

The European Single Market and the Politics of Deregulation and National Re-Regulation

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1. Introduction

Recent debates in comparative political economy have focused on the implication of economic liberalization in Europe, variously associated with domestic factors engendering the embrace of neoliberal ideology or more general tectonic shifts often attributed to globalization and European integrationⁱ. More recent contributions, especially those informed by the varieties of capitalism approach, contest that earlier pessimistic predictions of convergence on a minimalist liberal Anglo-American model of capitalism are inaccurate, suggesting instead a taxonomy that encapsulates coordinated market economies (CMEs) and liberal market economies (LMEs) while recent contributions also suggest categories encompassing central and eastern European emerging market economies (EMEs) and Mediterranean mixed market economies (MMEs)ⁱⁱ.

Though the number of categories and indeed their very nature are contested as wellⁱⁱⁱ, such recent strides reject dire predictions of neoliberal convergence. One obvious point of weakness in the attempt to sketch alternative capitalist models that are seen as robust enough to sustain liberalizing shocks is the ongoing steadily proceeding liberalization of these very models, due to the “internalization of globalization”^{iv}. Therefore, surviving institutions of politico-economic governance may serve radically different macroeconomic policy goals and their very existence ought not to be interpreted as evidence of a truly alternative model of capitalism^v.

A major external pressure that remains somewhat bereft of the scholarly attention it merits is the European Union (EU) Single Market Programme (SMP). The deregulatory liberal nature of the SMP clashes with and in some cases directly undermines the pillars of European politico-economic governance models by interfering with national authority over labour market regulation. “Negative

integration”, as one analyst refers to it^{vi}, weakens and distorts national regimes of wage-setting and labour market standard and access control regulation.

Recently, the European Commission has undertaken sustained attempts to revive relatively neglected aspects of the SMP, especially regarding service provision. The Bolkestein directive sought to curtail national market access regulation and promote trans-European service provision. Simultaneously, clever entrepreneurs are availing themselves of new opportunities for outsourcing and subcontracting by seconding employees transnationally, exploiting significant gaps in wages and social standards across Europe. By formally registering corporate headquarters in low cost Latvia or Cyprus, significant savings can be realised and the obligation to pay Irish or Swedish wages can be legally avoided. A number of recent European Court of Justice decisions undermine national regulations governing transnational service provision.

Though warmly welcomed by economic liberals, any such liberalization of service provision (LSP) was bound to prove highly politically contested. It evokes legitimate fears of promoting social dumping in the context of significant wage and income gaps (see table 1). Flying cheap flags of convenience has, of course, become standard practice in international shipping, but doing so legally within the EU by exploiting wage gaps raises concerns over a deregulatory race to the bottom. Temporary secondment of service sectors appears like less of a legitimate exploitation of Ricardian comparative advantages in wage levels because Romanian or Latvian wages do not reflect the true cost of living for such posted workers in high cost northwestern European countries. Just how pivotal this theme became is evident in the rejection of the European Constitution in referenda in the Netherlands and France, at least partially influenced by concerns over a neoliberal bias in this document,

embodied in the home country principle for wages and working conditions applicable to any posted workers that the Bolkestein directive sought to introduce.

While a clash between the liberal minded architects of deeper economic integration and advocates of national sovereignty in these policy domains appear inevitable, the argument submitted in this chapter is that the outcome of this conflict is strongly conditioned by institutional elements of the respective models of capitalism. The study of this conflict also affords a dynamic, rather than static, analysis of the viability, internal organizational structure and capacity to formulate and defend national response strategies. Building on earlier work^{vii}, I argue that these national response strategies will be shaped by the organizational-institutional characteristics of relevant domestic actor coalitions who can respond to top-down Europeanization pre-emptively or reactively in formulating re-regulatory national response strategies. The institutional characteristics of trade unions and employer associations as well as the quality of their access channels to relevant national ministries condition the overall nature of such national response strategies.

Governments are in essence involved in two-level game negotiations (Putnam 1988). The national interest position is conditioned by the interaction of labor market interest associations and their relative success to export their interests and successfully to shape the agenda^{viii}. Different varieties of capitalism thus generate different responses to a common EU-led impetus. This obviously also implies that not all such attempts at formulating a national response strategy will be equally successful. In emphasizing **institutional** characteristics, I situate this argument within the neoinstitutionalist framework^{ix}. Empirically, the paper examines the repercussions

and attempts at re-regulation with regards to more recent attempts at EU LSP, especially the so-called Bolkestein directive.

