

**Zeitschrift:** Schweizerische Zeitschrift für Soziologie = Revue suisse de sociologie  
= Swiss journal of sociology

**Herausgeber:** Schweizerische Gesellschaft für Soziologie

**Band:** 31 (2005)

**Heft:** 3

**Artikel:** From "multilevel governance" to "social transactions in the European context"

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**DOI:** <https://doi.org/10.5169/seals-815084>

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## From “Multilevel Governance” to “Social Transactions” in the European Context

Philippe Hamman\*

### 1 Introduction

Current views on the European construction often contrast ‘top-down’ integration – associated with the gap between technocracy and democracy – with ‘bottom-up’ processes – associated with issues such as European citizenship, considered as significant of the emergence of new forms of local governance, that is defined as a way of coordination between social players, groups and institutions in order to reach specific aims that are collectively discussed within a fragmented and uncertain environment (Le Galès, 1999). These processes are characterized by the transformations of interactions between the key authorities involved in this field and the increasing importance of non-governmental social players within the dynamics of European integration (Gaudin, 2002; Hamman, 2003b). The model of ‘multilevel governance’ puts the accent on contacts made between subnational players or institutions and European authorities especially with regard to the increase in power of the regions and the weakening of the states. It constitutes a theoretical framework that allows us to consider Europe as an opportunity for interest groups to put an emerging ‘Community governance’ forward against national historical agreements – especially when it’s a matter of coalitions between public and private or associative players (Jachtenfuchs and Kohler-Koch, 1996). Subnational territorial interests are no longer constrained to dyadic political relations with national state actors, but interact with a variety of actors in diverse arenas. This multiplication of channels for subnational mobilisation is a part of a broader transformation in the European Union from a state-centric structure to a system in which authority is diffused across multiple territorial levels. Multilevel governance differs from classical federalism (like in Germany) because the constellations of arenas and actors are both connected and fluid in the European context, and hierarchical forms of conflict resolution are not uniformly attainable. As a result, existing actors are engaged in new patterns of interaction around networks (Hooghe, 1996; Marks et al., 1996).

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These hypotheses are particularly relevant in connection with the defence of cross-border workers, because the juridical position of this labour force that resides in the frontier zone of a state and works in the contiguous area of a bordering country is quite problematic: social security systems, unemployment benefits, health insurance, industrial disabilities, social and fiscal taxes, etc., don't fit between the different states, so that people can suffer the consequences on account of social inequalities. For a long time, national trade unions haven't involved themselves enough into these specificities of cross-border workers, so that several grass-roots associations emerged during the 1970s. In this paper, we'll consider their activities through a sociological approach based on direct observation and interviews completed through the exploitation of archives and regional papers.<sup>1</sup> In order to question the paradox linked to cross-border employment – Are cross-border workers a privileged minority with regard to attractive salaries, or victims of the differences between national legislations, or even perhaps the pioneers of the European construction in everyday life? (...) – we follow a comparative angle articulating eastern French border zones with the European level and the diversity of bilateral relations.

The stakes of cross-border work are both economic and juridical. In border areas, this phenomenon is of importance: for example, in 2004, there were no fewer than 90 000 cross-border workers from Lorraine, among whom 56 300 were employed in Luxembourg, 30 300 in Germany and 3 000 in Belgium. Moreover, this commuter traffic increased quite regularly during the last decades and especially during the last years, as we show in the cases of Luxembourg, Germany, Switzerland and even Belgium (Fig.1 to 3, based on EURES data). In that way, cross-border workers experience in practical terms the reality of the differences between national legal systems and Community attempts at social and juridical coordination (Hamman, 2003c, 2004, 2005).

1 We focus on French organizations of cross-border workers that have appeared in Alsace and Lorraine: *Comité de défense des travailleurs frontaliers* (CDTF, i. e. protection committee of cross-border workers) of Moselle [interviews, 13 February 2002 and 1 March 2004; Annual general meeting, 18 November 2001 and 21 November 2004], French cross-border group of the OGB-L (*Onofhängege Gewerkschaftsbond Lëtzebuerg*; one of the two main trade unions of Luxembourg) [22 July 2002 and 7 April 2004], *Association des Frontaliers d'Alsace-Lorraine* (AFAL, i. e. association of cross-border workers from Alsace-Lorraine) [16 March 2004] and *Union des Frontaliers Européens* (UFE, i. e. Union of European cross-border workers) [2 December 2002] in Bas-Rhin, *Comité de défense des frontaliers* (CDTF) of Haut-Rhin [18 November 2001, and *Dernières Nouvelles d'Alsace*, 9 March 2000], *Union Européenne des Frontaliers* (UEF, i. e. European Union of cross-border workers) [23 June 2003], etc., and we draw a comparison with other structures all along French frontier areas: for example the *Comité des frontaliers* (cross-border committee) of Musson [30 September 2002 and 2 December 2002] and the *Frontaliers Inquiétés* of Anor [7 October 2002 and 10 February 2005] near to Belgium, the *Groupement Transfrontalier Européen* in relation with the canton of Geneva [29 January 2004], or the *Comité des frontaliers* of Hendaye concerning Spain [18 November 2002], etc. The quotations mentioned in this paper are translated from the French into English by the author.

Figure 1 Evolution of the number of cross-border workers from Lorraine (from 1968 to 2004)

