into some of the languages of the Ireland's new migrant communities but it also began to offer English classes to migrant workers (SIPTU 2006b). Important as these initiatives are, they are not necessarily sufficient to attract migrants in greater numbers to the cause of trade unionism. As one ICTU representative put it:

I suppose that our initial response was that if we translate our communications into specific languages, that people will come running into us. But we then had to breakdown the barriers of distrust and the independent trade union movement (interview, ICTU (2), 2006).

As already pointed out, to develop a relationship of trust is possibly the most important task for unions in their endeavour to organise migrants. In this regard, building new links to community organisations and the appointment of migrants as shop stewards and organisers can make a crucial difference (Fitzgerald 2006). This has also been the experience of SIPTU who have started to employ migrants from within Ireland's new Eastern European communities as union organisers. Through these organisers SIPTU has improved its ability to communicate with migrant workers, which has contributed to an increase in membership.<sup>59</sup> Moreover, through these organisers the union has been able to build new contacts with migrant organisations and trade union movements in those Eastern European countries where many of the migrant workers come from (interview, SIPTU (2) 2006). Other, smaller unions like Mandate and UCATT Ireland do not have similar initiatives in place. While their officials admit that there is a need for such

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<sup>59</sup> SIPTU claims to have 16,000 migrants among its membership (SIPTU 2006b: 5).

initiatives, they often face the problem of limited resources (interview Mandate 2006; interview UCATT Ireland).<sup>60</sup>

According to proponents of the organising approach, what is required is not only some extra-workplace activities but also a new way of organising that goes beyond the individual workplace and tries to organise across low-skilled occupations (Wills 2005). While organising strategies such as the *Justice for Cleaners* campaign by the TGWU in London are absent in Ireland, there have been a few organising examples that mark a departure from traditional ways of organising. For instance, SIPTU has initiated a recruitment campaign in the mushroom sector where many cases of underpayment of migrant workers have occurred. Even though this campaign has not yielded many new members to date, it has highlighted cases of underpayment and discrimination (Krings 2007: 56). In another ‘atypical’ employment sector, domestic work, the ICTU and SIPTU have recently lined up with the Migrant Rights Centre Ireland (MRCI) to campaign for a Joint Labour Committee for domestic workers that would formally set out terms and conditions for this unregulated sector in which female migrants often have to endure exploitative working conditions. This co-operation also entailed the possibility of associated union membership (MRCI 2006). Such campaigns, however, still largely remain the exception among recent initiatives by Irish unions.

Thus, in Ireland due to the recent nature of inward migration but also due to the fact that the Irish trade union movement continues to mainly rely on traditional forms of workplace-based organising, attempts to organise new groups of employees including migrant workers has not featured as prominently as it has in Britain. As the Irish trade union movement remains in an institutionally embedded position through their involvement in the social partnership process, there has been less of an incentive to move towards an ‘organising unionism’. Hence it could be argued that ‘Ireland has been an outlier amongst the Anglo-Saxon economies in that organizing has only recently begun to emerge as a priority’ (Donaghy/Teague 2007: 25). Nevertheless, as shown, SIPTU in particular has

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<sup>60</sup> Nevertheless, UCATT Ireland has started to distribute recruitment and information material in different languages (interview, UCATT, 2007).

started to devote some considerable resources to the issue of organising migrant labour.

### **7.2.3 Germany**

As unions in Germany continue to rely on their (shrinking) institutional resources, the organising of new groups of employees has so far acquired less prominence than in LMEs. By and large, organising in CMEs is still geared towards the consolidation, rather than extension, of the existing membership. This is why unions still primarily rely on traditional forms of organising, particularly through works councils (Behrens et al. 2003: 28). In the context of migrant labour, this strategy was relatively successful in the past when migrants mainly entered unionised workplaces particularly in industrial manufacturing. However, as contemporary labour migration has assumed ‘elements of a postindustrial form’ (Held et al. 1999: 304), unions have not been near as successful in organising migrants as many of the latter enter non-unionised workplaces.

To date there have been few initiatives by German unions that would have been specifically tailored towards the organising of contemporary migrants, a group that nowadays predominately originates from Central and Eastern Europe. The most significant exception to this has been an organising initiative by the construction union IG BAU. The employment sector that IG BAU organises has been more affected by recent labour migration than any other employment sector in Germany, and possibly any other employment sector in Europe. As already mentioned, throughout the 1990s employers in the German construction sector increasingly preferred posted migrant workers from CEE and elsewhere to more expensive indigenous workers which led to a significant increase in unemployment among the latter (Hunger 2000). Naturally, this was an issue of utmost concern to the construction union, not only because of the pressure that this exerted on employment conditions, but also because of a significant loss in membership throughout the 1990s.<sup>61</sup>

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<sup>61</sup> From 1990 to 2006, IG BAU membership declined from around 780,000 to below 400,000 (Lillie/Greer 2007: 565).

Because of the temporary nature of this form of labour migration, IG BAU was not able to organise these migrants. Furthermore, as the vast majority of these migrants were not members of trade unions in their home countries (Poland and Romania in particular), increased co-operation with trade unions in those countries did not significantly improve the situation (interview IG BAU, 2006). It is against this background, and encouraged by a survey among posted workers on German building-sites, that IG BAU set up the European Migrant Workers Union (EMWU) (EIRO 2004b).<sup>62</sup> The aim of the EMWU is to specifically organise and represent the interests of temporary migrant workers from Eastern Europe (and elsewhere) who frequently cross borders and who are often in precarious employment. While during the starting up period, the executive council of the EMWU is composed of IG BAU officials, the aim is to organise sufficient numbers of migrant workers to eventually ‘hand over’ the union to them (interview, IG BAU, 2006).

The EMWU attaches considerable importance to the fact that some of its staff members are Polish and Romanian as ‘people are quite sensitive to where someone who approaches them comes from’ (interview, EMWU 2006). Furthermore, to avoid the perception that ‘we impose a German organisation onto Poles’ (interview, EMWU 2006), the EMWU has set up a bureau in Warsaw which is registered in Poland and run by Polish staff. The EMWU emphasises that they are not a ‘competitor union’ to union movements of other countries as their main constituency is posted workers, particularly in the construction industry, who tend not to be organised (interview, EMWU 2006).

With this initiative IG BAU has complemented its previous strategies that mainly focused on co-operation with employer groups and law-enforcing agencies to prevent a ‘race to the bottom’ in the German construction sector. This initiative, fittingly described as ‘innovation (that) arose from desperation’ (Lillie/Greer 2007: 557), is testimony to the recognition by IG BAU that traditional forms of union organising often have their limitations when it comes to contemporary labour migrants. Although the EMWU has so far not organised as many migrants

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<sup>62</sup> As mentioned earlier, this survey found that a majority of posted workers would be willing to join an organisation that specifically cares about their interest,

as hoped for, it represents an interesting attempt by unions to come to terms with new forms of labour migration.<sup>63</sup>

Other unions like IG Metall and Ver.di have so far not paid similar attention to the organisation of recent labour migrants. In the case of the IG Metall this may be partly due to the fact that until recently its organisational area (metal and electronics industry) was more affected by the globalisation and offshoring of parts of production than by the inflow of temporary migrant labour. However, since EU enlargement there has been an increase in the posting of workers from the NMS not only in the 'traditional' low-wage sectors like the meat industry, but also increasingly in low-skilled segments of the metal and electronics industry (Lippert 2006). So far IG Metall has no significant organising initiatives in place that would take into account these recent developments. However, the union is currently trying to develop new strategies to reach out to these migrants (interview, IG Metall, 2006).

Similarly, neither Ver.di nor NGG have any initiatives in place that would specifically target migrant workers. The employment sectors that both unions cover have so far been differently affected by recent labour migration. The organisational remit of NGG includes food-processing and hospitality. As already pointed out, since EU enlargement there is some evidence of a displacement effect in sectors like the meat industry where service providers from the NMS pay their workers wages that are sometimes well below the local rates (Czommer/Worthmann 2005). So far NGG has not made any inroads in organising these temporary labour migrants. Its main response to increased labour migration to date has been demands for the introduction of a legally-binding minimum wage (interview, NGG, 2007).

As regards the organisational remit of Ver.di, recent labour migration has been noticeable in employment sectors like transport and private services, in particular personal care. In the transport sector there is some evidence of social dumping as

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<sup>63</sup> It is noteworthy, however, that the EMWU has not received the full backing of other construction unions in Europe. This is mainly because of concerns about an 'intrusion' into their national spheres (Kahmann 2006: 194), a point I will return to at a later stage in chapter eight when I will discuss the prospect of transnational trade unionism and labour migration.

international transport companies sometimes employ drivers from the NMS to save on labour costs (Vaughan-Whitehead 2003: 343-345). The employment of migrants in private care has not similarly caught the attention of Ver.di as many of these migrants are employed informally in a sector that is not covered by collective agreements. While Ver.di has a section called 'particular services' (*Besondere Dienstleistungen*) that includes 'atypical' occupations like work in call centres and personal services, it does not have any particular initiatives in place that specifically aim to organise migrants. According to a representative of Ver.di, any such organising campaign would not reflect the tradition of German trade unionism that tries to emphasize the unifying aspect of employees and shared interests (interview, Ver.di, 2006).

Thus, while German unions have been relatively successful in integrating migrant workers into their ranks in the past, they still have to come to terms with contemporary labour migration. While there is a greater awareness among unions of the growing importance of organising in times of declining union membership, there are few examples of new organising initiatives that go beyond the traditional reliance on works councils (Behrens et al. 2003: 28-29). The only exception to date has been the IG BAU, the German union most affected by recent labour migration. Here the setting up of the EMWU marks an important departure from traditional ways of organising in times of the transnationalisation of labour markets.

