Unequal brothers:

Comparing French and German trade union responses to labour migration

Paper to be presented at the

Colloque International du CRIMT

« L’avenir syndical : innovations, transformations, stratégies »

Montreal, October 25 to 27 2012

Marcus Kahmann
Institut de Recherches Economiques et Sociales
16 boulevard du Mont d’Est
F-93 192 Noisy-le-Grand Cedex
marcus.kahmann@ires.fr
1. Introduction

European trade unions have a longstanding history with regard to migrants and migration that is marked by ambiguities and contradictions. Turning their back to the revolutionary conceptions of the First International, by the beginning of the 20th century trade unions had transformed from defenders of the free movement of workers across borders into staunch supporters of the post-liberal state’s desire to restrict and select labour inflows (Gallissot 1994; Bade 2000), while typically defending asylum rights for political refugees and equal social rights for migrant workers. Faced with people being increasingly designed as the “other”, susceptible of provoking either political trouble or wage dumping, trade unions have since been regularly torn between the defence of what had become “their” national labour market, internationalist worker solidarity and pragmatic considerations of how to deal with workers who often were “here to stay”. Outbursts of worker violence against immigrants and outright union attempts to exclude migrant workers from labour market access (and unions) are part of this history as well as the successful integration of successive waves of migrants into the social fabric of national working classes via their involvement in social and political struggles (Noiriel 2001).

Cross-national research has revealed that the ways national trade union movements have approached the issues of immigration and migrant workers differ considerably (Castles and Kosack 1974; Bastenier and Targosz 1991; Penninx and Roosblad 2000), to some extent even intra-nationally (Grenier and Nissen 2000; Milkman 2006). This does not come as a surprise if we consider that both sides of the relationship are variable: On the one hand, trade union identities and practices have been shaped in the context of national industrial relations. These are likely to impact the ways unions approach migrants and migration. On the other hand, migration varies between countries, too, as it is linked to specific (inter)national histories, political economies and state traditions with regard to immigrant and immigration policies. This contribution seeks to explore the ways French and German trade unions have reacted to the advent of “new migration” (Koser and Lutz 1998) by taking into account both sides of this relationship.
The transformation of the European labour migration regime
Since the late 1980s, in the aftermath of the breakdown of the Berlin wall and the intensification of economic and informational linkages in the context of “globalization”, EU member states are witnessing an important transformation of what we can call the European labour migration regime. The composition and the geography of labour flows to Europe have changed considerably. Former labour exporting countries such as Italy, Greece and Spain have transformed into immigration countries, counting important African, Asian and South-American populations; the Eastward enlargement of the EU has triggered considerable flows to a number of Western European countries.

The lack of viable economic or political perspectives in their countries of origin continues to act as a powerful momentum for people outside of and within Europe to migrate, with temporary or permanent intent. The barriers erected against undesired extra-European people have not prevented their arrival, highlighting both the significance of migration networks and the limits of the liberal state to efficiently control the phenomenon (Sassen 1996). At the same time, the structural transformation of the EU-economies exercises a powerful “pull” for migrant labour, both in the upper and lower tier of the labour market. The rise of the “knowledge economy”, the growing significance of (casualized) service jobs (e.g. in restaurants, cleaning, child and home care) and the continuous demand in stationary industries such as agriculture and construction all provide plenty of opportunities for migrant workers. The worker profiles (gender, qualifications) required for these jobs differ notably when compared to the predominantly lowly-qualified worker of the fordist mass production era.

These developments have interacted with the change of the policies destined to regulate these flows ever since the official halt to labour migration to Western Europe in 1973/74. A complex system of national and supranational immigration regulations has emerged in the EU, organized around a dividing line between intra- and extra-European citizenship. A common denominator of this two-tiered labour migration regime is that it multiplies the opportunities for “exiting” social standards with regard to the employment of migrant workers. Employers have proven keen to exploit these opportunities.

In the context of the abolition of internal border controls, EU member states have massively stepped up transnational cooperation to prevent irregular immigration. EU-directives have brought down rights of asylum seekers and irregular migrants to comparatively low standards, while decisions over admission and stay of “economic” migration of so called third-country nationals have largely

---

1 The term labour migration regime refers to the ensemble of employer, state, migrant and trade union strategies pertaining to the control of the mobility of migrant workers and their incorporation in a given polity, notably via the attribution of citizenship rights.
remained the prerogative of the member states. The restrictive turn in European immigration and asylum policies increased the number of migrants who find it increasingly difficult to regularize and perpetuate their stay. The number of irregular workers tends to increase as mass regularization campaigns have become rare in recent years and permits increasingly issued on a temporary basis. Consequently, as workers, they have difficulties claiming their rights against employers and welfare institutions. The attempt to transform Europe into a “fortress” against undesirable flows has strongly interacted with the fact that, over the last 25 years or so, immigration has become a high-profile issue on the political agenda all over Europe, associated with a number of threats (cultural, economic, security-related...) and subjected to hostile and divisive discourse (Huysmans 2006). By the beginning of the new century, however, the majority of EU-member states had begun to develop (often temporary) admission policies for selected groups of workers to address labour markets shortages (Menz 2008).

Intra-European migration, in contrast, has greatly benefitted from the European integration process. The stakes associated with it differ notably from those dominating standard (academic) accounts on immigration, integration and citizenship, based on models of (post) colonial, guest-worker or asylum migration (Favell 2008). Both legal frameworks in which transnational labour mobility takes place, the freedom of transnational service provision (and to “post” workers in this context) and the free movement of workers, are protected by European treaties and case law. These “fundamental freedoms” are conceived as a means to realize the single market; the 1992 Maastricht Treaty declared them as founding stones of a (post-national) “European citizenship”. The capacity of member states to intervene in these flows is very limited. In the case of the posting of workers, European jurisdiction has restricted member state rights to put posted and domestic workers on an equal footing. The country-of-origin principle attached to the labour and social rights of posted migrant workers has created a situation in which the use of transnational service providers from low wage member countries has become a widespread phenomenon in a number of industries in Europe.

According to estimations of the European Commission, the annual number of postings of workers approaches one million. Contrary to immigration, however, this form of migration evolves in the limelight of public attention as its benefits from the legitimacy of the European integration process. It continues to be conceived as an issue of labour market regulation by trade unions, employers, the European Commission and ministers of social affairs alike.

---

A notable exception to this rule was the mobilization against the service directive proposal ("Bolkestein directive") in 2004. Amongst other things, the directive would have rendered impossible the control of transnational service providers’ compliance with social minimum standards (directive 96/74/EC) in the destination countries (Fritz 2004). The objections contributed to the rejection of the treaty for a European constitution by French and Dutch voters in 2005.
1.1. Case selection and methodology

This paper is part of an ongoing comparative research project on the ways French and German trade unions seek to adapt to the transformation of migration since the late 1980s. The German construction and agriculture union IG BAU (Industriegewerkschaft Bauen-Agrar-Umwelt) and the French trade union confederation CGT (Confédération Générale du Travail) have been chosen as case study objects as each of them focuses on an emblematic social figure of the current two-tiered labour migration regime: (1) the itinerant worker, temporarily posted by an enterprise or temporary work agency in the framework of the transnational provision of services or bilateral contract labour agreements (IG BAU); (2) the irregular worker (students, tourists, failed asylum seekers, illegal border crossers ...), deprived of the right of residence, menaced by deportation and with very limited mobility opportunities (CGT). The binary and contrasting comparative strategy (Dogan and Pelassy 1982) should allow for identifying the ways the specific stakes at issue on each “side” of the citizenship divide of the current labour migration regime are “worked through” by trade unions.

While there has been a remarkable increase in research on the relationship between unionism and migrant workers in Europe (amongst others: Kahmann 2006; Lillie and Greer 2007; Greer et al. 2011; Lillie 2011; Meardi 2012), IR-literature has concentrated on migration within the emerging transnational EU-labour market and more specifically the posting of workers. Research on the relationship between trade unions and extra-European irregular migration has been largely left to immigration scholars. The latter tends to suffer from the “statist” bias of immigration studies, reducing trade union practice to its interaction with governments (e.g. Watts 2002; Menz 2005, 2008) and migration to cross-border mobility of third-country nationals. The case selection is meant to overcome this internal-external divide, thus allowing me to address the question of differences and resemblances of trade union attitudes towards each of these social figures. The approach is interdisciplinary in the sense that it builds on knowledge from industrial relations research and immigration studies.

If a basic underlying assumption guiding the case selection is that trade union responses to migration differ significantly with regard to the legal distinctions that “produce” these migrants by designing them and the effects they have on their lives as citizens and workers, we have to keep in mind that they are neither “the same” nor react the same way to the constraints they are confronted with.

---

3 Both figures have in common that – on each side if the citizenship divide – their status is the most discriminated compared to the national worker-citizen. This predestines them for sharing certain employment characteristics (industry, jobs, likelihood of illegal work, etc.). This is exemplified by the finding of Jounin (2008) who observed that in a number of French construction enterprises the reinforcement of sanctions against the employment of undocumented workers had led to their substitution by posted workers.
resulting from their legal situation (Lendja Ngnemzue 2008). In fact, other variables such as gender, age, personal trajectories, national origin, workplace and (transnational) community ties enter in this relationship, too, even if they cannot be explored here systematically. They link in part to the fact, regularly ignored, that immigrants are also emigrants (Sayad 1999).

