
Introduction

On 1 May 2004, eight post-communist states in Central and Eastern Europe (CEE) joined the European Union (EU).¹ On 1 January 2007, Romania and Bulgaria became the ninth and tenth CEE states to accede to the EU. It is difficult to overestimate the political and economic significance of these eastern enlargements. At the time of the enlargements, European Council president Herman Van Rompuy claimed that ‘finally Europe had become “Europe” again.’² In the years that have followed, the enlargements have resulted in an increase in the free movement of workers from ‘new’ to ‘old’ Member States. The unprecedented scale of intra-EU migration has had a visible impact on the labour markets of old Member States and, in particular, on national trade unions. The problems of changing economic and labour market conditions in an increasingly globalised world have been present in the EU for some time and have in some cases been exacerbated by the recent financial crisis. However, the EU enlargements have added an extra layer of complexity to these pre-existing problems facing trade unions.

Against this background, this book examines and compares trade union responses in five ‘old’ Member States – Austria, Germany, Ireland, Sweden and the UK – to the changing regulatory and opportunity structures that prevail at a national and European level following the recent enlargements. This involves looking at the way in which trade unions operate inside,

¹ The following countries acceded in 2004: the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia. Romania and Bulgaria joined the EU in 2007. Workers from the countries that joined in 2004 with the exception of Cyprus and Malta are referred to as ‘EU8’ workers, and Romanian and Bulgarian workers are described as ‘EU2’ workers throughout this book whenever they are referenced as an individual group. For ease of reference, when the book refers to both EU8 and EU2 workers, the term ‘new Member State workers’ is used. The same approach is applied to the ten CEE countries which acceded in 2004 and 2007 and which are referred to collectively as ‘new Member States’ even though it is recognised that at the time of publication of the book these Member States (and their citizens) are no longer ‘new’.

² www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/142420.pdf.

around and across the national and EU legal frameworks which regulate them. In terms of labour law, a majority of the ten CEE countries which acceded in 2004 and 2007 combine weak domestic labour protection systems with a high proportion of workers and enterprises keen to take advantage of their free movement rights under the European Treaty. In addition, they have attracted large amounts of foreign direct investment which is mainly due to two characteristics: on the one hand, favourable industrialisation legacies, skill structures and a stable institutional environment;³ and, on the other hand, low wage levels and collective agreement coverage as compared to Western Europe.⁴ The CEE labour law systems have undergone a process of enormous change since the end of the Cold War. Labour law was initially structured around ‘the assumption that the overwhelming pattern of employment was based on a subordinated, permanent and full-time employment relationship, and that the work was mainly organised within the framework of large production units or large administration.’⁵ In the field of collective labour relations, the common denominator amongst the systems was the single union structure where union membership was quasi-compulsory and unions were responsible for the administration of a very large share of the welfare system.⁶ As a result, unions were meant to ‘act primarily as a mechanism for transmitting and implementing policies and decisions taken by the state-party structure.’⁷

Since then the CEE labour law systems have undertaken a wave of reforms to enrich the content of labour law and to liberalise industrial relations so as to establish ‘collective representation and collective bargaining structures [which reflect] the prevailing industry-based patterns in Western Europe. [...] It should be observed, however, that such an approach has not yet been confirmed in practice, as in most Central European countries industry-based collective labour relations are insufficiently developed.’⁸ As

³ D. Bohle and B. Greskovits, ‘The State, Internationalization, and Capitalist Diversity in Eastern Europe’ (2007) 11 *Competition and Change* 89.

⁴ S. Avdagić and C. Crouch, ‘Organized Economic Interests: Diversity and Change in an Enlarged Europe’ in P.M. Heywood, E. Jones, M. Rhodes and U. Sedelmeier, *Developments in European Politics* (Basingstoke: Palgrave, 2006).

⁵ A. Bronstein, ‘Trends and Challenges of Labour Law in Central Europe’ in J.D.R. Craig and S.M. Lynk (eds.), *Globalization and the Future of Labour Law* (Cambridge: Cambridge University Press, 2006), 194.

⁶ *Ibid.*, 194.

⁷ *Ibid.*, 194. For other reasons why new Member State workers may not join a trade union in their host country see T. Turner, D. D’Art and M. O’Sullivan, ‘Union Availability, Union Membership and Immigrant Workers: An Empirical Investigation of the Irish Case’ (2008) 30 *Employee Relations* 479.