#### **7.2.4 Austria**

Traditionally, trade unions in Austria exercised a considerable influence on public policy as part of one of the most corporatist systems of social partnership in Europe (Traxler 1998). Although the importance of the partnership process outside of the fields of industrial relations has declined since the 1990s, the trade union movement in Austria, as in Germany, remains in an institutionally entrenched position that has provided less of an incentive to rethink traditional forms of organising. In response to growing pressure, unions have mainly relied on the strategy of restructuring, particularly through union mergers, while a

greater emphasis on organising has so far not featured prominently among union strategies for revitalisation (Blaschke 2006). Therefore, there are few examples of organising initiatives that go beyond the traditional trade union constituencies and focus on those employees in ‘atypical’ work, including migrant workers (Pernicka 2006).

As mentioned earlier, while the rate of union membership among foreign workers was relatively high in the past, Austrian unions have made few efforts to adequately represent the interests of migrants and integrate them into the trade union movement. Only since the 1990s gradual change has taken place, as there is now a greater commitment among unions to facilitate the integration of long-term immigrants. At the same time the main responses towards new migration has been rather protectionist (Gächter 2000: 85) and hence it is perhaps not surprising that unions have made few efforts to organise these migrants who increasingly enter Austria on temporary work permits (Tamas/Münz 2006).

Although Austrian unions generally acknowledge that there is a need to organise migrant workers, they have few policies and initiatives in place that would target contemporary labour migrants as a potential constituency to be organised. A representative of the construction union GBH, for instance, emphasizes that ‘the organisation of migrants is of utmost importance’ (interview, GBH, 2007). However, in its endeavour to preserve labour standards, the organising of migrants has so far not featured prominently in its strategies. Although the number of self-employed migrants has increased in the Austrian construction sector,<sup>64</sup> the GBH does not have similar organising initiatives in place like, for instance, its German counterpart IG BAU that specifically aims to organise these migrants, many of whom are in precarious employment. Instead, the sole focus of the GBH is more or less on co-operation with law-enforcement agencies and employer bodies to protect employment standards, as has been discussed in chapter five. A similar picture emerges for the GMT/N that covers the metal, textile and food-processing sector and the HGPD/Vida that includes, among other sectors, hospitality, private services and cleaning. While these two unions have increased their co-operation with the ÖGB in various projects that offer advice to

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<sup>64</sup> As pointed out in chapter three, an increase in self-employed people particularly from the NMS can be partially attributed to the transitional restrictions in Austria (and Germany).



migrant workers and have started to translate information material in foreign languages, they have few initiatives in place to organise migrants.

This may not be entirely surprising not only because the centralised structure of the ÖGB has been traditionally anathema to a more pro-active organising approach (Traxler 1998: 250). Perhaps more importantly, within the context of recent EU enlargement the main policy objective of Austrian unions has been to restrict access to the labour market for NMS migrants. Thoughts on the organising of migrants did not feature prominently on this agenda, not least because there was a widespread assumption among Austrian unions that migrants from the NMS would show little regard for trade unions and labour standards. However, this may not always be the case as the experience with some recent projects has shown:

We always had this hypothesis that these people (NMS migrants, T.K.) come over, they want to work come whatever, they don't care about anything as long as they earn more than at home ... The reality looks quite different. If these guys are informed (about their rights, T.K.), they insist on these rights and enforce them' (interview, ÖGB (2), 2007).

Particularly the experience with the Interregional Trade Union Council *Burgenland-West Hungary* has triggered a re-thinking of traditional assumptions about migrant labour among some sections of Austrian trade unionism. As already mentioned in chapter three, the role of ITUCs is, among other things, to facilitate labour mobility in cross-border regions. As part of this work the ÖGB set up a bureau that provides legal advice to Hungarian employees, an initiative that was well-received among the latter and has yielded new members for Austrian unions (interview, GMT/N, 2007; interview, ÖGB (1), 2007; interview, ÖGB (2), 2007).

Such initiatives, however, remain the exception in Austria where unions have so far shown no great desire to embark on US-style organising campaigns that would aim to reach out to previously untapped sections of the labour force. One reason for this is, undoubtedly, that the Austrian trade union movement can still rely on considerable institutional resources. Nonetheless, as the distinctive Austrian system of social partnership is in decline, at least outside of collective bargaining, it remains to be seen if this will open up the space for a reorientation of unions towards new strategies of 'union revitalization' (Frege/Kelly 2004a), including a

greater emphasis on organising approach that takes into account the growing diversity of the workforce.

### **7.3 Comparing union policies and practices on organising migrants**

What becomes apparent is that trade unions face similar challenges in terms of the organisation of migrant labour across the four case countries. Migrant workers tend to be over-represented in those employment sectors where trade union membership is traditionally low, particularly in private service sectors and agriculture. Furthermore, as the organisation of migrants is often a question of time, the fact that many migrants tend to view their stay as only temporary makes it more difficult for unions to organise them. Moreover, attempts to organise them are further complicated by the spread of subcontracting arrangements like agency labour and the posting of workers. Additionally, migrants may be concerned about possible adverse consequences of trade union membership, in particular the fear of losing the job, and may have certain misconceptions about the role of trade unions in Western European societies.

However, in spite of these similar challenges, the evidence of this chapter suggests that union policies and practices differ to some considerable extent across the four countries. This, as I have suggested, is linked to different incentives that trade union movements have in prioritising the organisation of new groups of ‘atypical’ employees, including migrant workers. In CMEs like Germany and Austria, unions still primarily rely on their institutional resources, particularly on sectoral bargaining and statutory works councils. Organising traditionally takes place through works councils and is geared towards the consolidation, rather than extension, of the existing membership. While in the past, unions in Germany were relatively successful in organising migrants who mainly entered organised workplaces in industrial manufacturing, traditional forms of union organising are less adequate to organise a changing workforce. Hence, unions have not yet managed to successfully reach out to new groups of employees, particularly in the private service industries. The most notable exception in this regard has been a recent organising initiative by the construction

union IG BAU in the form of the EMWU that specifically aims to organise temporary migrant workers. It was perhaps no co-incidence that this initiative came from the German union that has been most affected by labour migration in recent years.

As in Germany, union membership among foreign workers was relatively high in Austria. However, until the 1990s, Austrian unions have made few efforts to actively represent the interests of their immigrant members. Unions have only recently started to pay more attentions to long-term immigrants while at the same time having few policies and initiatives in place that would be tailored towards the needs of contemporary migrant workers. Although there has been a re-thinking of traditional assumptions about the ‘unorganisability’ of labour migrants from the NMS in particular, this has not been followed by a change in organising policy. It remains to be seen if Austrian unions will adopt a more pro-active organising approach that goes beyond the traditional trade union constituencies as a result of the declining importance of the social partnership process.

To some extent, it is perhaps not surprising that Austrian and German unions have few organising initiatives in place that are aimed at contemporary labour migrants, particularly from the accession countries. As pointed out in chapter three, in terms of EU enlargement both trade union movements pushed for transitional restrictions for NMS migrants because of concerns about labour standards and collective agreements. Nevertheless, in opposing the inflow of migrant labour from the accession countries, unions face a certain dilemma not least because workers from these countries continue to enter both Austria and Germany in significant numbers:

It may seem logical to oppose immigration, but once there are immigrant workers in the country, it is essential to organize them – not only in their own interests, but also in the interests of the rest of the workers. If the unions oppose immigration initially and even continue to do so, they may find that immigrants do not trust them and are unwilling to join. Where this happens, the unions have the worst of both worlds. Not strong enough to prevent immigration, their attempts to do so only serve to alienate the new workers from them (Castels/Kosack 1973: 128).

In Britain, such considerations played a part in the decision of the trade union movement to support an open labour market policy for workers from the NMS, as this offers unions at least the possibility of organising migrants. This has to be seen in the context of a move of some British unions towards an ‘organising unionism’ (Heery et al. 2000). While union organising in Germany and Austria is still primarily geared towards the consolidation, rather than extension, of existing union membership, British unions increasingly target those employment sectors where trade union support has been traditionally weak. This reflects, in part, the wider institutional position of the British trade union movement that has been more eroded than elsewhere. As in the UK, where organising is ‘the means to create new bargaining relationships’ (Heery/Adler 2004: 58), unions have a greater incentive to organise new groups of employees than union movements in other countries which remain in a more institutionally entrenched position. Although claims of moving towards an ‘organising unionism’ may not always reflect the reality on the ground, as organising often takes place in a piece-meal fashion and is not yet embedded in a coherent strategy (Heery et al. 2003a), British unions, more so than the German and Austrian union movements, have organising policies and initiatives in place that aim to reach out to previously untapped sections of the labour force including migrant workers.

Although Ireland shares a voluntarist tradition of industrial relations with Britain, Irish unions remain in a more institutionally embedded position through their involvement in the social partnership process. This is likely to be one of the reasons why an emphasis on organising new groups of employees has so far not featured as prominently as in Britain. However, in times of a quite dramatic decline of union density in the private sector and increasing difficulties to gain union recognition (D’Art/Turner 2005), some unions, in particular SIPTU, pay greater attention to organising new groups of employees. In the context of the recent transformation of Ireland into a country of immigration, the ICTU and SIPTU have adopted some special services like translating information material and providing language classes for migrant workers. Furthermore, Ireland’s largest union has started to employ migrant organisers, which marks an important

development in reaching out to Ireland's new migrant communities. Such initiatives, however, are largely confined to SIPTU in Ireland.

#### **7.4 Conclusion**

The organising of new groups of employees like migrant workers is an essential requirement for trade unions. This is not only because unions are membership-based organisations, but the organisation of migrant workers could also make an important contribution to prevent the emergence of a two-tiered workforce where migrants could represent a cheaper alternative to indigenous workers. Attempts to organise migrant workers takes place in the context of a decline of trade union membership density in most Western European countries. However, the organisation of migrant workers poses some particular difficulties to trade unions that are not confined to language barriers. Not only are many migrants located in employment sectors where unions traditionally have a weak presence, in particular the private service sectors, but the often only temporary nature of the migration and the spread of subcontracting arrangements also pose further obstacles to the organisation of migrants.