Empirically, this research is based on some 25 semi-structured interviews with trade unionists and social movement activists, conducted between 2008 and 2011 both in France and Germany. The questionnaire had been adapted to the specific national context in which they took place. This follows the (anti-nominalist) idea of the “societal approach” (Maurice 1989) in comparative social sciences according to which the objects and phenomena observed and compared are “social constructs” without any systematic inherent coherence. Therefore, they have to be apprehended from within the specific social configurations which determine their significance. Due to the state of this research as a work-in-progress, the nature of the text is largely monographic and explorative.

After having briefly sketched the comparative analytical framework guiding the analysis (1.3.), I will – in line with the methodological argument – chart the purposes, rules and relationships pertaining to the issue of labour migration in France and Germany since the early 1990s (2.). They are apprehended through the strategies of the major actors in this field: governments, employers and migrants. Building on this, I will then analyse in more detail CGT and IG BAU responses to the changes pertaining to migrants and migration, paying particular attention to CGT’s involvement in the 2008/2010 strike movement of irregular workers and IG BAU’s attempt to create a transnational union for itinerant (posted) workers (3.). Here, the accent will be laid on the analysis of the interaction between framing processes of trade unions, strategic choices and the particular types of constraints these are exposed to. The conclusion will address some of the central issues that have emerged from contrasting both cases in a comparative perspective (4).

1.2. Comparing trade union strategies in the transformation of the European labour migration regime: Three hypotheses

Three hypotheses are central to the underlying comparative analytical framework.

First, the stakes pertaining to migration differ from those associated with the two preceding phases of migration to post-war Europe (Castles and Miller 2009), namely labour recruitment and (post-)colonial immigration (1945 to 1973/74) and, after the official halt to labour migration everywhere in Western Europe in 1973/74, the settlement and stabilization of flows (1970s and 1980s). In the
1980s, the majority of Western European trade unions had developed strategies which addressed issues typically associated with established and heterogeneous “immigration societies”, such as integration or discrimination in the workplace (Bataille 1997; Penninx and Roosblad 2000; Wrench 2004). While these approaches directed at resident migrant workers, ethnic minorities and their offspring have not become obsolete, the way the “new migration” is organized has prompted interrogations over inequality of citizenship rights and the way they are exploited economically (and politically).

Second, the organization of the current European labour migration regime is organized around a fundamental distinction between European citizens and “third-country nationals”, between mobility of workers and enterprises in the Single market and immigration. This distinction produces a series of effects that trade unions have to take into account, notably:

1) *The stakes in question for unions and migrant workers.* European trade unions favour equal of social rights in order to put domestic and migrant workers on the same footing and to prevent downward pressure on pay and conditions. As workers, irregular migrants are not *per se* excluded from the rules pertaining to the regulation of the labour market (social security, minimum wages, labour law, etc.). However, the denial of their existence as citizens questions the efficiency of such rights. Hence, the centrality of the question of regularization to any mobilization of undocumented migrants. Residence and work permits appear almost as a precondition for any involvement in a union, not least because they allow individuals to envisage a future in the context they evolve in and discharge unions of the responsibility for the lives of the workers. In contrast, the extended mobility rights of workers in the Single Market have favoured the emergence of two different stakes, the equality of workers’ rights on a given member state territory and the efficiency of national and European regulations to protect workers against employer abuse. Hence, two different logics can be distinguished: conflicts over the attribution of national citizenship rights and over a meaningful European social citizenship.

2) *The level of strategic intervention and the specific constraints attached to it.* The attribution of citizenship rights to third-country “economic” migrants has largely remained in the hands of the member states. The legitimacy of the flows designated as irregular is largely contested and to overcome government resistance, large national migrant mobilizations have often proven necessary. In contrast, with regard to intra-European migration, the European Commission and the ECJ tolerate national regulatory responses so long as they do not conflict overtly with the underlying principles of the Single Market. Thus, trade union strategies directed at the employment conditions of intra-European migrant workers have to
engage in multi-level strategies that involve actors (European unions, European Commission, European employers) outside the traditional realm of the nation state. Questions pertaining to the efficiency of existing regulations have triggered efforts to organize, inform and support these workers.

3) *The impact on migratory patterns.* Here we have to take into account a well-known paradox of migratory policies: policies seeking to prevent and repress certain flows tend to favour their settlement. If the blockage of a return perspective tends to make irregular migrants want to stay in order to achieve their economic and personal goals, the granting of mobility rights to European workers favours itinerant transnational migration patterns. This, in turn, may impact the likelihood of being receptive to trade unions. In terms of union representation, the needs of transnationally mobile workers differ potentially from those of migrants employed by local employers and integrated in the wider social fabric (as parents, friends, tenants...).

Third, it is assumed that these transformations and distinctions interact with the changes that industrial relation scholars have characterized as the crisis of trade unionism. Phenomena such as the erosion of workplace representation, the decline of the normative power of collective bargaining, the weakening of the ties with labour-friendly political parties (susceptible of intervening in migratory policies), membership decline, diminishing financial resources etc. are all susceptible of influencing union strategy formulation. The manifestations and significance of this “crisis” not only depend on the specific industrial relation configurations in which unions are situated. Also, their effects are not unequivocal. If we want to understand the way trade unions approach “new migration” in the context of diminishing organizational and political power resources, we have to take into account their specific “frames” pertaining to migrants and migration and the way they change (or not) in the interaction with the evolving environment.

---

4 As socially and historically constituted actors, trade unions have developed rather durable and implicit cognitive frames pertaining to migration and migrants. Functioning as a generating principle of practices, norms and perceptions, these frames shape the way unions and unionists perceive their environment and themselves (Murray et al. 2010) and orientate the way actors deploy their (differently distributed) power resources. As these frames were formed and internalised in the permanent exposition to certain past social conditions and conditionings, actors tend to repeat the practices to which they have been adapted (Bourdieu and Wacquant 1992).
2. Facets of the emerging European labour migration regime: Taking the example of France and Germany

Throughout the 1970s and 80s, French and German societies had witnessed the transformation of flows and imageries of immigrants. The majority of the workers who were supposed to return in times of economic crisis decided to stay and family migration set in. In France, many immigrants became French citizens, while in Germany they remained excluded from political rights due to the restrictive German naturalization practice. Assimilation of post-war European migrants to France had been successful, but North African (Muslim) migrants and their offspring remained subject to discrimination and prompted interrogations over French identity. By the beginning of the 1990s, these figures associated with precedent migration flows were complemented by new migrants who were, albeit for different reasons, less visible: undocumented third-country migrants, more or less durably exposed to the denial of their existence as citizens. The presence of large numbers of irregular migrants is a part of French immigration history (Blanc-Chaléard 2001), but contrary to the past, governments were less and less inclined to integrate these groups ex post into the polity. In the early 1990s in Germany, new migration was mostly perceived as one composed of asylum seekers, refugees from former Yugoslavia and Eastern Europeans. Together with British and Portuguese (posted) workers, the latter were key to the reconstruction of the infrastructure in post-reunification Germany. Many of them went for good as the boom in construction gave way to a depression that lasted for more than a decade. In the context of an increasingly integrated Europe, others returned regularly, giving rise to the new figure of the itinerant worker.

3.1. France: The rise of immigration as a political and societal stake

Migratory policies: From “zero immigration” to selective economic immigration?
By the 1990s, French trade unions were increasingly confronted with the effects of the almost continuously hardening of immigration policies since the late 1980s. The 1993 Pasqua laws explicitly aimed at “zero immigration”. They limited family migration and asylum rights, reinforced entry controls and hardened the conditions for obtaining residence permits, both the temporary and the ten-year, permanent one. Deportation from France, considered until then as an extreme measure, became a key element of migration policy. The Pasqua laws notably responded to the rising electoral pressure of the extreme right (Front National; FN).
After the spectacular elimination of the socialist candidate Lionel Jospin in the first round of the 2002 presidential elections by the Front National-candidate Jean-Marie Le Pen, the two successive bourgeois right-wing presidents decided to pursue and intensify the mobilization of immigration as a political issue in order to attract FN-voters. As Minister of Interior, in 2003 and 2006 Nicolas Sarkozy notably signed two laws, officially destined to “end the state’s incapacity to control migration flows”. The stakes of these legislations went past simple regulatory issues; they were linked to increasingly tense interrogations on the boundaries of national identity, exemplified by the creation of the (short-lived) Ministry of Immigration, National Identity and Co-Development in 2007. Parents of children with French nationality were deprived of direct access to the permanent resident card; the possibilities of deportation were expanded (Sarkozy I law).

Preparing his 2007 presidential campaign, the Minister of Interior theorized that France attracted too many “undesirable” migrants (asylum seekers, family members), whereas the “desirable” migrants (i.e. the highly qualified, students) avoided France. Consequently, the Sarkozy II law further hardened the conditions for family reunions, rendered almost impossible the access to the permanent resident card and restricted the access to the (one-year) temporary permit, thus multiplying situations of instability and irregularity of residence. Most notably, the automatic regularization procedure after ten years of continuous stay was eliminated. This left an important part of the irregular population without any perspective of leading an “ordinary” life in the future. In parallel, the government intensified the “fight” against irregular migrants. It set annual targets for the number of foreigners to deport; in 2008, the Minister of Interior announced almost 30,000 deportations. Repression on employers increased equally. From July 2007 on, employers had to submit their migrant workers’ identity cards to official checks and police checks on sites multiplied.