⁸ *Ibid.*, 199.

a result, there are large discrepancies in labour protection between old and new Member States in the EU.

The CEE enlargements have created a climate of fear amongst workers and trade unions in old Member States that their economic and social position is being threatened by those workers and enterprises that may avail themselves of their rights under the European Treaties in order to engage in ‘social dumping’.⁹ Due to the characteristics of the Central and Eastern European labour law systems, it was feared and expected that their economic integration following the enlargements would lead to an intensification of competition that had not occurred after the previous enlargements.¹⁰ Kvist argues that ‘comparatively less wealth in acceding countries is seen as a push factor for migration, and the higher wealth of older member states as a pull factor’.¹¹ These fears were intensified by the fact that EU citizens have the right to move freely across borders. As a result, following the enlargements in 2004 and 2007, most old Member States restricted the right to free movement for workers from the new Member States with the exception of Cyprus and Malta.¹² Prior to the enlargements, the number of residents from the new Member States present in old Member States totalled 893,000; this increased to almost 2.3 million in 2009.¹³ Before the enlargements, Germany and Austria had received approximately 60% of immigration inflows from the countries who were later to accede in 2004 and 2007. After this, Germany and Austria were replaced by the UK and Ireland as the main destination of migrants from the new Member States. Approximately 70% of migrants from the new Member States travelled to the UK and Ireland. Thus, ‘a geographical redirection from historical migration patterns and pre-enlargement labour flows took place towards those old Member States that opened up their labour markets immediately

⁹ See further B. Hepple, ‘New Approaches to International Labour Regulation’ (1997) 26 *Industrial Law Journal* 353 and C. Barnard, ‘Social Dumping and the Race to the Bottom: Some Lessons for the European Union from Delaware?’ (2000) 25 *European Law Review* 57.

¹⁰ See further D. Vaughan-Whitehead, *EU Enlargement versus Social Europe?: The Uncertain Future of the European Social Model* (Cheltenham: Edward Elgar, 2003).

¹¹ J. Kvist, ‘Does EU Enlargement Start a Race to the Bottom? Strategic Interaction among EU Member States in Social Policy’ (2004) 14 *Journal of European Social Policy* 301, 305.

¹² The legal basis for the restriction can be found in the transitional arrangements in the Accession Treaties of 16 April 2003 regarding the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and of 25 April 2005 regarding the accession of Bulgaria and Romania.

¹³ The figures in this paragraph are drawn from T. Fic, D. Holland, P. Paluchowski, A. Rincon-Aznar and L. Stokes, *Labour Mobility within the EU – The Impact of Enlargement and Transitional Arrangements* (London: NIESR, 2011).

after enlargement and simultaneously displayed favourable conditions in terms of labour market demand.¹⁴ The exception to this is Sweden. While net immigration particularly from Poland and Lithuania increased substantially in comparison to pre-enlargement numbers, the overall figures remained low. The picture is more differentiated for the 2007 enlargements, and the preferred destination of Romanian and Bulgarian workers seems to be Spain and Italy due to the proximity in language and the initial free access (in the case of Spain) or lightly restricted access (in the case of Italy) to the labour markets.¹⁵

Trade unions in Austria, Germany, Sweden and the UK have a long history of responding to migrant workers. They have been particularly challenged by the recruitment of migrant labour following the end of the Second World War and have reacted in different ways to increased migration ranging from hostility to positive integration. The arrival of new Member State workers following the recent EU enlargements puts these traditional trade union policies on migration under strain. Ireland in contrast has historically been characterised by emigration rather than immigration, so trade unions have had to develop a policy on migration as a result of increased migration in the wake of the 2004 enlargement.

The use of the term ‘migrant’ in the context of the subject matter of this book raises a number of issues. It is widely recognised that there is no universal definition of ‘a migrant’, and various data sets and laws use different definitions.¹⁶ The EU distinguishes between ‘migration’ (for non-EU nationals) and ‘mobility’ (for EU citizens). Some national trade unions have various definitions of when someone is considered a migrant (see further the case studies) whereas the European trade union organisations follow the EU’s approach in differentiating between EU and non-EU citizens. Mindful of these differences, this book uses the terms ‘new Member State workers’ and ‘migrant workers’ interchangeably to refer to EU citizens who have moved from a new to an old Member State. In addition, the book refers to increased migration rather than mobility following the EU enlargements.