Table 1: Average Hourly Wages in the European Construction Sector (2006, except where otherwise noted):

*Latvia	3.23
*Hungary	4.36
*Lithuania	4.56
*Slovakia	4.79
* Poland	5.37
*Estonia	5.69
Malta	5.78
*Czech Republic	6.50
Portugal	8.94
Greece	8.94 (2003)
*Slovenia	10.37
Spain	14.22
*Cyprus	14.75
Ireland	16.60 (2000)
Italy	17.67 (2004)
Luxembourg	19.91
Germany	21.10
Finland	24.93
United Kingdom	25.04 (2005)
Austria	25.17
France	25.91
Netherlands	27.80 (2005)
Sweden	28.05
Denmark	29.61 (2005)
Belgium	30.07

All wage levels are denominated in Euro. * denotes countries that joined the EU in 2004. Source: Eurostat 2006

2. Organizational Power of Unions and Employers in Shaping Responses to Europe

Recent advances in the Europeanization literature have highlighted that the process is hardly “passively encountered”, but rather actively conditioned by national level actors and can therefore result in a great variety of outcomes^x. The exact interactive effects between top-down Europeanization and national actors’ activities remain somewhat underspecified. Are advocacy coalitions ad hoc in nature, is their emergence contingent on certain variables, do veto players emerge spontaneously or do sceptics of liberalism manage to sustain more long-term coalition-building? By insisting on a radical interpretation of mutual recognition^{xi} and country of origin principle, the European Commission could expect to face powerful reactions both by unions and employers. Similarly, the emergence of national level liberalizing initiatives based on the LSP provoked national re-regulation, generally led by the unions. Strong interactive effect between the European and the national level in labour market policy can be expected. Powerful and often strongly positioned interest associations face governmental actors and are keen to modify, influence or in some cases impede the liberalizing EU impetus. National governments can ill afford to ignore the activities of labour market interest associations and, given close contacts and superb access channels enjoyed by unions and employers, are unlikely to do so.

The idiosyncratic institutional embeddedness of actors in socio-economic policy thus conditions the degree of policy influence they can hope to exert in shaping national re-regulation and negotiating adaptation to change induced by the European integration process. The response strategy reflects the preference of the strongest actor. Organizational strength is conceptualized as a combination of degree of

organizational centralization, internal coherence, and representation among their clientele. A pivotal fourth variable is access to government.

In order to maximize variance among different politico-economic models of governance, this paper examines responses to the EU liberalization of service provision (LSP) in different varieties of the coordinated market economy category (Austria, Germany and Sweden), a case of a mixed market economy (France) and a liberal market economy (Ireland). They are thus “most different” cases along key dimensions of politico-economic governance^{xii}.

In *France*, the trade unions are impeded by a low level of representation among their clientele, underdeveloped internal coherence and problems in exercising control over the rank and file ideological and organizational fragmentation and underdeveloped links with the government. The employer association Medef represents major French business, but also organizes a significant number of small and medium sized enterprises. Its internal coherence and centralization is much more strongly developed and its hierarchical top-down organization offers additional advantages. However, recent change seems to undermine organizational coherence. Common socialization patterns facilitate access to governmental actors^{xiii}.

In *Austria*, the union movement represents a very high number of its constituents and internal coherence and centralization are strongly developed. Despite the recent decline in importance of the social partnership, formal and informal channels of influence-seeking still exist. The employer association WKÖ boasts a 100 percent membership rate, as membership is compulsory. It is highly hierarchical and centralized and also gains access to government through long-standing formal and informal consultation mechanisms^{xiv}.

In *Germany*, the union movement is no longer as encompassing, internally coherent or centralized as is often assumed^{xv}. In the “union of parts”^{xvi} sectoral unions, especially the powerful metalworker union IG METALL and service sector union ver.di command strong power. Access to government is secured through informal ties to the Social Democratic Party and formal hearings during legislative deliberations.

The employer association BDA is organizationally similarly subdivided along sectoral and regional lines but their representation levels are superior, recent trends towards atrophy notwithstanding^{xvii}. The employers rely on strong sectoral members, especially in the metal section, and dispose of informal contacts to the ministry of labour and social affairs.

In *Ireland*, the trade union movement organizes a medium level of employees, but most union members are concentrated in the public sector. It is organizationally subdivided and hampered by persistent sectoral sub-divisions. However, the institutionalization of various social partnership agreements has created new pathways for informal consultation with the government^{xviii}.