To promote desirable “economic” migration, a new (three-year) permit entitled “competences and talents” was introduced. However, it failed to attract notable numbers of “added value” migrants because of the conditions and discretionary procedures associated with it (Carvalho and Geddes 2012). Regulation on transnational service provision (directive CE 96/71 and GATTS agreement) had provided French employers with new opportunities for “economic” migration (Math and Spire 2004), albeit in a much more concealed way. In the same vein, in 2007 the government published a list with 152 professions in need of immigrant labour. It was destined to workers of the Central and Eastern

---

5 We have to keep in mind that the desire to create new, state-controlled channels mostly for highly-qualified migrant workers had appeared before the current economic crisis. At that time, France was clearly lagging behind its European neighbours in terms of the reopening of its labour market to third country nationals. By 2011, the Minister of Interior, Claude Gueant, had officially declared once more the end to labour immigration and restricted drastically the possibilities of foreign students to obtain a work permit after their studies. Organized employers spoke out against this turn.
EU-accession countries, excluded from free movement rights during a transitory period. More importantly in our context, article 40 of the 2007 Hortefeux immigration law opened up the possibility for employers to demand a temporary work permit for their employees, provided that their jobs were represented on a list of 30 (mostly high-skilled) jobs issued by the Ministry of Labour and that they were of African or Asian origin. This legislation should play a crucial role in the 2008/2010 irregular workers strike.

**Employer strategies: In the shadow of government policies**

Organized French employers have generally been reluctant to pronounce publically their views on politically contested migratory policy issues. According to Menz (2008), the major internationally active companies had been content with the fast-track procedures of the 1998 Chèvenement law for “desirable” workers. Notwithstanding, at the beginning of the new century the major employer association MEDEF discreetly pushed the government for opening new possibilities for the entry of skilled workers. Organized employers also have been involved in setting up the 2007 list of professions entitling migrants to enter or get regularized. This law attests of the organized employers’ selective approach to labour migration, with migrants supposed to stay only as long as they are needed by the employer. This preference for “temporary” migration translates their interest in migration as a flexibility reserve on the labour market and a means to adapt to economic cycles.

Their opposition to mass amnesties has not kept French employers from employing irregular migrant workers. French authorities have long time been lenient towards employers illegally employing undocumented workers, primarily to protect tax revenues and prevent negative consequences, such as delocalisation, for regular jobs (Moulier Boutang et al. 1986). Important industries of the French economy such as construction, garment, catering, agriculture, cleaning and home care heavily rely on the employment of irregular workers. In construction, for example, large construction companies have sought to externalize numerous labour-intensive activities. The resulting competition between subcontractors exerted strong pressures on pay and conditions. Changes in the legislation facilitating outsourcing and temporary agency work have accompanied this movement from the 1970s on (Jounin 2008). As a result, established (immigrant) workers left the labour market or created their own small construction business, becoming subcontractors themselves (Garson and Mouhoub 1989). Due to the flexibility it provides to enterprises, temporary agency work has become the dominant form of employment, for example, in iron bending or demolition (Jounin 2008). By now, these jobs are almost exclusively occupied by ethnic minority and migrant workers, including a considerable proportion of irregular workers. Construction employers have efficiently blocked legislation on main contractor liability in order to escape from increasing administrative and penal sanctions against illegal employment practices and the employment of irregular workers. They have equally
denounced the growing “administrative pressure” weighing on them pertaining to the compulsory control of workers’ residence and work permits.

**Migrant strategies: Heterogeneity and persisting mobilization**

National legislation provides us with specific criteria for “irregular stay”, but we should be aware that “regularity” and “irregularity” are most of the time situated on a continuum, “with particular individuals moving in and out of these statuses, with a condition of precariousness extending along the continuum” (Walters 2008: 44). Irregular migrants are not only confronted with the question of how to obtain their residence and work permit, but also of how to keep it. This is the condition for the obsessive nature of the question of “documents” for people without or temporary permits (Lochak and Fouteau 2008: 57).

In France, official estimations on the number of irregular migrants vary between 300.000 and 400.000, situating France in the European average and below Germany (MIGREUROP 2009). Previous migration waves had essentially been constituted of migrants from the (former) colonies, essentially North and West Africa. The transnational networks attached to these historic flows continue to function, but diversification has taken place. Since the 1980s, Chinese nationals have been attracted by the possibilities to find work in the closely knit French-Chinese community, notably in the Paris region (commerce, garment sweatshops) (Ma Mung 2003). Since the Iron Curtain came down, workers from Eastern Europe entering as tourists have found work in French agriculture despite existing (transitory) limitations on the free movement of workers. Gendered effects of gender-neutral policies have been observed, too (Morokvasic et al. 2008).

The multitude of observable situations and trajectories are not a suitable background for large, unitary mobilizations. The danger of exposing one’s residency status and the mechanism of (self-) stigmatisation can be considered as additional barriers. Notwithstanding these obstacles, in the 1990s France witnessed important mobilizations, including hunger strikes, of *sans papiers* (literally: the “undocumented”). The most important one was the successive occupation of St. Ambroise and St. Bernard churches in Paris in 1996. The movement based its claims on the notion of human rights, the respect of rights and the dignity of people, echoing traditional French Republican values. After the brutal deportation of the occupants by 1,500 police forces, 10,000 people manifested on the streets of Paris and forced Prime Minister Juppé to accord a number of regularizations. Under the impression of the events, in 1997 the newly elected Socialist government regularized 90,000 irregular migrants. The movement changed the societal representations of *sans papiers*. In public and media discourse, the term has replaced the *clandestin*, associated with trafficking and crime. Weaknesses became apparent, too, notably the difficulties of integrating migrants coming from regions other
than North and West-Africa (Turkey, Philippines, China ...) as well as the tendency of migrants to organize along national or ethnic lines, favouring divisive tactics by administrations (Terray 2008).

3.2. Intra-European labour migration to Germany: The Posting of workers as a labour market regulation issue

Migratory policies: The opening of the German labour market to temporary labour migration

The successive implosion of Germany’s Communist neighbour countries at the end of the 1980s triggered major preoccupations within the Federal government about an uncontrollable afflux of migrants. In order to channel the expected flows, it decided to conclude a series of bilateral agreements (*Werkvertragsabkommen*) mostly with Eastern neighbour countries, allowing a limited number of workers to enter Germany (Faist et al. 1999). In return, the government sought to facilitate the access of German enterprises to Eastern European markets. The condition was that the migrant workers’ employer had concluded a contract of services (as a subcontractor) with a German enterprise. These contract labour agreements allowed foreign firms to temporarily “post” their workers within the limits of the contingents fixed for each country and industry. They also specified the pay and conditions applicable to their employment.\(^6\) Temporary contract workers needed a residence and a work permit and could stay for two, maximum three years. As the reconstruction of the Eastern German infrastructure had generated a high demand for construction workers, most of the contingents were dedicated to this industry. The 1991 contingent envisaged the admission of 65,000 construction workers, notably from Poland. By 1997, in the context of increasing unemployment of national construction workers and pressure from IG BAU, these contingents had been halved (Worthmann 2003: 104).

From 1993 on, this flow was outnumbered by another one, posted workers from EU-countries.\(^7\) The posting of workers refers to the fundamental freedom to (temporarily) provide services in a member state different from where the service provider is legally registered. This right was enshrined in the founding 1957 Rome treaty and came in effect in 1970. In principle, member states are not allowed to limit or “discriminate” against these flows. Yet, it was only in the context of the emergence of a low-wage labour pool with the enlargement towards Southern Europe in the late 1980s that the posting of EU-firms became a structuring phenomenon in the European construction industry. In

---

\(^6\) Net wages had to be equivalent to the collective bargaining agreement in force. Social security contributions (health, unemployment, pension), however, were to be paid in the country of origin. As these were lower in the country of origin, trade unions denounced a competitive advantage of these enterprises.