¹⁴ B. Galgóczi and J. Leschke, *Intra-EU Labour Migration after Eastern Enlargement and during the Crisis* (Brussels: ETUI, 2012).

¹⁵ Migration Advisory Committee, *The Labour Market Impact of Relaxing Restrictions on Employment in the UK of Nationals of Bulgarian and Romanian EU Member States* (London: MAC, 2008).

¹⁶ See further <http://migrationobservatory.ox.ac.uk/briefings/who-counts-migrant-definitions-and-their-consequences>.

The recent European enlargements come at a time when old Member State governments are attempting to ‘modernise’ their labour and social security systems in order to combat the effects of an enlarged Europe within a globalised world economy and its associated phenomena such as ‘social dumping’. The problems of changing economic and labour market conditions in an increasingly globalised world have been present in the EU for some time and have in some cases (particularly Ireland and the UK) been exacerbated by the recent financial crisis¹⁷ – the biggest financial and economic downturn since the Great Depression – which has its origins in the bursting of the American housing bubble and the consequent collapse of the sub-prime mortgage market in the United States in 2007 and 2008. Governments in the United States and Europe had to step in to provide emergency funding for banks in their countries, to guarantee investments, to provide hefty stimulus packages for their economies and, in some cases, to nationalise failing institutions. The financial crisis in turn developed into a global economic crisis as global GDP contracted in 2009. This global recession considerably reduced public revenues and placed a heavy burden on welfare states. In addition, governments in most developed countries were burdened with costly rescue packages from bailing out banks in the wake of the financial crisis and had to initiate deep spending cuts and austerity measures in order to reduce their public deficit. At the same time, market confidence in sovereign debt faltered as investors and rating agencies began to doubt the creditworthiness of certain countries in the euro-zone – notably, Portugal, Ireland, Italy, Greece and Spain. In October 2009, Greece admitted that it was no longer able to pay its creditors, and in February 2010 the country was placed under budgetary supervision by the European Commission. European leaders, together with the Commission and the International Monetary Fund, have since agreed to a number of rescue packages for Greece in exchange for the reform and stabilisation of Greece’s public finances. In November 2010, Ireland was forced to draw on the financial support of the European Financial Stability Facility in order to service its debts and in April 2011, Portugal received a 78 billion euro bailout; Cyprus followed in June 2012.

Historically, the EU has sought to counteract fears surrounding European integration by ‘europeanising’ certain aspects of national legal

¹⁷ This is a very basic overview of the origins and development of the recent financial crisis. For an overview of some of the literature on the Eurozone crisis see <http://blogs.lse.ac.uk/lseviewofbooks/tag/euro-crisis/>. The effect of the crisis on national labour law systems is explained by the ETUI in individual country reports here: www.etui.org/Publications2/Working-Papers/The-crisis-and-national-labour-law-reforms-a-mapping-exercise.

systems in order to alleviate competition. However, the ‘europeanisation’ of different labour law systems has always proved problematic due to the socio-cultural context within which national labour laws have developed, and it is not clear to what extent ‘European Labour Law’ as a category of law has actually developed. Following the recent European enlargements, the debate on the role of the EU in ‘europeanising’ national social and legal practices has been revived, particularly as the absence of strong labour protection in the new Member States has exacerbated the problems facing old Member States. Trade unions in Austria, Germany, Ireland, Sweden and the UK have long, if not always, been in favour of the EU. However, it must be recognised that the recent enlargements have added an extra layer of complexity to the framework within which trade unions must act. Trade union attitudes to the EU have therefore become more ambivalent.

In particular, European enlargement has thrown up changed regulatory and opportunity structures for the social partners. These structural changes at a European level have occurred primarily as a consequence of an increase in the free movement of workers, services and establishment. As a result, trade unions find themselves in a vulnerable position within their domestic legal systems and are required to reassess the role that they can play at a national and European level in order to effectively respond to European enlargement, primarily by facilitating the integration of new Member State workers into their host labour markets. A successful response to the effects of European enlargement can also help trade unions to define a new role for themselves in their national labour law systems to ensure their continued relevance as institutions.

Against this background, this book undertakes a comparison of the responses of Austrian, German, Irish, Swedish and British¹⁸ trade unions to the challenges posed by the recent European enlargements. The literature on comparative labour law serves as a context for the comparison. A large body of theoretical literature has developed on the proper application of the comparative method to labour law as well as an ever-increasing amount of literature comparing aspects of different legal systems.¹⁹ The purpose of the comparison in this book is two-fold: first, to compare and analyse the

¹⁸ The comparison considers the UK as a whole and does not take into account specificities related to Northern Ireland or Scotland.