Employer association IBEC commands a weaker membership base but is organizationally strong. Like the unions, it is regularly consulted by the apposite ministries and plays an active role in the framework of the social partnership.

In *Sweden*, the trade union movement has been traditionally very strong and continues to organize large sections of the workforce, institutional characteristics remain robust, but access to the government is no longer as strongly pronounced as has been the case historically.

The employer federation Svenskt Näringsliv is characterized by a medium level degree of coverage and organizational coherence^{xix}.

In sum, the organizational characteristics of labour unions and employer associations in the five countries included here afford them different opportunities for affecting the national response strategies to EU LSP. Thus, we would expect a particularly strong position for French and Irish employers, a potential stand-off and compromise solution in Austria and Sweden and a somewhat stronger position for German employers.

	Employers	Unions
France	75	8
Germany	73	23
Ireland	38	35
Sweden	54	78
Austria	100	37

Table 2: Union and Employer Organization Density

Employer Organization data refers to density in terms of employees within the organisation's domain for 1991-1993 (source: Traxler, F., S. Blaschke and B. Kittel (2000) *National Labour Relations in Internationalized Markets*, Oxford: Oxford University Press); Union density according to OECD data, cited in Ebbinghaus, B. (2003), 'Ever Larger Unions: Organisational Restructuring and Its Impact on Union Confederations', *Industrial Relations Journal*, 34, 5: 446-460.

Internal Power Index	Austria	Germany	France	Ireland	Sweden
			Employers		
Unions					
Centralization	strong-strong	medium-medium	weak-medium	weak-medium	strong-strong
Internal cohesion	strong-strong	medium-medium	medium-medium	weak-medium	strong-strong
Representation among clientele	strong-strong	medium-strong	medium-medium	medium-medium	medium-weak
Access to government	strong-strong	medium-medium	weak-medium	medium-medium	medium-medium
Comparison:	strong-strong	medium-strong	weak-medium	weak-medium	strong-strong

Table 3: A Comparison of Relative Power of Labor Market Interest

Association

3. New Initiatives reinforcing the Liberalization of Service Provision (LSP)

Though originally already contained in Art. 59-66 of the Treaty of Rome and one of the “four freedoms”, considerable legal uncertainty clouded trans-European service provision and it remained of little practical significance well into the 1980s.

Historically relatively homogenous wage levels meant that transnational service provision was limited to instances of highly specialized niche providers. De facto, European service sectors remained well within the legal remit of national regulatory authorities and the often highly technical nature of applicable regulation deterred transnational service provision. The EU's activity largely focused on banking and financial services, as with the 1977 and 1989 banking directives, establishing a "passport" for financial service providers. Somewhat vague wording in the Treaty of Rome permitted protection of public service domains. The ECJ ruled favorably in regards to the French government funding postal service provider La Poste in 1997, along with the similar 1993 Corbeau and the 1994 Almelo cases^{xx}. The court referred to Article 86.2 of the Treaty of Rome (ex 90.2), which details that member states have special rights regarding certain economic sectors and that a restriction of standard competition rules can be accepted in services deemed in the general interest.

The Commission grew increasingly frustrated with this state of affairs. At the same time, the 1990s had witnessed a massive increase in transnational service provision, especially in the construction sector. Table 1 illustrates the substantial wage gaps across Europe in this sector, which were first exploited by a Portuguese subcontractor of French construction conglomerate Bouygues in 1986 and reached epic proportions in booming Berlin in the mid-1990s.

Such transnationally active service provision, spawning "posted workers" from low wage countries such as Portugal and Greece to high wage destinations in northern Europe were welcomed by economic liberals, whilst critics perceived the emergence of islands of foreign law that imported Portuguese wages into Germany as a neoliberal nightmare entailing minimal wages and employee rights.

A 1990 ECJ decision (*Société Rush Portuguesa Lda vs. Office National d'Immigration* 27 March 1990; C-118/89) opened up the way to national response strategies. National re-regulatory strategies were particularly powerful in France and Austria, much more liberal in the Netherlands, occasioned protracted battles in Germany, and based on “Scandinavian gentlemen agreements” in the Nordic countries, including Finland^{xxi}.

However, EU eastward enlargements in 2004 and 2007 re-ignited this problématique. Despite the imposition of temporary bans on labour mobility and service provision in all but three of the EU-15, the potential for competition via the wage factor re-emerged.