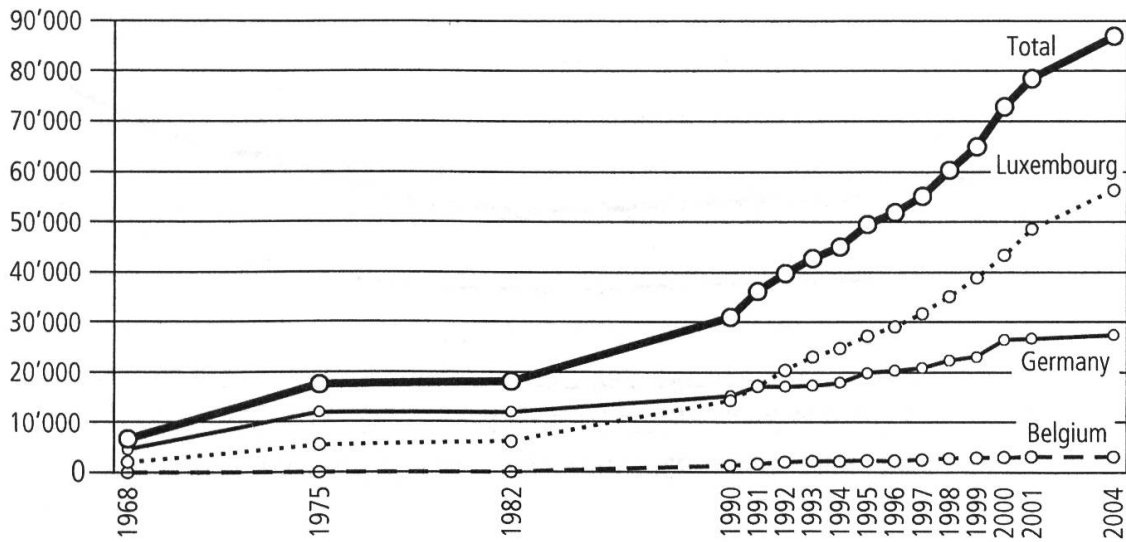


Figure 2 Evolution of the number of cross-border workers employed in Switzerland by nationality

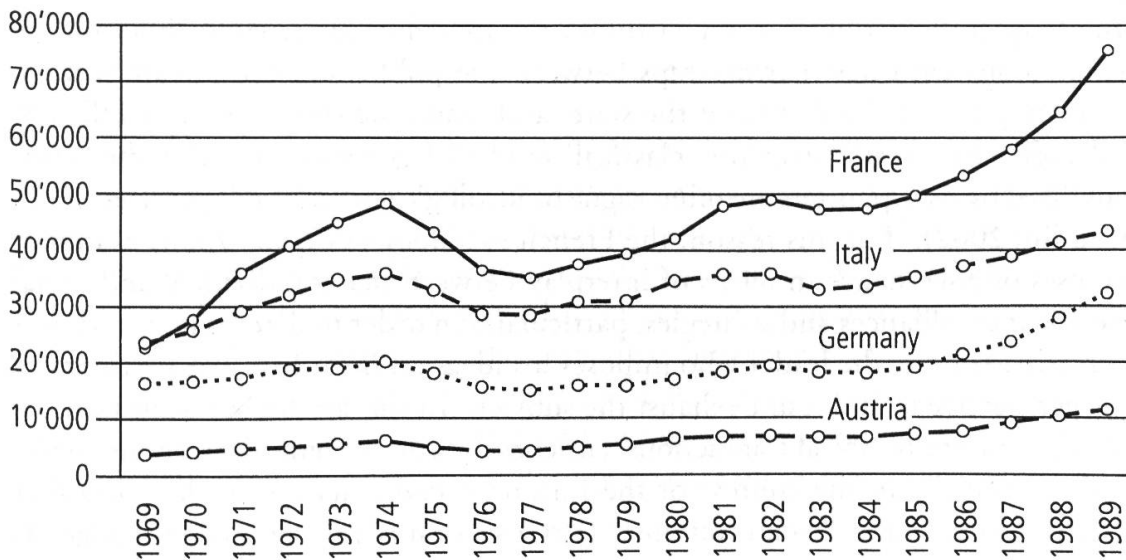
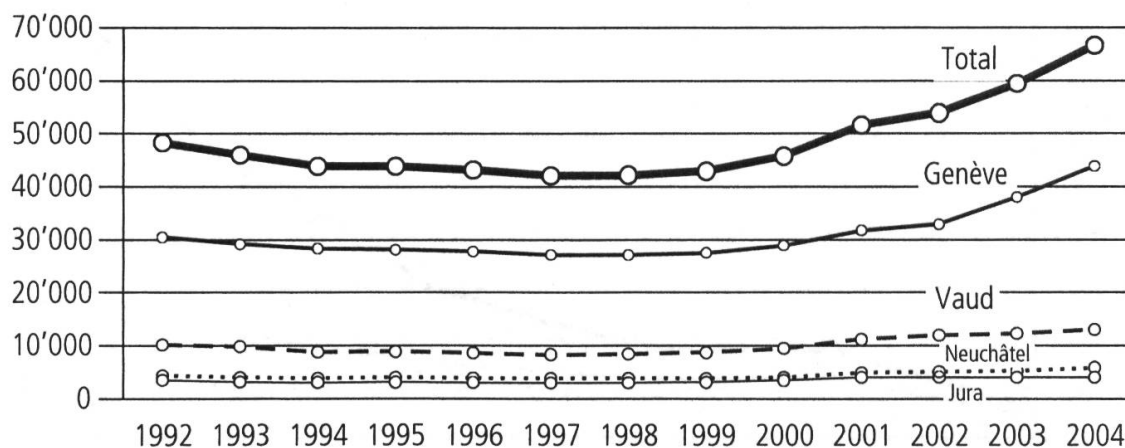


Figure 3 Evolution of the number of French cross-border workers employed in four cantons of Switzerland that have a common frontier with France (from 1992 to 2004)



Considering this background, the concept of 'social transactions' proves to be relevant to approach the relations built by the representatives of associations with the various local, national and European players and institutions involved in cross-border issues. These relations are distinguished by several forms of exchange, negotiation and imposition at the same time. We know that the notion of governance is quite widely used today, but often in multiple and unclear ways. One frequently attributes every virtue to the model of governance: it would be synonymous with new partnerships between the public and the private sectors, associating the civil society and the state, and would be therefore more efficient and more democratic than the 'classical' model of government. But the terms mobilized by its supporters are often vague or ideological (i. e. 'good' governance...) (Gaudin, 2002). For this reason, the French sociology of organizations examines the uses of governance in terms of interplay between many individual and social players, their alliances and strategies, particularly in order to determine the 'dominant partner', i. e. the leader who imposes his ideas on the others. As pertinent as this perspective is, it doesn't exhaust the subject. In this article, we want to show that the concept of 'social transactions' enriches the current reflections about governance, especially in the context of the European construction, in the sense that such an analysis takes from economics (a transaction is a negotiated exchange) as well as from law (a transaction is a technique to avoid and/or to resolve a conflict). In the background, it refers to the sociology of Georg Simmel. According to him, social life is structured by several pairs of conflicting tensions. For instance, he shows that the principles of personal freedom and of equality are antinomic, so the tension between these notions is impassable, and that's why one adds a third

