

Setting Wage Floors in Open Markets - Europe's Multilevel Governance in Practice

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1. Introduction

The aim of this paper is to account for the variation in the responses, at the European, national and sectoral level, to the challenges posed by deeper integration of European markets. In particular, the paper analyses how member states of the European Union (EU) or European Economic Area (EEA), have responded to union demands calling for the establishment of an effective wage floor in view of the challenges posed by the freedom of movement for workers and freedom of establishment and provision of services.¹

Our analysis has some self-imposed limits. Firstly, in the choice of issues. Although embedded in an analysis of the impacts of other steps in the European integration process, in particular the Single Market Act (SEA) of 1986 and the Maastricht Treaty of 1992 establishing an Economic and Monetary Union (EMU), we intend to deal mostly with the effects of migration and posting of workers, and the regulatory responses, as witnessed during the 1990s and 2000s, and mostly related to the re-uniting of the eastern and western halves of Europe and the EU Enlargements of 2004 and 2007. This also defines, secondly, our time frame. We compare the challenges and responses of the early 1990s, when the effects of deeper market integration, the EMU decision and the immediate consequences of the lifting of the Iron Curtain became apparent, with those of the second half of the 2000s, after the recent EU enlargements. Thirdly, we have limited our analysis to the effects on the host countries, without considering what migration has done, or might do, to labour relations and unions in sending countries (see, for example, Kaminska and Kahancova, 2011). Fourthly, we have limited our comparative analysis to host countries located, roughly, North of the Alps and East of the Oder-Neisse, comprising Austria, Belgium, Denmark, Germany, Finland, France, Ireland, Iceland, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom.² Arguably, these are the “rich” EU / EFTA states with the highest labour standards, wages, and social protection systems, that are most affected by labour migration and posting of workers originating in Central and Eastern Europe.³

¹ “Freedom of movement for workers shall be secured within the Union (Art 45, ex 39 TFEU)”; “restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State. Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings (Art 49, ex 43 TFEU)”; and “restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended (Art 54, ex 49 TFEU).”

² We have omitted Luxembourg mostly for reasons of comparability given its large non-resident workforce.

³ Although a claim can be made that legal and illegal migration from Bulgaria and Romania, the Western Balkans and even some areas of the former Soviet Union has been directed towards Southern Europe.

Reflecting differences in union power and union presence, as well as differences in traditions of collective bargaining, industrial action and state intervention, and the capacity of unions to build coalitions, we expect policy variation in national and sectoral responses. This variation should show both in the methods used to establish and enforce a wage floor, and in its degree of coverage and success.

We do not expect similar responses or convergent outcomes, and we should beware of the ‘determinism’ of predicting ‘path dependent’ answers that will be congruent with established ‘traditions’ or a particular ‘national model’. We should be prepared for changes, even surprises, based on the increasing interdependencies of Europe’s economies and growing possibilities for cross-national learning at all levels, within multinational companies, unions and government agencies. One of the key themes in Crouch’ landmark analysis of the different state and law traditions in European industrial relations (Crouch 1993) was that a similar external shock, such as opening the borders to foreign competition or a sudden rise in labour migration, is unlikely to produce similar responses. In fact, one should expect different responses. However, this does not mean that differences stay the same. Depending on the success or failure of responses, shifts in power and dominant coalitions, as well as the extent of cross-border mobility of labour and services, and perhaps learning from each other, countries, or rather the actors within countries, may change course and bring in elements that seem ‘alien’ to their ‘tradition’ or ‘model’ of industrial relations or collective labour law. The result may well be a ‘revised diversity’ (Crouch 1996). We will argue that revision of diversity applies to our case.

2. Market and monetary integration, and Labour’s responses

As mentioned before, we believe that the analysis of attempts to establish effective wage floors in view of the challenges posed by the freedom of movement for workers and freedom of establishment and provision of services in the EU cannot be isolated from the challenges that resulted from the maturing of the “Europe 1992” and EMU initiatives (SEA 1986 and Maastricht 1992). With these initiatives – to create a Single Market and a Single Currency – the European Union changed its trade and monetary regime.

The SEA1986 moved significantly beyond Treaty of Rome by forcing member states not only to remove non-tariff barriers to trade but also to eliminate domestic policies that inhibited intra-Community competition. Opening up their markets to each other was seen as a way to reduce regulation and making Europe fit for global competition. In the judgment of Peter Hall, the SEA 1986 “ratified a ‘move to the market’, that was a reaction against the poor economic performance of the 1970s and the activist state intervention associated with it” (Hall 2007:63). This had become politically possible because of a confluence of liberalization preference of the governments of Britain, Germany and France (Eichengreen 2007; Moravcik 1998). There was a remarkable ideological entrepreneurship of the European Commission, which “perceived itself as an agent of deregulation (Eichengreen, 2007:345) and presented the market as an answer to Europe’s underperforming economies and Europe’s stagnating integration process. As a result, EU member states face a supranational agency – Court and Commission pulling on the same side - that puts continuous pressure on member

states to deregulate protected markets, eliminate industrial subsidies, and promote free flows of capital” (Hall 2007: 65).

Add to this the structural reforms that are the consequence of the decision to create a monetary union among a group of rather diverse economies, in terms of performance, labour market regulation, wage setting, employment protection and public sector management. With no provisions for redistribution and very limited migratory streams, and with each member state having lost the control over monetary and, partly, fiscal policy, the adjustment has to come from the supply side, through policies increasing the ‘efficiency’ of the markets for labour, services, capital and goods (Eichengreen, 2007; Jones, 1998; 2004).

The changes and decisions of the early 1990s embodied both promises and threats for Labour, and each was surrounded by many ambiguities and uncertainties. Would they bring more growth, as suggested in various Commission and expert reports? Higher employment levels and more cyclical stability? Less employment protection and more job insecurity? Regulatory competition with a downward pressure on wages and standards? With few and minor exceptions, Europe’s mainstream labour (Social Democratic) parties and trade unions have supported both SEA 1986 and the Maastricht Treaty, judging the advantages bigger than the threats. At the same time they have strived for social policy corrections and compensating measures, both at the European and the national level.

Market and monetary integration changed the fundamentals for labour. This is how two well-known American labour economists and labour relations experts saw it at the time: “The state’s power to limit non-union operation within its borders as well as to establish nontariff barriers to imports, to restrict immigration, and to impose wage and price controls has acted as a dike behind which unions have been able to set wages and other terms of employment that are greater than what they would otherwise have been.” (Ulman and Reder, 1993: 38). They drew a parallel with the decline of organized labour in the United States and warned that “the elimination or attenuation of this power could beset the European unions with the same dilemma U.S. unions have faced: either to create more highly centralized structures able to cope with unified markets (as the U.S. unions were able to do in the nineteenth century and again in the 1930s) or, lacking that capacity, to suffer decentralization and organizational loss (as happened to the U.S. unions in the 1970s and 1980s under the impact of legal deregulation and intensified international competition).” (ibid.).

European trade unions took a less dramatic view of market and monetary integration and they did not set all cards on centralization and strengthening their European-level organizations and policies (Visser and Ebbinghaus 1992; Dolvik 1998). Instead they kept playing their different national cards. The fact that, Britain (and Ireland) being the main exceptions, these countries were co-ordinated market economies (Hall and Soskice 2001) with a strong role for both unions and employers’ associations and high levels of social protection, as well as the fact that cross-border labour mobility was miniscule compared to the U.S, may have directed union action towards attempts to repair at the national level whatever was lost, or threatened, at the European level. Moreover, what deep integration would actually imply for national labour relations was not at all clear.

The single market initiative contained many ambiguities and, like most leaps forward in European integration, the SEA 1986, like the Maastricht Treaty six years later, had only been possible by shifting difficult decisions to the future (Menon 2008: 51). In particular, the

opening of the market of services was put off to an undefined future (Eichengreen 2006: 344). Similarly, the full force of the ‘delayed’ agenda’s of structural reform and increased labour market flexibility, inherent in the EMU set-up, became apparent only in the second half of the 2000s and during the recent financial and economic crisis. At this time Labour also felt the more intense pressures of labour migration and cross-border sub-contracting following the 2004 and 2007 enlargements. The integration of ten ex-Communist, very poorly performing economies, still in the process of reform, with wage levels averaging 1/5th to 1/7th of Germany, and medium to high levels of unemployment, was bound to produce significant migration streams – five to ten percent of the population in working age - although this was downplayed in Commission documents. In addition to relocation of business and in combination with labour market flexibilization, with a greater share of temporary work and a liberalized market for temporary work agencies, this made defending an effective wage floor role at once more urgent and more difficult.

In the unions’ response to deeper European integration we can, in fact, discern three patterns. The first has been based on political lobbying and coalition building in the pursuit of a stronger and more harmonized minimum floor of rights and social protection throughout the European Union. The second pattern is a variant, still seeking further centralisation, but manifesting itself through the promotion of cross-national coordination and collective bargaining, mostly at the level of sectors and companies. The third pattern goes in another direction and has relied on political pressure, collective bargaining efforts, and coalition building at the national level in an attempt to restore (to the national level) some of the lost or disappearing national capacity to define policies and standards. Clearly, the three patterns or strategies are not mutually exclusive. Indeed, success of building a European floor of rights may help to maintain the integrity and viability of national systems and it may include elements that facilitate transnational bargaining and coordination. On the other hand, if successful, the third strategy tends to lower the incentives for the second strategy, and decreases the chances of success of the first strategy. If standards and policy capacities can be successfully defended at the national levels, unions have less reason to invest in transnational bargaining (cf. Martin and Ross 1998). Moreover, the third strategy, based on national capacities and coalitions, is likely to produce different results in different countries; success in some and failure in others will increase the already difficult task of bridging interest differences and finding common ground for carrying on with strategy one.

The three responses or strategies also differ in the type of external supports and coalition efforts. The first strategy relies most on state support, both at the European and national level, for bringing about the coalitions needed for gaining the necessary qualified majority in the Council and support of the Parliament. It also builds most clearly on a coalition with the Commission, as the agency that has the right of initiative in EU legislation. As a secondary support and using the social dialogue proceedings of Art 154-155 TFEU, negotiations with employers may also yield results and this may even happen in absence of Commission and Council support, but the reality is that employers will only move under political pressure. For the national strategy the unions need most of all effective coalitions with employers. These can be facilitated or supplemented by the state, or indeed develop under a shadow of hierarchy. The strategy of international bargaining and coordination

depends mostly upon cooperation among unions in different countries and has so far received little help from either employers or governments.

In this paper our aim is to analyse the diversity, and effectiveness, of the third or national response. However, as these responses or strategies partly interact, helping or hindering each other, we will first say something about the first and second response, creating a European floor of minimum rights, and transnational coordination and bargaining respectively.

3. The emergence of a European regime of minimum rights and standards

The political path

In the 1990s, facilitated by the conditions for qualified majority voting as defined in the SEA 1986, the Maastricht Treaty and the annexed Agreement of Social Policy, a number of long-standing social policy issues could now be legislated in the form of EU Directives. The issues of wages and collective action were, in accordance with the subsidiarity principle, kept apart (art 153.5 TFEU). In addition to regulations on health and safety for regular and fixed-term employees, there were EU Directives on the provision of contractual information (1992); revision of the collective redundancies directive (1992); workers' maternity rights (1992); working-time (1993); consultation and information rights in transnational undertakings (1994); posted workers (1996); parental leave (1995), part-time work (1997), fixed-term employment (1999). Some of these directives have been revised since or are under re-negotiation, as is the case with the much contested working time directive. After 2000 EU legislation in the social and labour domain slowed down, with a revised (or consolidated) directive prohibiting discrimination (2000); information and consultation in national firms (2002); and temporary work agencies (2008). Some of these, i.e., parental leave, part-time work; fixed-term employment and temporary work agencies, are based on framework agreements concluded by the European federations of labour and capital, as foreseen under Articles 154-155 TFEU.

The impact of this legislation has been contested. The directives of the 1990s could only pass the Council after the Commission gave up on harmonization and accepted a more flexible approach, and after diluting many of the original proposals (for instance on European Works Councils; part-time and fixed-term employment, and working time) in order to overcome the opposition of employers and stalwart Member States. The original proposals concerning part-time, fixed-term, and agency work had been intended to place curbs on these forms of 'atypical employment', while ensuring equal treatment with full-time and regular workers (Addison and Siebert 1993).