Political debates focusing on social dumping very quickly were met by a number of practical developments that juxtaposed national regulatory regimes in wages and working conditions with European deregulatory tendencies. Companies availed themselves of new opportunities for transnational service provision with the explicit aim of lowering wages. In some cases, this entrepreneurial exploitation of wage gaps generated legal battles, but generally a predictable conflict between profit-driven companies and trade unions concerned with wage dumping and a downward spiral in remuneration and social protection levels ensued.

In Ireland, shipping company Irish ferries incorporated a Cypriote subcontractor, replacing existing employees with new staff from Latvia, remunerated at Latvian wage levels. In Sweden, a Latvian construction company active in Våxholm applied its home country regime in terms of wages and working conditions offered to posted employees in Sweden. In Germany, meat processing plants and

construction companies found enterprising avenues for circumventing the temporary ban on service provision by employing nominally self-employed workers from Central and Eastern Europe (CEE) remunerated also at home country levels. In the absence of a statutory minimum wage, it proved possible to circumvent standard German wages, legally applicable only to businesses with membership in the German employer association.

Finally, and most controversially perhaps, the Commission issued a draft directive that would have enshrined the home country principle for transnational service provision, while forcing member states to open up significant segments of their economies to foreign competition, including areas traditionally regarded as *service public* such as health and education. While economic liberals, notably EU Trade Commissioner Peter Mandelson, warmly welcomed the 2004 draft directive named after former Commissioner Frits Bolkestein (Commission of the European Communities, 2004. Directive of the European Parliament and of the Council on Services in the Internal Market. COM(2004) 2 final/3), critics perceived of the “Frankenstein” directive as an incarnation of run-away neoliberalization, undermining fair wages and working conditions and pushing forward the doctrine of privatization by stealth. Such fears were nourished by the practical implications of the home country principle for host country wages, setting in motion a downward spiral.

a. Ireland

Concerned about increasingly ferocious competition pressures arising from the emergence of low cost airlines, ferry operator Irish Ferries announced in late 2005 that it was re-flagging its fleet, outsourcing management to Cypriote subcontractor

Dobson and replacing its workforce with eastern European, predominantly Latvian agency crew. This proved a shrewd manoeuvre, as the temporary restrictions on service provision did not apply to Cyprus and Malta, while the company claimed that Latvian wages (average hourly wages of EUR 3.60, but an hourly minimum wage of €0.71 per hour in 2004) should be legally applicable to these ostensibly temporarily posted workers. The sectoral trade unions Services Industrial Professional and Technical Union (SIPTU) and the Seamen's Union of Ireland (SUI) responded immediately and robustly with industrial action. Management deployed security guards to assist the introduction of agency crew, leading to a number of violent confrontations and the blocking of vessels in Irish and Welsh ports in December 2005. A major nationwide demonstration organized by the union on 9 December 2005 attracted a turnout of 100,000, widely viewed as a considerable demonstration of strength^{xxii}. However, despite the considerable negative publicity the company was courting, its management seemed unwilling to budge, arguing that outsourcing would save it €3.4 million, while the union's suggested reforms proposal entailed savings of only €2.4, including government assistance offered^{xxiii}.

The conflict had commenced on the Rosslare-Cherbourg service as early as 2004, when the company had flagged out its vessel Normandy to the Bahamas, announcing subsequently a lay-off of 700 employees^{xxiv} and locking out SIPTU-organized seafarers to apply additional pressure. With the 2003 Employment Permits Act the government had demonstrated a more restrictive stance regarding the administration of employment permits, as it sensed that previous exemptions from work permit requirements for temporary postings for up to three years had opened up channels for massive deployment of often low skilled migrants. It acted without the standard

consultation of the social partners, much to the dismay of employer association IBEC^{xxv}.

IBEC initially supported the company, arguing that greater flexibility for the Irish labour market and new transnational corporate strategies were desirable. The Irish Congress of Trade Unions was equally adamant about its rejection of management actions in this case, arguing that the outsourcing strategy was indicative of broader trends towards systematic undercutting of wages and exploitation of migrant workers^{xxvi}. Over the course of the year 2005, its irritation grew, culminating in the temporary refusal to negotiate the new sixth social partnership agreement, following the expiration of the 2003-2005 framework “Sustaining Progress”.