term in the common expression 'liberty, equality, fraternity' (Simmel, [1917] 1981, 144–145). A reasoning by 'social transactions' stresses the practical consequences of those principles of legitimacy that are of equal social value, but are mutually exclusive at the same time. Therefore, it differs from similar concepts used in economics, that don't really pay attention to this aspect. Moreover, it renders the importance of social space in order to understand a governance network; it means that the relation between individuals that is partly immaterial, also goes through a physical relationship. Institutional economics classically analyse transaction costs (for instance the subcontracting of a product by the market or its in-house manufacturing...), putting the emphasis on the exchanges. But the social space doesn't correspond to a pure and perfect competition (for instance the diffusion of information is not complete...). That's why the concept of 'social transactions' favours the part of exchanges and negotiations but retains a secondary dimension of conflicts. Besides, in a juridical perspective, a transaction is a way to solve a conflict by settling a difference out of court, so that 'social transactions' express an exchange that takes two dimensions into account: one of negotiation (like economic transactions) and the other of power struggle. Thus, the notion refers to a relation between partners of unequal strength with the aim of promoting a certain number of elements in common, and is therefore relevant for a better comprehension of intersectional stakes revealing social logics of 'co-production' that only work if they are partly tacit and implicit, partly negotiated and internalised (Blanc et al., 1992, 1998). All these dimensions are important to understand possible dialectics between expert rule and popular protest in European politics, especially regarding cross-border work in our case.

First, cross-border work concerns national authorities regarding the elaboration, the implementation and the review of the legislation. It also affects public services and local governments as far as the application of regulations is concerned, as well as European institutions concerning Community norms. Last but not least, today's cross-border workers' committees are placed in relation with national trade unions and with many public initiatives founded by local authorities to handle cross-border social problems. In this context, associations are particularly confronted with a structural handicap of their movement: cross-border workers are of course limited in number in comparison with the national working population of a state, and because of great distances their demonstrations are fragmented by nature all along the frontier areas, so that most often they can't make up the numbers to emerge as essential partners for national and European authorities through 'physical' mobilizations. This distinctive feature explains the fact that we can follow the setting up of quite original means of applying pressure on the rulers, as a reaction against 'technocratic' regulations, not only by 'usual' popular protest but mainly through a kind of 'militant expertise', that has an instituting function indeed (Castel, 1985).

That's why it is useful to question the plurality of transactions that occur. In this perspective, a first section deals with the clashes of interests at stake between expert-led politics and anti-establishment reaction, a second one with the even more complex conflicts of values, and a third section introduces the cultural dynamics of these social transactions.

## 2 Transactions about interests, or how to establish a "cross-border cause"

Cross-border workers are often perceived as profiteers: firstly, according to a common opinion, people who work in a neighbouring country would be a privileged caste, and secondly they are said to only try to promote their corporatist interests. Under these conditions, it is a necessity for the representatives of associations to produce a better popular recognition of concrete cross-border issues against national or European expert-led regulations that we examine in this section.

### 2.1 A privileged and corporatist minority?: A discourse of justification

As far as incomes are considered, cross-border workers seem to have nothing to complain about. This remark of the head of a council housing estate in eastern Moselle is very significant; he explains in that way the inoccupation of an increasing number of flats: "We are limited by a national scale of resources. We can't offer local authority housing to any people over these maximum incomes. You know, low-ranking workers employed in Germany can earn about twice as much as in France. Therefore I can do nothing in those cases! And that's the point for us, for Luxembourg too, or even worse: near Switzerland, they tear their hair out! Nobody can get a flat in a public housing stock. They all break up the upper limit on salary."

Officials of associations come to recognize the resonance of this feeling too. For instance, the president of the UEF mentions the common figure of "an outcast who cashes in on both sides" (Kessler, 1991, 136 f.). This representative of another Alsatian organization confirms: "For many people, a cross-border worker is a privileged person because he earns more money. They say: 'If he has a problem, that's the other side of the coin, every rose has its thorn', and so on." But when they speak about this quite negative perception, it is only to contest its relevance in fact. Let us quote what the president of the CDTF Moselle said during the 2001 annual meeting: "It is an opportunity to proclaim for the nth time that cross-border workers are not a caste of enormously wealthy members. Some people always think that we represent a large cost for the French state, whereas we are indeed nothing less than the first French company in the export business: we bring billions and billions of foreign currency back to France. Moreover nobody should forget that our activities maintain the unemployment rate at its bottom in border regions."

More precisely, three strong arguments are advanced. First, the differences in salary between 'national' and cross-border workers would be blown up out of all proportion. A vice-president of the CDTFM is insistent: "We did not go to Germany for money. That's not true, not during the 1970s: one German mark was worth F 1.05, it was not financially viable." Secondly, the reality of bad working conditions for unqualified people would be neglected: "We regularly see pay slips of women that work on assembly lines in Germany, they don't even get the guaranteed minimum wage they would have in France! And they work in really scandalous conditions, they need money and their employers know that!" Third, cross-border work would develop not as an opportunist choice but as an absolute necessity in economically depressed frontier areas. In particular, this argument is put forward in Lorraine after the end of the exploitation of coal mines and the crisis of the iron and steel industry (Nezosi, 1998). This cross-border worker employed in Luxembourg underlines: "For us, it's a necessity to go to Luxembourg. Otherwise where can we go? Quite frankly, there is no job to fill here in Lorraine. The creation of new jobs in France is the prior condition to any discussion." On the other hand, it is not easy to maintain this thesis relating to Alsace and the great influx of workers into the neighbouring Swiss cantons (Fig. 2-3). The president of the CDTF of Haut-Rhin has to admit this ambiguity: "When you are looking for a job and you go to the place where you can get it, and you have to accept the lack of job security, do you think that being a cross-border worker in Switzerland is a privilege, even if we make money from our abilities? Geographically, Alsace is a border region: it is an asset, so it would not make sense to refuse to take advantage of this situation."