In spite of these common challenges, union policies and practices across the four countries differ to some considerable extent. In Britain, unions have made the biggest effort to organise recent migrant workers linked to their organising agenda. In Ireland, SIPTU has started to make some considerable efforts in organising migrants. However, an 'organising unionism' does not feature as prominently as in Britain. In CMEs such as Germany and Austria, unions have less of an incentive to prioritise organising as they continue to rely more on their institutional resources such as sector-wide collective bargaining and statutory works councils. Nevertheless, IG BAU, the German unions that has been most affected by labour migration, recently dedicated greater resources to the organisation of migrant workers by sponsoring the EMWU.

If it is true that 'migrant workers represent a challenge to the way trade unions traditionally organise' (Fitzgerald 2006: 5), than trade union movements across

the four countries, to varying degrees, may have to devise new organising initiatives to complement traditional forms of workplace-based organising. Here an organising approach that goes beyond the individual workplace and focuses on occupations across the low-paid, low-skilled sector and involves some extra-workplace activity such as linking up with migrant communities might offer a new departure for trade unions (Wills 2005). To be sure, intensifying efforts to organise migrants will not prove to be an easy task for unions, not least because this would presuppose a greater commitment to dedicating more time and resources to this process which may be in conflict with other union tasks like servicing existing members. However, at times of increased cross-border mobility and declining trade union membership, unions have few other alternatives to exploring new and innovative forms of organising that aims to target migrants and other 'atypical' employees.

## **Chapter Eight: Explaining the Variation in Trade Union Responses**

The aim of this thesis is to establish whether unions in CMEs respond differently to the challenge of contemporary labour migration than unions in LMEs, and if so, how possible differences can be accounted for. What becomes apparent from the previous empirical chapters is that there is substantial variation in union responses to migration. Broadly speaking, unions in LMEs like Britain and Ireland have been more open towards the inflow of additional labour from abroad than unions in CMEs like Germany and Austria. This became particularly visible in relation to the free movement of labour in an enlarged EU in 2004 when British and Irish unions supported an open labour market policy, whereas German and Austrian unions demanded transitional restrictions. From this follows that unions in the former two countries have been more inclined to pursue a rights-based approach to precarious migrant labour including ‘illegals’, and to put a greater emphasis on organising contemporary labour migrants than unions in the latter two countries.

In chapter one, four explanatory factors (labour market factors, the institutional position of unions, the context of migration and unions as strategic actors) have been identified in accounting for possible variations in union policies on labour migration. I will now draw upon these factors in trying to evaluate the divergent union policies. I will argue that the different institutional framework in each ‘variety of capitalism’, in particular labour market factors and the structure of collective bargaining, is of considerable importance in accounting for the variation in union responses towards labour migration. However, while union policies are influenced by such ‘structural’ factors, they are not wholly determined by them. Unions have some agency in how they frame issues such as immigration. It is therefore the interplay of the economic, institutional and migration context in each country with union agency that shape the policy responses of organised labour and sometimes can lead to variation within the same ‘variety of capitalism’.

## 8.1 Labour market factors

Labour market factors do not only refer to rates of economic growth and the level of unemployment but also to the institutional configuration of labour markets. Whereas there are no clear differences discernible between LMEs and CMEs in terms of their overall macro-economic performance (Hall/Soskice 2001: 21), the former have been more successful in creating service sector employment in recent years. This has been facilitated by the deregulation of the economy and the emergence of ‘fluid labour markets’ (Hall/Soskice 2001: 44; see also Esping-Anderson 1999).<sup>65</sup> As many native workers in Britain and Ireland gravitated towards better-paid jobs at a time of an economic boom at the turn of the Millennium, demand for additional workers increased to fill low-paid service jobs in particular, but also jobs in construction in light of a building boom (NESC 2006; Tamas/Münz 2006).

Although Germany and Austria continue to rely on migrant labour to fill certain low-wage jobs, in both countries labour shortages have been less widespread than in Britain and Ireland in recent years. To some extent, this is linked to a more sluggish growth of service sector jobs. In Continental Europe high wage costs through social security contributions and relatively strong trade unions have long inhibited the development of a low-wage service sector (Scharpf/Schmidt 2000). Moreover, relatively strong employment protection legislation has contributed to a certain ‘insider/outsider’ dichotomy in light of a broader labour market orientation of privileging a core of skilled, mainly male workers with adverse consequences for those on the ‘outside’ (Esping-Anderson 1999: 150; Hassel 2007).

Arguably the most important labour market factor that influences union attitudes towards an additional inflow of labour is the unemployment rate in each country. Whereas Austria, Ireland and the UK have performed reasonably well in recent years, Germany is somewhat lagging behind. It is therefore not unreasonable to assume that comparatively low unemployment rates in the UK (4.7 per cent) and

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<sup>65</sup> It should be stated, though, that some CMEs, in particular the Scandinavian countries, have been quite successful in creating service sector jobs too. In the latter countries, service sector employment has been particularly widespread among women in welfare state jobs (Esping-Andersen 1999).



Ireland (4.5 per cent) in 2004, coupled with a labour shortage in both countries, helped to gather support among unions for an open labour market policy at the time of EU enlargement in 2004.<sup>66</sup> Conversely, high unemployment in Germany (9.7 per cent) is likely to have contributed to the support of unions for transitional arrangements. However, the Austrian case shows that even in light of relatively low unemployment (4.8 per cent), unions may still prefer restrictionist policies. Thus, the unemployment rate on its own cannot account for the variation in union policies.

This becomes also apparent when we compare union positions on non-EEA immigration. Although unemployment was significantly higher in Germany than in Austria at the beginning of the twenty-first century, German unions developed policies in favour of a system of ‘managed migration’ for non-EU migrants, whereas their Austrian counterparts have largely adopted a defensive approach towards immigration from outside the EU. Moreover, a sole focus on the level of unemployment would also not be able to explain why, for instance, British unions have made a considerable greater effort than Austrian unions to organise migrants, in spite of a similar unemployment rate. This also applies to the quite divergent policy positions of both trade union movements on illegal migrants. It is therefore necessary to go beyond labour market factors and consider the institutions of collective bargaining in each ‘variety of capitalism’.

## **8.2 The institutional position of unions and the structure of collective bargaining**

Generally, trade unions in CMEs such as Germany and Austria appear to be less accommodating of the inflow of additional labour from abroad than unions in LMEs such as Britain and Ireland. Besides labour market factors such as high unemployment in Germany, this appears to be also linked to different industrial relation systems and the institutional position of trade unions in each ‘variety of capitalism’. To account for different trade union behaviour, the structure of collective bargaining is of particular importance (Clegg 1976). What became

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<sup>66</sup> These figures derive from EUROSTAT (Structural Indicators) ([www.eurostat](http://www.eurostat)).

apparent in the previous chapters is that German and Austrian unions have particular concerns about the impact of labour migration on collective wage agreements. Hence, these concerns are likely to have contributed to a more protectionist attitude towards the inflow of migrant labour.

Whereas unions in CMEs are primarily concerned about defending existing industry-wide collective wage agreements, unions in LMEs are equally concerned about building new bargaining relationships. This is because in the latter the bargaining position of unions has been more eroded in recent decades and they do not possess the same institutional resources as their counterparts in CMEs (Frege/Kelly 2004a). This is shown particularly in a country like Britain where union membership density and collective bargaining coverage now closely overlap (Table 10).<sup>67</sup> It is against this background that the TUC and some individual unions have moved towards an ‘organising unionism’ (Heery et al. 2000) that aims to reach out to previously untapped sections of the labour force. This, in turn, has contributed to a re-appraisal of the approach of unions towards marginalised groups such as migrant workers. As argued by Wrench, ‘when unions are weakened and undermined, and their legitimacy challenged, then issues of membership and recruitment, particularly in growing sectors of the economy and amongst unorganised groups, take on increased significance’ (Wrench 2004: 89).

This became particularly visible in the context of EU enlargement when the rather principled support of British unions for an open labour market policy could be read as a preference for NMS migrants entering the labour market as dependent employees who can be organised, rather than as ‘bogus’ self-employed or irregular workers who effectively are out of reach for unions. This view of migrants as a potential constituency to be organised also extends to irregular migrants. An important reason why British unions support a rights-based

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<sup>67</sup> In Ireland, collective bargaining is likely to be somewhat more widespread than in Britain as company-level bargaining is complemented by national wage agreements. It is important, though, to stress, that national wage agreements which are negotiated as part of the social partnership process, are not legally binding as Ireland shares with the UK a tradition of voluntarist industrial relations. Nevertheless, the fact that Irish unions remain in a more institutionally entrenched position through their involvement in social partnership is likely to have contributed to the fact that the organisation of new groups of employees, including migrant workers, has not featured as prominently as a ‘revitalization strategy’ (Frege/Kelly 2004a) as in Britain, in spite of some considerable efforts by SIPTU recently.

approach to the issue of illegal migrant labour is the belief that such an approach is preferable to a ‘crack down’ approach which is seen as interfering with their organising agenda.

**Table 10** *Labour relations in the four case countries*

	Trade union density (%)		Collective bargaining coverage (%)	
	1980	2000	1980	2000
Austria	57	37	95	95
Germany	35	25	80	68
Ireland	57	38	NA	NA
UK	51	31	70	30

*Source:* as on p. 67; there are no reliable figures available for bargaining coverage in Ireland, estimates vary from 40 to 66 per cent (EIRO 2004a; EIRO 2007a).

Whereas unions in Austria and Germany have experienced a similar decline in membership density, they remain in a more institutionally entrenched position. In these countries, collective bargaining still covers a majority of all employees and unions continue to rely on their institutional resources, particularly on sectoral bargaining and statutory works councils, which ‘have provided some “buffer” against direct losses of power due to declining or low union membership’ (Ebbinghaus 2006: 141). This is likely to be one of the reasons why unions have so far paid less attention to the organising of new groups of employees including contemporary labour migrants.