Following intensive negotiations at the Labour Relations Commission and intervention of the National Implementation Body, itself established within the neocorporatist Social Partnership framework, a compromise agreement was eventually found in late 2005. The agreement entailed the continuation of outsourcing as planned, but safeguarded the existing wages and working conditions for Irish crew members. Crucial for acceptance by the union was the concession to pay all employees the Irish statutory minimum wage of EUR 7.65 per hour and EUR 18, 615 per annum and thus accept host country conditions. Though ostensibly an agreement that ended undercutting of wages, the overall conflict resolution is employer-friendly, as it permitted the effective de-unionization of a formerly state owned enterprise, significant wage cuts and the outsourcing to a company incorporated abroad.

The overall response strategy is thus business-friendly and can be categorized as liberal and voluntarist, merely entailing the application of minimum wages, but not more exacting standards on companies posting employees to Ireland.

b. Sweden

When the Swedish town of Våxholm invited tenders for a school renovation project in 2004, it received a highly attractive offer from Latvian construction company Laval & Partneri, a vehicle established to carry out construction work in Sweden using Latvian employees. Construction commenced in 2004, with 14 employees posted directly from Latvia. A conflict over pay quickly ensued between the sectoral construction union Svenska Byggnadsarbetareförbundet and the company, as no collective wage agreement had been signed and the company paid its workers an hourly wage of SEK 80, thus exceeding standard Latvian wages, but still falling well short of local sectoral hourly wages of SEK 130 to 145. The union justified its blockade of the building site on 2 November 2004 by reference to the 1991 Lex Britannica, according to which non-Swedish collective agreements, such as the Latvian applicable here, do not have to be recognized in Sweden. The Swedish electricians' union (Svensk Eletrikerförbundet) supported the blockade. The company demonstrated willingness to raise the hourly wage to SEK 105, but refused to be bound by standard wages or sign a Swedish collective wage agreement. Work on the site continued for a few days longer regardless, but eventually came to a halt on 14 December, after the company had exhausted cement supplies from non-unionised suppliers.

Unable to meet a complete a June 2005 deadline, the company withdrew from the site and took legal action against the union in the Swedish labour court (Arbetsdomstolen). For the first time since the posted workers controversy of the 1990s, the Scandinavian gentlemen agreement, enshrined in the 1991 modification to the Swedish Law on Co-determination, was put to a serious practical test in Sweden. There had been a brief episode in the mid-1990s during which an Italian company in Copenhagen sought to pay its posted workers Italian wages, but eventually succumbed to union pressure and paid Danish wages. The intriguing question was whether the key component of this agreement – the right to impose a blockade to ensure the payment of Swedish wages – was consistent with EU law and whether the hourly wage of SEK 109 was a de facto minimum wage. Also, if a Latvian collective agreement existed, the blockade would have been illegal under existent Swedish legislation (Lex Britannica). The Swedish labour court referred the case to the ECJ.

The ECJ 18 December 2007 Laval decision (C-341/05) ruled that industrial action can not be allowed

“where the negotiations on pay, which that action seeks to require an undertaking established in another Member State to enter into, form part of a national context characterised by a lack of provisions, of any kind, which are sufficiently precise and accessible that they do not render it impossible or excessively difficult in practice for such an undertaking to determine the obligations with which it is required to comply as regards minimum pay”.

Industrial action was ruled unlawful as it sought to attain higher than minimum conditions for the posted workers. Unsurprisingly, Swedish business cheered the result, while the union was exasperated^{xxvii}. As Sweden does not have statutory minimum wages as many other countries, in the absence of any legislative applicable instrument, obvious strategies for outsourcing and undercutting of wages emerge.

c. Germany

Given that the original German national response strategy to the EU LSP had only ever been limited to the construction sector in the broadest sense (including installation work and building cleaning services), the possibilities for successful undercutting of wages through the exploitation of the wage gap with CEE seemed extraordinary. The Schröder government had responded to considerable popular discontent over EU eastward enlargement by introducing a seven year ban both on labour mobility and transnational service provision from the eastern eight new members. A particular Achilles heel is the absence of a national minimum wage. Sectoral wage agreements are drawn up as the result of regional collective bargaining between unions and employer associations. Given the recent trend of businesses leaving employer associations to avoid the legal obligations such agreements entail, certain service sectors, especially private security, gastronomy and private personal services including hair-dressing witness truly minimal sectoral wages. In certain sectors, notably meatprocessing, there is no recognised employer association and henceforth no applicable and legally binding sectoral minimum wage. Consequently, from 2004 onwards the posted worker syndrome re-emerged, this time focused primarily on the meat-processing sector. German companies dismissed regular employees and replaced them with more than 15,000 posted workers from East European subcontractors. Sectoral union Nahrung-Genuss-Gaststätten (NGG) claims 26,000 job losses as a consequence of the deployment of east European subcontractors, especially from Romania^{xxviii} (Worthmann 2005). Remunerated at hourly wage levels of 3 to 5 euros and thus well below standard wage levels, the posting of workers offered the additional advantage of circumventing laws regarding

holiday payment, sick payment and contributions to health insurance and social insurance schemes.