In fact, behind the diversity of individual positions of cross-border workers, the discourses of justification refer more to the conditions of validity of the collective activities of associations. So far, the problem of corporatism comes to the surface. As a result, the president of the French OGB-L cross-border group explains that representatives of associations should avoid giving an impression of clinging to a narrow-minded view, i. e. to defend by all means possible only corporatist interests. He quotes the case of the French 'local' social security system as a good example of this concern about doing things with realism: "We had Community law on our side, we could have won hands down: each cross-border worker living in Alsace and Moselle or who had lived there at a certain point would have enjoyed the advantages of 'local' social security benefits for his retirement. But we thought that if someone worked during two years under this French 'local' system and during thirty years in Luxembourg, there was something wrong in such a global solution. Today, everybody wants to take all the credit, but there were the cross-border organizations that suggested several conditions of admission to the 'local' system. So we went farther than Community law, that's why one cannot say that we don't behave responsibly!" We see that these uses of



law are connected with the disqualification of other protest methods: juridical resources allow to select the representatives who make 'reasonable' proposals; cross-border committees can take advantage of this accordance of their means of action with the juridical pattern enhanced within the national public arena as well as at the European level.

## 2.2 The production of a "cross-border cause" and its Recognition

First, it needs a permanent activity of lobbying to approach public authorities in order to obtain legislative adjustments, as the president of the French OGB-L group develops: "First and foremost it is an action of meeting and dialogue, to inform different rulers and politicians of our problems and to find somebody who accepts to give us a hand." The line of conduct consists in building up a wide-ranging network; CDF representatives lay stress on this point: "It is a matter of asking for interviews with Belgian federal rulers via our deputies, by protest post directly sent to concerned ministries, through the questioning of provincial governments, presidents of political parties or European commissioners, also oral questions during political meetings and of course an enormous amount of letters, so that they support our requests and make reform proposals."

More particularly, we can perceive two main ways used by leaders of associations: the juridical expertise in the cross-border field and the submission of individual cases for a legal settlement. Three forms of expertise are mobilized at different degrees according to the type of case. First, the representatives I was talking to stressed the importance of their personal experience. Either because they consider themselves as competent on the subject, just like the president of the committee from Hendaye: "It works because there is a jurist and a lawyer in our association, as well as members who study law." Or, on the contrary, because they claim to adhere to a practical understanding of the problems – for instance within the CDTFM: "Commanding this sphere is something you acquire only with practice. I have a vocational training certificate of typographer, that's all! I'm a self-taught person. Besides, nobody else but ourselves can resolve cross-border problems, because we are confronted with these issues every day." Resorting to consultants doesn't fit well with a group that is formed out of a social identity.<sup>2</sup> Nevertheless, if the need arises, cross-border committees subsequently appeal to the help of trade union jurists, especially 'allies' from the CGT (*Confédération Générale du Travail*: French trade union, historically marxist) in France and unions from the country where they work. This member of the CDTFM underlines this selective cooperation: "For specific questions we get in touch with the DGB (*Deutscher Gewerkschaftsbund*: German trade union.) and on the French side there is the

2 Because in that case the activities of representatives consist not only in the defence of the group's interests but in its representation too – in every sense of the word, cognitive, social and political (Boltanski, 1982).

juridical department of the CGT in Paris that gives us a hand. For instance, it was the case to support our protest against the CSG."<sup>3</sup> Finally, before certain courts of law, specialized law firms are appointed according to the problem, as the president of the French OGB-L group explains: "Our organization is in close contact with several law firms, because it all depends on the individual case. One lawyer or another is more specialized in international or in Community law, or perhaps in employment or social law and so on." Of course, this possibility to enlist big names of the bar is an important asset for associations and it is explained by the singular position or 'moral code' of many French employment lawyers (Michel and Willemez, 2002). For instance, the president of the CDTFM pays tribute to the efforts of his top-lawyer towards the European Commission: "He's an ace! You know, he wrote our memorandum about the CSG in 1992... it really worked wonders! Because at first, the Commission was not especially on our side."

These resources of expertise prove their efficiency in particular with regard to the European Union. In this connection, we should point out that there is a historical link between European institutions and cross-border organizations that found at this level their first institutional supports facing the states. For instance, the Council of Europe has organized several symposiums since the 1970s in partnership with cross-border associations, and the European Commission has even financed a report on cross-border migrations, entrusted to the care of the president of the CDTF Haut-Rhin (Kessler, 1991). We know that European institutions are open to discussion with interest groups when they present a solid offer of expertise (Mazey and Richardson, 1996; Greenwood, 1997). It is specifically relevant concerning the European Commission, mobilized by cross-border associations to characterize a supposed default from a member state with regard to European obligations. The president of the French OGB-L group clarifies the significance of this procedure: "We exchange all the necessary information about a case to know if it is compatible with Community law. If not, the European Commission will get the procedure under way, there will be exchanges of views, and that will be either settled amicably between the Commission and the concerned government, or it will be necessary to complain to the Court of Justice, and the Commission can refer the controversy to the Court. That's really practical." In the case in point, 'grass-roots' initiatives that underline local disparities to the detriment of cross-border workers use the departments of the Commission as an intermediary, even if this institution is often denounced as the most typical of a 'technocratic' Europe, precisely because cross-border associations meet with a favourable reception from the Commission thanks to their expert position that fits with the one of the European institutions – the vice-president of the CDTFM emphasizes: "They always make us feel welcome and our opinion is valued in

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3 *Contribution Sociale Généralisée*: French supplementary social contribution created to finance in part the medical system, pensions and other basic benefits.

Brussels! That's important, because as soon as we have a question to ask, we know we have these partners to discuss with, who are well-versed in Community law and can answer straight away."

Towards national administrations, it is more the contentious way that is used by cross-border organizations to obtain recognition of their interests. Representatives of associations often go to court; the president of the French OGB-L group mentions this solution as logical: "That's life! Either we are capable of settling the dispute out of court, between the parties, or we are not capable and then a judge will have to make a ruling." Precisely, after three decades of active existence, cross-border leaders consider at present to have won certain recognition from public authorities, as the president of the CDTFM says: "We can say we are credible now, with regard to all the institutions. At the ministerial level, every door is open. With the pension funds or the state health insurance offices, when they hear about our organization, they know very well that what we say is viable. Our 8,000 members and all the cases we have already won are our best 'invitation card' in fact."

### 3 Transactions about values: Conflicts on the principles of legitimacy of cross-border workers' protection

That's not the whole question. Other scenes of transactions relate to the principles of legitimacy cross-border representatives want to take advantage of with regard to expert-led politics. In that case, we move on to social transactions about values. Three stakes are particularly relevant: the juridical legitimacy, the principle of representativeness and the nature of the call to Europe.