According to Menon (2008: 119) 'many EU 'social policies' are little more than declaratory initiatives intended to belie the impression of market creation as a neo-liberal, deregulatory affair'. Wolfgang Streeck (1995) has emphasized the 'voluntarist', non-binding character of many EU institutions and provisions, and holds that, at best, EU legislation has helped to maintain, or expand, national-level institutions if, and only if, the key actors wanted to continue to play by the rules. From his British perspective, William Brown comes to a much more positive conclusion, calling the EU achievements in social policy "partial but

impressive”, adding that Europe’s labour markets “would surely be a harsher place without the EU’s legislative innovations” (Brown, 2000:34). He mentions in particular legislation to prohibit sex discrimination; improvement of the employment terms of part-time and fixed-term workers; health protection at work; protection of migrants; and consultation and information of workers. Paul Pierson calls European social policy a “saga of high aspirations and modest results” (Pierson 1998:129) and this is surely true for Europe’s machinery for social dialogue, but in his view “the combined impact of what has been passed is ‘not trivial’” (131). Nor is it always based on ‘lowest common denominator’ policies, for instance in the case of health and safety.

Do these directives establish a European floor of rights and standards? In some areas (discrimination, health protection) the answer is affirmative; in most other areas this depends on the implementation and enforcement at the national level, or – as in the case of the posted worker directive – on the interaction with the relevant national regulations, be it the law or the organization of collective bargaining. Abandoning the harmonization perspective (except in health and safety regulation, and on discrimination) has made European standard setting a multi-level game, requiring action and regulation at both European and national level.

Moreover, the outcome is not stable, as many things can change. To begin with, and demonstrated by the case law of the ECJ, European integration is an ambiguous, double-edged process (Pierson 1998). The direct impact of positive EU legislation on social policy can be, and has often been, overshadowed by Court decisions “striking down features of national systems that are deemed incompatible with the development of the single market” (Pierson 1998: 140). This kind of ‘negative integration’ (Scharpf 1999) has become, so Pierson (1998: 140), an “increasingly dominant” influence in welfare state (pension, health care, social security) domains. With the Laval Quartet it has now also reached the core of labour relations, the right to collective action. Corrective political action at the European level has turned out to be extremely difficult, with blocking minorities in the Council and within Europe’s main employers’ associations. Hence, the remedies must be found at the national level, even if these are difficult to find, temporary and fragile. According to Pierson (1998:145) the losses in autonomy and sovereignty of member states and national actors have “occurred without member states paying a great deal of attention” (1998: 145), but this appears to have changed, at least since the negative referendum results in a number of countries in recent times.

One can easily sum up the reasons why EU legislation on social policy (‘positive integration’) is weak: different interests of richer and poorer countries; the high hurdles for passing legislation in the Council which makes it easier to block changes in social policy than to enact them; limited financial resources, which excludes significant redistribution compensating for expensive social policy initiatives; relying on member states’ often poor capacities of implementation and enforcement; the weakness of the social democratic forces most interested in a strong ‘social dimension’; the declining power of the unions, as well as many differences between them; and not least, the difficulty of harmonizing widely divergent and deeply institutionalized national social policies (Pierson 1998; Scharpf 1999; 2002). What Pierson writes about welfare states is not less true for labour relations and collective labour law: “In contrast to those pushing for the development of national welfare states in the nineteenth and early twentieth century, EU actors find that a great deal of the ‘space’ for

social policy is already occupied. As a part of nation building and democratic development, these policies are moreover politically salient. Consequently, EU initiatives are most evident around the edges of these national cores, in policy domains that are unoccupied or that the integration process renders particularly fragile (Pierson, 1998:129).”

EU-level social policy – and EU-level labour relations – tend to be built around a ‘hollow core’ – the metaphor is Pierson’s. In other words, the action is elsewhere, not in the centre, and whatever happens or is decided in Brussels is strongly conditioned by member states and decentralised actors and interests. Innovations in employment contracting come from below, in new practices of international sub-contracting, dependent self-employment, pay-rolling, and this is surely promoted by fiercer competition and market integration. Labour legislation, both at the national and European level, has a hard time catching up. Especially in the domain of cross-border mobility of services and labour, market-making is way ahead of market-correcting. With legislation on these matter stalling at the European level, or directives that leave important gaps, either between them (as in the case of the work agency and the posted worker directive) or in the definition of who is a posted worker, the result is that the policies that originate at the European level are increasingly prohibitions and prescriptions that are court-driven (‘negative integration’), rather than based on political actions and compromises (‘positive integration’).

Transnational bargaining

We can be much shorter about the second response, transnational bargaining, because there is much less to report and what has been achieved following this path has very little bearing on the issue of establishing a minimum floor of rights or dealing with issues of migration and service provision. Of course, one should mention in this context the coordination regime that was established, already forty years or longer ago, for migrant workers and their social insurance rights, but that regime was established between member states with little direct involvement of the unions.

Transnational bargaining can happen for different jurisdictions – a multinational company, a particular sector, or cross-sectoral; it can involve all EU member states, as is the case under the Social Dialogue (art 154-155 TFEU), but also, outside the Treaty, for a smaller or larger subset of countries. For instance, framework agreements in multinational companies are frequently negotiated globally, often with the European union federations in a leading position.

Through the Treaty provisions (Art 154-155 TFEU), Europe’s trade unions and employers’ associations received the right, not only to be consulted on social policy legislation, but also to become, in principle, co-regulators of the European labour market by means of negotiating agreements between them. These agreements can be implemented either by jointly asking the Commission to start a process to convert these agreements into EU legislation (as happened in the case of the Parental Leave, Part-time Work, Fixed-Duration and Agency Work Directives, and for a number of sectoral agreements, mostly in transport), or by choosing implementation in accordance with ‘the procedures and practices specific to management and labour and the Member States’. The second method has been used since 2000 for a number of issues: telework (2002), work related stress (2004), sexual harassment (2007) and inclusive labour markets (2010); there are also a number of sectoral

agreements, mostly on issues of training, certification and health and safety standards, for which this route has been chosen. Following the second method unions and employers are more 'autonomous' in relationship to Council, Commission and Parliament, but their dependency on national actors (affiliates, but in many cases also governments and parliaments) increases if they are to guarantee effective regulation covering all employees, as is required by the Treaty with the Commission (and the Parliament) claiming a monitoring role.

The fact that these negotiations have resulted in EU framework agreements, to be implemented by the social partners themselves or through EU legislation, has been interpreted as the start of EU collective bargaining. However, it is more akin to standard setting by means of legislation. Surely the second method of implementing EU-level agreements, using 'the procedures and practices specific to management and labour and the Member States', is more promising in this respect, since it raises the responsibility of the negotiating parties for the proper implementation and enforcement of what they agree to, and thus increases the interdependency between EU-level and national organizations, and between the social partners both at EU and national level.

We note that EU-level negotiations, at the cross-sectoral and sectoral level, have so far produced nothing in the domain of labour migration or posting. EU employers and trade unions failed to agree on any measures to repair legislation on the posting of workers after the Laval verdict. There is more cooperation between EU-level unions and employers' associations in the construction sector. They reached an agreement, and jointly and successfully lobbied the European Parliament, Commission and Council for the 1996 Posted Worker Directive, and post-Laval they reached a joined opinion about regulatory improvements. There are some cooperation agreements between unions from sending and receiving countries on defending the rights of migrants, and exchange of information, but the dominant picture is lack of cooperation and of unions working at cross-purposes or even pitted against each other, for instance in their appeals to the court in the Laval case, or in the disputes at Irish Ferries and Lindsay.

Attempts at wage coordination, meant to defend real wage growth against beggar-thy-neighbour wage policies, have evolved in the context of the EMU. Already in 1993 the European metalworkers federation started with some activities in this directions, mostly involving the German unions and those in neighbouring countries (Traxler 2010). In the past two decades the EMF has stepped up its efforts, but the best it can do is no more than ex-post coordination of policies set by its national affiliates. Its efforts have not prevented a decade of severe wage restraint, based on widespread concession bargaining in the metal sector, in the leading economy, Germany. This has actually put more pressure on standards in other countries, where the demand for concession bargaining through opening clauses or derogation from standards has become widespread (and is now also voiced in the European Commission, especially through ECOFIN reports and recommendations).

Finally, there are quite some bargaining activities going on within multinational companies, involving European works councils and, more recently, the European union federations. Pressure on MNCs to ensure compliance with core international labour standards has resulted in the conclusion of a growing number of international framework agreements, the implementation of which at local level raises many challenges

(Riisgaard, 2005; Niforou, 2011). The tendency of some EWCs to negotiate transnational agreements with MNCs has also raised questions of mandate, and in some cases it has resulted in conflicts with the unions (Müller et al., 2011). Recently, the merger of two MNC's in France provoked an international agreement about restructuring, with a social plan for workers to be relocated internationally. This is the only example of such agreements remotely dealing with international staffing and migration, in this case of core workers with high levels of protection.

In its Social Agenda 2006-2010, the European Commission proposed an optional European framework for transnational collective bargaining, providing for the possibility of negotiations both at the company and sectoral level. However, consultations within the Social Dialogue procedure soon produced deadlock, with the trade unions judging the Commission initiative useful and the employers arguing against any governance tool that facilitates bargaining above the national level. The Commission initiative ran counter to employer preferences favouring further decentralisation of collective bargaining and less regulation of industrial relations at any level. The proposal has since been withdrawn (Keune and Warneck 2006).

4. Strategies to maintain national wage floors

A central rationale of national trade unions and collective bargaining has been to establish a floor under competition in national labour markets and prevent competitive underbidding (Commons 1912). When the labour market is widened, either by extension of its outer boundaries or by abolishment of barriers to labour migration, such national wage floors can become subject to erosion and the effective coverage of collective agreements may shrink. In instances of large scale flows of labour migrants and sub-contractors – which historically have proven difficult to organize – the national collective agreements will cover only parts of the actual labour market. The successive enlargements of the EC/EU in the 1970s and 1980s extended the territorial scope of the potential labour market, and especially the accession, in 1986, of Spain and Portugal, with wage levels only half of those in Northern member states, raised many concerns among unions. Around that time most EU countries were suffering from high unemployment. For precisely this reason, the “freedom of movement of workers” was subjected to a transitional regime, with a maximum of seven years, for both Spanish and Portuguese workers. (It was this regime that was rediscovered, and used, in the 2004 and 2007 enlargements.). However, fears of massive migration to the North were ill-founded and actual labour mobility was – except in certain border regions and high-end occupations – so limited that national regimes for wage setting remained largely unaffected. As shown by Flanagan (1993) internal EU migration streams had been very small in spite of consistent and significant differences in the real value of wages (including fringe benefits) across member states; these streams had become smaller after the foundation of the European Community in 1957; they had at all times been outpaced by migration from outside the Union (especially from former colonies, and from Turkey and North Africa). Moreover these streams appear unrelated to the removal of legal

impediments to free movement between member states within the Union. Instead, they tended to reflect the demand for (unskilled) labour, and the migration (and family reunion) policies of host countries such as Germany, France, Britain, Belgium and the Netherlands.

There are reasons to believe that this time was different. Soon after lifting of the Iron Curtain in 1989 and German re-unification there was noticeable migration into building sites in Berlin, Paris, and Brussels. This conflated with the rise of independent contractors, and workers posted by subcontracting firms from other member states, especially from Ireland, Britain and Portugal, where unemployment was high. This became an issue especially in the building industry. Posting of cheap labour by foreign sub-contractors prompted renewed attention to the old issue of regulating competition in the labour market. In Austria, France, and Germany, national posting legislation was adopted, building on old schemes for extension of collective agreements, eventually paving the way for adoption of the EU Posting of Workers Directive in 1996 (EC 96/71). With the Eastward enlargements in 2004 and 2007 the issue attained increased salience, also because the transitional arrangements that allowed to curb the freedom of movement of workers from the new member states for a maximum of seven years, may have re-directed labour migration into other channels, including sub-contracting and posting. Against their promises but under pressure of a shifting public opinion, amidst fears of rising unemployment, 12 of the 15 ‘old’ EU member states (all except Britain, Ireland, and Sweden) applied these TA’s. Germany and Austria did also negotiate additional limits on posting of workers.

Since the establishment of the Single Market in the early 1990s, the issue of creating, maintaining, and enforcing effective wage floors has thus become a pivotal and contested subject in national industrial relations in the “old” EU/EFTA Member States. This has been accentuated by domestic transformations of the labour markets, where partial deregulation, trade union decline, shrinking collective agreement coverage in some countries (see Table 1), company restructuring and the rise of flexible employment (fixed duration contracts; agency work) since the 1990s have given rise to growth in low paid, atypical and sometimes precarious work. This has at once made the union’s task of maintaining an effective wage floor, especially in low-skilled sectors and for low-skilled occupations, more urgent and more difficult.

In this section we will review how Member States have responded to the trade union demands for re-establishment and bolstering of national wage floors with special emphasis on developments in the wake of the 2004 enlargement. By what means have the different Member States responded to trade union demands, and what have been the main factors conditioning the resulting responses, or lack of so?

