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# Employer strategies, cross-class coalitions and the free movement of labour in the enlarged European Union

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The free circulation of workers and services in the European Union after its latest enlargements has been believed to foster a 'race to the bottom' in wage standards. This paper explains the strategies of national employer associations towards labour market regulations geared to protect national wage standards in the context of labour mobility. First, this article shows that employers in non-tradable sectors confronted with strong trade unions support the regulation of wage standards in order to prevent foreign competitors from using lower wages as a competitive advantage. Second, the strategies of national employer associations (as protagonists, consenters or antagonists) are explained by sectoral power relationships within employer associations, trade union power resources and the risk of unilateral public intervention. A comparative case study analysis of regulation processes in Austria, Switzerland and Ireland shows that employer associations dominated by firms in non-tradable sectors are protagonists of wage regulation, while employer associations dominated by firms in tradable sectors consent to negotiate with trade unions about wage regulation in order to ensure labour acquiescence, or contain unilateral public intervention.

**Keywords:** labor mobility, employers, trade unions, services, EU enlargement, regulation

**JEL classification:** J53 labor–management relations, J18 public policy, F22 international migration

## 1. Introduction

After the eastward enlargements of the European Union (EU) in 2004 and 2007, the cross-border movement of workers and services has come to the forefront of the debates on wage and social standards in Europe. Since these enlargements have fundamentally increased the heterogeneity of wages, labour market

regulations and welfare arrangements across member states, there have been growing concerns that the free circulation of labour could trigger a ‘race to the bottom’ in wage standards and undermine cooperative systems of industrial relations. This could take place, for instance, if companies could employ workers in high-income countries under conditions prevailing in low-income countries, thereby circumventing local wage norms and social security contributions at a large scale (Lillie and Greer, 2007; Menz, 2010). The heated discussions around the directive on services in the internal market (Schmidt, 2009a; Lindstrom, 2010) or the controversial rulings of the European Court of Justice (ECJ) on the cases of *Laval*, *Viking*, *Luxembourg* or *Rüffert* have mainly revolved around how the cross-border mobility of labour in the enlarged EU should be regulated, and how it may affect national labour market institutions in Europe (Dølvik and Visser, 2009).

So far, the conflicts about the regulation of transnational labour mobility and wage standards in the EU have essentially been understood around class or inter-governmental cleavages. Employers are assumed to advocate minimal regulation of transnational labour mobility as a way to bring down wages, while trade unions seek to protect wage levels and existing industrial relations arrangements (Krings, 2009). ‘New’ member states advocate de-regulation in ‘old’ member states as a way for their companies to use lower labour costs as a competitive advantage, while ‘old’ member states seek to protect their social models which enjoy wide popular support (Crespy and Gajewska, 2010; Lindstrom, 2010; Copeland, 2011).

However, little attention has been paid to the cleavages *among* employers in this domain, and to the re-regulation processes taking place at the domestic level. Employer associations in all member states have not uniformly pushed for the liberalization of labour mobility and services in the EU. For instance, Austrian and Belgian employers have criticized the rulings of the ECJ on *Viking* and *Laval*, which declared the primacy of EU competition rules over national labour legislation, and they supported increased regulation of transnational service provision and worker posting (Eurofound, 2010, p. 29). Some countries have adopted measures agreed between trade unions and employers to strengthen labour market control against risks of wage dumping, for instance by strengthening the enforceability of collective labour agreements or by an increase in labour inspection (Eurofound, 2010, p. 19; Menz, 2010). In Ireland, a country that has been actively advocating liberalization at the European level (Copeland, 2011, p. 15), the peak employer association IBEC (Irish Business and Employers’ Confederation) has nevertheless agreed to a package of measures to enhance compliance with employment rights after the enlargement of the EU in 2004. Set against the assumed benefits of transnational labour mobility and regime competition for employers, why do some of them support—or consent to—measures to protect national employment and wage standards?

This paper explains the strategies of national employer associations in the domestic regulation of labour mobility and wage standards, and their reasons for negotiating measures of labour market protection with trade unions at the domestic level. It investigates re-regulation processes in Austria, Ireland and Switzerland, three countries where peak employer associations have agreed to measures to protect labour markets from downward wage pressures. This article highlights the role of power relationships between sectoral interests within national employer associations, trade union power resources and the threat of public intervention to explain the strategies of employers as *protagonists*, *consenters* or *antagonists* of re-regulation processes. By doing so, it bridges the literature on preference formation and cross-class alliances in labour markets and welfare states (e.g. Pontusson and Swenson, 1996; Swenson, 2002) with research on the politics of economic regulation in the context of internationalization (e.g. Vogel and Kagan, 2004). The paper is structured as follows. First, I outline the preferences of employers towards labour mobility and wage regulation in the EU. Second, I explain how these preferences translate into policy strategies through preference aggregation within associations, and strategic interactions with organized labour and the state. Third, I analyse the re-regulation processes in the three countries, and conclude by reviewing alternative explanations and presenting the main contributions.

## 2. EU enlargement, labour mobility and employer preferences

Cross-border labour mobility involves two intertwined elements, namely the mobility of *workers* through labour migration and the mobility of *services*—and by extension of the workers providing them—through transnational service provision (Eurofound, 2010). In the former, migrant workers are employed in the country where they work, whereas in the latter, workers are ‘posted’ in one country by their employer to carry out work usually for a limited period of time, but they remain employed in another country. This practice is widespread in the construction sector, for instance, and introduces uncertainty as to the rules applying to their employment relationship (‘home-’ or ‘host-country’ principle). In recent years, the fears regarding a ‘race to the bottom’ in labour and wage standards in the EU have been triggered by two combined developments: the increasing heterogeneity of labour market arrangements in the EU, and the weaker insulation of these arrangements from the liberalization dynamic of European integration.