#### 3.1 The principle of juridical legitimacy: Community free movement of labour versus national legislations

Nowadays, the act of turning to the European level is quite 'natural' for cross-border workers, as the president of the French OGB-L group mentions: "It's inevitable! That's essential for us to make a connection with the European aspect because we have a French legislation, a different one from Luxembourg, and in the middle there is nothing! In that case, we are in the heart of the European construction: the free movement of labour is really synonymous with the European Union." At the European level, the juridical profile is much more efficient than the militant one (Dezalay, 1992). The resort to law allows a generalization of local cross-border problems, i. e. to promote the lawful and rightful imposition on the political schedule of the question of a unified legal status of cross-border worker in Europe beyond the diversity of bilateral situations. Cross-border committees take advantage of this particular asset, because they can use the accepted

principle of free movement facing national juridical standards that put obstacles in the way of this coordination. It offers a way to enter into negotiations favourably and, if necessary, to go to the European Court of Justice with a good chance, as this OGB-L official explains: "With regard to social security benefits for instance, Community law is running well now, so that if there are contentious issues without any national solution, we know that the Court of Justice is a possible way of settlement."

The most often mentioned 'conquest' is the exemption of the French CSG tax liability for cross-border workers. This episode fully reflects a conflict of values. On the one hand, the national law establishes a new tax levy that is 'generalized' as the expression of solidarity in favour of the public health system, that is to say in the general interest. On the other hand, cross-border leaders make a sharp legal objection concerning the affectation of the resource; the president of the CDTFM develops his argumentation as follows: "According to French law, the CSG is a tax, but it is directly allocated for the *Sécurité Sociale*, that's why we have taken up the struggle in 1992: for us it is undoubtedly a social contribution, and in accordance with Community law we are subjected to German rules as far as social legislation is concerned, because it's the state where we work. Thus, we don't see why we should pay twice!" Such an argument immediately clashes with the governmental objective of an extension of the basis on which social contributions are assessed. Consequently, the position of cross-border associations doesn't find a favourable echo in the French government, even under socialist rule: the UFE president has very bad memories of this issue, even though he was personally a socialist activist and secretary-general of the Socialist federation of Bas-Rhin: "Martine Aubry [Social services minister] in particular was very hard on the question, and I found that very dishonest – and as a socialist militant it hurt me especially – to say 'The CSG is a tax, so it's normal for everyone to pay'." This mutual incomprehension leads this official to leave the Socialist party (PS), with a severe judgement: "I joined the PS to fight against social injustices and now there is a flagrant one that affects me and the PS does nothing, I wouldn't like to be taken for a fool too by continuing to militate in favour of the PS platform. That's why nowadays I concentrate on our associative activities." For cross-border representatives, the solution finally comes from the European Court of Justice that concludes the 15th of February 2000 along the same lines. This 'victory' remains unforgettable for cross-border committees as the CDTFM: "It represented an enormous juridical work, day after day and almost the whole year round... since 1992! That will go down in the history of our association. You know, when you have problems with the taxman, it's no joke! They even threatened some people to make a seizure of their goods, but the success finally rewards us for all our efforts."

From then on, a permanent tension has gone through cross-border issues between the legitimacy of national law and the European principle of primacy of Community law (Rideau, 2002). We can therefore conclude to a loss of centrality from a system of state control (Schmidt, 1996; Lequesne, 1996), but this 'retreat' doesn't mean its elimination, of course. In fact, this process has two main repercussions on our subject.

First, it turns out that the operative field of a decision can become relatively restrictive with regard to cross-border workers as a whole. For example, a decision of the European Court of Justice pronounced in 1995 in the 'Schumacker case', dealing with the taxation of cross-border workers, disappointed many committees. In that case, it clearly appears that Community law functions as a Europeanization operator and yet this process is never complete, as this cross-border worker of the UFE sets out: "The Schumacker action gave us great hopes, but it only settled rare borderline cases. Mr Schumacker alone earned a living, he was taxed only in Germany and the German tax department didn't take his marital status into account, as they said it concerned the country of residence. But as he had no income in Belgium, Belgium couldn't take his marital status into account. The Court of Luxembourg found that it was really too unfair. But now, after the Schumacker decision, they said 'The party is over! Cross-border workers... that's enough, you'll have to manage on your own'."

Secondly, Community law becomes an object of contention with national authorities, all the more so as from now on, national rulers put a lot into this scene to obtain favourable interpretations. Thus, the president of the CDTFM deplores the calling into question of a long-standing Franco-German convention by French authorities as it wouldn't be in accordance with Community law: "In France, when you are a student, you pay your contributions to a specific student social security system. In Germany, they don't have to pay for their medical expenses until the age of 27, and we say 'the same contributions, the same benefits', for the children of a cross-border worker. We came to an agreement with German officials before. But the French government said 'No, it doesn't respect Community directives'. Apparently it appears in the European law, but we don't really agree with this text..." This fluctuating connection with the relevant level of law reveals the current transformations of the institutional framework of public policies, that don't come down to an only clear-cut elitist-populist divide.

### 3.2 Social transactions about representativeness: from the local to the European level

A similar territorial issue structures a second scene of transactions about values: that is the principle of representativeness. This concept is a social construction that has followed different ways according to the national contexts. In France, pressure groups have been arousing suspicion for long since the law *Le Chapelier* broke the

guilds during the French Revolution.<sup>4</sup> This context accounts for the construction of a requirement of 'representativeness' as a possible way for public authorities to legitimize institutional contact with lobbyists, insofar as they are promoted to be 'representatives', and so to be recognized as valid negotiators.<sup>5</sup> The 'neocorporatist' paradigm (Schmitter and Lehbruch, 1979) reflects such a solution that actually favours trade unions (to the detriment of associations), because they can insist on their ramified structure covering the whole national territory.

In these circumstances, the affiliation to a German national confederation, the large number of members and the organization by economic branches all constitute trade union features advanced by the president of the CGM<sup>6</sup> to justify the opening of an office in Moselle specially for giving some advice to cross-border workers: "In Sarre, the CGM has about 10,000 members in various metallurgical industries: iron and steel industry, car industry, and so on. I joined the CGM as a staff representative in Germany because of my personal convictions, but I turned to the trade union for support too, in particular for all the cross-border problems here."