4.1 Establishment of national posting regimes and the role of labour and business

In his book “Varieties of Capitalism and Europeanization. National Response Strategies to the Single European Market” (2006), Georg Menz analyses the role of the social partners in establishing national posting regimes in the wake of the single market initiative and adoption of the Posting Directive in 1996. This initial phase was, as indicated above, driven by expectations of rising labour migration and sub-contracting in the Single Market from

new Southern Member States, which in the 1990s seemed to be confirmed by the surge in posted workers during the construction bonanzas in Paris, Brussels, and Berlin.⁴ In the mid-1990s migrant labour accounted for 17% of all construction workers in Germany (Kahmann 2006, Bosch & Zülke-Robinet 2000). At the sites, Portuguese, Irish, British workers and workers from Central and Eastern European (CEE) countries posted by foreign sub-contractors were offered wages and working conditions way below the going rate in the host-states.

Inspired by the Rush Portuguesa verdict of the ECJ in 1990 (see Evju and Novitz, this volume) and strong influx of posted Iberian workers during a short-lived building boom in Paris, the French government, supported by the employers and labour organizations, in 1993 enacted a law which extended all French labour and social regulations, including collective agreements that were declared generally binding, to posted workers in all sectors (Menz 2006: 101,103). A parallel move was instigated by the ÖGB unions in Austria 1993, where the prospect of EU membership caused concern about a downward spiral of wages while the lifting of the Iron Curtain had made the country a gateway for foreign labour and entrepreneurs from South-Eastern Europe. At the same time a joint delegation of the German trade union IG Bau and construction employers approached Labour Minister Norbert Blüm in the Kohl government, calling for legislative measures to bring low wage competition to a halt. After lengthy negotiations, the unions had to give up their demand for “equal pay for equal work” and accept adoption of a German Posting Law (*ArbeitsnehmerEntsendegesetz*, AEntG) applying to construction, according to which the two lowest wage brackets in the collective agreement in construction could be extended to posted workers (Kahmann 2006). While the French employers and unions embraced the Government proposal to extend the entire French *social acquis* to posted workers in all sectors, and a similar response was seen in Austria, resistance from German employer federations in other sectors, spilling over to the confederation BDA, and from key actors in the Kohl government resulted in a much more limited regime in Germany. As shown in the chapter by Evju and Novitz (this volume), the emerging European regulation (PWD) steered a somewhat unclear course between these national antecedents.

Applying an organizational power model where the degree of centralization, internal cohesion, representativeness, and access to the government is transferred into relational power, Menz suggests that trade union influence on the national response strategies was critically dependent for their ability to build broad coalitions with employers (Menz 2006: 64-65). The organizational strength of trade unions and power relations between different sectoral associations in the employer confederations, together with the respective traditions for centralized vs sectoral coordination with the state, and possibly the ideological leaning of governments, would thus seem essential for unions’ ability to shape national responses. One would also expect that the extent of exposure to low cost competition through posting affects the receptiveness of employer and state actors, which is likely to be associated with proximity to main countries of origin, the sectoral structure of the economy, and cyclical

⁴ Reportedly, there were 165-200,000 posted construction workers in Germany in the mid-1990s (Menz 2006: 107).

factors influencing the demand for and influx of posted labour. Such factors were clearly conducive to the swift adoption of posting regulations in Austria, France and Germany.

In the initial phase (1990-2000), the trade unions were clearly instigating the national responses in many countries, but their success in influencing national implementation of the Posting Directive in 1999 varied. Countries such as Austria, France, Belgium, and Finland applied a maximalist interpretation of the Directive, aiming for equal treatment, whereas the Netherlands, like Germany, limited implementation to the nucleus of conditions in article 3.1 of the Directive and extended minimum wages in construction. In Sweden and Denmark, the social partners rejected, in line with a longstanding tradition, any notion of state interference in wage setting and relied on their strong autonomous systems of collective bargaining, underpinned by trade union rights to launch industrial action to pressure foreign service providers to sign collective agreements (Dølvik and Eldring 2006). In the UK, where the Major government had opted out of the Social Chapter and opposed social policy legislation from Brussels, the New Labour government, elected in 1997, had decided to 'opt in'. The conservative government had in 1993 abolished the last vestiges of sectoral minimum wage setting, the Wage Councils, but in 1999 the New Labour government established a statutory national minimum wage. This was followed soon after by the implementation of the Posted Worker Directive, with the sweeping statement that the entire Labour code would apply to all workers in the UK (Novitz 2010, Evju & Novitz, in this volume). Also in *Ireland*, which introduced a statutory minimum wage in 2000, the Directive was implemented by simply extending the Irish Protection of Employees Act 2001 to eligible workers (Doherty 2011: 81).

With the adoption of the Posting Directive in 1996 and the fading of the building booms, attention to the issue of posting waned until the Eastward enlargement of EU in 2004 (Cremers 2007). The core issue during the final negotiations of the Accession Treaty, was free movement of workers and the conditions for erecting transitional arrangements. Against their initial promises and to the great disappointment of the new member states, 12 out of 15 old EU member states decided to apply TA's limiting the full freedom of movement for workers from the member states that joined the EU in 2004. Austria and Germany had obtained limits on the freedom of service provision as well. But for the other member states (except the UK, Ireland and Sweden which allowed freedom of movement for workers from CEE countries right from the start) the unintended consequence of the TAs may have been that more people from CEE countries found their way into their labour markets as posted workers.

4.2 Post-2004 developments in posting and labour migration

The enlargements of the EU/EEA markets for labour and services in 2004 and 2007 were bold moves. Nowhere before had politicians agreed to allow free movement of not only goods and capital but also services, citizens and workers between countries with such huge welfare gaps. Reneging on their promises, all the old Member States except Ireland, the UK, and Sweden, hastily drew up transitional arrangements (TAs) to limit free movement of workers from the CEE8+2. These TAs varied from strict quotas in Continental countries to virtually free movement in Denmark and Norway, provided that

CEE8+2 workers were ensured equal conditions.⁵ Regardless, to the accession countries these TAs were deeply disappointing, indicating that they were still regarded as secondary European citizens. As mentioned, no transitional arrangements were, except in Austria and Germany, allowed for the free movement of services. From day one cross-border posting of workers therefore became the easiest channel for Westward labour migration. This gave rise to a complex pattern of labour migration, where differences between the various legal categories and channels for migration gave rise to creative company adjustments of contracts and ‘regime shopping’ between regular movement of labour, posting, hiring through temp agencies, and self-employment (Visser and Dølvik 2009).

The transitional arrangements notwithstanding, labour mobility from the CEE8+2 grew rapidly. Credible data are only available for those moving under the auspices of free movement of labour and as employees of host-country firms are therefore counted in their registries. Relying on Labour Force Survey data, the Commission consistently underplayed the issue. Up till the financial crisis it estimated the number of new migrant workers from the CEE8+2 at 1.1 million in 2008 or less than one percent of the labour force in most recipient countries (EC, 2008a). LFS data are, however, ill suited to capture temporary labour migration and do not cover posted workers and self-employed. In major sending countries, Poland and the Baltic states, various estimates suggest that 5-10 percent of the 20 million labour force had moved abroad to work (World Bank, 2007; Dølvik and Eldring, 2008; Kaczmarczyk and Okolski, 2008). Romania and Bulgaria, with more than 30 million inhabitants, indicated that around 10 percent of the labour force left after the visa requirements were lifted in 2003 (Financial Times, 9/11/2007). In the main receiving countries in Northern Europe, the UK had by 2008 registered an inflow of more than 800.000 labour migrants from the CEE8, whereas 3-400.000 had moved to Ireland, several hundred thousand to Germany, and some 150.000 to Norway (Dølvik and Eldring, 2008). Brücker *et al.* (2009) thus estimated that nearly 4 million people from EU8+2 had moved to Western Europe in 2008. On top of these numbers came unknown flows of posted workers, self-employed service providers, and unregistered labour.

Whatever the precise figures for movement of workers, they were much higher than officially expected even in countries with transitional arrangements.⁶ Although much of the flow were short-term and circular, growing shortages of labour and skills were experienced in the sending countries, while most of the often young and well educated migrants worked in low paid, unskilled jobs in the West (Kaczmarczyk and Okolski 2008). Clearly, the East-West gap in wages, exchange rates, and employment opportunities during the boom gave rise to stronger migratory dynamics than previously seen within the EU. For the migrants this opened new opportunities to earn a living, for the sending companies it opened new business opportunities, and for the receiving

⁵ The transitional arrangements expired 1 May 2009 but were prolonged to 2011 in Austria and Germany, and several countries have prolonged their restrictions for Romania and Bulgaria, which should have been repealed by 1.1.2012, except in Austria and Germany.

⁶ Reports commissioned by the Commission estimated around 3 million during the first 30 years and around 300,000 annually the first years (Boeri and Brücker 2005).

countries it contributed to higher growth and lower inflation. The economic crisis tended to slow outflows, but the severe fall-out in several sending countries, such as Latvia and Romania, strengthened the push factors and seemed to sustain out-flows. Eventually the debt-crisis in the euro-zone has spurred rising out-migration from hard hit Southern countries. In major destination countries, like the UK, Ireland and Spain, labour market retrenchment, in particular the huge drop in construction, in the wake of the financial crisis reduced demand and probably encouraged flows of return and transit migration – but how many that chose to stay and rely on earned rights in the host country or were hired into unregulated work are unknown.

Especially where restrictions on the free movement of labour applied, much of the East-West labour mobility went into alternative channels such as posting, leasing of workers and self-employment. As registration schemes are deemed “disproportionate restrictions” on the freedom to provide services, no viable European statistics for posted workers exist. The Commission, referring to registered numbers of E101 social insurance formulas that people working abroad “shall carry with them”, has asserted that the flows from CEE10 are modest (EC, 2008a). According to a recent study by IDEA/ECORYS, 1,3 million E101 certificates were issued in 2007, of which 1,06 million reportedly related to posted workers (Commission 2011: 45-46). As proportion of non-nationals in the EU labour force this figure constitutes 18,5% and accounted for only 0,4% of the labour force in EU15. The main sender countries were Poland (21,8% of total number of registered postings), France (21.8%) and Germany (18%). The latter two were also the main receiving countries. Approximately half of the registered posted workers went into the services sector (in particular transport activities, financial intermediation, and business activities), while 46% of the certificates were issued for work in industry, in which construction accounted for roughly half (*ibid*: 46). The high share issued for skilled services may indicate a bias in registration towards high end jobs. During the financial bonanza 2005-7 the number of certificates rose by 24%, while the registered flows stagnated during the crisis 2008-9.

Experience in countries with compulsory registration of posted workers, however, suggests that the number of E101 formulas vastly underestimates the actual size of the flows of posted workers. In Belgium, 99,000 E101 certificates were registered in 2007 whereas the national database on notification of posted workers (LIMPOSA) indicates that the number was substantially higher – approximately 145,000 in 2007 and in 2008 more than 200,000 (Pacolet & De Wispelaere 2011: 23). In Switzerland the registered number increased from 93,000 in 2005 to 127,000 in 2009, implying that posted workers constituted 41 percent of all migrant labour while self-employed constituted almost 11 percent. Preliminary analyses of tax registry data in Norway indicate that the number of posted workers constituted almost half of the labour inflows 2004-2008 (Bratberg & Raaum 2012, forthcoming), fitting well with the Swiss figures. In 2010 roughly 45,000 posted workers were registered in Norway. On an annual basis that would equal ca 2,6 percent of total employment, but a study among Polish labour migrants in Oslo indicates that the real share of posted workers is considerably higher (Eldring & Friberg 2011). An employer survey showed that among the 35 percent of Norwegian companies in construction, manufacturing, and HORECA that had hired labour from EU8+2 over the

last year, 31 percent in construction, 21 percent in manufacturing, and 7 percent in HORECA had done this via sub-contractors and altogether 45 percent had done this via temp agencies (Andersen et al. 2010).⁷ Case studies in a group of main shipyards revealed that 50-60 percent of the workforce was CEE labour employed by foreign sub-contractors and temp agencies, while labour migrants only constituted a minor share of the in-house workforce (Ødegaard & Andersen 2011). A similar even more fragmented picture has been painted for French yards (Lefebvre, 2006). In Denmark, studies in the construction sector indicate that roughly 10 percent of the workforce in 2008 was migrant labour (Hansen & Andersen 2008). A study in Finnish construction and shipyard companies suggests that around 20% in the former and 40-50% in the latter was posted workers from Estonia (Lillie 2010). Earlier estimates suggested a posting share around 10-15% in construction in Germany and Britain (Lillie & Greer 2007: 554). In the Netherlands “zelfstandigen zonder personeel”, or independent services providers employed under a “work contract”, have been the fastest rising category even outside construction. Germany, where service mobility was still restricted, also saw a marked rise in self-employed EU8 workers (EIRO, 2008).