Thus, if it is true that ‘variations in union behaviour under collective bargaining can be explained by differences in collective bargaining’ (Clegg 1976: 8), then it appears that trade unions in countries like Germany and Austria, where collective bargaining is traditionally regulated by industry-wide agreements, are less inclined to accommodate additional labour from abroad. This is all the more so the case at times when the traditional system of collective bargaining is no longer uncontested particularly in Germany (Hassel 2007). Indeed, it could be argued that in the absence of a statutory minimum wage labour standards may be indeed

adversely affected in the context of inward migration *if* employers should decide to abandon the institutions of collective bargaining and unions no longer possess the capacity to enforce wage agreements, as observed in Germany in employment sectors such as construction and food-processing (Czommer/Worthmann 2005; Menz 2005).

In spite of a more protectionist attitude among unions in CMEs, it should not be assumed that the latter are opposed to labour migration *per se*. For instance, during the ‘guestworker’ era post-World War Two, most unions including those in CMEs agreed to labour migration after they had received assurances that migrants would receive ‘equal pay for equal work’ (Penninx/Roosblad 2000). Moreover, while German unions have adopted a rather restrictive stance on labour migration from the EU accession countries, as shown in chapter five, they have developed policy positions in favour of a system of ‘managed migration’ for non-EU immigrants. It therefore appears that unions in CMEs may well agree to immigration, provided that there are demonstrable labour shortages and migrants are paid in accordance with prevalent collective agreements (Freeman/Kessler 2008: 671). Hence, the particular circumstances of *how* migrant workers access the labour markets, appears to be another factor influencing union policies.

### **8.3 The context of labour migration**

From a trade union perspective, what is of particular importance is that migrants become integrated into the workforce on an equal par with domestic workers and are paid the prevalent local rates. As pointed out, trade unions in traditional high-wage countries like Germany and Austria where wage-setting is regulated by sector-wide collective agreements have particular concerns about this. Such concerns have contributed to the support of unions in both countries for transitional arrangements for NMS migrants. While in the case of Austria such a policy position is perhaps less of a surprise in light of a rather protectionist tradition, the German case appears to be less clear cut. As mentioned in chapter one, unions here have not opposed the recruitment of foreign workers during the ‘guestworker’ era and have made some considerable efforts in integrating

migrants into the workplace. Moreover, there was already some evidence in the 1990s that unions may well agree to further labour migration, provided that wage agreements and social security contributions are observed (Kühne 2000: 50). How, then, can the more restrictive stance that unions adopted in relation to East-West migration be explained?

One obvious difference to the ‘guestworker’ era is the above mentioned macro-economic context, as unemployment at the turn of the Millennium was significantly higher than during the time of the *Wirtschaftswunder* in the 1950s and 1960s. However, another reason for the more restrictive position that German unions adopted in relation to the free movement of labour in 2004 was, as I would like to argue, the changing context of migration. During the ‘guestworker’ era, at the height of ‘organized capitalism’, unions, which had a considerable input into public policy at that time, agreed to immigration provided that it would not undermine established pay and working conditions. However, throughout the 1990s a new form of temporary labour migration emerged, involving the posting of workers and other subcontracting arrangements, where migrants were no longer integrated into the workforce on an equal par with domestic workers. Furthermore, many migrants from Central and Eastern Europe who entered Germany in the post-1989 era, worked illegally, further increasing the pressure on wages and labour standards. These developments contributed to the deregulation of the employment relationship in sectors such as construction where wages and labour standards were adversely affected (Hunger 2000; Menz 2005).

Thus, the experience of a new form of labour migration during which migrants were no longer integrated into the social welfare and pay arrangements of the host country, influenced in no small part the attitude of the German trade union movement towards the free movement of labour in 2004. German (and Austrian) unions feared that an inflow of NMS migrants would further undermine labour standards and collective agreements, already under strain in times of contemporary global changes that have strengthened the position of capital *vis-à-vis* labour. Moreover, as the inflow of migrants from CEE quite often resembled commuter migration during which migrants frequently cross borders and do not integrate into the host society, German and Austrian unions perceived these

migrants to be out of reach for unions, thereby further contributing to their support for a transitional period. Therefore, CMEs may oppose a form of labour migration that is not regulated, particularly if it involves the inflow of migrants from countries in close geographical proximity that have lower wages and living standards. On the other hand, they may well accede to the inflow of migrants if it is as part of a system of ‘managed migration’ that ensures adherence to collective agreements.

In turn, neither Britain nor Ireland experienced a similar form of temporary labour migration during the 1990s. Indeed, at that time both countries were more likely to be sending countries, rather than receiving countries of posted workers (EIRO 2003a). When both countries became major destinations for migrant workers at the beginning of the twenty-first century, trade unions broadly accepted that there was a need for additional labour from abroad in light of significant labour shortages. Even construction-related unions, which have been at the forefront in pushing for restrictions in Germany and Austria, have not adopted a similar stance in Britain and Ireland, in spite of concerns about the enforcement of wage agreements. This appears to be linked to the fact that a construction boom in both countries required additional labour from abroad and that employment conditions in the sector have generally improved in recent years, in spite of incidents of underpayment of migrants (Bobek et al. 2008; Lillie/Greer 2007).

In spite of concerns about the underpayment of migrants, unions have adopted a relatively open attitude towards labour migration in recent years, most notably in their support for an open labour market policy at the time of EU enlargement in 2004. This support of unions has to be seen not only in the context of low unemployment and labour shortages, but also ‘fluid labour markets’ (Hall/Soskice 2001: 44) that have been able to absorb a huge inflow of migrant labour without leading to major disturbances in the labour market.<sup>68</sup> This is, of course, of crucial importance for trade union attitudes towards immigration as they are likely to raise objections if the inflow of additional labour leads to a displacement effect.

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<sup>68</sup> As mentioned in chapter two, the very recent rise in unemployment in the context of the global ‘credit crunch’ in 2008 is not considered in this thesis. There are few suggestions, however, that this increase is linked to recent immigration.

Moreover, there is a view among British and Irish unions that many migrants from the NMS may not necessarily be just on ‘their way through’ and may well settle down. Consequently, a perception that these migrants are out of reach for unions appears to be less widespread than in Germany and Austria. As mentioned above, British unions increasingly view migrant workers as a new constituency to be organised, but also SIPTU in Ireland has made some noticeable efforts to organise the recent arrivals.

Nevertheless, in spite of a generally more open attitude towards migrant labour, LMEs may at times raise objections to the inflow of additional labour as well. When in Ireland cases of underpayment of foreign workers became more frequent in the context of large-scale inward migration from the NMS, unions became concerned about possible negative consequences on employment conditions. These concerns led them to reverse their policy stance in favour of restrictions for Bulgarian and Romanian workers in 2007. Here it can be seen again that the context of labour migration, in particular concerns about labour standards, can trigger a change in union attitudes even in LMEs that appear to be less inclined to favour restrictive policies. The question remains, however, why British unions did not perform a similar policy change, in spite of a similar context of labour migration. As argued before, the rather principled support for the free movement of labour is linked, to some extent, to the organising agenda of British unions. However, this policy position is also indicative of ideational change among British unions in relation to how they frame issues such as immigration.

#### **8.4 Unions as strategic actors**

Trade unions are strategic actors who can choose from a variety of policy options to respond to challenges like labour migration. These ‘strategic choices’ (Kochan et al. 1986) are influenced by institutional and labour market factors, but not wholly determined by them. Previous research found that unions in similar institutional settings do not necessarily respond uniformly to immigration (Penninx/Roosblad 2000). As unions ‘are not bereft of independent influence’

(Heery/Adler 2004: 61), they have some agency on how they frame issues such as immigration.

The policy choices that unions make are not only influenced by external factors but also by the identity of a trade union movement. In relation to migrant labour this means that if unions see themselves as the advocates of marginalised groups in society, they are likely to adopt a different stance on migration than if they see their primary task as protecting the labour standards of indigenous workers alone. As unions are embedded in particular national societies, these identities do not exist in an ideological vacuum but are in many aspects connected to broader society (Penninx/Roosblad 2000).

This becomes apparent when we compare the debate about the free movement of labour in 2004 in the four case countries. In Ireland and, to a lesser extent, the UK, the public debate was decisively in favour of an open labour market policy in light of significant labour shortages. This policy stance was supported by the main political parties in both countries (except the British Conservatives), the social partners as well as most media outlets, with the exception of some British tabloids (Doyle et al. 2006: 25). Conversely, in Germany and Austria the enlargement process and the free mobility of labour in particular were quite unpopular. In these two countries almost all of the main political and social actors were in favour of restrictions for citizens from the accession countries (Tamas/Münz 2006). Thus, in relation to the free movement of labour in 2004, trade unions in all four countries adopted policy positions that were in agreement with the main stakeholders, suggesting an interplay of union identities and the broader public discourse in each country.

At times, however, unions may well resist the dominant policies and discourses on immigration. As already pointed out in chapter one, German unions already demanded integration policies at a time when the ‘guestworker’ concept was virtually uncontested in official German politics. Moreover, as shown in chapter six, trade union movements in all four countries, albeit to different extent, have demanded policies to ease labour market access for asylum-seekers and to seek an improvement of the situation of irregular migrants. This does not only suggest that



contemporary trade unions have become more responsive to the human rights of migrants than their predecessors, but it also shows that even in a country like Austria, unions on occasions depart from the political mainstream, particularly if they see official policies as running contrary to their interests, as in the case of restricted labour market access for asylum-seekers which may fuel the informal economy.