Associations of cross-border workers don't fit in much with this national model of representativeness. Sometimes, the local characteristic of their development can lead to erosion if bilateral migrations are reversed. The composition of the CDF of Musson, between France and Belgium, is a good example of this potential fragility: "Our members are mostly – 90 per cent – between 65 and 68 years old. It was the metallurgical, steel and textile industry around Lille and Longwy before 1985, but today there are only a few hundred jobs left." Elsewhere, it is the purpose of the association itself that limits its importance. The case of Anor's *Frontaliers Inquiétés* (that is 'harassed cross-border workers') is quite significant: this organization was founded as a popular reaction against a singular tax dispute within a Belgian border town "in order to unite behind this cause the people who were automatically re-registered in their former Belgian town, so that they had to pay taxes there, even if they lived in France afterwards. Our aim is to appoint just one competent lawyer to plead our cause that concerns about a hundred people", as its president said.

Faced with such a serious handicap in relation with national trade unions, officials of associations lay stress on their real grass-roots representativeness along the French frontier regions. From this viewpoint, each cross-border movement

4 It's quite different in the United States, where interest groups are seen as a corrective to the defects of the representative political system: during the 1960s, 'pluralistic' analysis underlined their democratic contribution, especially with regard to the associative phenomenon (Dahl, 1971).

5 See for instance the analysis of Pierre Muller concerning the social construction of the representativeness of the French farmers' union in the agricultural sector (Muller, 1984).

6 *Christliche Gewerkschaft Metall*: German Christian union well established in the metallurgical industry of the Sarre frontier area (Interviews, 24 February 2003 and 8 March 2004).

has its own area that its spokesmen cover by a dense network of committee rooms located as close as possible to the place where cross-border workers live. Not surprisingly, the number of members is one of the foremost preoccupations for cross-border representatives, and they get a sense of pride from their results – for example concerning the French OGB-L group: “25 per cent of the French cross-border workers in Luxembourg have joined our organization. That’s far more than you can imagine in France in the case of trade unions. It accounts for 8 per cent of all these unions together...” In that way, cross-border associations acquire a key position in the area where they are present. By way of example, it becomes quite common in border towns to put premises at the disposal of those local committees, just like the CDTFM: “Now we have a good office, set up by the town council, this means we are levelled with the trade unions over the road.”

At the same time, cross-border leaders also try to produce a kind of accordance with the national pattern of representativeness to increase the ‘validity’ of their claims. The setting up of a confederative structure dates back to 1971 with the foundation of the National Committee of French Cross-border Workers, following on from the cooperation that associated the structures of Haut-Rhin and of the Lake Geneva (Kessler, 1970, 1991). It provides an exchange of information, with a variable intensity according to the member associations however; these extracts of interviews show both sides: “There are yearly meetings that allow to have an update on the latest events, it’s always fruitful”; “We meet from time to time. Each association has its own philosophy. We always ask to communicate information to one another, some play the game, some don’t, that’s clear.” Anyhow, the system proved its worth in times of crises; it worked as a ‘driving belt’ in the episode of the CSG: “Above all, it was a success concerning the case of CSG: we took the decision to boycott this tax all together, and it bore fruits, that’s clear! In practice, this national committee is ready to take action.” As we see, the coalition is justified at the same time by the complexity of the interests they want to defend and by the necessity to make public authorities realize how important practical cross-border problems are (Webster, 2002, 141–150).

This first cleavage between local and national representativeness becomes now even more complex with the construction of the European area. It leads to renewed tension between unions and associations with particular acuteness concerning new cross-border institutions as the European Employment Services (EURES), that include national trade unions as experts on the working conditions of cross-border workers. As a result, representatives of committees feel dispossessed of their ‘trademark’ and excluded from European support; the leader of the CDTFM explains that clearly: “EURES structures include all the trade unions, and associations should be an integral part of this partnership too. But some people jam on the brakes: they don’t want to share a piece of the pie! But we won’t make concessions, because I know one EURES employee, when someone

asks him for some advice, he answers: 'Listen – it's quite simple: there is the cross-border workers' committee, go there, they are well informed' Well... at the same time he gives us new members. It's a possible tactic too! But that's not work, so we don't see why we couldn't take advantage of a European grant." We understand there are institutional as well as practical agreements that are renegotiated in the context of the Europeanization of the representation of interests. National trade unions are members of EURES thanks to their management and labour position, so that they are particularly restive to envisage the integration of cross-border committees, inasmuch as that would lead to share their resources. This official of the CGT Lorraine makes no secret of it: "The discussion is always distorted because of the problem of means that immediately appears. Protection committees do have a certain number of members. OK! But there is the question of the permanency of those organizations... That's it, and sometimes there is hardly anyone there, and some other time there are 10 000 associations in the same area. Finally we say no."<sup>7</sup>

Furthermore, at this new European level of public policies, the conflict between unions and associations becomes more complex insofar as the principle of representativeness becomes vaguer: 'neo-corporatism' gives up to a more 'pluralistic' running, open to pressure groups.<sup>8</sup> We know that these organizations have often been seen as a factor of Community integration, in particular in the 'neo-functional' literature (Mitrany, 1943; Haas, 1958), and European institutions actually seem more receptive to cross-border associations than national governments. That's why the president of the CDTF Haut-Rhin created in 1991 the 'European Union of Cross-border Workers' (UEF). This forum regroups 'direct' members as well as several local associations to ensure a better representation at the European level (Kessler, 1991). This reorganization reflects an extension of the associative sphere of activity towards the Community scale (Kohler-Koch and Quittkat, 1999). But this strategy can only work if the initiative is recognized by 'grass-roots' organizations, and that in a sufficient number of member states to build a European representativeness. Consequently, the president of the UEF emphasizes the importance of the foundation of new federate associations along the Franco-Belgian border zone, like Anor's *Frontaliers Inquiétés*, even if he must face the fact that partnerships often remain fragile: for instance, he has not heard anything about the AFAL of Bas-Rhin for several years, although this association is based in the vicinity of the UEF office of Haut-Rhin. As it reveals, the cooperation between cross-border committees does not only take place within a determined area but it is always defined in reference to such an area and its founding political, economic and social balances – precisely unlike expert-led politics.

7 Interview, CGT, 1 October 2002 and 23 September 2004.

8 See the analysis of Hassenteufel (1990) who evokes a 'pluralistic model' characterized by interest groups that influence public authorities but outside official media.