Whatever the correct numbers are, these figures indicate that the flows of posted workers represent a sizeable share of total labour migration and is considerably higher than the 0,4 percent of the labour force reported by the Commission. This underscores the point made in the (draft) Commission directive on enforcement of posting rules, that the importance of posting exceeds by far its estimated quantitative size (Commission 2012). Besides playing a crucial economic role in filling shortfalls and increasing the supply of labour in certain sectors and professions, it is an indispensable part of enhancing trade in services, and may, on the margin, have significant impact on evolving patterns of recruitment and terms and conditions of work for new hires in parts of the labour market.

The dynamics behind the rise in cross-border subcontracting are complex.⁸ First, most countries have over the past 15 years seen a general restructuring trend towards more project based organisations, concentration on core activities, outsourcing, and contract flexibility, leading to increased segmentation and sharper divisions between the labour market core and periphery (Emmenegger et al. 2012, Dølvik 2012, forthcoming). The growth in markets for sub-contractors provides openings for cross-border competitors and providers of labour services. Second, the East–West gap in labour costs pertaining to pay, taxes, employer levies and social charges – likely to be complemented by a growing South–North gap in the wake of the debt crisis – is a major economic incentive for clients, contractors and posted workers. Splitting the difference among them may be irresistible. With the growing logistical infrastructure provided by websites, cheap air-carriers and migratory networks, a mushrooming flora of agents, middlemen, and hiring-firms has grown. Due to the transitional restrictions on free movement of labour, posting was often the easiest and sometimes only channel for cross-border

⁷ It is unclear how many of these were employed by foreign sub-contractors and agencies.

⁸ It is likely that the numbers of posted workers and self-employed will decrease during the recession, as these are the costs that can most easily be cut without facing severance payments or dismissal proceedings, but this may constitute only a halt in an long-term upward trend.

mobility, encouraging also mock self-employment facilitated by letterbox firms. The restrictions also added to the distortion of competition between companies hiring workers directly and those relying on external suppliers of manpower, especially in labour intensive sectors where domestic restructuring had made access to cheap labour a key parameter of competition in many countries.

This has added to the domestic dynamics towards more fluid and flexible work practices in the lower ends of the labour market. Besides blurring the boundaries between different categories of external labour, this has made the demarcations between the national and international labour markets and between different categories of labour migrants more fuzzy. For a Polish worker going to London, Berlin or Oslo it is not uncommon to shift between temporary jobs with a firm or temp agency established in the host country, spells of self-employment, and short-term assignments for foreign sub-contractors, intermittent with periods of joblessness (Friberg 2011). As these categories are subject to different EU and national rules, information about labour and social rights is hard to comprehend.

During the crisis aftershocks, foreign workers employed by sub-contractors and temp agencies were usually the first to go, serving as an external cushion for the core workers (Commission 2011 q4). Under the slow recovery in 2009 and 2010, as much as 85% of all net employment growth in the EU came in temporary jobs. Even if this share fell somewhat during 2011, the interplay between domestic dualization, higher employment in the wake of crisis and austerity, and growing cross-border mobility seem likely to reinforce job competition in the increasing second tier of European labour markets. With changing staffing strategies in domestic companies, there is an obvious risk that the traditional institutions for national labour market regulation and wage setting will become ever more restricted to a shrinking core of skilled workers who are covered by collective agreements (Emmenegger et al. 2012).

Besides media stories about unequal treatment, exploitation and underpayment of foreign workers, companies' turn to sub-contracting of posted workers and other forms of regime shopping in order to boost flexibility and reduce labour costs have been subject to disputes and social tensions with sometimes ethnic undertones. The most known cases such as the disputes at Irish Ferries, Gama, Laval, Viking, Lindsay, and Pocheville have made their way to the news headlines, but under the radar working life is changing in ways that are hard to reign in for politicians and organized actors. One of the most visible attempts, however, is the trade unions efforts to re-establish national wage floors.

4.3 National responses to Eastward enlargement and the rise in posting

Variations in geographical proximity, growth, labour market conditions, and transitional arrangements implied that the recruitment of migrant labour from EU8+2 have differed markedly between the destination countries. Variations in the TAs and in the pre-existing posting regimes also implied that the incentives to hire posted workers and the temptation to evade national rules and wage floors have differed significantly. In this section we review the main responses to the trade union efforts to maintain or re-establish national wage floors.

The UK

In the UK no changes were made in the rules regarding pay and rights for posted workers in response to enlargement. Except in construction and certain public services, no sectoral collective agreements exist. Extension is only applied in the collective agreement for the National Health Service, where private (cleaning) contractors have to comply with the pay scales in the agreement (Grimshaw, Shepherd and Rubery 2010). Only one of five private sector employees is covered by collective agreements (CAs), bargaining takes place at the local (company) level. This implies that the wage floor for most posted workers is provided by the statutory minimum wage (5.80 pounds/0.x euros per hour). This is way below the going rate in construction, where most posted labour is located. As posted workers are not obliged to enlist in the British registration scheme, official figures concerning posting are hard to come by. An ad hoc Eurostat survey, however, indicated that the numbers were not insignificant, predominantly in construction, engineering construction, and agriculture (Hall, in Fitzgerald 2011: 168). In construction self-employment and temp agencies play a central role in the supply of migrant workers – currently attracted by the London Olympics boom -- whereas international sub-contractors have been more salient in several large engineering construction projects, such as at the Lindsay Refinery (ibid. 169). With statutory employment protection and minimum pay as the only regulatory framework in most sectors, enforcement is mostly left to various public inspectorates who are generally ill equipped for the task. However, certain innovative, coordinated enforcement approaches have been developed under the Gangmasters Licencing Act, leading to exposure of some bogus posting chains in the agricultural sector organized by Bulgarian temp agencies (ibid: 170). In construction and engineering construction, the unions have in the wake of the Lindsay Refinery dispute taken a more active campaigning role and succeeded in strengthening cooperation with the employers association based on clauses regarding the use and rights of posted workers in collective agreements .

In general, under the liberal British labour market regime the rights of posted workers are not very different from what is common for other unorganized workers in the same sector. Hence, equal treatment and protection of the wage floor is not the prime challenge for the unions, except in construction where the national collective agreements are often circumvented by posting of labour. Given the significant role of temp agencies in British construction, the implementation of the TAW-Directive might imply a certain improvement in protection of foreign and posted labour, but the granting of a three month opt-out period from the equal treatment principle in UK leave ample room for circumvention. As will be discussed further below, the liberal British regime represents the kind of regulatory context for labour migration and posting that employer's associations in most other countries would seem to be longing for. With a low statutory minimum wage applying to all categories of migrant labour as well as to all domestic workers who are unorganized and not covered by a collective agreement, the reach of the wage floors provided by the pattern-setting effects of collective agreements at company level is very limited. It makes Britain a very attractive labour market for international and domestic agencies supplying foreign labour under the cheapest conditions possible.

Ireland

Ireland had since the deep malaise in the 1980s, when one in five Irish workers was unemployed and many people sought a better future through emigration, developed a growth model based on Social Partnership and strong reliance on inward FDI and multinational companies. Except in construction, where the sectoral collective agreements are universally applicable and binding, collective bargaining has been decentralized to company level and agreements are not legally binding. The only legally enforceable pay regulation has been the statutory national minimum wage, which was introduced in 2000 and amounts to roughly half the level stipulated in the main collective agreements in construction.⁹ After 15 years of strong growth, the Celtic Tiger Miracle culminated with an unprecedented, credit-driven building boom coinciding with the Eastward opening of the labour market. With no TAs, Ireland became one of the main destinations for migrant labour from CEE countries. In the liberal Irish context and with unemployment at an all time low, the inflows were dominated by job-seekers coming under the free movement of labour (Doherty 2011: 82).

Yet, the disputes at *Gama* and the *Irish Ferries* in 2005 made big media headlines and made posting a contentious issue. In the *Gama* case, a company based in the Netherlands was accused of employing Turkish workers below agreed standards in Ireland (Afonso 2009). At around the same time *Irish Ferries*, a company organizing passenger transport between Ireland, France and the UK, announced its intention to outsource services to a Cypriote subcontractor and lay off more than 500 seafarers, to be replaced by agency workers from Latvia (Menz 2010: 980). The Irish Congress of Trade Unions (ICTU), under pressure of its largest affiliate SIPTU, saw this as flagrant failure of the existent regulations to ensure compliance with Irish terms and conditions, and played the issue up during the negotiations of the new Social Partner agreement (“Towards 2016”), which were taking place at that time. ICTU threatened that without new regulations making ‘going rates’ enforceable and without stronger enforcement procedures the social partnership process would be undermined. Irish business and the government were afraid that the unions’ demand for re-regulation would provoke a negative response from the strong multinational business lobby and have negative consequences for FDI and the country’s export position. After lengthy negotiations, the main result was an amendment of existing legislation aimed at ensuring stronger enforcement of existing employment rights. A statutory office (National Employment Rights Authority) was set up for the purpose of monitoring and enforcing compliance with existing regulations. Among the most important measures were the three-fold increase of the number of labour inspectors; new rules for record keeping; higher penalties for breeches; and a system for ensuring that temporary work agencies are properly licensed (*ibid*).

In essence, Ireland maintained its liberal posting regime, basically implying that posted workers were broadly covered by statutory employment rights and the national minimum wage, like the UK, except in construction where the collective agreement is universally applicable. According to Afonso (2009: 101), the failure of the unions to instigate re-regulation of the posting regime can be attributed to the decentralized bargaining structure

⁹ The minimum wage stood in 2005 at 7,65 euros and in 2012 at 8,65 euros per hour, compared to minimum 18-20 euros in the main CAs in construction (Doherty 2011: 89, Eldring & Alsos 2012, Figure 3.1)

and the strong position of the export oriented sector -- alongside fears in the employer associations and the government about the reactions of the multinationals.

France

In France,¹⁰ the posting regime established in 1993 by *Loi Quinquennale* No. 93-1313,¹¹ has largely been maintained. The main change is that, in line with the 2007 Laval verdict of the ECJ, only minimum wages and not as before the entire pay section defined in generally extended collective agreements, or, if no agreement applies the statutory minimum wage (SMIC), are now applicable to posted workers (Cremers 2011: 59). Further, posted temporary agency workers have become entitled to the same pay and conditions as if employed by the user company. Together with the legal amendments made by decree of 11 December 2007, additional sectors were included (agriculture and transport), control and enforcement were strengthened, and it was made clear that in cases where the activity can no longer be considered as being exercised temporarily all binding French rules and provisions apply. Companies posting workers have in that case to establish in France. The tightening of enforcement practices reflected the findings of several reports (Kahmann 2006, Grignon 2006) that the actual volume of posting had by far exceeded the official number based on E101 certificates (149,000 in 2007) and that unregistered postings were often associated with inferior labour practices, subcontracting etc. According to a Senate report (Grignon 2006), even if posting takes place following the rules, it still means a 50% saving on labour costs for the French customer, mainly thanks to lower social security charges and minimum rather than standard wages. In addition many posting companies subtract the legally obligatory compensation for lodging and travel from the minimum pay. (In most legally binding extended collective agreements employer coverage of meals are also compulsory.) In a prominent dispute in Porcheville (2005), where Alstom has been constructing a power-station, it was revealed that a Polish subcontractor that was posting 40 workers subtracted lodging costs from the minimum wage. a Polish worker and member of the NSZZ Solidarnosc union obtained assistance from the local French (CGT) union and brought the case to court. He won the case and the sub-contractor had to repay 10,000 euro in unpaid earnings to the workers (Cremers 2011: 66). To sum up, regardless of the right or left orientation of French government and trade union decline notwithstanding, France has maintained its strict and encompassing posting regime, without much evidence of employers' protest. Adjustments to the Laval verdict have been kept to the required minimum, and been compensated by stricter criteria for posting, stricter rules for temporary work agency specialised in posting workers, and more stringent enforcement measures overall.

¹⁰ This section builds extensively on Cremers (2011: 58-69).

¹¹ The law was supplemented by a subsequent decree and governmental circular in 1994, in effect stating that: "...Without prejudice to international treaties and agreements, where an undertaking not established in France is engaged in the provision of services on the national territory, the workers posted temporarily by this undertaking to carry out the services are subject to the provisions of the laws, regulations and agreements applying to workers employed by undertakings in the same sector, established in France ...".

Germany

Germany is an especially pertinent case for studying national responses to the challenges of increased cross-border labour mobility and. Together with Austria, Germany was the only country that was allowed to erect transitional restrictions not only for migrant labour but for cross-border services and posted workers after the 2004 enlargement. These restrictions were repealed on May 1st 2011, except for citizens from Bulgaria and Romania for whom the transitional regulations must expire by the end of 2013 by the latest.