The sectoral subdivision of the union movement impaired attempts at responding in a timely and robust fashion in the way the Irish and Swedish unions had. It pursued a two-pronged strategy, lobbying both for a statutory minimum wage and the extension of the existing legislative national response strategy to additional sectors. This so-called Posted Workers Act had been amended in 1999 to enable the Ministry for Labour and Social Affairs to declare universally applicable wages and working conditions even in the absence of employer consent. Construction sector union IG BAU successfully lobbied for construction-related trades to be covered, including building cleaning, painting, demolition and roofing, while metalworker union IG METALL secured coverage of electricians^{xxix}. Somewhat more controversial was the creation of a sectoral wage in postal services, as the main company in the sectoral employer association Deutsche Post is majority government-owned, attracting criticism from the employer association BDA of undue union influence and political manoeuvring to outflank private competitors^{xxx}.

But not all sectoral employer associations agreed to rendering their sectoral minimum wage universally applicable and umbrella association BDA remained staunchly opposed on ideological grounds to accept the introduction of a statutory minimum wage in Germany^{xxxi}. Between 2007 and 2008, a major political battle between unions and employers ensued, which was represented respectively by the Social Democratic minister for Labour Olaf Scholz and the Christian Social minister for Economic Affairs Michael Glos within the Grand Coalition. Both camps used their political access channels to the major two political party blocs to lobby actively in this matter^{xxxii}. The Social Democrats championed the issue to accommodate the

significant popular discontent over the Red-Green government's cuts in social assistance and labour market deregulation. Only few sectoral employer associations agreed to the legally sanctioned universal applicability of sectoral minimum wages, notably in construction and related fields^{xxxiii}.

Though an initial compromise seemed to appear during the summer of 2007, it took until July 2008 for a legislative response strategy to emerge that consists of two components: Firstly, the existing national response strategy, the modified 1996 Posted Workers Act, will be amended to permit sectoral minimum wages to be declared universally applicable if at least 50 percent of employees in the sector in question are covered by existing wage agreements and both sectoral unions and employers agree to such measures. Interestingly, such universal applicability can be decreed by government fiat, a notable legal instrument for government intervention. Secondly, a modification of the 1952 Act on Minimum Working Conditions permits the creation of sectoral minimum wages even in sectors in which employer associations either do not exist or possess very low levels of membership. No agreement could be found on whether or not to permit such sectoral minimum wages for the sector of temporary work agencies, where the sectoral employer association remains fiercely opposed^{xxxiv}.

In the meantime, the advocacy position of the unions had improved somewhat due to the remarkable ECJ Rüffert ruling, which struck down the obligation imposed on companies tendering for public bids in the *Land* of Lower Saxony to pay standard regional wages (*Tariftreue*). In its very liberal ruling, the court found that « imposer aux prestataires de services établis dans un autre État membre, où les taux de salaire minimal sont inférieurs, une charge économique supplémentaire qui est susceptible de prohiber, de gêner ou de rendre moins attrayante l'exécution de leurs prestations dans

l'État membre d'accueil (...) est susceptible de constituer une restriction au sens de l'article 49 CE ». This ruling effectively undermined regional laws aimed at impeding wage dumping in the construction sector and thus rendered the need for a national minimum wage more pressing which would be considered a legitimate component of the *ordre public* in the way the French minimum wage SMIC is.

After long-winded political battles and considerable lobbying activity on both parts, the amended legislative acts present a revamped version of the German national response strategy, enabling the government to create sectoral minimum wages based on the recommendations of a bipartisan expert commission on low wages. This creates fairly powerful legislative tools to introduce sectoral minimum wage regulations in sectors affected by transnational service provision.