### 3.3 Social transactions about the nature of community integration: "Top-down" versus "bottom-up" European construction

In this sense, the call for Europe as a resource for the activities of cross-border committees must be backed up with concrete local presence. We can clearly perceive a "bottom-up" process of Europeanization: cross-border organizations aim at changing a long-standing constraint – i. e. the disparities between national legislations – into a resource through a practical mobilization of Community law contrasting with common integrationist views that most often remain 'overhanging'. In that way, a third series of transactions on values concerns the legitimate definition of European construction, what it should cover in accordance with what sort of dynamic.

A first split relates to the nature of the Community integration process. One can mention the recurring denouncements of the Maastricht Treaty by many representatives of cross-border associations. The speech delivered by the president of the CDTFM during the general meeting for 2001 attests to the resonance of this critical position: "In every European country, the working classes suffer from an attack without precedent against their social benefits. This attack has only one source: the domination of the financial world in Europe and the globalization that impose their will upon us in conformity with the Maastricht agreement. So don't tell stories! It's a political act and we have to question it." More recently, during the meeting 2004, the leader of the CDTFM reacted in the same way as he did three years before, by attacking the current project of the European Constitution. For him, this text is a further proof of what he defines as "the ultra-free market Europe that is built against and without its people", so that he officially appealed to all the 8 000 members of the association to vote against the European Constitution at the time when the referendum takes place in France, in reply to "the present policies of organized social destructions and the tyranny of the financial open markets." As we understand, the mobilization of European references by cross-border protection committees is also closely linked with a kind of antithesis: the free circulation of capital, in the face of which associations promote the 'real' European integration, that deals with the free movement of labour and the social union, about which this cross-border activist of the OGB-L regrets: "We must strive to build an Europe with a common social policy. And at the present time, there is still everything to do."

That's why always the same people underline the power of Community law and the support of European institutions when it's a question of obtaining adjustments favourable to cross-border workers. The president of the French OGB-L group explains this apparent paradox as followed: "It's true that it can seem a bit contradictory because on the one hand we criticize certain things and on the other hand we have to work with them. But it's the same thing with a law for instance: many people who come at our office often tell me: 'This law is not

fair, it's shameful! When you say that, do you think you solve the problem? Of course you don't. It's our job to try to change the situation, at the European level in particular, and to replace those laws, that's all!" As a result, it is not only a transfer of the stakes at the European level that occurs, but also their redefinition, and these evolutions position the cross-border level directly in relation with the European construction (Abélès, 1994).

In this context, the leaders of cross-border committees base their legitimacy on a practical reasoning. In particular, they frequently express their feeling to take part in the European integration from a 'cross-border testing ground', and they proudly define themselves as its mainstay or even, as we often heard, as the 'pioneers of Europe'. For instance, the president of the cross-border committee of Hendaye insists: "Europe will remain sheer utopianism if the rulers ignore the European citizens who are the main players of the European construction, and they are indeed the cross-border workers." In the Franco-German border area, the vice-president of the CDTFM affirms the same conviction: "We are an integral part of Europe because we live that every day, at work and in our way of life in Germany and in France. There are cases that surreptitiously occur, and even the European Commission only becomes aware of such problems at that time, when we sound the alarm. We are in practice the spurs of the European debate concerning the free movement of labour."

However, at present, this 'bottom-up' position is not the only one in the cross-border scene any longer: the often strained relations between associations, national trade unions and public authorities reveal parallel evolutions taking place at the moment concerning the legitimate representation of the 'cross-border cause'. From now on, unions put a lot of effort into taking the local level of cross-border questions into account, which increases dissensions with associations. For instance, in Moselle the German union CGM shows its concern for organizing regular meetings and receiving people individually: "We notice one thing: cross-border workers go to their work place and come back home, that's all, they don't get easily in touch with trade unions in Germany. We have to realize that, and that's why now we try to go and meet them."

Moreover, public authorities – states as well as regions and cities – pose at present as mainstays of cross-border relations (Hamman, 2003a, 2003b). It's especially true in the Rhine area between France, Germany and Switzerland, where local and regional authorities created at the beginning of the 1990s with the support of the European Commission the 'Infobest' offices,<sup>9</sup> that work in partnership with EURES. Their concrete activities are relatively similar to the juridical assistance associations offered to cross-border workers for a long time. Private people formulate the main part of the requests, which concern 90 per cent of the cross-border work. Information and advice are offered during individual

<sup>9</sup> *Informations- und Beratungsstelle*: information and advisory centre.

appointments at the office, where people are welcomed by an adviser, who can be joined by mail or over the phone: there seems to be a line for line copy of the activities of committees.<sup>10</sup> Besides, these Infobest initiatives are explicitly mobilized by local counsellors so that they can claim to adhere to a political union in Europe that puts the daily preoccupations of citizens as a central issue. The views of the president of the Infobest office of southern Alsace from 1996 to 1998 clearly reflect this state of mind: "Inside a border area, everyday life does not have the same meaning as 50 km farther. We are in the vanguard of the European construction. The largest one that the member states want to promote has a regional complement: it's the everyday cooperation, dealing with minor problems that become great ones for the people who suffer from these issues. The mission of Infobest offices is precisely to become a melting pot where those problems are handled" (*Revue de la coopération transfrontalière*, 16, 1999, 3 f.).

#### 4 Social transactions and cultural dynamics between expert rule and popular protest

As we see, cross-border organizations take an active part in the processes of Europeanization inasmuch as they give concrete expression at the national and local level to the European Union and its regulations, whose effects become more marked in the daily working life of many concerned citizens. It's this singular position of juridical and social mediators that becomes competitive nowadays. Cross-border representatives come within social transactions that are linked to cultural dynamics around the dialectics of elitism and populism, formal and informal, confidence and suspicion between a plurality of social players.

First, the relations between spokesmen of cross-border committees and officials of the European Commission appear as contacts between unequal partners for the promotion of common interests. For instance, a member of a cross-border association lays stress on the support brought by the European Commission against France concerning the case of retired cross-border workers from Alsace and Moselle, so that they can be restored to their rights within the 'local' French social security system, and he shows several official letters from the head of the Social Security department of the DG V, while another one evokes a tax litigation between France and Luxembourg giving rise to well-argued exchanges with officials of the DG XV, that came to a favourable regulation preventing heavy taxes for

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10 We base our analysis on the annual reports of Infobest since 1999, its Web page <[www.infobest.org](http://www.infobest.org)> and several interviews with its project leaders: PAMINA, 18 June 2003, Kehl-Strasbourg, 22 July 2002 and 24 June 2003, Vogelgrun-Breisach, 19 July 2002, and Palmrain, 18 July 2002.

cross-border workers in both states.<sup>11</sup> These cases reinforce the position of European high-ranking civil servants towards the member states and they can benefit from the practical experience of cross-border associations, so we can conclude to an 'objective alliance' formed between partners that nothing seemed to bring together at first sight. And yet, as a vice-president of the CDTFM says, "one thing is for sure: about several things we go the same way. They can only make progress through the complaints we lodge and send to them."