The trade union efforts to establish minimum standards for posted workers have in recent years become interwoven with union strategies aimed at tackling the low wage issue in the German labour market in general. In the wake of the post-unification recession, partial deregulation of the labour market, and sweeping reforms in the unemployment benefit system, known as Harz IV (Hassel et al 2012) the unionisation rate and collective agreement coverage have been shrinking over the past 15 years. From 1998 to 2010, the coverage declined from 76 to 63 per cent in the western part of the country and from 63 to 50 per cent in the east. Currently, the unionisation rate is below 20 per cent, and only 56 per cent of all employees in the private sector are covered by a collective agreement.¹² In the same period, there was a stronger increase in the number of low-wage workers than in most other European countries (Bosch & Kalina 2010, Schulten 2009). Measured in terms of having an income of less than two-thirds of the median wage, the number of low-wage workers increased from 4.4 million to 6.5 million in the period from 1995 to 2007/8, representing more than one fifth of the workforce (Schulten 2011). The category of low-wage workers comprises a large proportion of women, unskilled workers as well as immigrants. In light of this, there were wide-spread fears that existing wage standards would be further undermined after the repeal of the transitional restrictions for labour and services in 2011 (Eldring & Schulten 2011).

The German scheme for legal extension of collective agreements has been described as a crisis-stricken instrument, and the number of extended collective agreements has declined radically (Kirsch 2003). Two main criteria must be fulfilled before a decision to extend a collective agreement can be made. First, the Act requires that employers who are already bound by the agreement must employ at least *50 per cent* of the workers in the area concerned. Second, an extension must be necessary *with a view to the public interest* – commonly understood as being the case if the norms of the collective agreements are threatened by *Schmutzkonkurrenz* and *Lohndrückerei*. The assessment of whether the extension is in the public interest is the prerogative of the members of the Collective Agreement Committee (Tarifausschuß). Since the 1990s, however, the central-level labour organisations have differed in their opinions as to what should be considered the public interest in this context, with the result that most extensions have been blocked by the employers' representatives in the committee. In 1991, a total of 408 agreements had been extended, compared to 235 in 2010. This corresponds to 1.5 per cent of all active collective agreements in that year, and only a few of these pertained directly to wages (WSI 2011). This development implies a marked

¹² http://www.boeckler.de/pdf/v_2011_09_27_bispinck_extension_eu.pdf

decline in the contribution of the extension mechanism to minimum-wage regulation in the German labour market. Retail trade is one example, for which wage agreements were previously extended on a regular basis, but where low-wage competition currently has been given free rein to employers who are not bound by collective agreements. The Bundesvereinigung der Deutschen Arbeitgeberverbände (BDA) has adopted a very restrictive attitude to extension of wage agreements, which are currently found only in a few industries and regions where the employers concur that halting low-wage competition is required, such as hairdressing, security services, cleaning and hotels. According to prevailing legal practice, posted workers are not covered by ordinary extensions, since their labour contracts are not regulated by German law. This is not explicitly stated in the Act, but has remained the dominant doctrine in the federal labour court (Eldring 2010).

While use of the original German scheme for extension of collective agreements has declined, the Posted Workers Act (Arbeitnehmer-Entsendegesetz, AEntG) has nevertheless implied that industry-level minimum-wage regulations have increased in importance and reach. Since the AEntG came into force in 1996, it has thanks to trade union pressure been amended on several occasions, most recently in 2009, allowing much broader application than the original confinement to construction. An important revision took place in 1998, allowing the Minister of Labour to issue a legal injunction on extension, even if the social partners fail to agree in the Collective Agreement Committee.¹³ The purpose of the Act is to “produce and implement reasonable minimum labour conditions for workers who are posted across borders and employed on German territory, as well as to ensure fair and well-functioning conditions of competition.”¹⁴ The Act identifies the types of general labour conditions that can be made applicable to posted workers in accordance with the nucleus of the Posting of Workers Directive. Prior to a request for an extension through the AEntG, the parties usually conclude a special collective agreement that reflects the provisions of the directive, while additional conditions are included in other agreements (that are not covered by the request for extension). In practice, minimum provisions related to wage levels and holidays constitute the main elements of extension through the AEntG.

Since 2000, several new industries have been included in the Act, for example cleaning, electrical work, mining and postal services. These have typically been industries with growing shares of unorganized, low-cost firms, where the trade unions have managed to build coalitions with the sectoral employers associations around the need for re-regulation in spite of reluctance in the BDA. The broadening of the scope started under the red-Green government in the early 2000s and continued under the Grand Coalition, but under the CDU-FDP coalition it has proven more difficult to gain accept for such extensions.

¹³ For the sectors that were concluded in 2009, the legal injunction must be issued by the whole government, and not by the Minister of Labour alone.

¹⁴ Our translation

In the autumn of 2009, the Ministry of Labour estimated that the industries covered by the AEntG employ approximately three million workers. At the end of 2011, extended agreements were in effect in construction, electrical work, mining, cleaning, guard and security services, laundries, waste disposal and care services. The minimum wage levels range from EUR 6.36 (laundries) to EUR 13.70 (skilled construction workers in West Germany) per hour.¹⁵ Recently, a change in the law on temporary agency workers opened the possibility to make the collectively agreed minimum wage in the sector generally binding. Reportedly, expected negative effects of the labour market opening in May 2011 have been major concern behind the inclusion of new sectors in the Posted Workers Act, which was also supported by several of the sectoral employers' associations (Eldring & Schulten 2012). The critics of the AEntG have claimed that its real purpose is not to protect posted workers, but to compel German enterprises to pay collectively agreed wages (Schlacter 2009). Seen in light of the industries where agreements have been extended pursuant to the AEntG, it seems obvious that the Act has to some extent been used to ensure minimum wages also in industries that are unlikely to be dominated by foreign labour on short postings. In spite of the broadening of the AEntG, the trade union confederation (DGB) raised the demand for introduction of a national, statutory minimum wage in Germany. This happened after a lot of debate and internal controversies in the German trade unions. The initiative had come from the hotel and restaurant workers' union, which called for a statutory minimum wage in 1999. This received some half-hearted support of the Schröder government. But it was only after the large Service Employee's Union Ver.di got involved in the issue in 2003 that the campaign for a statutory national minimum wage became serious. From 2003 to 2006, the unions were strongly divided on this issue, and the powerful unions in manufacturing remained opposed. In 2006 however, all the unions of the DGB, with one exception,¹⁶ declared that they supported the demand for a national, statutory minimum wage.

Initially, the minimum-wage demand was set at EUR 7.50 per hour, but in 2010 this was raised to EUR 8.50 per hour. Linked to its campaign, the DGB underscored the necessity of expanding the applicability of the AEntG to all industries.¹⁷ The unions' demand for a national minimum wage is therefore not intended to replace the demand for the broadening and reinforcement of the practice of extending collective agreements. The TU strategy rather reflects a clear recognition that the shrinking system of collective agreements has not succeeded in providing sufficiently broad minimum-wage guarantees in the domestic labour market, and that supplementary measures of a statutory nature are required. The debates on statutory minimum wage levels have mainly followed the same lines of division and support as the discussions associated with the industry-level minimum-wage regulations through the AEntG. Some sectoral employer federations faced with proliferating low-costs competition have expressed sympathy, while the BDA has been deeply sceptical. In certain industries the introduction of minimum-wage

¹⁵ Source: Bundesministerium für Arbeit und Soziales, Mindestlöhne im Sinne des Arbeitnehmer-Entsendegesetzes (AEntG), Stand 29. Dezember 2011.

¹⁶ Industriegewerkschaft Bergbau, Chemie, Energie (IG BCE).

¹⁷ Press release, 20 February 2010.

provisions has been highly controversial, also with regard to their possible consequences for employment. In the current government especially the liberal junior partner, the FDP, has been hostile to the introduction of a statutory national minimum wage, whereas the Chancellor, Mrs. Merkel, and large parts of the CDU have expressed support during their most recent party conference in 2011.

The introduction of a statutory, national minimum wage in Germany appears to be a matter of time. Still, the 2009 coalition agreement of the present government all but precludes such a measure.¹⁸ This situation changed slightly in the autumn of 2011, when the CDU¹⁹ party congress in November adopted a positive resolution regarding minimum wage levels. During the financial crisis Merkel and CDU have tried to improve relations with the trade unions – illustrated amongst others in the generous strengthening of the Kurzarbeit-schemes to prevent rising unemployment (Urban 2012) – also being attentive to contest for core labour votes in upcoming elections. The CDU party resolution states that the introduction of a minimum wage (Lohnuntergrenze) is necessary in areas that have no collectively agreed minimum-wage regulations. This minimum wage will be determined by a commission consisting of the labour market parties, which – according to the resolution – will produce a market-based wage floor and not a politically determined minimum wage.²⁰ Even though this is apparently a concession to the advocates of the minimum wage, it has been met with relatively little enthusiasm and a certain amount of scepticism from the trade unions and the political opposition. It has been pointed out that the resolution is unclear in several respects: with regard to the scope of minimum-wage regulation (will it apply only in areas where no collective agreement exists?), with regard to the composition and decision-making procedures of the commission (if composed of trade union and employers, how will the employers react?), and with respect to the minimum wage level (would the demand for EUR 8.50 per hour be accepted?).²¹ It appears that the further processing of this issue will take some time, and the government is also internally divided with regard to the feasibility of various models.

In 2007, the Rüffert case in the ECJ deemed the practice in several German Länder of requiring that public procurement contractors should comply with the wages and terms defined in the relevant regional collective agreement in breach with EU posting rules (see Bruun et al, this volume). While the land of Niedersachsen had required that a Polish construction contractor followed the regional collective agreement, the ECJ stated that the only legal minimum wage for posted workers was the extended minimum wage of the national collective agreement in accordance with the AEntG. Eventually, in response to TU complaints, a number of Red-Green Länder governments have enacted

¹⁸ Stettes, O. (2009), Coalition deal gets mixed reactions from social partners, EIROOnline, 16.12.09.

¹⁹ Die Christlich-Demokratische Union Deutschlands (CDU), is the largest party in the present government coalition.

²⁰ <http://www.cdu.de/doc/pdfc/111115-sonstige-beschluesse.pdf> (page 2).

²¹ Schulten, T.: Die Antwort ist 8,50 pro Stunde. Commentary in Financial Times Deutschland, 14 November 2011.

new forms of minimum pay legislation that apply not only to public tenders but also to organizations receiving financial public support. The new regulations broaden the relevant wage floor to all suppliers of the public sector by referring to extended collective agreement (in acc with the AEntG), in transport to the public branch collective agreement, and in sectors where no such minimum wage exists the lands have enacted a regional minimum pay for such work (Schulten 2011).²²

To sum up, through coalition-building with sectoral employers and through lobbying of shifting governments, the German TUs have managed to win support for broadening of the wage floor applying to posted workers set by collectively agreed minimum wages to a range of new sectors. Compared to the narrow posting law applying to construction only when enacted in 1996, this has implied a significant transformation of German LM regulation. This shift has clearly been triggered by growing influx of foreign labour, often associated with circumvention of the TAs through self-employment and domestic temp agencies, but it has also been influenced by the sweeping transformation of the domestic German labour market of the past decades. In response to the growth in low-paid work, the TUs have also gained political support in principle for establishment of a statutory minimum wage in sectors without (extended) collective agreements in the CDU and the parties to the left. Opposition from the liberal junior partner in the government has so far delayed this step towards establishment of a supplementary statutory wage floor. Compared to demands for a statutory minimum wage among employers and centre-right politicians in other countries, it is worth noting that the German notion of a minimum wage presumes priority for minimum pay rates in collective agreement and extended collective agreement, illustrating an example of a strategy based on combination of collective agreements and statutory means to restore national floors.

The Netherlands

As a liberal corporatist country, the Netherlands shares certain similarities with Germany but there are striking differences. Trade union density is about the same as in Germany, approximately 20 percent, but collective agreement coverage is much higher (84 percent) (see Table 1). This is largely due to higher organization rates of employers (also around 80 percent), and partly to the stronger support for use of the mechanism for legal extension of collective agreements among employers in domestic services. Many employers' associations, especially in the international sector agreed with criticisms from economists that extension of agreements drives up wage costs, but pressure from domestic employers has caused the main employers' association VNO-NCW to stay neutral or rather leave the issue to the sectors where extension is relevant (which is construction, agriculture and food, domestic services, and temporary work agencies).