\(^7\) Here, we neglect the EU-framework of the free movement of workers.
1990, a decisive ruling of the European Court of Justice (ECJ) explicitly allowed for the posting of workers from low wage Portugal to France within the framework of provision of services, notwithstanding the existing transitory ban on individual labour migration. Moreover, it stipulated that pay and conditions of the country of origin were applicable. At the same time, the ECJ opened up a room for national re-regulation, stating that ‘communal law does not oppose the practice of ... [member states] imposing their legislation ... on any person performing a paid service ... on their territory.’ In the absence of legal wage provisions, Portuguese service providers could send their workers to France (or elsewhere in the EU) and apply Portuguese wages and conditions. As a consequence, posting in Europe spurred up. In Germany, between 1993 and 1996, the number of posted workers from EU-member states rose from 20,000 to 165,000 (Worthmann 2003: 109), concentrating almost exclusively in construction.\(^8\)

In reaction to the political blockage at EU-level, several (high-wage) member states decided to define national-level legal mechanisms corresponding to the ECJ ruling. In Germany, the process was much more contested than in other member states (Menz 2005). The government was split between opponents and supporters of a national re-regulation. Finally, in 1996 it adopted the posted workers Act (Arbeitnehmer-Entsendegesetz) that stipulated that construction employers and IG BAU had to conclude a collective bargaining agreement on minimum wages.\(^9\) In turn, the government would declare the agreement as generally binding, rendering it thus applicable to all workers in the German construction industry. Equally, foreign employers had to pay contributions to the industry-specific holiday allowance and wage compensations funds. Under the impression of these advances, the European Commission achieved an agreement that protected the national re-regulations adopted so far. The European posting directive (96/71/EC) declared binding minimum wage, working-time, paid leave and health and safety provisions of the receiving country. By excluding these matters from the country-of-origin principle, the EU-member states sought to level the playing field for national and transnational service providers and put a brake on social dumping.

When in 2004 eight Central and Eastern European countries (CEE) and two Mediterranean countries (Malta and Cyprus) joined the EU, the German government opted for the maximum transitory period of seven years envisaged by EU-treaties before the opening of the market to construction service providers and individual migrant workers. Construction employers and IG BAU had lobbied in favour of this temporary ban. As a consequence, until May 2011, firms from these countries could only post

---

\(^8\) According to Worthmann (2003: 234) in 1997, some 17 percent of the German construction workers were posted migrants, either from CEE- or EU-countries.

\(^9\) The original posted workers Act has been amended on several occasions (1997, 1999, and 2009). Amongst other things, the changes introduced stricter controls, abrogated the initially limited validity period and extended its coverage to several other industries (cleaning and postal services).
their workers in the framework of the bilateral contract labour agreements. However, this did not prevent the arrival of bogus self-employed workers (in the EU-framework of the freedom of establishment) or the illegal posting of workers from the CEE-countries. German government again applied the seven-year transitory ban to workers and construction service providers from countries of the 2007 enlargement round, Romania and Bulgaria.

**Employer strategies: Divisions over re-regulation**

From the early 1990s on, organized German construction employers had been pushing government for a European posting directive in order to “restore fair competition”. When it had become clear that the process had stalled at European level due to resistance from low-wage member states, both construction employers and IG BAU increased domestic pressure on the German government in order to advance on a national solution. However, the employers of the leading exporting industries opposed the introduction of generally binding minimum conditions. Their fear was that it would make construction prices go up as they were applicable not only to the transnational service providers, but also to German enterprises which were not bound by the industry collective agreement. A high-level minimum wage, let alone a cross-industry minimum wage, would cause an upward spiral of wages across the industry and push the unions to claim higher wages. The posted workers Act bore the traces of opposition from within the government and employers: Coverage was initially limited to two years only and restricted to the construction industry.

The commitment of organized construction employers to an industry minimum wage did not prevent the spread of undeclared employment in the industry. The formal reason for this is that employer associations lack the powers to enforce existing provisions among members who employ unlawful foreign (or German) subcontractors. More fundamentally, the use of services from such subcontractors had increasingly turned out to be common practice amongst federated employers. This reflects the erosion of the employers’ consensus about avoiding wage dumping in the context of the transformation of the main contractors into service providers and, linked to this, the increasing externalisation of labour intensive works. From the mid 1990s on, the continuous contraction of the German construction market further accelerated the pressure on wages and conditions. Enterprises left employer associations and became more ambiguous in their efforts to prevent illegal employment, as was demonstrated by their partial resistance in 1999 against the introduction of the main contractor’s liability for the application of social standards.

The practices of transnational service providers present themselves on a continuum between the respect of binding conditions and complete ignorance of posted workers’ rights (Cremers 2011). They
interact with the transformation of the social and economic relations underpinning the German construction industry. Some enterprises provide their services legally, gaining a competitive advantage from the fact that social security contributions are lower in their country of origin. Other subcontractors respect binding conditions, but deduct administrative, lodging or transport costs from workers’ wages or claim the refunding of the minimum wages back home, disrespecting thus the posting directive. Frequently, workers are demanded longer working hours without being paid accordingly and daily and week-rest periods are disrespected. While it is difficult to measure the precise impact of such practices on the German construction labour market, it is certain that the abusive use of migrant workers is part of a more general tendency observable in the German construction industry that has put into question the legitimacy of the social norms which had been prevalent until the 1980s (Kahmann 2009).

Migrant strategies: The (re)emergence of the itinerant worker
Since the Iron curtain had come down, the European continent has become, as it used to be, a vast space of exchange in which migration takes diverse forms, from more or less permanent emigration to a variety of short-term movements, for studies, contract or seasonal work. Eastern Europeans developed these practices from the beginning of the 90s on, without awaiting the enlargement of the EU. This type of migration is characterized by a more or less constant mobility between the region of origin and (several) destination countries. The construction of Europe as a large transnational space has been the result. Many of the Eastern Europeans initially entered on tourist visas and found undeclared jobs in Germany or France, for example. Migration networks, linking durably Eastern and Western Europe, emerged and facilitate the migration of newcomers; as a result, gender and age profiles of East-West migrants changed, too. The income gap and the facilities of movement, especially since the EU enlargement, allow for the spending of the money earned in the East. Most of them do not conceive migration as permanent settlement (Morokvasic et al. 2008).

Eastern European workers coming to Germany in the framework of the bilateral contract labour agreements long-time were exposed to employer abuse. Opposition to the withholding of wages or over-time implied the risk of getting fired and thus losing not only income, but also their work permits. Most of them were skilled and suffered from the “bad” jobs they were doing on German construction sites (Cyrus 2003). Although the consequences are not the same, EU-posted workers equally tend to fear worksite controls as they are afraid to lose their jobs. The income differences between the sending and host country are such that even wages below the applicable minimum standards are desirable to the posted workers. Also, employers do not provide them with
information of their rights with regard to the posted workers Act. As a result, many of them are completely unaware of the applicable conditions in the destination country (Whitall et al. 2012).

Surprisingly, surveys on the reality of posted workers and work in Germany are quasi non-existent. A recent interview-based study by Whitall et al. (2012) however tends to confirm the view present in the general literature and emerging from interviews with union officers. Posted workers essentially come to Germany during spring and summer; they leave during the winter months when there is less employment due to seasonal conditions. Some Polish interviewees affirmed that they have been working as posted (contract) workers since the beginning of the 1990s. Most workers interviewed were on a permanent contract that was complemented by a posting-subcontract. Once the posting contract was finished, workers tended to get another contract by their foreign employer. Thus, posting can become a permanent form existence in a foreign labour market, implying that back at home, the worker does not work. Whitall et al. (2012) equally highlight the distance that exists with German speaking workers. In spite of several years of stay in Germany, workers could hardly communicate in German and contacts with the local population were very limited. This observation points to their general conditions of existence in the host country, both in terms of accommodation in migrant workers homes or hotels and work in nationally homogenous work teams.

3. Charting trade union responses to new labour migration

As collective labour market actors with a societal vocation of promoting social justice and (industrial) democracy, we would expect European trade unions to be concerned by the changes pertaining to migration. Yet, they have tended to respond rather slowly if not reluctantly. In their respective countries, IG BAU and CGT have been the most active unions in finding new responses to the changes. As they had to take into account the different relationships, stakes and rules pertaining to the specific category of migrant workers they were focussing on, strategies varied significantly and mirrored the specificities of the unions in question. IG BAU’s leadership embarked on a strategy of organizing and servicing posted workers, meant to temper the ongoing downgrading and erosion of social norms in the construction labour market. This step reflected the state of desperation the union was in after it had realized the limits of its traditionally protectionist and rule-making approach. In contrast, CGT’s strategy was geared towards government and local administrations in order to obtain the regularization of workers. Its strategy evolved as a bottom-up discovery process of the usefulness of traditional union repertoires for the specific issue at stake and opened out into a full-blown strike
movement of national significance. If the efficiency and sustainability of both approaches is uncertain, IG BAU and CGT strategies converge nevertheless on the importance attached to the mobilization of migrant workers and the necessity to reach out the wider social movement and public.

3.1. France

Framing the stakes: CGT as a part of the social movement over the regularization of irregular migrants?

By the 1990s, CGT saw itself confronted with the fact that migration had become an increasingly important issue on the political and societal agenda. The period between 1945 and 1974 had been marked by the relative absence of migrants in French public and political discourse; representations confined them mainly to the world of work (workplaces, strikes, trade unions, collective worker residences ...). The immigrant was represented monolithically as the (male) foreign worker with regard to whom “the dichotomy of the class struggle seemed to transcend any other categorization to the point of forgetting that immigrants had a religion, a culture, a family, an emotional life” (Withol de Wenden 1998: 88). The supposedly temporary nature of their stay comforted this vision.