Besides, a cultural issue also characterizes conflicts between cross-border associations and public organisations like Infobest in Alsace. Their project leaders position themselves at the same time on the side of the Government and of cross-border workers. That explains the importance given to the *service public*, because this notion allows linking up those two potentially antagonistic aspects by the guarantee of a neutral and free assistance: "We get in touch with different public utilities in order to collect information we need in our job. It's not a question of pointing an accusing finger at problems in the management of a department or another. As an administrative office we are under professional obligations to remain neutral, and we are a public service, also free." This Infobest adviser clearly tries to distinguish his position from the associative position that is presented as more anti-authority than explicative, more political than administrative. Another Infobest official from northern Alsace precisely adds to these statements the following remark concerning the local cross-border association: "What we do is very different from what AFAL does, because AFAL works like a trade union: they only give some information to their members, and they have a function of lobbying too. The defence of sectional interests is really more in a protest dimension." Moreover, Infobest advisers explicitly distance themselves from any contentious action, insofar as departments of the regions or the states that actually co-finance the organisation could be potentially affected by those claims. So the head of northern Alsace office stresses this point: "It's something the person has to decide in all conscience, it puts the person in confrontation primarily with herself. We absolutely stay away from legal actions."

In fact, there are two different interpretations of the protection of cross-border workers that appear and lead to divergent handlings of expertise and law – explicative or contentious. This Infobest official expresses that well: "In comparison with associations, we don't have the same way to deal with the same problem. It's true that they give some information, but they often immediately advise to go before an industrial and social tribunal and so on! They are protest movements. But we notice that some people come to our office because we never tackle a problem from a controversial point of view. It depends on the people and their expectations: you have some people who think that they don't get enough at our

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11 Consequently, the government of Luxembourg passed a national act on October 3, 1997.

office, and other people who say ‘I don’t want to join an association, I only want to see how my problem can be solved in the easiest way’.”

The identities of the opposing social players are really different too. Leaders of associations often have an activist profile closely linked to an early personal commitment to trade unions. The case of the president of the CDTFM specifically reflects the state of mind that follows: “I’m a union activist since the age of 14, when I started my apprenticeship, and since that time I have never stopped to militate in favour of the working class, I have taken on union responsibilities in France and Germany and in workers’ councils. We are factory workers indeed.” On the contrary, on the Infobest side, advisers are most of the time quite recently qualified, with a high academic standard (at least 5 valid years of higher education) and profiles that are quite general on economic, social and political questions and specialized in cross-border issues. This identity of ‘specialists of the general’ is closely akin to the definition of professional expertise (Henry, 1992). For example, the French adviser of the northern Alsace Infobest office explains: “We have very different profiles, according to all our missions: our first secretary is more a specialist in administrative management, the second one is a personal assistant, my German colleagues have done a course in geography or regional development, and I come from political science.”

Considering these dissimilarities, open crises can break out. By a way of example, the CDTF of Haut-Rhin waged war against the local Infobest office, with particularly sharp episodes, notably throughout the year 2000 about the reform of the health insurance scheme for French cross-border workers in Switzerland: both organizations compete in order to supply precise information to the concerned people as quickly as possible and strengthen in that way their relative position towards the ‘opponent’. This struggle for influence led in April 2000 to an occupation through force by CDTF activists of the German hotel in which Infobest had planned to organize the first meeting open to the public on this subject. The local cross-border committee seemed to be caught on the hop and reacted virulently – its president raged against Infobest: “Information is lacking, so that nobody can answer these questions about health insurance, and they want to inform even if they don’t have a clue about the matter... it’s disinformation!” – while an Infobest project leader retorted in all the regional papers: “These acts of sabotage are a real affront! I’m expecting the support of our local authorities”, underlining the ‘official’ public legitimacy of Infobest.<sup>12</sup> These demonstrations of mutual incomprehension reveal the process of institutionalization of a sphere of representation of the cross-border workers’ interests through divergent uses of expertise and law.

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12 Several comments on this episode in the regional papers: *Dernières Nouvelles d’Alsace*, April, 12 and 13, 2000; *L’Alsace*, April, 12, 2000; *Dreiland Zeitung*, April, 13, 2000; *Badische Zeitung*, April, 13, 2000, etc.

## 5 Conclusion

In this paper, we show that the often mentioned elitist-populist divide in European politics can be analysed from a territorial point of view: local, national and European scenes appear as particularly interdependent in this cross-border field, so that we can observe concrete contacts between EU-experts and representatives of associations for instance. The strategies of cross-border committees finally prove to be really suited to European logics: the importance of juridical expertise, the high level of activity in the field of law standardization and the common resort to national and European authorities in parallel are congruent with a multilevel governance on a network that is adjusted to a functionalist angle, so that the Europeanization of the interests of these associations is more advanced than in the case of national trade unions in general (Quitkat, 2002, 88 f.). At present, the states aren't the only intermediaries between the national and the international policy level any longer. It's in this new scope of what is possible that cross-border committees find a place, generating many-sided social transactions about clashes of interests as well as conflicts of values between expert rule and popular protest. The advantages that emerge from this transnationalization of the recourse to collective action (as defined by Balme et al., 2002, 21–120; Imig and Tarrow, 2001) are not exclusive any more today, in the face of national unions and public offices. Nevertheless, activists of cross-border associations act as mediators who come from an outlying position and manage to connect to much more central worlds,<sup>13</sup> leading to concrete measures through singular uses of law (and especially Community law) as well as a constant activity to build up a network of relevant relations and influence in order to put in contact different worlds that hadn't met until then.

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<sup>13</sup> About the fruitfulness of an analysis of the places and the players, i. e. the crossing ways and their intermediaries, who make an hybridization between social worlds that appear *a priori* separate, see Hamman et al., 2002.

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