Under Dutch law collective agreements are only binding on the signatory parties and their members. However, it has been practice that employers who are bound by the agreement apply its terms also to non-union members (the same applies in Germany and many other countries). Since 1937 the Minister has the possibility to declare a collective agreement generally applicable (*algemeen-verbonden*). The conditions are that the agreement must already cover 60 percent of the employees (or 50 per cent in exceptional

²² http://www.boeckler.de/pdf/wsi_ta_triftreue_stellungnahme_schulten.pdf

cases), that one of the signatory formally requests extension, and that the agreement does not harm public interests. The latter has sometimes been interpreted as a stick to press the unions to accept lower wage scales for unskilled and starting workers, closer to the statutory minimum wage (Visser and Hemerijck 1997), and both employers and unions have accepted a wider use of dispensation or derogation clauses for new businesses and starting firms. The Minister must ask advice from the Labour Foundation, the joint body of the main unions and employers' associations, but he is not bound by this advice. It has to be noted, moreover, that any firm can 'escape' from an extended agreement in its sector, if it can register a valid collective agreement of its own. Finding a free-booting or 'yellow' trade union for this purpose has not been terribly difficult in some sectors (from instance in work agency business, or among petrol stations, or even in the furniture sector where IKEA showed how to do it).

In 2009 collective agreements applied to 83 percent, or 6.15 million out of a total of 7.4 million employees (in employment). Of these 11.5 percent, or 850 thousand workers were covered through the extension of the collective agreement in their sector (figures provided by the General Employers's Association AWFN; see Zielschot 2010; also Visser 2012). These figures have hardly changed during the past decade or two, and suggest a high degree of stability of collective agreement, even of the use of extension in the sectors where it applies. In addition, the Netherlands has since 1968 a statutory national minimum-wage, which is usually augmented every half year on the basis of an index derived from the pay rises in a basket of collective agreements. However, the law does allow the Minister to suspend indexation in times of high or rising unemployment and inactivity, and this has happened several times in the past decades (Visser and Hemerijck 1997). The statutory minimum applies only to a very small percentage (2-4 percent) of adult workers, but its importance is probably more related to social benefit schemes that are derived from it.

The Posting Directive was implemented in 1999 by the WAGA Act, 'employee conditions in cross-border employment'. According to the original implementation, until 2004, employers of posted workers had to meet the minimum requirements in the Minimum Wage Act, the Working Time Act and the Health and Safety Act. With the exception of the construction sector, posted workers were not covered by extended collective agreements (Cremers 2011), a situation rather similar to the initial implementation in Germany. After 2004, it soon became evident that the imbalance between service providers and posted workers from the accession states and domestic companies that had to comply with collective agreements could lead to a distortion of competition with serious substitution effects in the labour market. As a result, the WAGA was revised in 2005, giving all posted workers protection by generally binding collective agreements if they are extended) (ibid). This applies to the core provisions in Section 3.1 of the Posted Workers Directive.²³

The Dutch system – with a longstanding practice of making collective agreements generally binding, and a national minimum wage, provides for a more consistent and

²³ Eiro NL090803Q: Posted workers.

<http://eurofound.europa.eu/eiro/studies/tn0908038s/nl0908039q.htm>

tight safety net than what is found in Germany – both for domestic and posted workers. The rise of a low pay sector is less dramatic in the Netherlands, although in recent times several issues related to migrant workers and posting have risen. The liberalisation of the market for temporary work agencies in 1998, which abolished the requirement to register, appears to have created a large market of illegal and semi-legal work agencies, some specialising in cross-border posting. The main employers, like Randstad, and the main employers' associations have tried to regulate the market through codes of conduct and have consistently lobbied in favour of the extension of their agreements with the unions (in spite of a very weak union presence in the sector). But there are still thousands of work agencies around that flout the rules, and the unions are currently pressing for re-registration

To summarize, the Dutch posting regime based on extension of collective agreements has become significantly broadened in response to the rise in labour and service mobility after the 2004 enlargement. In recent legislation similar rules have been made applicable to foreign workers hired or leased through national temp agencies (Houwerzijl 2012, this volume). Even though only collectively agreed minimum wages at different levels of the pay scale are applied, the Dutch system can hardly be characterized as especially liberal. The more consistent extension of the Dutch wage floors to posted and other categories of foreign workers than in Germany must be seen in view of the Dutch tradition for centralized concertation, where unions and employers seek agreement and have been able to influence government policy when united (Visser and Hemerijck, 1997). The Netherlands is also an interesting case of a relatively smooth interplay between a statutory minimum wage and an encompassing system of collective agreement extension. In recent years, xenophobic tendencies in Dutch politics, with a liberal-centre coalition-government depending upon the support of a anti-Islam and anti-immigrant (from Southern and Eastern countries) party which wants to quit membership of the euro, and reduce the influence of Brussels, has further strengthened government support for restrictive policies even in the field of intra-EU labour migration, and recently a governmental report took a very critical view of spreading malpractices associated with posting and labour migration.

Belgium

When transposing the Posting Directive in 2002 the Belgian legislator followed in the path of France and applied a broad interpretation of the mandatory rules to be applied to posted workers which went well beyond the 'nucleus' of conditions laid down in Article 3.1 of the PWD (Cremers, Bosch and Dølvik 2007:532). Invoking the principle of 'equal pay and conditions for equal work', compliance with all labour, wage and employment conditions set out in the statutory labour provisions and in collective agreements (made generally binding by a Royal decree) was to be enforced by the labour and social inspection services based on prior notification of all posted workers.²⁴

In the wake of Eastward enlargement, electronic notification of all postings was made obligatory from 1 April 2007 in order to improve the conditions for control and

²⁴ As such, the implementation of the Directive clarified the Civil Code, stipulating that the laws falling under criminal law had to be respected by all who live on Belgian territory (Cremers and Donders, 2004).

enforcement. Thus foreign undertakings have to notify the posted workers, their working conditions, and activities on Belgian territory prior to the start of the work (in the so-called LIMOSA system), including data about the posting undertaking, the Belgian client or employer involved, the duration, sector, and venue of the works. After notification, a receipt is given which the posting undertaking has to hand over to the Belgian user-firm in order to free that undertaking from further registration. Relevant documents have to be kept at the disposal of the labour inspectorate at the place of work or in the Belgian residence of a representative of the employer.²⁵

According to the European Commission (2009), approximately 113,000 E101 certificates were issued to workers posted to Belgium in 2007, whereas the LIMOSA system had registered 145,000 declarations in 2007 and 204,000 in 2008 (Pacolet & De Wispelaere 2011: 49-50). Most of these came from neighbor countries, while 17,3 percent came from Poland and Romania and 5 percent from Portugal. In spite of the stringent Belgian regime, reports suggest that abuse and circumvention is widespread (Pacolet & Baeyens 2007, Pacolet & Wispelaer 2011: 53, 57).

To sum up, even if the Commission has long been critical of the Belgian posting regime and has signaled that infringement procedures may be underway, public authorities have, supported by the social partners, persisted their maximalist approach and stepped up control and enforcement activities.

Switzerland

Switzerland can be characterised as small liberal corporatist economy (Afons & Visser 2012forthcoming). The country is not member of the EU, but has a number of bilateral agreements with the union, including on the free movement of workers and services. The labour market was opened to workers of the EU-15 in 2002, and then through an additional (bilateral) agreement, to workers and services providers from the accession states in 2004. During the 1990s Switzerland experienced a significant decentralisation of collective bargaining, a declining bargaining coverage and an overall weakening of the trade unions (Oesch 2007, 2011), while there has been a certain growth in the number of agreements since 1996 – and the collective agreement coverage has increased from 45 percent in 1998 to 52 percent coverage in 2010 (Hartwich & Portmann 2011). In 2011, about half of the employees were thus covered by collective agreements, but only 40 percent of agreements that contained a minimum wage protection (Imboden & Erne 2011). Switzerland has a mechanism for extension of sectoral agreements (GAV) to all firms in a sector (*Allgemeinverbindlichkeit*), but extensions have been subject to strict legal conditions, and few agreements have been made generally binding (Fluder & Hotz-Hart 1998). Furthermore, the country has no national minimum wage system.

Against this background the trade unions feared that an increased inflow of migrants from EU countries would undermine Swiss wage standards. The Swiss political system has strong elements of direct democracy, and all bilateral agreements with the EU

²⁵ Exemption from the notification duty is only possible for certain short-term activities like concerts, professional sport arrangements, seminars and conferences, maintenance of supplied machinery and initial assemblage, and for international transport.

are subject to referenda. The strong conservative/nationalistic block in Switzerland would normally vote against the free movement of workers, but as the more liberal parties and the business community had a strong interest in adopting the EU agreements, the outcome of these referenda depended very much on the positions of the left parties and the trade unions (Fischer 2003, Eldring & Schulten 2012).

As a response, the unions made clear that they would only support the bilateral agreements with the EU, if the Swiss government would at the same time introduce measures to strengthen wage regulation in order to protect workers against wage dumping. The unions' demands were initially met with fierce opposition, especially from the employers in the export industries who claimed that such regulations would be damageable for Switzerland's competitiveness. Since the position of the trade unions was decisive for the outcome of the referenda, however, a tripartite body was set up to deal with the issues. As the trade unions managed to build alliances with employers in the domestic sectors – most importantly construction employers dominated by SMEs – the government finally agreed on the parallel introduction of so-called 'flanking measures' (*flankierende Maßnahmen*) (Afonso 2009, Cremers 2011, Eldring & Schulten 2012).

Firstly, the flanking measures included the introduction of a posted workers act that guaranteed application of labour laws and generally binding collective agreements also for posted workers. Secondly, the barriers for extension of collective agreements to whole sectors were lowered. Originally, an extension was only possible, if the collective agreement covered already 50 percent of both employees *and* employers. With the 'flanking measures', extension was made possible in sectors with significant undermining of established wage standards, even if only a minority of the employees was covered. Thirdly, in sectors which had no generally binding collective agreements the state was allowed to determine so-called 'standard work contracts' (*Normalarbeitsverträge*) which define certain statutory minimum wages for the respective sectors (Cremers 2011, Eldring & Schulten 2012).

The 'flanking measures' have contributed to a significant re-regulation of the Swiss labour market and a strengthening of collective bargaining (Afonso 2010; Oesch 2011). The most obvious indication is that the former trend towards propelling erosion of the collective bargaining system has been reversed (Oesch 2007). After the bargaining coverage reached its bottom at the end of the 1990s with only about 40 percent, it showed a continuous increase and is now back at a level of around 50 percent. One reason for this turn was a significant increase in the number of extended collective agreements. While in 2003 only 36 agreements with around 360,000 workers had been declared as generally binding, in 2007 there were 62 agreements covering nearly 590,000 workers (Bundesamt für Statistik 2011, Eldring & Schulten 2012). In 2011, 68 agreements were extended, and some new were underway – the most significant being the extension of 'GAV Temporäre' in 2012, that will cover 180 000 employees in temporary work agencies ((Hartwich & Portmann 2011).

The possibility for the state to determine statutory minimum wages within the framework of standard work contracts has so far had less impact and the use of this instrument has been rather limited. Yet, in 2011 a national standard working contract for housekeeping was introduced, and a few cantons have set minimum wages for sectors

like domestic work, beauty parlours, call centres and repair services at regional level. As there is a significant part of the economy which is neither regulated by collective agreements nor by standard work contracts, the Swiss trade unions are now campaigning for the introduction of a nation-wide statutory minimum wage which they hope to introduce through a referendum (SGB 2011b, Eldring & Schulten 2012).

Austria

Proto-corporatist Austria (Traxler 1998) had already before the entry into EEA in 1994 and the EU in 1995 established a posting regime based on application of the entire labour code and extension of the universally binding national collective agreements (CAs) to all foreign undertakings and workers. This was instigated by the trade unions (Bau-Holz supported by ÖGB) who feared downward wage pressure when entering the single market, and neither the employers association nor the Grand Coalition government (where the Minister of Labour was a former head of the Bau-Holz) had serious objections (Menz 2006: 132). A law on 'Changes in the Labour Code' (*Arbeitsvertragsrechtsveranpassungsgesetz - AVRAG*) was swiftly enacted in 1993, stipulating that wages for all foreign labour, including those sent by foreign companies, should be in accordance with law and collective agreements. In effect this implied that the whole bracket of the pay scale was mandatory also for posted workers, who in addition were entitled to coverage of transport and accommodation (ibid.133). Extension was no issue of controversy since all employers in Austria are compulsory members of the employers association (*Wirtschaftskammer, WK*) and bound by their agreements (ibid.). A four week exemption to allow for installations and services of equipment etc was closed in 1995 (*Antimissbrauchsgesetz*), while certain adjustments were made in the AVRAG in the course of implementation of the Posting Directive (in 1999 and 2002). The entire labour code was also made applicable to workers posted by foreign temporary agencies.

Before enlargement, the Austrian unions and government, supported by the employers, already from 1996 campaigned actively at European level for long-lasting transitional rules regarding free movement of workers and services from EU8. When the German Chancellor Schröder in 2000 called for a 7 years transitional phase, this was heartily welcomed in Austria who eventually declared the EU consent as "one of the biggest successes of Austrian diplomacy" (Der Standard 2001c, Afonso 2009b). Nonetheless, in 2004 the European Commission initiated a lawsuit against Austria for breeches with the PWD. This pertained to the Austrian requirement that posted workers had an open-ended employment relationship with the employer sending him to Austria (Euro 2009/studies/tn0908038s/at0908039q.htm), which was subsequently amended to a contract whose duration exceeded the period of posting.