It is worth bearing in mind that the way unions frame issues such as immigration is not fixed and can change. Particularly at times of crisis and an erosion of influence, unions may question traditional forms of collective identities (Frege/Kelly 2004b: 39). This may be well illustrated by the case of the British trade union movement. Over the years, British unions have not only adopted some fairly robust anti-discrimination policies but have also increasingly opposed restrictive immigration policies. Already at its annual conference in 1990, the TUC endorsed 'the principle of dismantling the barriers between nations and allowing the free movement of all persons to the greatest extent possible' (TUC 1990, in Avci/McDonald 2000: 201; see also Wrench 2004). As argued before, this support for the free movement of labour and migrant workers' rights is linked to the organising agenda of unions. However, it can also be regarded as 'a broader renegotiation of union identity' (Heery/Adler 2004: 64) in that unions increasingly see themselves as the defender of marginalised groups in society. Intriguingly, when British unions in the past were in a stronger position, they were not so opposed to restrictive immigration policies (Avci/McDonald 2000: 206). However, the loss of influence has stimulated a 'renegotiation of union identity' in that unions increasingly aim to organise and defend the interest of groups like migrant workers that have not featured as prominently on the radar of the trade union movement in the past.

In Ireland, it has been less a crisis of the trade union movement, but rather the over a century-long experience of emigration which impacted upon the way union officials frame issues such as migrant labour. This emigration tradition has contributed to the fact that unions have adopted relatively open attitudes towards the inflow of migrants. As pointed out in chapter six, Irish union officials still refer to this experience and recall that Irish immigrants have been centrally

involved in building the trade union movement in countries such as the USA, Britain and Australia. Thus, the identity of the Irish trade union movement is a rather inclusive one, shaped to some extent by the Irish tradition of emigration. However, the Irish case is also instructive in illustrating that unions may resort to more restrictive policies on labour migration if they perceive the inflow of foreign workers as a threat to established labour standards, as happened at the time of EU enlargement in 2007. Hence, we see again that unions have some agency to determine their policy choices that are not fixed and may change over time.

This also becomes apparent in the case of the German trade union movement. Here, as pointed out earlier, a rather inclusive tradition on immigration has not stopped unions from demanding a restrictive regime for NMS migrants in light of concerns about labour standards. At the same time the German trade union movement has developed policy proposals in favour of a system of ‘managed migration’, and as such has not adopted a wholly protectionist outlook on contemporary labour migration. This is in contrast to the situation in Austria where unions have traditionally seen their role as ‘protecting indigenous workers from immigrants’ (Gächter 2000). Although some change has taken place since the 1990s when unions started to make a greater effort to improve the situation of long-term foreign residents, the political response to new migration, both from within the enlarged EU and beyond, is still rather protectionist. This suggests that union movements which remain in an institutionally stronger position as in ‘neocorporatist’ Austria are less likely to question traditional union identities than in a country like Britain where the institutional position of unions has been more eroded, particularly in relation to collective bargaining.

### **8.5 Conclusion: varieties of capitalism, institutional diversity and trade union policies**

The findings of this study suggest that there is considerable variation in how unions respond to the contemporary challenge of labour migration. Broadly speaking, unions in LMEs such as Britain and Ireland have adopted a more open attitude towards migrant labour than unions in CMEs such as Germany and

Austria. A more open stance of unions in the former two countries has to be seen in the context of a buoyant economy at the beginning of the twenty-first century, significant labour shortages and 'fluid labour markets' (Hall/Soskice 2001) that have been able to absorb a significant inflow of migrant labour without leading to major disturbances in the labour market. Although British and Irish unions would have concerns about the impact of recent labour migration on employment conditions, they appear to be more inclined to protect labour standards through the proper enforcement of employment rights. As both Britain and Ireland have a statutory minimum wage, unions have a legal tool at their disposal to prevent a 'race to the bottom'. Moreover, particularly among the British trade union movement the organisation of migrant workers increasingly features 'as an alternative strategy to restrictionism for improving wages and work conditions' (Haus 2002: 7).

In turn, German and Austrian unions have been less welcoming towards recent migrant workers. In these countries unions, which remain in a more institutionally entrenched position, have a tendency to protect the 'insiders' in light of a broader labour market orientation of privileging a core of skilled, mainly male, workers at the expense of outsiders (Esping-Anderson 1999: 150).<sup>69</sup> If it is true that 'the primary institutional influence on patterns of union behaviour [is] the structure of collective bargaining' (Heery/Adler 2004: 57), then it appears that concerns about collective wage agreements in CMEs can explain to a large extent why unions in these countries have adopted a stronger protectionist attitude towards migrant labour. Having said this, it should not be assumed that unions in CMEs are opposed to labour migration in principle. They may well agree to the inflow of migrants, provided that there are demonstrable labour shortages and the latter are paid in accordance with the prevalent collective agreements.

Thus, the different institutional configuration in each 'variety of capitalism', in particular the structure of collective bargaining, is of considerable importance in

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<sup>69</sup> This insider-outsider dichotomy is not necessarily a dichotomy between native and immigrants as the 'insiders' may also include long-term foreign residents. As mentioned before, the German trade union movement has been relatively successful in integrating immigrants from the 'guestworker' generation, and even in Austria unions have intensified their efforts in that regard recently. However, unions in both countries have so far found it difficult to accommodate more recent migrants in particular from Central and Eastern Europe.

accounting for the variation in union policies on immigration. However, it is unlikely that the different institutional framework in each VoC could account for all variation in union policies. As unions which are in a similar institutional position do not necessarily respond uniformly to labour migration, other factors including the unemployment rate and the (changing) context of labour migration have to be considered as well (Penninx/Roosblad 2000). Whereas union policies are influenced by these 'structural' factors, they are not determined by them as unions are 'key actors in shaping their own destinies' (Kelly/Frege 2004: 183). In other words, union agency matters. Thus, there is not one explanatory factor that can account for the variation in union attitudes towards immigration. Instead, union agency interacts with other factors such as labour market factors, the institutional setting and the context of migration in shaping policy choices to immigration that sometimes can lead to variation within the same 'varieties of capitalism'.

## Chapter Nine: Conclusion

Trade unions face multiple challenges at the beginning of the twenty-first century, including economic internationalisation, the rise of the service sector, new forms of ‘atypical’ employment and an erosion of collective forms of activism. Although countries continue to follow distinctive adjustment paths to globalisation and Europeanisation, and differences in national industrial relations systems are unlikely to disappear any time soon (Thelen 2001), it is no exaggeration to say that unions in most European countries continue to struggle to adapt to contemporary processes of social change that have strengthened the position of capital *vis-à-vis* labour. Whereas globalisation and the Single European Market have provided capital with new ‘exit’ options, trade unions continue to be organised primarily at the national level. It is not only external developments commonly associated with globalisation and European integration, but also processes of economic restructuring within nation-states associated with the rise of service sector employment that have undermined the bargaining position of unions. As organised labour is less capable of organising an increasingly diverse workforce in the expanding private service sectors, union density is in decline in most European countries. In the context of a changing workforce, migrant labour poses a particular challenge to organised labour.

In spite of assumptions that ‘post-industrial’ societies would no longer be in need of migrant labour, particularly of the less-skilled variety, there continues to be a demand for migrants at all skill levels. Indeed, while states increasingly aim to attract highly skilled migrants in a ‘global race for talent’, the majority of migrant workers continue to fill lower-skilled jobs that often are shunned by domestic workers (OECD 2007). Whereas in the past Western European countries sourced additional labour from Mediterranean countries and former colonies, in recent years East-West migration has acquired greater prominence. The accession of eight countries from Central and Eastern Europe to the EU in 2004 in particular has created a new dynamic of labour migration in Europe. What is noticeable about contemporary migration flows is that it has adopted a more temporary and circular character which often makes it more difficult for unions to organise migrant workers. Moreover, in the context of the deregulation of labour markets

and the spread of the informal economy, precarious forms of migration have increased, sometimes involving posted workers and agency labour which poses further problems to unions. How do trade unions respond to these challenges?

This thesis examined trade union responses to the contemporary challenges of migrant labour in comparative perspective between Austria, Germany, Ireland and the UK. By comparing their policy responses to intra and extra-European migration, the spread of precarious employment and organising of migrants, it sought to establish whether unions in CMEs respond differently to immigration than unions in LMEs, and if so, how possible variation can be accounted for. In this concluding chapter I will first summarise the main findings of the study with regard to the main research question. I will then try to assess the future prospects of trade unions and migrant labour at the beginning of the twenty-first century. Of particular interest will be whether transnational forms of organising could open up new avenues for trade unions in trying to keep pace with the increasingly mobile ‘birds of passage’.

### **9.1 The main findings**

In chapter three, I outlined the conceptual framework of the study. Across Europe, unions face similar challenges, including economic internationalisation, the rise in service sector employment, new forms of ‘atypical’ employment and the erosion of collective forms of activism. However, in spite of these same challenges, there are reasons to believe that union policy responses have not converged. This is in part linked to the institutional framework of different ‘varieties of capitalism’ that provide different incentives for unions to adapt to contemporary social change. At the same time, union responses to contemporary global change are not determined by the institutional context. As unions are strategic actors, they have some agency on how they frame issues such as immigration. This holds for the possibility that union policies may not only vary alongside the LME/CME typology but also within the same ‘variety of capitalism’.

In chapter four, I compared trade union responses to the issue of the free movement of labour in an enlarged EU. East-West migration has become the main form of labour migration into Western Europe in recent years. However, when eight countries from CEE joined the EU in 2004, most 'old' member states opted to impose a transitional period because of concerns about possible labour market disturbances. The free movement of labour in an enlarged EU proved to be particularly controversial among trade unions. In countries like Germany and Austria with common borders with some accession countries, unions argued that significant income differences and previous migration patterns demanded a transitional period. In both countries construction unions were particularly vocal in their demand for a transitional period, fearing that service providers from the accession countries would undermine established labour standards.