In the 1980s, in the context of mass unemployment, the definitive settlement gave rise to other imageries which moved irresistibly to the centre of the political debate. Immigrant offspring had gained greater visibility in urban neighbourhoods and schools. Their presence was reflected in new debates on citizenship, national identity, civic behaviour and allegiance (ibid.). Images of mosques, head-scarves at school, religious militants and arranged marriages became part of a new imagery attached to immigrants and their offspring; they were conveyed by the media, increasingly entered political discourse and became object of legislation. Immigration was now used as a political marker between “left” and “right”, but in reality both camps shared restrictive conceptions on admission and regularization. In the course of this process, immigration had become a means to construct social identities along the opposition French of origin vs. non-European foreigner, in particular Arab-Muslims.

Since the early 1980s, the latter has successively replaced the formerly predominant social cleavage constructions (bottom vs. top) (Noiriel 2007). Of course, the decline of both the French trade union movement\textsuperscript{10} and the once exceptionally strong Communist party as a political and societal force...
were conducive to these developments. The long-term ethnological study by Beaud and Piauloux (1999) in the Sochaux Peugeot works highlights the ways how social processes were alimented at the shop floor level. The decline of collectivist worker identities and the incapacity of union collectives to renew appear to aliment the emergence of new intergenerational and racialised cleavages. CGT strategies had to take into account these changes occurring at different societal levels. The union thus was confronted with a profound transformation of the space it was operating in. A CGT report on the “place of immigration within CGT” from 1994 explicitly points to this (Bellanger 1994: 100):

“It is evident that nationalism, populism and ethnicity, these three key concepts of (today’s) society have affected associative movements as they have affected the entire French society, including the union and the (communist) party. Political and union organisation are not anymore the habitual reference ... They do not have the same weight anymore”.

The resulting strategic problem for the union can be formulated as a dilemma: The purely protectionist and overtly exclusive option risked to favour social forces to which the union was traditionally opposed to on a social and societal level (right-wing parties, MEDEF, FN...). At the same time, demonstrating working class unity against these processes had become more difficult as migrant worker militancy, following a general trend, had significantly declined under the pressure of technological, organizational and demographical change. Since the late 1980s, worker militancy identifiable as “immigrant” (either by its content or by the profile of the workers (primary migrants)) almost exclusively took place out of the workplace. How could the union in these conditions manifest solidarity with immigrant workers?

CGT adapted to this transformation by becoming a supporter of the claims of irregular migrant workers and adopted the demand for the regularization of all sans papiers. It thus created a cleavage with the moderate political left, including rivalry CFDT on the issue. In the context of the sans papiers movement emerging in 1996, it joined into a coalition with migrant associations and left-liberal groups such as the League of Human Rights to support the occupation. The union provided material help and made numerous declarations of support. One of them noted: “It is Human Rights that are at stake!” (Haus 2002: 147). CGT Secretary-General Viannet visited the striking migrants at St. Bernard church in August 1996. In contrast to the previous mass amnesty for irregular migrants in 1981 when trade unionists had played a great role in helping applicants file forms, in 1997 it was sidestepped by immigrant associations that had proliferated since a legislative change in 1981. In the course of these developments, CGT’s role had been reduced from a privileged interlocutor of migrant workers to coming down to 639,000 in 1993 (Mouriaux 2010: 75). It is acknowledged that data on union membership neither is very reliable nor well suited as an indicator of union strength due to the particularities of French industrial relations.
being part of a broader support movement of migrants, competing in a sense over the relationship. If the crisis of union representativeness and migrant worker militancy had favoured the emergence of more rights-based arguments (Haus 2002), the traditional economic problématique of CGT (exploitation of migrant workers leading to pressure on conditions of regular work (read: French nationals in regular employment)) had not disappeared (CGT 2005). In this discourse, irregular migrants appeared solely as objects of abusive employer and state practices, highlighting the social distance existing with them as workers.

Reaching out to irregular workers as a union: the 2008/2010 undocumented workers strike

The origins of the strike 2008/2010 irregular workers’ strike movement reach back to 2004 and 2007. At the time, in the Greater Paris Region (Essonne), 22 irregular employees of the industrial laundry Modeluxe were to be laid-off due to their lack of valid residence permits, but the entire workforce went on strike to protect these workers against dismissal. The local CGT was engaged in this strike since the initial discovery in that laundry of the employment of irregular workers by labour inspectors in 2004 (Barron et al. 2011). Setting the local activists somewhat apart from other union locals, its leaders had a proven record of supporting the regularization of sans papiers. It had founded a sans papiers committee back in 1997 that coordinated the occupation of Saint Paul church in Massy in 2002. The police turned up at Modeluxe but could not enter the worksite for a particular legal reason that protected the irregular workforce: workers were on strike. To put an end to the situation, the local prefecture decided to regularize all the workers. The question opened to CGT was: How could we make use of the strike as a means to force local administrations (prefectures) to regularize migrant workers? A similar situation arrived in May 2007 when 26 irregular workers of the Buffalo Grill food chain went on strike. After a police inspection on one of their sites, the employer had checked their residency status and decided to lay them off. The workers contacted the Essonne CGT after they had become aware of the Modeluxe success and together they decided to mediatise their claims, holding their pay slips into the TV cameras. Since the Modeluxe strike CGT knew that some préfectures de police were willing to consider documents proving employment in administrative regularization procedures. In July 2007, only 20 out of 60 Buffalo Grill workers were regularized, but

---

11 In 2004, Modeluxe employed 160 workers, amongst them about 40 undocumented. All the irregular workers were on the late shift and worked up all the work not done by the regular workers of the early shift. Working hours are from 2:30 pm to 8:30 pm but could be extended without payment until 11:30. Monthly wages were below the statutory minimum wage. Managers were aware of their situation: Upon engagement, they asked for electricity bills, tax and rent receipts, but never for any residence or work permit.

12 In France, the right to strike is a strong individual right and is protected by the constitution. In February 2006, a government circular specified the conditions for arresting irregular migrants at their homes, in schools and in public places. Workplaces were excluded from this list.
the echo from the media was considerable and the principle of the strike as a relatively efficient means to obtain permits was established. It revealed to the general public that undocumented workers were not a group apart from society, but in a sense part of it, be it as cooks, cleaners, nurses or security guards, as tax or social insurance payers.

By November 2007, the Hortefeux law had established a list of high-skilled jobs entitling irregular workers to residence and work permits on employer demand, confirming thus the hesitating opening of French migratory policies towards the economically “desirable”. The stake had become national and the union scaled up strategies subsequently. It was ready to exploit what it perceived as a political opportunity - not only in legal terms, but also in terms of mobilization: After the initial success at Buffalo Grill and Modeluxe, literally hundreds of irregular workers had contacted CGT and declared their willingness to go on strike. From now on, the union’s focus had changed from supporting irregular workplace collectives to finding a national solution by engaging in negotiations with the government over regularization criteria by using the strike as an effective means not only to exert pressure on individual employers, but also to catch media attention.

In early 2008, nine irregular cooks in the Champs-Elysée restaurant Grande Armée went on strike – and obtained their permits almost immediately. National television teams were present during the preparation of the strike, too, and CGT’s strategy was to force the minister of the interior to issue a circular with precisely defined regularization criteria in order to reduce arbitrariness of the local prefectures. The (strike) “Movement of April 15 2008” of 300 irregular workers followed exactly this objective. In total, they occupied 15 enterprises (cleaning, restaurant, clothing, and garment). Most of them were workers from francophone West-Africa; a number of them were colleagues, other workers knew each other from the worker hostels they lived in. Symbolically, CGT was present on the picket lines with stickers and banners; local CGT had mobilized about 150 militants to support the picket lines and help organize neighbourhood solidarity. On May 1st (Labour Day) the workers on strike participated in the traditional demonstration within the CGT cortege. Their slogan was “We slog here, we live here, and we will stay here”, justifying their claim in terms of their “normality”, as workers, tax payers but also as members of French society aspiring a “decent” life.

This first strike wave had been prepared secretly in a series of General Assemblies with hundreds of irregular workers all willing to go on strike. A local Essonne CGT leader who had already coordinated the support for the Modeluxe workers and led the negotiations over their regularization emerged as the leader of this movement. He cunningly worked in favour of the discipline and the unity of the movement, both to protect workers (enterprises and workers were carefully selected in view of the chances for regularization) and to maximise the political impact in the negotiations with the
government. He teamed up with the national CGT secretary for immigration and both led the negotiations over a new circular on the criteria for regularization with the Ministry of Immigration, insisting on the necessity to put an end to arbitrary local regularization practices by *prefectures*. The movement received support from the majority of immigrant rights groups; for the first time since the 1990s the latter had become second role actors. Main decisions were discussed jointly with them in order to keep the movement as large and unitary as possible. Yet, they remained suspicious about leadership-oriented CGT union politics that contrasted with their more grass-roots approach to democracy.

Notwithstanding a number of advances in 2008 (1,000 workers had been regularized by the end of the year), the negotiations were complicated. When the local prefectures became increasingly hesitant to accord permits to the workers that had been occupying their enterprises for several months already, the movement decided to start a second strike wave and enlarge the panel of union actors present in the movement in order to step up pressure. A committee was formed that included five trade unions federations (CGT, CFDT, Solidaires, UNSA, FSU) and six civil rights organizations. In their letter to the Prime Minister they called for coherent and binding criteria for the regularization, insisting notably on the necessity to include those (often female) workers who could not prove continuous employment by a single employer (e.g. temporary agency workers, child care workers, cleaners in private households) and were handicapped in terms of collective action to urge their employer to support their claim.

