

## NEW LABOUR LAWS IN OLD MEMBER STATES

The enlargement of the EU in 2004 and 2007 has led to greatly increased free movement of workers from ‘new’ to ‘old’ Member States. The unprecedented scale of this migration has had a profound impact on the regulation of labour law in Europe. This book compares the ways trade unions have responded to the effects of the enlargements, and in particular to the increased migration of workers across borders. It undertakes a contextualised comparison of trade union responses in Austria, Germany, Ireland, Sweden and the UK and examines the relationship between trade unions and labour law at a national and European level. This analysis illustrates how trade unions can use law to better respond to changing regulatory and opportunity structures and indicates the kinds of laws that would benefit trade unions at a national and European level.

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# NEW LABOUR LAWS IN OLD MEMBER STATES

Trade Union Responses to European Enlargement

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*University of Strathclyde*



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In memory of Peter Zahn (1945–2014)

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## P R E F A C E

This book project was conceived with a view to exploring how trade unions in different countries are responding to increased migration following the European Union (EU) enlargements which occurred in 2004 and 2007. I wanted to identify the impact that the enlargements had (if any!) both on trade unions and on national labour law systems, and to consider whether there was anything that trade unions could learn from each other in order to better respond to the challenges which they are facing at a national and European level. I also wanted to develop a framework for analysis which would provide a better understanding of the role and functions that trade unions adopt at a national level when reacting to external pressures and challenges, in this case the European enlargements and developments in European labour law. I did not imagine, when I first began to work on these topics in 2007, that free movement of workers would become such a hotly contested subject ten years after the enlargements and that, shortly after completion of the work (in March 2016), the UK would hold a referendum which voted in favour of the country leaving the EU. These developments made it difficult to put an end point to the research. As a result, the conclusions of the book focussed on four broad areas which remain relevant regardless of political developments: to outline ways in which trade unions could better respond to increased migration so as to secure their continued relevance within the labour law system; to provide an understanding of the legal context which shapes the responses of trade unions to developments which have their origin at a European level but have a national impact; to recommend ways in which trade unions in different countries could learn from each other and coordinate their actions on a transnational level in order to facilitate the integration of migrants into the host labour markets; and to outline the legal reforms necessary at a national and European level to assist trade unions in coping with the challenges of European enlargement. The law upon which these conclusions are based is, to the best of my knowledge, accurate as of 1 October 2014. Some minor amendments up to 31 December 2015 have been included where this was

practical. The effects of the seismic developments in British politics which occurred in the summer of 2016 and the future relationship between the UK and the EU are unlikely to crystallise for years to come (although it is almost inevitable that the nature of ‘europeanisation’ will change), and it was not therefore possible to take them into account.

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## ABBREVIATIONS

ACAS	Advisory, Conciliation and Arbitration Service
AGEMOU	Automotive, General Engineering and Mechanical Operatives' Union
AK	Arbeiterkammer
AMS	Arbeitsmarktservice
APSE	Association for Public Service Excellence
ArbVG	Arbeitsverfassungsgesetz
ArGV	Arbeitsgenehmigungsverordnung
AuslBG	Ausländerbeschäftigungsgesetz
AuslG	Ausländergesetz
AVRAG	Arbeitsvertragsrechts-Anpassungsgesetz
BASTUN	Baltic Sea Trade Union Network
BAWAG	Bank für Arbeit und Wirtschaft AG
BGB	Bürgerliches Gesetzbuch
BMAS	Bundesministerium für Arbeit und Soziales
BVFG	Bundesvertriebenengesetz
CAC	Central Arbitration Committee
CBI	Confederation of British Industry
CDU	Christlich Demokratische Union
CEE	Central and Eastern European
CFR	Charter of Fundamental Rights
CIU	Congress of Irish Unions
CJEU	Court of Justice of the European Union
ČMKOS	Czech-Moravian Confederation of Trade Unions
CNLM	Common Nordic Labour Market
Congress	Irish Congress of Trade Unions
CSO	Central Statistics Office
CSU	Christlich-Soziale Union
DACO	De Anställdas Centralorganisation
DAF	Deutsche Arbeitsfront
DGB	Deutscher Gewerkschaftsbund
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECSR	European Committee of Social Rights

EEC	European Economic Community
EFFAT	European Federation of Food, Agriculture and Tourism Trade Unions
EFTA	European Free Trade Area
EPSU	European Federation of Public Service Unions
ERO	Employment Regulation Order
ESC	European Social Charter
ETUC	European Trade Union Confederation
ETUI	European Trade Union Institute
EU2	Romania and Bulgaria
EU8	Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia
EWC	European Works Council
EWCD	Directive 94/45 on the Establishment of a European Works Council
FPÖ	Freiheitliche Partei Österreichs
FSU	Finnish Seaman's Union
GdG-KMSfB	Gewerkschaft der Gemeindebediensteten
GÖD	Gewerkschaft Öffentlicher Dienst
GPA-DJP	Gewerkschaft der Privatangestellten, Druck, Journalismus, Papier
GPF	General Political Fund
ICP	Information and Consultation Procedure
ICTU	Irish Congress of Trade Unions
IG Metall	German Metalworkers' Federation
ILO	International Labour Organisation
INPDTU	Irish National Painters' and Decorators' Trade Union
IPU	Irish Print Union
ITF	International Transport Workers' Federation
ITGWU	Irish Transport and General Workers' Union
ITUC	Irish Trade Union Congress
ITUCs	Interregional Trade Union Councils
IWU	Irish Writers' Union
JLC	Joint Labour Committee
KNS/KPY	Kommunalanställdas Nordiska
Kommunal	Svenska Kommunalarbetareförbundet
LO	Landsorganisationen i Sverige
LRC	Labour Relations Commission
MPGWU	Marine, Port and General Workers' Union
MRC	Migrant Rights Centre
NERA	National Employment Rights Authority
NFS	Council of Nordic Trade Unions
NOFS	Nordens Offentliganställdas Fackliga Samorganisation
NSDAP	National Socialist German Workers' Party

## ABBREVIATIONS

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NSFCO	Nationalsozialistische Betriebszellenorganisation
NTF	Nordiska Transportarbetarfederationen
OECD	Organisation for Economic Co-operation and Development
ÖGB	Österreichischer Gewerkschaftsbund
OMC	Open Method of Coordination
OPZZ	All Poland Alliance of Trade Unions
ÖVP	Österreichische Volkspartei
PWD	Directive 96/71 concerning the posting of workers
REFIT	Regulatory Fitness and Performance Programme
SACO	Sveriges akademikers centralorganisation
SAF	Svenska Arbetsgivareföreningen
SAP	Sveriges socialdemokratiska arbetareparti
SDAP	Social Democratic Workers' Party of Austria
SGB	Sozialgesetzbuch
SIPTU	Services, Industrial, Professional and Technical Union
SN	Svenskt Näringsliv
SPD	Sozialdemokratische Partei Deutschlands
SPÖ	Sozialdemokratische Partei Österreichs
TCO	Tjänstemännens Centralorganisation
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TUC	Trades Union Congress
TULRCA	Trade Union and Labour Relations (Consolidation) Act 1992
UMF	Union Modernisation Fund
ver.di	Vereinte Dienstleistungsgewerkschaft
WKÖ	Wirtschaftskammer Österreich
WRS	Worker Registration Scheme



TABLE OF CASES  
(BY COURT/COUNTRY)

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