d. Bolkestein directive

In 1999, Dutch politician Fritz Bolkestein, an advisor to the secretive neoliberal think tank Mont Perin Society, became Commissioner of Internal Market and Services. Perhaps inspired by Art. 49 of the Rome Treaty^{xxxv}, but certainly by the Lisbon Agenda of promoting economic growth through neoliberal deregulation, the DG MARKT presented its draft directive on service deregulation on 13 January 2004, drawing on an internal study identifying remaining “barriers” to services^{xxxvi}. Very little external consulting of stakeholders had been conducted and the European union umbrella association ETUC had simply been ignored altogether. The directive's remit was extremely broad. Article Art. 2: 4 (1) clarified that “any self-employed economic activity, as provided for by Art. 50 of the Treaty, consisting of the provision of a service against consideration” was covered, including management consultancy,

certification and testing, maintenance, facilities management and security, advertising services, recruitment services, including the services of temporary employment agencies, services provided by commercial agents, legal or tax consultancy, property services, such as those provided by estate agencies, construction services, architectural services, distributive trades, organisation of trade fairs and exhibitions, car-hire, security services, tourist services, including travel agencies and tourist guides, audiovisual services, sports centres and amusement parks, leisure services, health services and personal domestic services, such as assistance for old people. Excluded from the remit of the directive were non-economic activities and activities performed by the state as part of its social, cultural, education and judicial functions where there is no element of remuneration. This obviously implies that public services that do involve a small service charge, including, for example, municipal libraries or swimming pools, could be covered. Also not included were financial or transportation services, to the extent that they are covered elsewhere in the treaty.

The section containing the most political dynamite was Art. 16, containing the “country of origin” principle regarding applicable contract law. In essence, the host country was limited in enforcing its own laws to instances in which a very narrowly defined range of issues involving the *ordre public*, public health and public safety were at stake. Articles 14 (3) and especially 24 of the draft, the latter of which regulated the division of labour in administrative terms between country of origin and host country, outlawed existing practices of obliging posted workers to carry appropriate documents detailing wages and working conditions and the requirement to appoint a national representative. Worse yet, any new administrative requirement introduced by national governments would become subject to approval by the

Commission (Art. 15 (6)). Art. 15 further sought to abolish restrictions regarding quantitative, regional or financial restrictions. It is no exaggeration to characterize the original Bolkestein directive as the single most aggressive deliberate act of assault on the structure of European society and economy.

While a number of neoliberal governments, including usual suspects such as British Prime Minister Anthony Blair, rushed to the defence of the draft directive, substantial political controversy ensued. On 22 November 2004, Irishman Charles McCreevy took over DG MARKT from Bolkestein, admitting in early 2005 that this directive did not have a “snowball’s chance in hell of getting through either the Council of Ministers or the European Parliament”.

At the national level, the Bolkestein directive spawned vociferous political debates and conflicts. In *France*, the response of employer organisation Medef was somewhat lacklustre. In its 6 April 2005 summary of the draft directive, the employers acknowledged the potential for social dumping and expressed concern over the abolition of documentation requirements for posted workers. During the first half of 2005, a vociferous public debate over the merits of the European Constitution unfolded, during which the Bolkestein directive was often invoked as representative of the neoliberal fundamentalism informing the European project. The trade unions strongly opposed the directive, expressing their concerns to the government^{xxxvii}.

In *Austria*, the union movement was very active in coordinating street demonstrations and political lobbying aimed at blocking the first draft of the directive in general and removing the home country principle in particular^{xxxviii}. The employer association generally welcomed a less bureaucratic and more transparent process for transnational service provision, but shared some of the concerns over potential social

dumping^{xxxix}. The government thus responded by assuming a moderate stance and embracing a compromise solution. During the Austrian EU presidency in early 2006, the much revised directive, notably no longer containing the country of origin principle, was accepted by national governments across Europe and eventually passed in the Council of Ministers in late July 2006.

In *Sweden*, the trade unions developed a very clear and active position from early on, insisting on an abolition of the country of origin principle and Swedish standards of wages and working conditions for posted workers^{xl}. Their lobbying activities at the national level proved quite successful, with the Swedish government assuming a very reserved stance. Employer organisation Svenskt Näringsliv dismissed the social dumping argument as “unfounded concerns” and strongly supported the directive, yet did not insist on maintaining its more controversial components^{xli}.