When the repeal of the TAs was getting closer, the TUs gained support from employers and the government for a substantial package of measures to curb wage and social dumping. In 2007, ÖGB obtained an agreement of principle with employers to establish a minimum wage at 1,000 euro or more per month in all collective agreements, which by 2009 was codified in a statutory regulation. The social partners in 2009 also got the government to introduce a law on contractor liability for social security levies in sub-contracting chains, complementing former legislation regarding minimum wages. By the opening of the markets 1 May 2011 the social partners' calls for strengthened enforcement laws were heeded by the

government enacting a law against wage and social dumping enabling stricter control of wages, employment conditions and social security associated with higher penalties for breaches (Eiro 2007, 2009, 2010, 2011). In the course of these adjustments it also seems that the posting regime has been adjusted so that only minimum wages in the collective agreements and the parts of the labour code that fall within the core of the PWD are applied to posted workers (Eiro 2010). Even if the ÖGB unions sometimes complain about fraudulent practices of employers illegally hiring posted workers and insufficient enforcement, the all-encompassing Austrian collective agreement regime seems to remain solid and uncontested. Notable, however, is the trade union initiated development of sectoral minimum wages anchored in collective agreements in all sectors, which presumably implies that a somewhat lower and more universal wage floor is evolving.

The Nordic countries

In the Nordic countries, the 2004 Eastward enlargement engendered a sharp rise in mobility of low cost workers and service providers from the new Member States. This fuelled the boom in the 2000s but also raised issues associated with unfair competition, wage dumping, and – as illustrated by the infamous Laval Quartet – regulatory clashes between the law-based EU regime and the Nordic systems where statutory minimum wages have been *anathema*. When originally implementing the PWD, the Nordic countries chose very different approaches. In Denmark and Sweden, where the social partners have viewed state interference in wage setting as a no-go, the actors chose to rely on their longstanding tradition of signing collective agreements with foreign companies based on the principle of equal treatment, if necessary by means of legally protected industrial action (Ahlberg et al. 2006, Alsos & Eldring 2008). Receiving also assurances from the Commission about the legitimacy of the Danish and Swedish systems, none of the countries saw it as appropriate to include references to clause 3.8 of the PWD, which enabled minimum wages set by generally binding national agreements, or by accords signed by the most representative social partners, in their posting laws (Dølvik and Eldring 2008). Proto-corporatist Finland, by contrast, followed the path of France, Austria and Belgium, referring in its posting legislation to the entire range of labour rights and all relevant clauses in the countries' routinely extended collective agreements (Bruun 2010 – Formula Working Paper No. 15). The same applied to Iceland. As a precondition for supporting Norway's entry into the EEA and/or EU, the dominant trade union confederation, in order to ensure equal treatment, demanded a statutory right to extend wages and conditions in collective agreements legislation to prevent social dumping of foreign labour. In spite of employer misgivings (they preferred statutory minimum wage regulations), this was followed up by the Social Democratic government. When the Posting directive was implemented in 2000, the centre-right government, lending ear to the employer side, basically stuck to the hard core of article 3.1 and did e.g. not invoke the right to make all labour law applicable to posted temporary agency workers (Evju 2010 – Formula Working Paper No. 17).

As to the free movement of workers from the new Member States after the 2004 Enlargement, the Nordic countries responded in different ways. Initially all countries but Sweden applied transitional arrangements, but these were soon repealed in Finland and

Iceland (2006) and in Norway and Denmark by 2009.²⁷ As no such restrictions were allowed for mobility of services and posted workers, major parts of the migration flows from the EU8+2 were organized through subcontracting, posting of workers, and temporary work agencies, often associated with inferior pay and working conditions and circumvention of taxes and levies (Dølvik & Eldring 2008).

In response to TU demands, Finland, Iceland, and Norway mainly followed the continental approach, relying on statutory extension of minimum pay and core standards defined in collective agreements, underpinned by strengthened state control and enforcement measures.²⁸ In contrast to in Finland and Iceland, such extension was in Norway met with strong objections and eventually court cases²⁹ from employers in export-oriented branches, whereas employers in domestic markets (like construction and cleaning) suffering from external low-cost competition, tended to support such measures (Eldring & Alsos 2012, Eldring et al 2012). In order to settle internal rifts, the Norwegian employer confederations have repeatedly voiced the idea of instead introducing a statutory minimum wage – formerly an anathema in Nordic contexts. Also among the trade unions, extension has been contested, due to fear for free-riding on collective agreements, and by 2011 only four industries – agriculture, construction, shipyards, and cleaning – were covered by such minimum wages.

In Denmark and Sweden, by contrast, the insistence on maintenance of their traditional autonomous regimes has led to major clashes with the ECJ's understanding of

²⁷ For Romania and Bulgaria, the Norwegian transitional arrangements expired in 2012.

²⁸ In Finland a national system for extension of collective agreements had been established already in the 1970s. In Norway, pressure from the trade unions in 1993 led the government to adopt an extension law with the purpose of preventing unequal treatment of foreign workers when entering the EU single market (Evju 2010).

²⁹ The decision of extending parts of the CA for the shipbuilding industry has been disputed by the employers, represented by their main confederation NHO. They lost the first court case in 2010. On appeal the appellate court resolved to submit some questions to the EFTA Court for an advisory opinion. In January 2012 the EFTA Court gave its opinion, holding that the PWD preclude an EEA State from requiring an undertaking established in another EEA State to pay its workers the minimum remuneration fixed by the national rules for work assignments requiring overnight stays away from home, unless the rules providing for such additional remuneration pursue a public interest objective and their application is not disproportionate. Furthermore, the EFTA Court judgment stated that the PWD does not permit an EEA State to require that workers posted to its territory from another EEA State are granted compensation for travel, board and lodging expenses in the case of work assignments requiring overnight stays away from home, unless this can be justified on the basis of public policy provisions . See for the full decision: http://www.eftacourt.int/images/uploads/2_11_JUDGMENT_EN_FINAL.pdf. The subsequent hearing in the Norwegian appeals court commenced in Oslo on 20 March 2012. If the Norwegian court adheres to the EFTA court's ruling, that will entail that expenses for travel, lodging etc. can be subtracted from the posted workers' salaries, which according to the unions will undermine the extended minimum wage rates and open the floor for renewed low wage competition within the shipbuilding industry.

the EU free movement regime. In the Viking case (2007) where the Finnish seamen union had threatened industrial action against a Finnish shipping company planning to relocate a ship to Estonia, the ECJ judged the threat of union action as a disproportional restriction on the freedom of establishment and sent the case back to the national court.³⁰ Next, in the Laval case where the Swedish construction union had organized a blockade in order to pressure a Latvian company to sign a collective agreement (Evju 2010, Dølvik & Visser 2009), the ECJ deemed the actions disproportional and in breach with EU law, because they had demanded Laval to sign an agreement which contained no clear minimum pay provisions (as stipulated by the Posting Directive) and conditions outside the nucleus of the directive. Besides declaring the union attempts unlawful, the ECJ held that the Swedish, and thus the Danish, manner of implementing the Directive was in breach with EU law since national legislation contained no reference to the use of art 3.8 of the PWD. As it was seen in Sweden and Denmark, the court had declared their national models of collective bargaining incompatible with the EU regime for free movement of services (Malmberg 2010). This caused widespread consternation.

Nonetheless, in response to the *Laval Quartet*,³¹ Denmark and Sweden felt compelled to amend the legal basis by invoking clause 3.8 of the Posting Directive which, as mentioned, allows regulation of core conditions for posted workers by collective agreements that are nation-wide or signed by the most representative social partners. While the Danes swiftly signed a tripartite agreement laying the basis for only minimalist changes in national practices, boldly aiming at equal treatment and payment, the Swedish centre-right government chose a cautious approach, reflecting deep conflict between the social partners.³² Hence the Swedish Parliament adopted an EU-proof solution which, against union protest, only allowed industrial action against foreign firms in order to obtain minimum pay rates defined in nation-wide agreements and to underpin demands conforming with minimum rights stipulated in the amended Swedish posting law.³³ The result is that foreign employers in Sweden now enjoy much stronger protection against industrial action than domestic employers – an example of inverse discrimination that is likely to affect subcontracting practices and power relations also in domestic negotiations (Malmberg 2010, Evju 2010). In response, Swedish trade unions have started negotiating minimum pay rates in their agreements which had previously left

³⁰ The dispute was settled by a secret ‘gentleman agreement’ before it came back to the national court.

³¹ Besides *Laval* and *Viking*, the level *Laval Quartet* includes two related cases (Evju 2010, Malmberg 2010).

³² The Swedish business confederation (SN) had actively supported the Latvian employer and the new Member State governments in the Laval case, causing rage in the union camp - and lifted eyebrows even in the government, which had won its election victory by support from considerable numbers of union voters and publicly defended the Swedish model in the European Court.

³³ Union action is only allowed if the foreign company cannot ‘document’ that the minimum conditions are met, which in the view of Swedish unions invites use of fake papers and inhibits so-called enforcement agreements.

actual pay setting to company bargaining – an ironic example of re-centralisation and reduced flexibility driven by EU-law.

The two-fold pressures posed by EU law and growing cross-border competition in the market for services and labour have thus engendered a process of judicial re-regulation of the Nordic labour markets. Especially in Finland, Norway and Iceland a range of initiatives to strengthen state control and enforcement has been launched.³⁴ In practice, however, securing proper standards is difficult, and in all Nordic countries there are indications that new secondary tiers of employment are evolving (Friberg & Eldring 2011, NOU 2012: 2, Lillie 2010) – confronting the trade unions with new and difficult tasks (Eldring & Hansen 2009, Hansen & Andersen 2008). This also affects native workers and firms competing in the same markets, and tends, *ceteris paribus*, to make it more attractive for employers to outsource jobs and exit from collective agreements. In consequence, the leap to an open European market for labour and services, has raised substantial challenges for the Nordic models and prompted a variety of measures to prevent further erosion of the national wage floors.

Eight years after Eastward enlargement it is not any longer possible to categorize that Nordic countries as a united strongly corporatist group requiring ‘equal treatment’ for posted workers (cf Menz 2006). Finland, Iceland and Denmark can perhaps still fit into such a category, but both Sweden and Norway have seen rising strife between the social partners, and sweeping adjustments towards EU-proof minimum wage regulation have been undertaken. In Sweden, this was prompted by the Laval verdict, which – strongly supported by the employer confederation (SN) – set in motion a re-centralization process whereby trade unions negotiate trimmed posting agreements that are offered to foreign service providers, still underpinned by industrial action if necessary. In Norway, the trade unions have after enlargement left their demand for equal treatment and only demand extension of minimum pay and conditions in accordance with the PWD. Given the complicated Norwegian extension regime, many unions have also been hesitant to launch extension demands, resulting in that only four industries by 2012 have any kind of minimum wage regime in place. Still, in coalition with the Red-Green government sweeping enforcement measures have been enacted – mainly pertaining to areas with extension – stirring protest, anger and several complaints to the EEA Surveillance Authority from the employer camp.³⁵ In both countries, the issue of labour migration and posting has thus spurred new lines of conflict in national industrial relations, and the

³⁴ These include e.g. contractor liability in subcontracting chains, union access to information about subcontractors’ working conditions, social clauses in public contracts, registries and ID-cards for workers in construction and other branches, strengthened conditions for operation of TAWs (in Norway including a national registry), establishment of services centers and registries for foreign workers, better cooperation between different state agencies etc.

³⁵ The climate of trust between the social partners in issues pertaining to posting and foreign labour has deteriorated to such an extent that employer questioning of the Norwegian restrictions regarding temp agencies when the TAW directive is being implemented, brought the TU camp to demand “veto” against the TAW-directive which largely have been welcomed among TUs in other EU/EEA countries.

employer associations have especially in Norway been flirting with the idea of introducing a statutory minimum wage – evidently not as a complement to collective agreements and extension mechanisms but as an alternative. Gaining sympathy among conservative parties, such a move would imply a radical shift in the level and way of setting wage floors in these Nordic countries. By contrast, in Denmark certain employer federations have voiced the idea of introducing *erga omnes* procedures to underpin the collective agreements, but such voices have swiftly been silenced by their confederations.

4.4 Comparative observations: Trends of convergence and divergence

We observe that during the two decades since the completion of the single market ('Europe 1992') the development of national wage floors has been influenced by two opposing tendencies. On the one hand a tendency of weakening and erosion of wage setting institutions, especially trade unions, caused by changes and restructuring in domestic labour markets combined, in several countries, with partial deregulation of employment protection and opening up of a market for atypical and temporary labour; on the other hand a tendency of re-regulation and transformation of national methods of minimum wage setting in response to the integration of EU/EEA labour markets and EU regulations. The latter tendency can be divided in two phases. The first phase was prompted by national responses to the perceived effects of the Single Market, rising flows of migrant labour in the wake of the Southern enlargement of 1986, the lifting of the Iron Curtain, and the subsequent adoption of the EU Posting Directive. The second phase was prompted by Eastward enlargement of the EU and the resultant surge in labour migration and posting in particular.