Conversely, British and Irish unions supported the open labour market policy of their governments. There was not only broad agreement among unions on the need for additional labour at a time of low unemployment, but British unions in particular argued that labour standards are best protected by the enforcement of rights, and not restrictions. Irish unions, while remaining supportive of the decision of the Irish Government to operate an open labour market in 2004, recently changed their position in relation to the accession of Bulgaria and Romania to the EU. Thus, trade unions have not responded uniformly to the recent inflow of labour migrants from the NMS. Unions in CMEs such as Austria and Germany have adopted a more restrictive stance on the free movement of labour than unions in LMEs.

Whereas in quantitative terms intra-European has become the main form of labour migration into the four case countries, non-EU immigration continues to be of relevance. Hence, I compared in chapter five union policy preferences with regard to non-EU immigration. Among trade unions there is increasing acceptance of the fact that even in light of an intra-European free movement regime, Europe will continue to require additional immigration, not only for economic reasons but also because of the demographic development in Europe. Importantly, if migration takes place, unions prefer a form of rights-based immigration that should entail the option of permanent residence from the outset and should be accompanied by

policies that facilitate the integration of the newcomers. The main rationale for this is that migrants who become integrated in the workplace and wider society are less likely to undermine labour standards and may be indeed more willing to join trade unions.

The view that non-EU immigration is likely to continue does not make unions favour ‘open door’ policies. In Britain, Germany and Ireland, unions’ immigration preferences are perhaps best captured by the concept of ‘managed migration’ that opens up avenues for legal immigration from outside the EEA while at the same time ensuring that labour migration takes place in response to genuine skill and labour shortages. In Austria, unions have adopted a more defensive approach towards non-EEA labour migration with few policies in place on how to actively shape the inflow of people from outside the EU. Thus, while there is *some* commonality of union positions on non-EEA immigration particularly with regard to a preference for long-term immigration based on equal rights as opposed to temporary labour migration, there is continuous divergence on *how* to regulate this labour immigration. Interestingly, to some extent these differences transcend the CME/LME typology, suggesting that unions in the former are not opposed to labour migration in principle. Instead, as the German case shows, unions in CMEs may well accede to the inflow of migrant, provided that it is in response to genuine labour shortages and migrants become integrated into the workforce on an equal par with domestic workers.

However, such a preference for a rights-based form of immigration sits somewhat uneasily with a proliferation of agency labour, posted workers and other subcontracting arrangements that the four countries have experienced in recent years, albeit to different extent. Hence, in chapter six I examined union policy responses to the spread of precarious migrant labour. Traditionally, the main demand of unions in response to labour migration has been ‘equal pay for equal work’. However, as a result of an increase in subcontracting arrangements and the growth of the informal economy, unions increasingly struggle to establish a ‘level playing field’. In response to an increase in subcontracting arrangements, trade unions demand that the principle of equality of treatment be applied. This policy position entails a vigorous defence of the ‘host country’ principle in the context of



cross-border posting of workers and the proposed EU Services Directive. Similarly, in terms of agency labour, the ideological baseline of unions is ‘equality of treatment’.

However, exactly what ‘equality of treatment’ entails can differ. Traditionally, unions in CMEs such as Austria and Germany equated ‘equal pay for equal work’ with adherence to industry-wide collective wage agreements. While this is still the main policy position of Austrian unions in light of almost universal bargaining coverage, some German unions covering low-wage sectors have started to demand the introduction of a general minimum wage as they no longer possess the capacity to negotiate meaningful collective agreements. While collective bargaining in LMEs such as Britain and in Ireland is organised on a voluntary basis, trade unions utilise the statutory minimum wage in those low-paid sectors such as food-processing and hospitality where they lack bargaining power to demand ‘equality of treatment’.

The spread of subcontracting arrangements often overlaps with the informal economy. In all four case countries, irregular migrants make up a sizeable section of all immigrants. However, in spite of similar challenges, unions respond differently to the issue of illegal migration. In CMEs such as Germany and Austria, unions are more inclined to pursue a controlling approach to the issue of irregular migration as they view illegal migrants as a potential threat to sector-wide collective wage agreements that continue to cover the majority of employees. Although German unions have recently put greater emphasis on the human rights of undocumented migrants, such an approach sits somewhat uneasily with continuous support for a state controlling policy that includes police raids on building sites. In turn, in LMEs such as Britain and Ireland, unions appear to be more supportive of a rights-based approach. In the absence of similar collective agreements in the latter two countries, unions, particularly in Britain, have openly campaigned for ‘illegals’. A ‘law and order’ approach to this issue is viewed less favourably, in part because British unions view increased immigration controls in the workplace as interfering with their organising agenda.

In chapter seven, I compared trade union policies and practices on organising contemporary labour migrants. From a trade union perspective, the best way to preserve employment conditions and to protect workers is to organise migrant workers. This, however, represents no small challenge, not only because of language barriers, but also because migrants are over-represented in those sectors of the labour market where trade union support is traditionally weak. Moreover, attempts to organise them are further complicated by the spread of subcontracting arrangements like agency labour and the posting of workers. Furthermore, as the organisation of migrants is often a question of time, the fact that many migrants tend to view their stay as only temporary makes it more difficult for unions to organise them. However, in spite of these similar challenges, the evidence of this chapter suggests that union policies and practices differ to some considerable extent across the four countries.

This, as I have suggested, is linked to different incentives that unions have in prioritising organising as a ‘revitalization strategy’ (Frege/Kelly 2004a) of new groups of employees including migrant workers. Among the four trade union movements, British unions, and to a lesser extent Irish ones, have made the biggest effort to organise recent migrant workers. Particularly in Britain, where organising is ‘the means to create new bargaining relationships’ (Heery/Adler 2004: 58), unions have more of an incentive to organise new groups of employees, including migrants, than union movements in countries such as Germany and Austria which remain in a more institutionally entrenched position. In the latter countries, the organising of new groups of employees has so far featured less prominently, as unions continue to rely primarily on their institutional resources such as sector-wide collective bargaining and statutory works councils. Nevertheless, individual unions like IG BAU, the German union that has been most affected by labour migration, have begun to dedicate greater resources to the organisation of contemporary migrant workers.

Thus, the findings of the previous empirical chapters clearly illustrate that there is considerable variation in union policies on contemporary labour migration, in spite of similar challenges. Hence, in chapter eight I tried to account for this variation. Broadly speaking, unions in LMEs have responded in a more open

manner to recent labour migration than unions in CMEs. To some considerable extent, this can be explained by labour market factors and the different institutional configuration in each 'variety of capitalism'. British and Irish unions have adopted a more open attitude towards migrant labour, reflecting a buoyant economy at the beginning of the twenty-first century and significant labour shortages. Moreover, 'fluid labour markets' (Hall/Soskice 2001) and the existence of a statutory minimum wage helped to ensure that recent large-scale inward migration has not led to major disturbances in the labour market.

While there is a demand for additional labour in CMEs like Germany and Austria too, unions here appear to be more wary about the impact of immigration in the light of more widespread coverage of collective wage agreements and, in the case of Germany, relatively high unemployment. Therefore, labour market factors and industry-wide collective bargaining are important factors to account for the more protectionist attitudes of the German and Austrian trade union movements. Nevertheless, it should not be assumed that unions in CMEs are opposed to labour migration in principle. As the German case illustrates, they may well accede to the inflow of migrants if it is as part of a system of 'managed migration' that ensures adherence to collective agreements. Therefore, the particular circumstances in which migrants enter the labour market is of further importance in shaping union responses to labour migration.

It is worth bearing in mind, however, that 'structural' factors such as the institutional configuration in each 'variety of capitalism' and the context of labour migration, important as they are, do not wholly determine union attitudes. Unions have some agency in the way they frame issues such as immigration. If they see themselves as the advocates of marginalised groups in society, they are likely to adopt a different stance on migration than if they see their primary task as protecting the labour standards of indigenous workers alone. An emphasis on union agency does not necessarily refute the 'varieties of capitalism' approach with its insistence upon the importance of institutions in shaping the way political economies adjust to contemporary social change. However, the findings of this study call for a greater sensitivity to the interplay of the institutional, economic and migration context with union agency in shaping policy responses to

immigration that sometimes may lead to variation within the same ‘variety of capitalism’.

Thus, in spite of parallel developments like European integration, economic internationalization and an increase in immigration, domestic political, economic and institutional factors continue to be decisive in shaping union responses to labour migration. These policy differences largely persist at the national level. Indeed, one of the core finding of this study is that the national context remains an important unit of analysis. This becomes apparent when we move the level of comparison from the level of the national trade union movement to the one of individual trade unions in those employment sectors under consideration in this study.

Take, for instance, the construction sector. The latter is, admittedly, the most contentious sector across the four countries as it is regulated by wage agreements and domestic and foreign workers tend to be more in direct competition than in other sectors. However, while construction unions in Germany and Austria have been at the forefront of pushing for transitional restrictions particularly in terms of labour migration from the NMS, these unions have not demanded similar restrictions in Britain and Ireland. Although construction unions in the latter two countries would share concerns about the impact of immigration on wage agreements and employment conditions, they broadly recognised the need for additional labour from abroad in light of a construction boom in recent years. Hence, in spite of incidents where migrants have been paid less than the prevalent rates, so far there has been no noticeable displacement effect as the employment rate of domestic workers as well as wages in the sector have significantly increased in recent years which is likely to have influenced union attitudes towards additional labour from abroad (Bobek et al. 2008; Lillie/Green 2007).

In other employment sectors such as food-processing, hospitality and other services, competition between indigenous and migrant workers appears to be less intense. Nevertheless, German and Austrian unions have adopted a more protectionist stance on labour migration than their counterparts in Britain and Ireland. In Germany in particular this appears to be linked to concerns about a

‘race to the bottom’ in the absence of a statutory minimum wage. In Austria, where collective wage coverage is still almost universal, unions worry about the impact of labour migration on wage agreements in these sectors. Such concerns about a ‘race to the bottom’ are probably less pronounced in Britain and Ireland where unions have a statutory minimum wage at their disposal which provides a ‘minimum threshold’. Furthermore, considerable labour shortages in these sectors are likely to have contributed to a more open stance on labour migration. Moreover, these sectors are covered by general unions such as the TGWU (now Unite), the GMB and SIPTU which have shown themselves to be more responsive to low-paid workers, including migrants, than industry-specific unions in traditional high-wage countries such as Germany and Austria (Ebbinghaus 2006).