In *Ireland*, the government assumed a broadly supportive stance, partly informed by employer positions. The liberalization of services was broadly characterised as potentially beneficial for Irish companies. However, the concurrent Irish Ferries case which attracted a lot of public attention demonstrated starkly the potential negative ramifications for wages. The trade unions were very strongly opposed to the directive, perceiving it as a “Frankenstein directive” that would set into motion a downward spiral in wages and working conditions^{xlii}. The employer association IBEC, by contrast, supported the directive, as “further reduction of red tape and unnecessary restrictions for companies” were considered desirable goals and the fears over social dumping largely inflated^{xliii}. The Department of Enterprise, Trade and Employment organised a number of consultation exercises with the social partners, receiving the positions of both unions and employers^{xliv}. Despite the strongly expressed reservations about the country of origin principle and the concurrent Irish

Ferries industrial action, the overall Irish position was broadly favourable towards the directive, with the government being strongly favourably inclined towards the employer position.

In *Germany*, the trade union very vehemently opposed the directive and the country of origin principle in particular. Head of DGB Michael Sommer referred to the project in a speech during a demonstration in Berlin on 11 February 2006 as “madness”^{xlv}. The trade union very strongly lobbied also against the end to national enforcement of local labour standards, against the coverage of temporary work agencies in the directive as well as broader exemptions from its remit of public services, especially health and education. The German government proved quite open to these concerns and assumed a deeply sceptical stance. Even the employers were concerned about possible negative ramifications regarding national labour and health standards^{xlvi} and accepted that though the general impetus of the directive was desirable, certain “contradictions” regarding the rights of posted workers seemed to exist and needed to be “clarified”^{xlvii}.

The principle of origin which attracted pronounced criticism throughout Europe, was directly criticized by the Austrian, German, Swedish and French governments and contributed to the negative results in the 29 May 2005 French referendum on the European Constitution. During the debates in the European Parliament it was this point again, which led to the most heated exchanges, with an eventual compromise between the major two groupings consisting of substituting the expression with the term “freedom to provide services”. The compromise was of high political significance, essentially signalling an end to the original goal of home country rules. The amended proposal was presented by the Commission on 4 April 2006, containing thousands of minor amendments, notably re-instating the right to conduct

national controls of working conditions and wages. The final result is the Directive on the Single Market (2006/EC/123) to be implemented into national law by 28 December 2009.

5. Implications

LSP proves politically contentious because it is perceived by some as undermining national sovereignty, creating islands of foreign law, promoting wage and social dumping and unfair competition between companies posting workers temporarily to high wage destinations paying home country wages and those bound by local standards. The nightmarish vision of a downward spiral and a neoliberal Europe in which shell companies registered in Lithuania post workers to Copenhagen, Stockholm or London was invoked by the unions during the long-winded political battle surrounding the Bolkestein directive.

Employer associations generally welcomed the new services directive, but many expressed concerns over a distorted and unfair competition from low wage locales and, with the exception of Ireland, henceforth did not attempt to defend the home country principle originally embedded in the Bolkestein directive. In Ireland, a slightly organizationally superior employer association managed to shape the official position towards the directive.

At the national level, the LSP has also unleashed a number of political conflicts, undermining existing arrangements and national response strategies. The EU liberalizing impetus and recent ECJ rulings on LSP therefore undermine national labour market regulation and politico-economic governance. However, in subsequent attempts at national re-regulation, new equilibria could be created, as in Germany and

Ireland. In these instances, organizational characteristics and access to government are crucial variables in accounting for the different policy outcomes. In the Irish case, a business-friendly compromise emerged, which proves face-saving for the union and avoids the wholesale import of foreign wage levels and working conditions. In Germany, currently planned legislation will permit sectoral minimum wages, nominally requiring the consent of both employers and unions, but permitting an override by the ministry in select instances. As such, it is a true compromise solution, with the political colour of future governments likely affecting any such override. Far from leading to convergence, European-induced liberalization thus interacts with different national level institutionalized political economies in Europe. In analysing these interactive effects, such differences create varying outcomes. The effects of a generally liberalizing impetus are thus far from uniform on the ground.

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^{xxxvi} In a 2003 speech, Bolkestein had declared: "The mistake that is often made is to think that after ten years the Internal Market is completed. This is to misunderstand the Internal Market. [...] It is a continuous process that will require constant attention."

In its consultative communication, the new Prodi Commission declared in 1999 that “Less progress has been made in the services’ sector. The Community’s objective must now be to eradicate any remaining obstacles to cross-border trade and to prevent the emergence of new barriers. Concrete work is now underway to address the problems identified in business surveys. These include problems with the application of the mutual recognition principle, the additional costs incurred by business in conforming with national testing and approval procedure; inadequate access to national procurement markets; misuse of national rules protecting the “public good” in order to restrict unfairly the cross-border provision of services. Many of these weaknesses were identified in the Single Market Action Plan as needing further attention.”

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