¹⁹ A good overview is provided in D. Ziskind, ‘Labor Law Comparison in Perspective’ (1977) 2 *Comparative Labor Law* 209. On labour law see also O. Kahn-Freund, ‘On Uses and Misuses of Comparative Law’ (1974) 37 *Modern Law Review* 1 and R. Blanpain (ed.), *Comparative Labour Law and Industrial Relations*, 8th edn (Alphen aan den Rijn: Kluwer, 2004).

responses of trade unions in Austria, Germany, Ireland, Sweden and the UK to the European enlargements and the new Member State workers; and, second, leading on from this, to develop a better understanding of the role of trade unions and their functions in reacting to the pressures and challenges of enlargement. In order to achieve this purpose, one must have regard to the socio-historical context of the labour law systems within which trade unions operate.²⁰ The national systems must in turn be seen in their European context.²¹ One must also consider the role of trade unions within those systems, in order to effectively analyse the responses of trade unions to the pressures and challenges that have arisen. A comprehensive understanding of the broader industrial relations context – both in a legal and in a historical and social context – is thus vital for an effective comparison of the responses of trade unions in their respective legal systems. Industrial relations systems are often perceived as a mirror of the society in which they operate. For that reason they cannot be understood without comprehending the way in which rules are established and implemented and decisions are made in the society concerned.²² Therefore, as Kahn-Freund noted, the comparative study of labour relations is a prerequisite for any comparative study of collective labour law.²³

The five countries examined in this book were chosen for a number of reasons. Primarily, the different transitional measures in place in the Member States, particularly following the 2004 enlargement, allow the five countries to be grouped into two categories and justify their choice for a comparison. The UK, Ireland and Sweden immediately opened their labour markets following the 2004 enlargements, and the UK and Ireland in particular witnessed a large surge in the numbers of new Member State workers entering those countries. Trade unions were therefore forced to find strategies to try to integrate these workers into the host

²⁰ See further B. Hepple (ed.), *The Making of Labour Law in Europe: A Comparative Study of Nine Countries up to 1945* (London: Mansell Publishing, 1986) and B. Hepple and B. Veneziani (eds.), *The Transformation of Labour Law in Europe: A Comparative Study of 15 Countries 1945–2004* (Oxford: Hart, 2009).

²¹ For literature discussing the uses of comparative labour law within a European context see, for example, J. Pipkorn, 'Comparative Labor Law in the Harmonization of Social Standards in the European Community' (1977) 2 *Comparative Labor Law* 260; Hepple, *The Making of Labour Law in Europe*, and, Hepple and Veneziani, *The Transformation of Labour Law in Europe*.

²² J. Schregle, 'Comparative Industrial Relations: Pitfalls and Potential' (1981) 120 *International Labour Review* 15.

²³ O. Kahn-Freund, *Labour Relations: Heritage and Adjustment* (Oxford: Oxford University Press, 1979).

labour market. Germany and Austria, on the contrary, placed heavy restrictions on workers from new Member States entering their labour markets, which were lifted only in 2011. Trade unions in both countries were thus protected from increased legal migration and had more time to develop a coherent strategy for the integration of new Member State workers. Although it is recognised that the underlying labour law systems in Austria, Germany, Ireland, Sweden and the UK are very different to each other (see Chapter 2), they nevertheless possess a number of characteristics which make them suitable for a comparison in this instance. One example is the relative lack of legal intervention in the industrial relations systems. In addition, trade unions in all five countries are facing similar problems following the recent European enlargements which stem in part from the EU's attempts at europeanising national labour law systems, and are adopting similar roles within their respective national labour law systems, as they respond to the problems which they are facing. Unions in all five countries are struggling to find ways to deal with the consequences of the recent European enlargements and, in particular, the arrival of new Member State workers. Their responses to these problems are producing different outcomes and it is argued that, given the similar problems which trade unions in these countries are facing, they could learn from each other's experiences and would benefit from a comparison. This book makes a number of practical suggestions for improving dialogue between national unions and transnational union bodies on issues of mutual interest and concern.

Against this background, this book focuses on two main research questions. First, how have trade unions responded to the challenges of European enlargement? Following on from this, second, how have trade unions responded to, and what impact have their responses had, on the new Member State workers?