Analyses of the initial phase (1990-2000) have distinguished between on the one hand Austria, France, and Belgium, three countries which early on moved to establish comprehensive 'equal treatment' regimes, applying the entire labour code and with extended collective agreements to posted workers, and on the other hand the Netherlands and Germany, which adopted a regime that has been mainly limited to the hard nucleus of the Posting Directive and application of minimum wages in the construction sector. The UK and Ireland did initially very little, though in Ireland the sectoral agreements in construction allowed for extension of the core terms and conditions. Among the Nordic countries, Sweden and Denmark relied on their autonomous systems of collective bargaining, while Finland, Iceland and Norway based their initial responses on extension of collective agreements and fairly broad understandings of the statutory employment rights to be applied.

The differences in these responses cannot be explained by differences in union density, the left or right composition of the government, or even such broad categorizations as corporatist or statist orientations in labour relations. Apart from the broad classification of liberal versus coordinated market economies (Hall and Soskice 2001) which seems to fit the British and Irish case compared to the others, there is not much that clusters these responses in particular types of coordination between labour market agents. More promising is an explanation of these differences in terms of the availability of particular instruments, even if laying dormant, within a particular national system of labour relations and conforming to its traditional approach and philosophy.

Another part of explaining these differences is whether the choice and use of a particular instrument was contested among the main actors and whether the dominant actor, be it the state, the employers or the unions, was powerful enough to promote or block a particular regulatory approach in response to migration and posting.

Although there are many elements of continuity between the two phases, the review of national responses to the 2004 enlargement and the ECJ decisions in the Laval Quartet displays a more complex picture, pointing towards a revised diversity of national industrial relations. Five broad tendencies are detected:

- first, national posting regimes based on statutory extension of collectively agreed minimum wages (*erga omnes*) have been maintained, and in several countries – such as the Netherlands, Germany, Switzerland and partly Norway – they have been broadened so that they (can) apply to all or many more sectors than was the case before (usually only construction);
- second, in line with the Court’s interpretation of the Posting Directive in Laval most countries have converged on practices that only include minimum rates in collective agreements, but the extent of differentiation of minimum pay scales related to skill and experience ladders vary considerably;
- third, the UK and Ireland have joined the large group of EU countries (now 20 out of 27) that have a statutory national minimum wages; Germany is on its way to follow this route, providing a supplementary wage floor in sectors and companies without (extended) collectively agreed minimum rates; In Austria the social partners have agreed to introduce from 2009 a minimum wage in all sectors, which with a coverage rate of 99 per cent (mostly due to compulsory organization of employers) in effect means a national minimum wage.
- fourth, most countries have developed more stringent control and enforcement regimes, including measures ranging from strengthened labour inspectorates, and schemes for notification and registration with e.g. tax and social security authorities, to establishment of contractor and chain liability for subcontractors;
- fifth, in most countries trade unions have stepped up their efforts to provide services, support and offer membership for posted workers, sometimes with a certain success but mostly with modest results in terms of organizing and signing collective agreements.

Table 1 Trade union density and collective bargaining coverage (1992-2009), extension mechanisms and statutory minimum wages – selected EU/EEA countries]

	Union density		Bargaining coverage		Extension		Statutory minimum wage		
	1992	2009	1992	2009		scope	1992	2009	method
Finland	78	67	82	82	yes	large	no	no	
Sweden	85	69	89	91	no		no	no	
Denmark	76	68	84	80	no		no	no	
Norway	58	54	72	74	no	small	no	no	
UK	38	28	40	34	no		no	yes	Govt low pay committee
Ireland	57	37		44	yes	small	no	yes	Govt low pay committee
Germany	34	19	70	62	yes	medium	no	no*	
Austria	44	29	99	99	yes	large	no	no*	National agreement
Switzerland	23	18	48	48	yes	medium	no	no	
Netherlands	25	19	82	82	yes	medium	yes	yes	Govt, indexed to CAs
Belgium	54	52	96	96	yes	large	yes	yes	National agreement, ext
France	10	8	92	90	yes	large	yes	yes	Govt decision

Source: ICTWSS database

Altogether, the responses to increased migration of labour and posted workers go in the direction of national re-regulation aimed at broadening national minimum wage floors and a stronger state hand in the governance of labour markets. Combined with implementation of the EU Temporary Agency Workers Directive, which stipulates equal treatment for leased labour, (and social clauses in public procurement contracts), these responses have in a number of countries extended the coverage of collectively agreed minimum wages. With the dissemination of *erga omnes* practices to new sectors and countries, statutory extension of minimum terms in collective agreements have clearly become the predominant regulatory means for securing posted workers decent conditions. With a few possible exceptions, this also implies that the trade unions have had to give up their old demand for “equal pay for equal work” and accept that conditions for posted workers are restricted to the hard nucleus (art 3.1) of the Posting Directive. In addition, it is notable that the UK and most likely Germany are moving towards stronger reliance on statutory minimum wages to counteract the growth in low-paid work following the decline of private sector unionism and withering of the domestic systems of collective bargaining. While this is the only wage floor pertaining to more than 80 percent of the private sector employees working in British companies without a collective agreement, the rationale behind the German trade unions demand for a statutory minimum wage is not to replace extended collective agreements but to bolster them by securing a bottom wage floor even in areas with no collective agreements. The apparently smooth interplay between extension mechanisms and the statutory minimum wage in the Netherlands has

evidently served as inspiration here. With extended collective agreements having primacy, the German unions hope to stem the competitive pressure on the collective bargaining system exerted by company outsourcing of activities to un-organized branches.

The big question marking debates in other countries where the idea of statutory minimum wages have been raised by employers – such as Norway and Sweden – is how the existence of a statutory minimum might influence the behavior of employers with regard to signing collective agreements and accepting extension practices, an issue which also pertains to politicians. While Nordic employers flirting with the idea of a statutory minimum wage appear tempted by the possibility to establish a new and lower wage floor, which via competition can exert pressure on collective bargaining, the rationale behind the British, Dutch and German minimum wages is evidently the opposite. In fact, the consistent critique of the minimum wage system, offered by economists, the OECD (until recent) and the political rights, is that it drives up wages by increasing the ‘reservation wage’ and hence the bargaining strength of workers. The interaction between collective bargaining institutions and statutory minimum wages is extremely complex and it is really very hard to derive definite conclusions. Whether strong bargaining institutions (high coverage, high unionization levels) owe their position to the absence of a statutory minimum wage, or might erode if a statutory minimum wage were introduced is obviously a question that sparks a lot of debate and emotion in Nordic countries, the only ones (with Italy, Malta and Cyprus) without a statutory minimum wage).

This brings us back to the actor constellations and relations of power that influence Member State responses to trade union efforts to maintain and restore national wage floors in a context of domestic labour market fragmentation and open European labour markets. Even if external pressures have served as an eye-opener, and possibly also a window of opportunity, for re-launching the old issue of regulating competition in the labour market, domestic considerations have evidently also been important for the renewed attention to statutory minimum wage regulation. The shift from manufacturing to services has in most European countries been associated with growth in flexibility, atypical contracts, and fragmentation of employment relations, alongside steady decline in unionization (see Table 1). Bargaining coverage has not declined very much; except in Britain where the decline started in the 1980s with the breakdown of sectoral bargaining and in Germany where the erosion started right after unification, it has held up remarkably. Accentuated by long periods of high unemployment, most national trade unions have lacked clout and political power to win support among employers and politicians to turn the tide. In this view, the surge in labour migration and the shift in competitive conditions in the domestic product markets that followed in the wake of enlargement have provided an opportunity for national trade unions to build new alliances and mobilize political pressure behind demands for re-regulation in the labour market. Similarly, in Austria, Norway and lately in Switzerland, the prospect of fiercer foreign competition in domestic product markets when entering the Single Market provided the unions with bargaining power and made employers and politicians receptive to their demands for new extension laws before the national referenda. Also in other countries, perceptions of unfair competition in national product and labour markets have

provided popular and political support for strengthening of national posting and minimum wage regimes. In this respect, it seems that the old purpose of trade unions and collective agreements, notably to ensure a level playing field in the labour market and prevent underbidding, has been rediscovered also among groups of employers and politicians that for many years didn't care much about the role of unions. In this sense, one might argue that the rise in labour migration and salient unequal treatment helped trade unions who for long had struggled with a lack of clear purpose to rediscover a mission worth fighting for - to ensure workers of whatever national origin dignity and decency at the workplace. In many countries, the unions have thus engaged in a variety of activities and services to support and organize migrant labour (Eldring et al. 2012). The success has been mixed, but such activities have sometimes helped the unions to develop new alliances and to raise public awareness about the importance of labour market regulation and the role of collective agreements in the domestic context.

Still, the picture of revised diversity emanating from our review reflects significant differences in actor constellations and resilience of the national labour market institutions. Common to all the countries where the unions have achieved political support for strengthening of national wage floors is, first, that they have managed to forge coalitions with employer federations in the domestic private sectors who struggle with low-cost competition from un-organized firms. As employers in the export sectors usually view access to cheap labour as a means to strengthen international competitiveness and retain production in the home country, they tend to oppose extension of collective agreements and opt for flat statutory minimum wages. The extent to which the unions have managed to win broader employer support for re-regulation therefore depends on power relations in the employer confederations. Given the variation in such power relations, union success, secondly, seems to depend on the pattern of coordination of collective bargaining and on traditions for concertation with the government. In countries with a tradition for centralized coordination the employers tend more often than in countries with sector-based pattern-bargaining to heed the demands of the domestic sectors for re-regulation. The protracted development in Germany as compared to the Netherlands and Belgium illustrates the point. Interesting variations are also notable among the Nordic employers. While there has been broad tripartite consent to re-regulatory responses in Finland, Denmark and Iceland, employers in Sweden and Norway have been much more reluctant to support re-regulatory measures and have flirted with the idea of statutory minimum wage. In Sweden this clearly shaped the adjustment towards a more minimalist posting regime, while employers in Norway have been deeply divided on the issue of extension, and have opposed many of the enforcement measures agreed between the government and the unions. As these are countries where national collective bargaining systems are still strong and providing comparatively high national wage floors, this seems to indicate that employer interests in protecting national wage floors tend to vary with their level, solidity, and coverage. With the uniquely high domestic coverage in Sweden, employers look eager to establish a secondary floor for foreign workers, which can serve as a provider of cheap ancillary labour and keep pressure on the unions. In the Norwegian case, where coverage is much more uneven, a similar logic seem to apply to the export based federations who dominate the employers'

confederation, whereas views among federations struggling with modest coverage and foreign low-cost competition are more divided. Some may be tempted to get rid of the collective agreements altogether, others call for extension to safeguard their membership basis, political influence, and ability to influence competitive conditions.

The growing reliance of the trade union efforts to preserve national wage floors on the state, might suggest that government colour is important for their success. Even though labour leaning governments may have been more receptive to trade union demands, it is hard to discern any systematic pattern here. Recent re-regulations and regulation initiatives have actually been set in motion under centre-right governments in France, the Netherlands, Austria, Belgium, Switzerland, Denmark, and recently in Germany. This points to the important role of Christian-democrats as ‘catch-all’ parties in many continental countries, being politically dependent on support among labour electorates – and among small and medium enterprises (Mittelstand). Typically, Merkel’s recent support for a minimum wage in Germany can be seen in view of her careful strategy to develop relations with the trade unions during the crisis and the prospect of upcoming elections (Urban 2012). With rising unemployment in many of the euro-zone countries and the establishment of a European regime of macro-economic governance bent on austerity (the Euro-pact), it cannot be precluded that fear of electorate losses will force center-right parties to look for something to offer their labour constituencies. Sarkozy’s recent pledge to preserve public procurement for European suppliers and reconsider membership in Schengen can illustrate the point.

What all these measures of re-regulation have meant to actual labour market practices has not been the purpose to answer here. Just briefly, however, it seems to go without saying that statutory protection is no guarantee for anything if not underpinned by organized actors with capacity to monitor and sanction malpractices. Even though public enforcement measures have been stepped up in many countries, reports seem to suggest that compliance is at best uneven (Cremers 2011). Both in parts of the domestic labour market where unions and collective agreements are rare, and in transient segments with high shares of migrant labour, evidence seems to suggest that it is very hard to reign in malpractice and circumvention. With higher unemployment, low growth, and growing mobility, the task of re-embedding European labour markets clearly requires comprehensive action at both national and European levels.

References - to be completed