The second strike wave was set off in October 2009. It centred on the Paris region, but also extended to other *départements*. By the end of 2009, it counted approximately 6,000 workers (only 500 women participated) and concerned about 2000 different employers (main temporary agency firms, security, cleaning, hotels, restaurants ...). The amplitude of the movement was an enormous task in terms of coordination and organization. Workers on strike had to get financial support, employers to be pressured to declare their intention to employ irregular workers, assemblies to be held at CGT head-office, press conferences to be organized etc ... Workers were given union strike cards, attesting their participation and, due to a tacit agreement with the government, protecting them from being arrested by the police during strike action. CGT equally sought to rally organized employers’ support, either by occupying the construction federation office or simply by appeals to solidarity.

In November 2009, the Minister of Immigration issued a text (circular) that was rejected by the movement on the grounds that it blocked the regularization possibilities for non-declared and individual home care workers and demanded a proven minimum length of residence of 5 years. The
regional elections to be held in Mars were not favourable of major advances and police evacuations of occupied workplaces multiplied. Following a demonstration against the pending pension reform, on May 2010 CGT and the striking workers occupied the stairways of the Paris Opera, situated at the highly symbolical Place de la Bastille. When on June 18th, CGT’s Raymond Chauveau announced significant advances in the negotiations with the government, the striking workers – exhausted after several months on the picket lines – decided to accept the text (addendum to the 2009 circular, with feeble legal value) that envisages unified regularization criteria all over France. It stipulates that workers cumulating successive employment contracts as well as temporary agency workers can claim regularizations on their basis of their employment. The condition of a proven minimum length of 5 years of residence in France, however, had not disappeared from the text. Within CGT and the coordination committee, however, CGT leadership had appeared increasingly isolated and the way the strike had come to an end was severely criticized.

The end of the second strike wave did not mark the end of CGT’s involvement in the movement of irregular workers. Yet, it changed radically in character, in so far as it became administrative and individualistic: From now on, local and national union officers were occupied with filing the regularization demands of the workers participating in the strike. Hopes of a massive and rapid regularization of have been disappointed, though. In May 2011, almost one year after the strike, out of 4,000 demands for regularization, 13 percent had been accorded and another 13% had been refuted, the rest was still pending. In particular, prefectures have proven increasingly reluctant workers to accord permits to the “weakest” cases, i.e. workers in illegal employment or without an employer to provide them with a labour contract (CGT 2011).

3.2. Germany

Framing the stakes: Posted workers as a threat to the national industrial relations system

Although most of the larger DGB unions had created representations structures in the 1960s and sometimes even had migrant worker representatives on the executive board, IG BAU did not. This comes as a surprise as historically many workers of the preceding migration wave had held jobs in construction: In 1974, a third of all workers employed in construction were foreigners. In the 1970s, the union had produced foreign language editions of its union journal, but - contrary to the metalworkers union – post-war migration had not become part of the official memory of the union: Immigration and immigrants are excluded from the voluminous book on the social history of the union (Klößner et al. 1989), co-edited by IG BAU. Compared to industrial unions, foreigners are
underrepresented in IG BAU: In 2001, resident foreigners held 16% of construction jobs but represented only 6% of IG BAU membership (IG BAU 2001: 175).

When in the late 80s contract labour migration to Western Germany set in, foreign enterprises entered a labour market that was, even by Western German standards, highly regulated. Since the 1950s, employers and the union had set up a number of collectively agreed industry-specific institutions which mainly compensated for the social disadvantages resulting from the discontinuous nature of work in the industry (mutualised training; bad weather and holiday compensation funds). The corresponding production model of the industry was geared towards quality and high wages. In a relatively closed labour market, these regulations allowed employers to retain their workers against competition from other industries and guarantee the absence of overt industrial conflict. To the union, the social partnership approach was a means to reduce the traditional stigma attached to construction work and to compensate for its relative organizing weakness. The opening of the Western German labour market in the aftermath of 1989 represented an enormous challenge to a union whose practice was geared towards the maintenance of “industrial order” in a firmly circumscribed labour market with stable reference points.

The fall of the Berlin wall had confronted IG BAU with enormous changes in a very short lapse of time. Its effects cannot be underestimated. The unification demanded the rapid but difficult expansion into Eastern Germany, including the absorption of its Eastern trade union homologue and the establishment of works councils. The construction market expanded rapidly in the context of the massive infrastructure plans dedicated to the East and Berlin’s bid to the 2000 Olympic Games. A multitude of newly founded, mostly small Eastern construction firms emerged without any linkages to organized employer associations and collective bargaining. At the same, Eastern European migrants entered the labour market, different in terms of language and migratory patterns from the former “guest-worker” generation. The arrival of a second wave of EU-migrants, mainly Portuguese and self-employed British workers, posed additional challenges to the union as these flows could not be restricted anymore by appealing to the government. It required the rethinking of union strategies in the light of the constraints imposed by the European integration process.

IG BAU essentially perceived these new realities as a threat to the industrial relations system the union had contributed to establish. The appearance of new, albeit more diffuse actors not complying with the norms was immediately denounced. While the Eastern German workers and enterprises soon became integrated (more symbolically than institutionally) into the industry’s ‘us’, the same did not apply to the non-German actors. In his analysis of the IG BAU journal Der Grundstein, Cyrus (2003: 204) identifies three elements constitutive of trade union representations with regard to
(Polish) contract workers: transnational employers and migrants were regularly lumped together and associated with illegal employment; competition with domestic workers was uniformly assumed; workers were stigmatized for their supposedly low level of qualification and their labour force was associated with inferior productivity and low quality. Subsequently, the union unsuccessfully demanded the government to abolish the contract worker programmes, but obtained a reduction of the contract worker contingents, joining forces with organized construction employers (Faist et al. 1999).

The union could not reproduce its protectionist approach in the institutional context of the Single market. In order to address the issue of wage dumping inherent to the conditions governing the employment of posted workers, it recurred to the more inclusive approach of lobbying jointly with the European Federation of Building and Woodworkers (EFBWW) and German construction employers for a European directive. The objective was to define a core set of labour conditions applicable to posted workers in the target countries such as working time, paid annual holidays, minimum wages, and health and safety standards, provided that they were part of national law or collectively bargaining agreements declared universally in the destination countries. Effective control and sanction mechanisms were equally demanded.

The representations behind this policy appear to have been relatively stable since the union’s initial efforts to limit the contract labour programmes. Under the title “Chaos and loss of control on construction sites” an article published in 1994 by the union’s international affairs officer (Weipert 1994) reports on “a scandal of the first importance”, the supposedly 50,000 British self-employed workers who enter in a fictive employment relationship with a letter box company at home in order to get posted and thus save social security contributions. To counter the “systematic infiltration of cheap labour from the United Kingdom”, the author demands the future directive to integrate the “logical conclusion: the most important aspect of the elimination of social dumping and competitive distortions on the European labour market is the establishment of controls and sanctions”. Similar representations emerged once again in the run-up to the Eastern EU-enlargement in the late 1990s when IG BAU (successfully) demanded the social-democratic government to make use of the maximum transitory period of seven years before the opening of the German construction market.

---

13 In May 1993, in a joint declaration with organized employers IG BAU demanded the abolition of the contract labour programmes and the immediate reduction of the contingents in order to prevent an “epidemy” of unlawful employment practices. Instead, it called for extending the possibilities of individual immigration in the framework of a work permits based new guest-worker programme. The refusal of this claim by the Federal government led to a fierce (and successful) union campaign on the reduction of the contingents, mobilizing imageries of criminality with regard to Eastern European workers (Cyrus 2003).
(Cyrus 2003). Again, it mobilized images of massive influx of posted and individual migrant workers, although most migration experts had (rightly) ruled such a scenario.

By that time, however, the situation for the union had considerably changed. From 1997 on, the rapid contraction of the construction market had caused massive unemployment amongst resident workers and drastically increased the pressure on wages and conditions. Thousands of enterprises went bankrupt, including some of the big players in the market, and concession bargaining spread. Although it was initially conceived to address pay and conditions of posted EU-workers, the collectively agreed industry minimum-wage in the framework of the posted workers Act soon emerged as the new reference norm also for domestic workers, at least in East Germany. Union membership had engaged in a seemingly irresistible decline. It was in this context that the union’s head-office started reflecting on the necessity to explore alternative routes to deal with the phenomenon.

Organizing migrant workers transnationally? – The experiences of the European Migrant Workers Union

If a protectionist attitude with regard to posted contract workers from Eastern Europe had been present throughout the 1990s, from 1993 on IG BAU had sought contact with Eastern European trade unions and Poland in particular. The rationale behind this move was to provide workers with relevant information on their rights and help IG BAU denounce illegal employment. In a first stage, it established bilateral contacts with the construction branch of Solidarnosc. Yet, apart from a general declaration on the necessity for equal treatment of Polish and German workers in terms of wages, labour law and social rights, these contacts never transformed into a fully-fledged union cooperation. According to Treichler (1998), divergent views as well as Solidarnosc’s fragmented and decentralised structure were behind this failure. Cooperation at a later stage with post-communist Budowlani equally proved inefficient as the union had only a few representatives on construction sites. As a result of these experiences, IG BAU established a small office in Warsaw that aimed at informing posted Polish workers about their rights in Germany. While this approach did not put into question IG BAU’s general vision of migration and migrant workers, it was nonetheless a sign of a growing awareness that the exclusive reliance on government, employers and labour inspectorates was insufficient to control the labour market impact of these workers (Kahmann 2006).