The inflow of migrant workers into the agricultural sector is probably the least contested form of labour migration across the four countries as domestic and foreign workers effectively do not compete for the same job. This sector, however, has quite a weak trade union presence and is covered by general unions such as the TGWU and SIPTU in Britain and Ireland and blue collar unions such as IG BAU and GMT/N in Germany and Austria. This sector does not feature very prominently for any of these unions. However, national differences become once again apparent with British and Irish unions more inclined to highlight cases of exploitation and underpayment of migrant agricultural workers whereas German and Austrian unions appear to be more concerned about the impact of migrant labour on wages.

Hence, the findings of the study clearly suggest that the national context, in particular labour market factors and the structure of collective bargaining in each ‘variety of capitalism’, are of more importance in influencing union attitudes towards migrant labour than sectoral issues across the four countries. Broadly speaking, individual unions have more commonality with each other in the same country, rather than within the same employment sector across the four countries. In other words, if it comes to variation in union responses, these can mainly be observed between countries, rather than within countries, suggesting the continuous importance of national economic, institutional and political factors for the comparative study of trade unions.

In spite of continuous national differences between the four countries, there is increasingly *some* commonality in how trade unions respond to the inflow of migrant workers. Across the four case countries, unions recognise that immigration is an inextricable part of contemporary processes of globalisation and European integration. Although as shown unions may at times still prefer restrictionist policies, there is an acknowledgement that labour migration is likely to continue in light of the transnationalisation of labour markets. As argued by a union official from Ver.di:

It is clear that in a country like the Federal Republic (of Germany, T.K.) which is internationally so economically interweaved, it is not conceivable that on the one hand the economy is, if you like, borderless but then on the other hand you say this does not apply to people (interview, Ver.di, 2006).

Hence, restrictive immigration policies are seen as less of an option to protect labour standards. As argued by a representative of the TUC, '[w]e tend to take a position that in a globalised economy it is very hard to put up barriers ... when it is about undercutting existing pay and conditions of workers, it is not about putting up barriers, it is about addressing those issues' (interview, TUC (1), 2006). Even in Austria where the trade union movement still has a more protectionist outlook on immigration than in the other three case countries, unions are adamant that 'we don't want "Fortress Europe". We can have as many war ships in the Mediterranean Sea as we like to displace those guys from Senegal, that is not the solution of the problem' (as on p. 107). Restrictive policies may even prove to be counter-productive by fuelling the informal economy as spelled out by the European Trade Union Confederation:

In recent years many EU member states have adopted very restrictive asylum policies and '*zero immigration*' policies especially with regard to low-skilled workers and as a result offered European Citizens a false sense of protection. In doing so, they have *increased the pressure* at the EU's external borders and the number of illegal immigrants [...] in EU labour markets (ETUC 2005b: 3-4).

Moreover, union immigration policies are not only shaped by labour market consideration but also by considerations for the situation of immigrants, as contemporary trade union movements have become more receptive to the human rights of immigrants than some of their predecessors. This confirms previous

research by Haus (2002). A greater responsiveness to the human rights of migrants is shown not only in a greater commitment to combat racism and discrimination (ETUC 2003), but also in defending the rights of long-term immigrants and asylum-seekers. It has to be stressed again that trade unions across the four countries do not campaign to the same extent for the rights of immigrants, with Britain and Austria probably representing the opposite end of the spectrum. However, it is no exaggeration to say that even in a country like Austria, unions increasingly see themselves as representing the interests of long-term foreign residents as well.

Thus, there is little doubt that contemporary trade unions have become more supportive of the rights of minorities including immigrants than some of their predecessors. However, a greater responsiveness to the situation of immigrants is not only driven by ideational change alone. While unions are opposed to the exploitation and discrimination of workers, it is also self-interest that drives such a policy stance as spelled out by a TGWU representative: ‘We know that we’ve got to get them exactly the same conditions of the people living here. One, because it is morally right and two, because they are used to undercut the conditions of the people who are already here’ (as on p. 85).

Thus, in spite of continuous variation in their policies, some commonality can be identified. No trade union believes that a policy of ‘zero immigration’ represents a viable option. If migration takes place, unions prefer a form of rights-based migration that should entail the option of permanent residence from the beginning and be accompanied by policies that facilitate the integration of the newcomers into the workplace and indeed wider society. This is seen as the best way to prevent the emergence of a two-tier workforce. Migrants who become integrated in the workplace and wider society are less likely to undermine labour standards and may be indeed more willing to join trade unions. However, in their preference for a permanent form of immigration, unions face the dilemma that contemporary migratory movements have become more temporary and circular. It thus appears as if traditional concepts of trade union organising no longer suffice to reach out to contemporary labour migrants. Hence, in the final section I would like to

briefly assess the prospect of trade unions and migrant labour with a particular focus on transnational union activities.

## **9.2 Trade unions and migrant labour in the twenty-first century**

As argued throughout the thesis, the nation-state remains the main frame of reference for trade unions. It is at this level where unions can strike deals with governments and employer associations and lobby for legislative change. In spite of the continuous importance of the national context, unions increasingly put emphasis on transnational initiatives as there is a growing awareness among unions that national politics alone no longer suffice in the light of globalisation and European integration. As argued by a representative of SIPTU:

there is certainly more of a realisation now in trade unions that the world is truly globalised and that we all exist in that global world. The only way that we can effectively counteract the bad effects of globalisation, which is just globalisation of markets, is to globalise trade unionism. We have more and more contacts with unions in different countries...there is less of a belief now that you can protect your own little island. Economic nationalism is yesterdays' philosophy (interview, SIPTU (2), 2006).

At the same time, these contacts have not reached the level yet where organised labour could match the growing mobility of capital as acknowledged by a TUC representative: 'companies are very good at international solidarity as we have seen in many cases through multinational organisations. I don't think that trade union organisation internationally matches the sophistication with which business organises itself' (interview, TUC (2), 2006). Particularly the area of collective wage bargaining appears to be of relevance in this regard. As mentioned earlier, in their demand for 'equal pay for equal work' unions have to face the reality that migration is often driven by *inequality*. In other words, migrants often operate on the basis of a 'dual frame of reference' (Waldinger/Lichter 2003: 40) that makes them accept wages and work conditions that are poor by the standard of the host country, but good by the standard of the country of origin. To counter this effect, European-wide collective wage bargaining may prove to be a way out of this dilemma. However, although there are increasingly attempts at the transnational level to co-ordinate collective bargaining in sectors such as manufacturing (Erne



2008), the prospect for genuine European collective-wage bargaining appears to be dim, at least for the moment. As argued by a trade union official from the HGPB:

As regards European-wide collective agreements...that is a very long way off. You have wage costs, you have costs for housing and you have living costs, which won't be harmonised. Collective wage bargaining is already quite difficult at the national level, to co-ordinate this internationally, I think that is impossible (interview, HGPB, 2006).

However, even though European-wide collective bargaining is unlikely to materialise any time soon, there are still various avenues open to unions at the transnational level to better reach out to migrant workers and ensure that established labour standards are not undermined. Indeed, trade unions in all four case countries increasingly explore transnational forms of coordination and networking in the context of labour migration. Most of these initiatives are with trade union movements in other European countries, in particular from the NMS. For instance, the British trade union movement has intensified co-operation with Polish unions in the context of large-scale inward migration of Polish citizens to the UK. This involved most recently the signing of a protocol between the TUC and the two Polish trade union confederations OPZZ and Solidarnosc with a view of supporting Polish workers in the UK. Moreover, this co-operation also involved the secondment of a trade union officer from Solidarnosc to the North West region in England where he assisted local unions in trying to recruit migrant workers. Similar initiatives are in place with the Portuguese trade union confederation CGTP with which the TUC already has a history of co-operation (interview, TUC (1), 2006; TUC 2008).

In Ireland, it is mainly SIPTU that has built up contacts with trade union movements in some NMS such as Poland, Latvia and Lithuania. The aim of such contacts is to raise awareness about employment rights and trade unions among nationals from those countries who are considering moving to Ireland (interview, SIPTU (1), 2006). Moreover, in a recent agreement signed between SIPTU and Solidarnosc, both trade union movements committed themselves to 'co-operate to ensure that they effectively counteract attempts to use competition between

workers (especially migrant workers) to drive down and reduce levels of pay and working conditions' (SIPTU 2007c).

In spite of the support of German and Austrian unions for transitional restrictions, the latter have also intensified co-operation with their counterparts in the NMS. In Germany this has been precipitated by various agreements signed between the construction union IG BAU and unions in Austria, Switzerland, Portugal, Italy and Poland, aiming to assist posted workers. These agreements included the mutual recognition of trade union membership, transnational co-operation to enforce employment rights and the exchange of trade union officials (Erne 2008: 92). In many aspects IG BAU, the union that has been most affected by labour migration, has been at the forefront of exploring new transnational initiatives. As already mentioned in chapter six, in 2004 IG BAU set up the European Migrant Workers Union that specifically aims to organise migrant workers who are posted abroad and who are often in a vulnerable situation. While its initial target group are mainly Polish and Romanian workers on German building sites, the aim is to eventually organise migrant workers of all nationalities in industries such as construction, agriculture and hospitality who temporarily work abroad in any EU member state (EIRO 2004b).