The book uses several approaches in answering these research questions. It focuses on the law that regulates trade unions at a national level; it examines the influence of the EU on national trade unions; it explores historic trade union attitudes to migrant workers and the EU in order to assess the problems currently facing national trade unions; and it analyses specific trade unions acting in their respective labour markets so as to better understand the impact of the recent enlargements on trade unions. The book is split into three main sections.

The first section comprises Chapters 2–5 and sets out a theoretical framework drawing on the relevant literature and case law. The theoretical

framework clarifies the national and EU legal context within which trade unions operate. It also pulls together key aspects of law and policy. Chapter 2 explains the national framework in Austria, Germany, Ireland, Sweden and the UK within which trade unions operate. This is done by setting out the historical, social, cultural and economic background and context as well as the current legal framework. The chapter illustrates the changing national regulatory and opportunity structures, particularly in the wake of the financial crisis, and touches upon recent responses of trade unions to these changes. It explores the type of functions that trade unions adopt within their national legal system in order to clarify how trade unions operate within and across this system.

Chapters 3 and 4 tie in the European influence on national labour law systems to complete the law and policy context within which trade unions operate. It is ineffective to compare European labour law systems without taking full account of the European influence. In the case of trade unions, one must also look at the influence of European regulation and policy on these non-state actors. This yields an understanding of the challenges that trade unions are facing in acting within a changing national labour market which is also heavily influenced by European requirements for increasing flexibility and the approximation of labour standards across the EU. There has been an ongoing debate as to whether, and if, the EU's attempts at the approximation of labour law systems through the establishment of a 'European Social Model' have been successful. Following the European enlargements, this debate was reignited due to the differences in labour law systems in old and new Member States. This phenomenon obviously poses problems for trade unions at a national level as illustrated by recent case law of the Court of Justice of the European Union (CJEU) discussed in Chapter 4. However, the establishment of a European social and labour policy not only creates difficulties for trade unions but also opens up opportunities for them to engage in transnational cooperation in order to find solutions to common problems. In the past, initiatives have been slow to develop. Nonetheless, this is a potential method of response for trade unions that has to be borne in mind. Clarity on the debate surrounding the 'europeanisation' of national social and legal practices is therefore essential when comparing trade union responses to the challenges of the enlargements. Chapter 3 provides this clarity by focusing on a number of issues that arise in this context: (1) the existence of a category of 'European Labour Law' and (2) the increased movement towards soft law mechanisms to europeanise national labour

law systems. Chapter 4 considers the role of the CJEU and its recent problematic case law.

Chapter 5 completes the theoretical framework by examining the literature on trade union responses to migrant workers and the EU in order to provide a background to their current reactions. On the basis of this theoretical framework, suggestions are made as to how one would expect trade unions to respond to the European enlargements and the new Member State workers. In Chapters 11 and 12, these suggestions are compared with actual trade union responses so as to provide a comparator for the analysis of trade union responses to the enlargements and the new Member State workers.

The second section of the book bridges the gap between theory and practice. Chapters 6–10 set out the results of five case studies conducted in Austria, Germany, Ireland, Sweden and the UK. The case studies clarify the responses of five comparable national trade unions to the challenges of European enlargement and provide a response to the research questions, that is, what trade union responses to European enlargement and the challenges surrounding it are, and how trade unions are responding to the new Member State workers.

In order to delimit the scope of the case studies, purposive sampling was the method chosen to gather the appropriate data. In the case of trade unions this meant selecting those trade unions which could be expected to contribute most to the topic of research. By looking at the responses of national confederations as well as individual trade unions, one can gather qualitative data on broad practical and political responses from trade unions that exercise different functions (see Chapter 2 for further details): national trade union confederations largely adopt a government function and coordinating role whereas individual affiliates engage in a regulatory and representative function. Thus each case study focuses on both a confederation and an individual affiliate. The exception to this broad categorisation is Austria (see Chapter 2) which has two main actors that take on the functions of trade unions: the Austrian Trade Union Confederation (ÖGB) and the Labour Chambers (Arbeiterkammer – [AK]). The ÖGB has sole rights to engage in collective bargaining and is comparably much stronger than other national trade union confederations. As a result, the Austrian case study considers the responses of the ÖGB and the AK rather than engaging with individual affiliates although an interview was carried out with an affiliate of the ÖGB in order to gauge whether their responses differed. The table that follows outlines the subjects of the case studies.