14 In 1996, after the acquisition of the forestry workers union, IG BAU counted 720 thousand members. By 2011, this number had halved. While this decline appears dramatic, we have to keep in mind that in the same period employment in construction had come down at the same rhythm. More worryingly, increasing parts of the membership are unemployed or retired.
By the end of the 1990s, a new generation of IG BAU leaders had emerged. According to an officer of the European Migrant Workers Union, at that time, “head-office decided politically that we stop debating about whether we appreciate or not the fact that Poles are coming. They are here. We accept it. We have the posted workers Act; we have generally binding minimum wage agreement ... Now we want that those who benefit from these agreements get organized in the union... It is our job to support our members as good as we can for getting their rights, but not to exclude them. You cannot organize people if you exclude them”. A double strategy emerged around an intensified cooperation of unionists with the labour inspectorate and the organization of migrant workers. The new approach to migrant workers echoed the heated general debates within the union on the adoption of an organizing approach at that time. They culminated in the decision of the 2005 congress to transform IG BAU into a member-driven union (Mitmach-Gewerkschaft).

In September 2004, IG BAU announced the foundation of the European Migrant Workers Union (EMWU), a transnational organization formally independent from IG BAU. This union aimed at organizing migrant workers irrespective of their nationality who work for a limited period of time in one or several member states of the EU. Even the conclusion of collective bargaining agreements – in cooperation with IG BAU – was initially envisaged. Yet, EMWU’s essential task was to provide its members with information on their rights in their native tongue, assistance in work-related conflicts, legal protection, and target group specific services. The transnational character was chosen as IG BAU considered that the mobility of these workers would not make them receptive to organizing in nationally rooted union structures. Equally, it was felt that their specific demands in terms of information and assistance could better be dealt with by a separate organization.15 In organizational terms, the separation offered another advantage to IG BAU: a self-sufficient EMWU would relieve regional and local union structures from the resource-intensive task of servicing and organizing these workers. Moreover, negative interference would be reduced between the ongoing IG BAU campaign on the detection and repression of illegal employment on the one hand and the organizing activities of the EMWU on the other.

From the beginning, the creation of the migrant workers union was contested by other European construction unions on the grounds that EMWU’s transnational nature marked a departure from nationally based unionism. It contrasted with the way European and international federations are constituted: They organize unions, not workers. This posed a challenge to national construction

15 This view was supported by a small-scale survey among posted workers that IG BAU had commissioned before the launch of the EMWU. It had revealed that the majority of interviewees could imagine joining a union, but preferred an independent organisation to IG BAU. To what extent this preference was due to an identification of the union with labour inspectorates (and the police) is difficult to judge. The interviewees’ main expectation was that such a union had to provide them with legal advice and advice on conflict at work.
unions “whose leaders were reluctant even to accept transnationally portable union membership, due to the uncertainty about how fees would be levied” (Greer et al. 2011: 9). In effect, amongst the national member unions of the EFBWW it was felt that the EMWU was a form of (German) intrusion in their domains. They contested EMWU’s expertise on national bargaining agreements and spoke out against proper EMWU collective agreements. They equally suggested that existing union structures were better suited to deal with and organize itinerant migrant workers and that the EMWU represented a form of exclusion of migrants (Schmidt-Hullmann 2008). In Poland, cooperation between the EMWU office and the national construction union never took off, either. Second, EMWU was meant to be open to transnational workers from industries other than construction. This marked a departure from the traditional German model of organizing workers into industry unions (Greer et al. 2011). IG BAU could never convince other unions such as the food workers union NGG to join in. As a result, EMWU rested isolated nationally and internationally. Initial hopes of creating a network of EMWU offices all over the EU were quickly deceived. The absence of organizational and financial support from other unions had been a burden for the EMWU from the very beginning.

In practical terms, the EMWU operated from two offices in Warsaw and Frankfurt and employed eight dedicated officers with German, Polish or Romanian backgrounds. EMWU felt that it was essential for EMWU officers not only to speak these languages, but also to be recognized as “one of us”, bridging thus the distance with unknown German unions and help overcome the fears of migrant workers making claims against their employers. The Polish office advises workers on pay and conditions in Germany and elsewhere and helps returning migrants with their court cases. Worker demand is considerable; EMWU staff report that they have served over 1,000 people (Greer et al. 2011: 13). The German office handles queries and cases from migrant workers in Germany. Court action proved difficult as workers could not easily prove the fact that they had e.g. worked 140 to 160 hours a week. Moreover, this tactics proved lengthy, costly and simply not adapted to the lives of itinerant workers. EMWU therefore preferred direct negotiations “outside the courtroom” with the main contractor, bound by the liability provisions of the posted workers Act. Resistances were sought to be overcome by mobilizing media attention. Although in theory EMWU was supposed to be a union, in reality it functioned rather as a worker advice and help centre, incapable of mobilizing a much broader community of workers than those who had asked for support or even of imposing specific regulations for migrant workers.

16 Often workers from Eastern Europe are not aware of what a union does or reject unions on the grounds of their experiences in their country of origin.
IG BAU also started cooperating with migrant support groups that hitherto were rather sceptical of the right-wing and sometimes even racist image attached to the union. Equally, as a clearly male-dominated organization of crafted workers with traditionally strong ties to the social democratic party, unionists shared suspicions about activist (left-wing) political cultures. Yet, its opposition to the radical labour market reforms of the social democratic Schroeder-government and joint campaigns on the EU-services directive proposal had somewhat eroded these barriers. The union’s cooperation with the labour inspectorates proved a lasting conflict, yet: While social movement activists suspected IG BAU of wanting to get migrant workers out of their jobs or tolerate their deportation, IG BAU insisted on the necessity to combat illegal employment.

By 2008, the initial project of founding a transnational union was abandoned by IG BAU, but union officers maintained that this did not mean the end of the EMWU (Schmidt-Hullmann 2008). EMWU was integrated in the union as a national advice and information point for itinerant workers coming to Germany.¹⁷ Four out of eight officers were retained. Servicing migrants had proven costly, especially as the union had to adopt a policy to support migrant workers independently of whether initially they were a union member (Greer et al.: 2011). IG BAU covered the costs for the start-up and consolidation phase by providing a loan of EUR 1.5 million but had hoped that it would become financially viable at some point. Crucially, EMWU had largely failed to pass the threshold of 10,000 members set by IG BAU. Retaining members had proven particularly difficult: Workers who had recovered their wages regularly left the EMWU after a few months, either because they did not have a bank account in Germany to pay their union fees or because they considered EMWU as a service provider. Equally, EMWU meetings were scarcely attended by its members scattered around Europe.

The initial question posed by the foundation of the EMWU thus remained entirely open: Is it possible to organize highly mobile transnational workers from countries with significantly lower income standards? – Was it the nature of the union as a service provider or the lack of an extended European support network that hampered the success of the project? Or was it that transnationally mobile workers put up with employer abuse as the wages earned in Germany easily exceed those “back home”? – Is settlement a precondition, both in economic and social terms, for getting involved with a union? – Are there identity-related resources other than stable workplace collectives and work which could be mobilized to organize these workers? – British experiences of organizing Polish workers tend to draw less sceptical conclusions on the possibilities of organizing mobile workers into national

¹⁷ After this setback, IG BAU became involved in an EU-funded multilateral union project (European Construction Mobility Information Network; ECMIN) that set up a multi-language website providing information on applicable national standards and union contacts to posted workers. While ECMIN is low in ambition, it is certainly more adapted to the realities of European inter-union relations.
unions (Meardi 2012), even if we have to take into account that most of them arrived as individual migrants due to immediate opening of the British labour market to CEE-workers in 2004.

4. Conclusion: Migration as a strategic site for union renewal?

The objective of this contribution has been to explore the ways in which trade unions have reacted to the transformations on both “sides” of the emerging European labour migration regime. The different stakes associated with “internal” and “external” migrations have been an object of multiple actor strategies. CGT as well as IG BAU have been participating actively in the social conflicts over the shape of the labour migration regime. Both unions’ efforts demonstrate their willingness to confront the new realities on European labour markets and to find socially viable and more inclusive ways of dealing with the migrant workers in question, running counter to the degraded position national and European authorities as well as employers reserve to them as workers and as citizens. The concluding remarks will isolate some of the common issues emerging from the confrontation of both cases.