Moreover, the German and Austrian trade union confederations intensified co-operation with some of their counterparts from the accession countries in Interregional Trade Union Councils that have been set up in the run up to enlargement in 2004. The role of these ITUCs, among other things, is to facilitate cross-border mobility in regions characterized by significant wage gaps and different socio-legal employment systems (Noack 2000). Particularly for Austrian unions, the co-operation with their Hungarian colleagues in the ITUC Burgenland-West Hungary proved to be a fruitful learning experience as this transnational co-operation demonstrated to unions that migrant workers are quite willing to stand up for their rights if provided with adequate support and assistance (interview, ÖGB, 2007 (2); interview, Vida, 2007).

Besides co-operation at the national or regional level, unions increasingly utilise transnational union structures such as the ETUC and in particular industry-wide

European federations to deal with issues such as labour migration and the protection of employment standards. In the European Federation of Food, Agricultural and Tourism Trade Unions (EFFAT) the issue of migrant labour has acquired a greater prominence in recent years, particularly since EU enlargement in 2004. One of the functions of transnational union co-operation in EFFAT is to provide information to would-be migrants about living and working conditions in the receiving countries (interview, NGG, 2007; interview, TGWU (1), 2006). Furthermore, EFFAT affiliates from Britain, Denmark, Holland, Germany, Hungary and Poland signed an agreement covering the meat industry where incidents of 'social dumping' have occurred. The aim of this agreement is to establish 'the principle of equality of treatment regarding work and social relations'. Moreover, the signatories committed themselves to better co-ordinate their actions in case of the offshoring of production and the closure of firms (EFFAT 2005).

In construction the issue of migrant labour has acquired growing prominence for the European Federation of Building and Wood Workers (EFBWW) because of the issue of posted workers in particular. The EFBWW, together with the ETUC strongly lobbied for the EU Posting of Workers Directive that has been adopted in 1996 (Cremers 2006). However, recently there have been controversies about its implementation, something I will return to below. More recently, the EFBWW, together with the ETUC and other European-wide federations, campaigned against the original draft of the proposed EU Services Directive. The aim of such initiatives has been to restore the autonomy of national wage bargaining through increased transnational campaigning and lobbying (Erne 2008: 91).

Thus, although European-wide collective bargaining is unlikely to materialise any time soon, trade union increasingly explore transnational activities to ensure that migrant labour does not undermine established wage standards. The relevance of such practices is likely to increase in light of future labour migration. To cope with the increasingly temporary character of intra-European migration in particular, trade unions may have to come up with new practices to organise migrants. This is all the more important as transnational union co-operation sometimes can pose difficulties for unions in terms of organising migrants.

Commenting on the co-operation with British unions, a Polish trade union official admitted that ‘it will be hard for us to help organise people who pay their dues elsewhere’ (in Fitzgerald 2007: 13). Hence, dual trade union membership could offer a way out of this dilemma, something that is currently under discussion between British and Polish unions in the context of recent inward migration (Fitzgerald 2007: 13).

In spite of all the caveats and difficulties that unions still encounter in building up transnational networks, there is little doubt that the importance of such co-operation, if anything, is likely to increase. This is all the more the case as a result of political developments at the level of the European Union. Whereas in the past the EU Commission, particularly under Jacques Delors and his vision of ‘social Europe’, has been quite concerned about the inclusion of organised labour in the process of European integration (Martin/Ross 1999), the current EU Commission has adopted a stronger free market stance (Erne 2008: 38). This became particularly visible in its recent interpretation of the Posting of Workers Directive. As mentioned earlier, the PWD has been adopted by the EU in 1996 to strike a balance between the freedom of services and the preservation of labour standards. However, the EU Commission increasingly subordinates the PWD to the free provision of services in an enlarged EU (Cremers et al. 2007).

Recently, in a number of rulings (‘Viking’, ‘Laval’, ‘Rüffert’ and ‘Luxembourg’) the European Court of Justice (ECJ) broadly endorsed the free market stance of the Commission. The ECJ ruled that the PWD neither justifies taking industrial actions to ensure compliance with collective agreements as in the Viking and Laval cases, nor that national labour legislation with regard to collective agreements (Rüffert and Luxembourg) can be forced upon service providers. For trade unions, these judgements have been a matter of considerable concern as they run counter to the principle of ‘equal pay for equal work’, which, as shown in this study, marks a core principle of trade union policies on labour migration. According to the ETUC (2008), ‘the ECJ judgments are a threat to workers in terms of unfair competition on pay and working conditions, and unequal treatment between migrant and local workers’. From a trade union perspective, individual immigration during which migrants become integrated into the workforce of the

host country, and indeed wider society, seems to be preferable to the temporary posting of workers under the EU freedom of services. However, in the light of the planned further liberalization of service markets, the provision of services across borders is likely to increase. Thus, the remuneration of posted workers is likely to remain a contested issue in an enlarged EU.

This was dramatically illustrated by a recent wave of unofficial strikes in Britain against the deployment of foreign workers on an oil refinery in Lincolnshire, allegedly excluding British workers from construction jobs. As the dispute involved Italian and Portuguese workers employed by an Italian subcontractor, it brought to the fore the controversial issue of the posting of workers under the EU freedom to provide services. Although unions were adamant that ‘the anger should be directed at employers, not the Italian workers’ (Brendan Barber, General Secretary, TUC), there were signs that the far right British National Party was trying to exploit the dispute for their own xenophobic political agenda (Booth 2009). Therefore, particularly at times of an economic downturn as currently experienced across Europe, the proper implementation of the PWD with its insistence on the principle of equality of treatment is likely to acquire growing prominence to prevent an anti-European backlash and a resurgence of economic nationalism.

What remains certain is that a defence of the principle of equality of treatment will remain a cornerstone of union policies. It seems unlikely, however, that equal pay and working conditions for indigenous and migrant workers alike can be achieved without the involvement of the latter. Therefore, unions have to engage more actively with migrants and explore more innovative ways of organising them. This thesis has already identified some examples of ‘good practice’. Particularly the appointment of migrants as organisers can make a crucial difference as shown by the experience of SIPTU and a number of British unions. These migrant organisers have been invaluable to unions in terms of reaching out to migrant communities and building trust. Moreover, in some low-paid sectors such as hospitality, an organising approach that focuses on occupations across the low-paid sector and involves some extra-workplace activity like linking up with migrant communities may open up new possibilities for trade union organising.

This has been illustrated by the ‘Justice for Cleaners’ campaign of the TGWU in London which has been modelled closely after the successful ‘Justice for Janitors’ campaign in Los Angeles (Milkman 2006).

As argued earlier, unions may prefer a form of immigration during which migrants settle down in the host country to temporary migration, not least as in the former case migrants are more likely to join trade unions. However, a form of migration during which migrants frequently cross borders without necessarily settling down in the host country is, if anything, likely to increase. This is facilitated through the free movement regime of the EU as well as a new institutional framework for temporary labour migration which has seen a resurgence of temporary migrant workers programmes in recent years. Hence the relevance of transnational trade union structures is likely to increase. In that regard initiatives such as the EMWU or the co-operation between British and Polish unions mark an interesting departure from previous trade union practices.

To be sure, the organization of migrants, particularly if the latter see their stay as only temporary, will not prove to be an easy task for trade unions. However, in times of the transnationalisation of labour markets, membership decline and an increase in casualised, non-standard forms of work, unions have few alternatives than to represent more actively the increasingly mobile ‘birds of passage’ of the twenty-first century. Or in the words of a union representative from the TGWU, ‘it is a tremendous challenge for the union but a huge opportunity to replenish our core and prepare ourselves for the modern world of work’.

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## **Appendix 1 Interviewed trade union representatives**

### ***Austria***

Hotel, Gastgewerbe, Persönlicher Dienst (HGPD), telephone, 23.11. 2006  
Österreichischer Gewerkschaftsbund (ÖGB) (1), Vienna, 18.2. 2007  
Vida, Vienna, 20.2. 2007  
Gewerkschaft Metall, Textil und Nahrung, Vienna, 21.2. 2007  
Österreichischer Gewerkschaftsbund (ÖGB) (2), 22.2. 2007  
Gewerkschaft Bau-Holz (GBH), e-mail, 26.2. 2007

### ***Germany***

Deutscher Gewerkschaftsbund (DGB), Berlin, 29.5. 2006  
Ver.di, Berlin, 30.5. 2006  
Deutscher Gewerkschaftsbund (DGB), Berlin, 1.6. 2006  
Industriegewerkschaft Bauen-Agrar Umwelt (IG BAU), Frankfurt, 5.6. 2006  
Industriegewerkschaft Metall (1), Frankfurt, 6.6. 2006  
Deutscher Gewerkschaftsbund (DGB) (3), telephone, 5.9. 2006  
Gewerkschaft Nahrung-Genuss-Gaststätten (NGG), Hamburg, 2.10. 2006  
Industriegewerkschaft Metall (2), telephone, 18.12. 2006

### ***Ireland***

Irish Congress of Trades Union (ICTU), Dublin, 25.1. 2006  
Services, Industrial, Professional and Technical Union (SIPTU) (1), Dublin, 16.2. 2006  
Services, Industrial, Professional and Technical Union (SIPTU) (2), Dublin, 6.4. 2006  
Mandate, Dublin, 19.4. 2006  
Irish Congress of Trade Unions (ICTU), Dublin, 4.7. 2006  
Union of Construction, Allied Trades and Technicians (UCATT), Dublin, 10.5. 2007

## ***UK***

Trades Union Congress (TUC) (1), London, 11.10. 2006

Transport and General Workers Union (TGWU) (1), London, 13.10. 2006

Union of Shop, Distributive and Allied Workers (USDAW), telephone, 21.11. 2006

Transport and General Workers Union (TGWU) (2), London, 23.11. 2006

Trades Union Congress (TUC) (2), London, 27.11. 2006

Union of Construction, Allied Trades and Technicians (UCATT), London, 29.11. 2006

GMB, e-mail, 16.1. 2007

Transport and General Workers Union (TGWU) (3), telephone, 12.2. 2007

European Migrant Workers Union (EMWU), telephone, 29.9. 2006

European Trade Union Confederation (ETUC), telephone, 2.10. 2006