Mobilizing migrant workers

Both cases analyzed here suggest the importance, albeit in very different ways, inclusive trade union strategies accord to mobilization. Throughout the 1990s, IG BAU’s strategy was directed towards limiting contract labour supply on the one hand and pushing for a mechanism establishing minimum standards for posted EU-workers on the other. The union had been relatively successful in both respects. By the beginning of the new century, however, the limits of the distanced regulatory approach had become clear and the IG BAU’s head-office began to focus on the enforcement of existing rules. It was in the perspective of a loss of control over the increasingly split construction labour market that IG BAU head-office embarked on a strategy of empowering migrant workers by organizing them into the EMWU. It thus recognized that the effects of the transnationalization of the European labour market on national regulatory prerogatives had objectively revaluated this primary source of union power. However, the union had to take into account the fact that itinerant worker mobilizations had been rare and restricted to single employers. As a top-down approach without any clearly articulated demand from migrant workers, the existence of the EMWU had always been charged with this uncertainty. The servicing approach was a means to appeal immediately to migrant workers (and render it potentially acceptable to other European trade unions), but also a way to avoid the question of whether itinerant migrant workers would organize in a “real” transnational
migrant workers union and what consequences its existence would have for the European construction unions.

In the case of irregular workers, mobilization has proven crucial, given the evolution of the French government’s politics on what it termed undesirable migrants. Immigration had become a strategic site for the French government to demonstrate its capacity to exert control over borders and to protect national populations in the context of globalization (Sassen 1996). As a consequence, the resistances the social movement had to affront were considerable. The 2008-2010 strike movement of a total of 6,000 workers showed the degree of determination and amplitude necessary to achieve only relatively small advances. Without the existing social networks of migrant workers, notably of West African origin, the strike would probably never have gained such a momentum. Government tactics of dividing different migrant groups remained a persistent challenge. To sum up, the conditions necessary for such mobilizations are not easily reproducible, neither on the union nor on the workers side. As soon as the mobilization ended, local prefectures had returned to their well-known tactics of retarding demands and decisional opacity. The union was once again confronted with the particular difficulties of assuring a collective representation for this group and the resource-intensive task of filing applicants’ forms and accompanying them to the prefectures.

**Bridging social distance**

Migration is about borders between states as much as boundaries between social categories (Fassin 2010). The latter build on variables such as skin colour, religion, culture, origin and impact the access to resources. They manifest in the productive sphere (work groups, labour market segments, undeclared employment), outside the labour market (schooling and housing) and in state policies (e.g. access to social and political rights). Ideologically radicalised differences can be considered as a more or less effective means to create and maintain distances between social groups of workers. If trade unions want to reach out to migrant workers, bridging these distances is crucial.

In the case of IG BAU, we can consider that a part of head office’s strategy was to move away from certain excessive imageries of the past that associated posted workers with organized criminality or rendered workers responsible for wage dumping. Part of it was the transformation of the “foreign worker” into the “foreign colleague” in official union discourse and documents. The organizing and servicing approach chosen by the union, however, built on the separation of migrant workers from the larger union. Representations and practices of local unionists could remain unchallenged as questions pertaining to the representation of migrant workers were evacuated from everyday union activities. Effectively, interviews with IG BAU officers in a regional union office (Landesbezirk) suggest that even after the restructuring of the EMWU in 2008, migrant claims continue to be directed to
exterior union structures, be it to the former EMWU or to the newly created DGB regional information and advice points for Eastern European workers (Beratungsstellen faire Mobilität). Interviews equally suggest that daily union operation continues very much along established lines (servicing works councillors, lobbying for new legislation on public procurement and preparing collective bargaining rounds). IG BAU officers continue distributing foreign language leaflets on applicable minimum standards on sites, but some 20 years after the appearance of itinerant migrant workers on German construction sites the prevailing attitude with regard to undeclared (migrant) labour appears to be rather fatalistic. The boundaries created by the conditions in which postings take place continue to appear almost insurmountable to unionists. In a way, “business as usual” prevails that tends to restrict the union to one side of the split labour market.

In contrast, the evolving mobilizing approach by CGT implied that for the first time in many years the union had bridged the distance with irregular workers other than in discourse or by supporting individual regularization demands. A crucial part of the strategy of rapprochement was to reveal to the general public the “organic” links that existed between irregular workers and (more or less scrupulous) French employers, consumers and customers. This narrative was complemented by the emphasis on their “regularity” as workers, notably as tax and social insurance contributors. CGT held general meetings which decided over the main course of the movement, even if the CGT leaders insisted on representing solely the striking workers in the negotiations with the Minister of the Interior. Hundreds of CGT members and officers in the Greater Paris region supported the striking workers during weeks and months. Often, they had been confronted for the first time with these workers and their situation. These experiences contributed to the popularity of the movement within CGT. Migrant workers were given a public voice and allowed them to get around the invisibility migratory policies condemn them to. Without any doubt, CGT has improved its standing amongst (irregular) migrant workers. Major questions remain, however, over the sustainability of this relationship.

Changes in union practice
The evidence gathered here suggests that over the last 20 years IG BAU has continuously sought to adapt – albeit reactively – to the changes, following an evolution from a protectionist to a more inclusive approach. All these changes appear to have been initiated by head-office. This testifies of the traditionally high degree of centralization of IG BAU that long-time compensated for its weakness as a member organization. If changes have been driven by generational change at head-office, questions remain over the impact on the larger union, members and domestic workers. After the failure of EMWU, the innovative impetus associated with the creation of the EMWU seems to have vanished. IG BAU continues to activate its traditional repertoires of cooperating with labour
inspectors on detecting undeclared labour, lobbying in favour of an increase of their number and providing information to migrant workers, but with regard to their collective representation there appears to be a strategic void. Compliance with existing regulations is rendered more difficult by another fact: the weak workplace representation of the union. Finnish construction unions, for example, have managed to retain the negative impact of posting on wages and conditions due to their extended network of shop stewards prepared to boycott non-complying subcontractors and the resulting pressure on main contractors (Lillie 2011). If these tactics are not easily reproducible in the context of German industrial relations, they point nevertheless to the necessary, but highly uncertain transformation of IG BAU into a member driven union to restore the legitimacy of social norms.

Preceding analysis has suggested that CGT’s role long time was marginal in the struggles surrounding undocumented migrants. Its traditional discourse on exploitation did not easily connect with the movements’ claims in terms of human rights; also the union did not have any particularly effective means to intervene. This changed when local CGT leaders had seized the political opportunity inherent to the 2007 immigration Act on regularizations on “economic” grounds and had captured the role the strike could play in this context. Building up from local Modeluxe and Buffalo Grill experiences of worker mobilization and negotiations with the prefectures, unionists and migrant workers successively discovered the mechanics of a successful mobilization, with the traditional action repertoire of the strike being at the centre of the struggle. The “discovery” of the strike as a relatively efficient means to force employers and the government to back down equally implied that the fight for the rights of irregular workers suddenly “made sense” for the wider union that was often sceptical of the desirability to engage in such a “societal” question. In an effort to redefine the boundaries of the union’s constituency and to appropriate the movement, CGT leadership constantly highlighted the “workerist” nature of the movement. It refused the government’s criteria of desirable and undesirable (irregular) migrant workers, but also opposed itself rather implicitly (or tactically?) to the more universal claim of “regularization for all” of the majority of support and autonomous migrant groups by claiming the “regularization of all workers”. Subsequently, within CGT, the strike also became popular because it allowed continuing the historical narrative of hard-fought worker struggles that the union prides itself of – and which had become rare over the last 30 years. Accounts of unionists supporting the strike movement admiringly put forward the solidarity of migrant workers and their extreme dedication. So, somewhat unexpectedly, the movement allowed for a reaffirmation of CGT’s traditional identity as an internationalist and militant class organization with a strong grassroots element attached to it; this identity strikes a contrast with the uneasy role of a responsible “social partner” the union is increasingly asked to transform into by employers and governments alike.
If we can assume that the 2008-2010 strike movement has had an impact on the representations of irregular migration within and, even more importantly, outside the union, its medium to long-term impact is highly uncertain. The number of regularized striking workers is much too weak to expect any significant changes in terms of union activities and membership. Equally, the current socialist government shares the same basic objectives with regard irregular migration as its predecessor, so no fundamental change is to be expected in the regulatory framework. The weak representative capacity of the union at workplace level, notably in the types of enterprises and industries where migrant workers are employed, does not favour a lasting relationship either. So, there is a major risk that the dynamics created by the movement evaporate in everyday union routines and that representations reinforced by the ongoing economic crisis will take their toll. In this case, questions pertaining to these workers would once again be delegated to a core of union activists.

***

The evidence presented here has demonstrated that the resistances to be overcome to counter the degrading and downgrading tendencies inherent to the current labour migrant regime are considerable and multiple. The way it is organized not only poses questions as to its economic, political and social effects, but also in ethical terms. Union strategies willing or forced to engage in this field have to confront powerful economic interests favouring labour market segmentation as well as allied, but not identical political interests. Resistances and hesitations, albeit of a different type, are also encountered from migrants and within the unions themselves. Taking up these challenges is undoubtedly resource-intensive and does not promise any short-term benefits. As we have seen, in many aspects, however, the changes pertaining to migrant workers and migration link to the transformation of economic, political and social conditions in a much larger sense. It poses essential questions on the scaling of unions strategies, relationships with members, union identities, resources, organizational learning and sustainability. If trade union strategies pertaining to migration and migrants are to have a stronger impact, they have to affront more directly these questions. In turn, such a transformation would signify that unions are much better prepared to take on the challenges pertaining to other groups and issues.
References


http://www.labournet.de/diskussion/gewerkschaft/real/evw_sh.html.