First, the latest eastward expansions of the EU have substantially increased the heterogeneity of the Single Market in terms of social, wage and labour market arrangements. For instance, hourly labour costs in the 12 countries that joined

the EU after 2004 represented only 25% of those in the EU15 in 2007.<sup>1</sup> These differentials raised incentives not only for individuals to migrate, but also for companies to use these differentials by setting up shop in low-regulation countries and providing services in high-regulation countries through worker posting. While popular concerns over mass westward migration movements led most governments of the EU15 to restrict the free migration of workers in the aftermath of these enlargements (Gajewska, 2006), the freedom to provide services across borders has not been restricted, except for a specific set of economic sectors in Austria and Germany. Specifically, there is evidence that service mobility and the ‘posting’ of workers have been used as a gateway to overcome the limitations on the mobility of workers after enlargement (European Commission, 2008, p. 121; Dølvik and Visser, 2009, p. 492). For instance, in 2006 alone, over 750 000 workers were ‘posted’ by their employers in another member state (including EEA countries and Switzerland) for a period of less than 12 months (European Commission, 2008, p. 121).<sup>2</sup>

Second, while national industrial relations and welfare systems had hitherto remained protected from the liberalization dynamic of European integration, recent developments have challenged this equilibrium (Höpner and Schäfer, 2010; Scharpf, 2010). In the end of the 1990s, the Posted Workers Directive (PWD, 96/71/EC) secured a core of national legislation that companies posting workers had to comply with, thereby protecting national industrial relations arrangements (Streeck, 1998, p. 449). However, its principles have been challenged in many respects over the last decade. This was first the case with the controversial attempt to introduce the ‘home country’ principle within the Directive on Services in the Internal Market (2006/123/EC), which was met with heavy resistance before being substantially watered down (Schmidt, 2009a). A probably more important challenge to national sovereignty was raised by the ‘quartet’ of rulings of the ECJ (*Laval*, *Viking*, *Rüffert* and *Luxembourg*).<sup>3</sup> In these rulings, the Court decided against trade unions or public authorities attempting to impose national wage standards to foreign companies on the grounds that it violated Single Market rules (Dølvik and Visser, 2009). It is now clear that national industrial relations arrangements are no longer sheltered from the implications of EU Single Market rules (Scharpf, 2010, p. 227). Concretely, the risk that foreign companies posting workers can overcome national rules

<sup>1</sup>Hourly labour costs in industry and services of full-time employees in euros (2007) (Eurostat, 2010, p. 309).

<sup>2</sup>This figure underestimates the real extent of posted work, as no information was available for workers posted from France, Spain, Bulgaria and Romania.

<sup>3</sup>C-341/05, December 18, 2007 (*Laval*); C438/05, December 11, 2007 (*Viking*); C-346/06, April 3, 2008 (*Rüffert*); C-319/06, June 19, 2008 (*Luxembourg*).

regarding wage and social standards has become stronger, even if the actual contours of national sovereignty in this domain remain uncertain.

These developments have been essentially understood as detrimental to workers and trade unions—at least those in high-income countries—and favoured by business and employers. In his analysis of the determinants of national re-regulation strategies of cross-border labour mobility in the 1990s, Menz (2005, p. 184) argued that the institutionalized power of organized labour, possibly supplemented by the state, played a central role in protecting industrial relations arrangements from downward wage competition. Recent articles by Lindstrom (2010), Crespy and Gajewska (2010) and Copeland (2011) have analysed conflicts *across member states* around the issue of service and labour mobility, wherein ‘new’ EU member states, Ireland and the UK, sided with employers, and most ‘old’ EU member states sided with trade unions. However, the existing research has paid little attention to the potentially conflicting preferences *among* employers about the regulation of transnational labour mobility. This paper seeks to explain the strategies of employers by drawing upon literature on employer cleavages and cross-class alliances in comparative capitalism (e.g. Swenson, 2002) and on the dynamics of regulatory change in the context of economic internationalization (Vogel and Kagan, 2004).

The preferences of business towards transnational labour mobility and wage regulation can be understood in the light of their dual role as employers of labour, and as producers of goods in competition with each other (Bowman, 1982, p. 574). In this context, it is useful to differentiate between the mobility of workers (migration) and the mobility of services (transnational service provision), even if these two aspects are often bundled together in domestic regulation processes. More precisely, if employers may constitute a united front on the mobility of workers (because it uniformly strengthens their position as *employers* of labour), they are more likely to be divided about the mobility of services (because it can also affect their competitive position as *producers*).

On the one hand, the end of national restrictions on independent migration can be considered beneficial for all groups of employers. The eastward enlargements of the EU has made a large pool of both skilled and unskilled labour available, increasing the supply of labour and potentially containing or slowing down wage progression. Nevertheless, as migration is a politically sensitive issue, most governments of the EU15 adopted transitional measures to restrict migration flows from the new member states (Gajewska, 2006). Employers have generally been very critical about these transitional arrangements, except perhaps when it came to self-employed workers (e.g. ‘Polish plumbers’), who can be considered companies and potential competitors themselves for firms in non-tradable sectors in high-income countries.

On the other hand, the liberalization of transnational service provision and worker posting has more complex implications for employer preferences depending on which sector of the economy the businesses are located. It is difficult to draw a clear-cut line, but tradability and trade union power seem to be determinant factors to explain pro-liberalization or protectionist preferences. Companies whose products and services are traded internationally may indeed favour service liberalization in order to increase competition and cut down on production costs at home. For instance, manufacturing firms may want to be able to hire foreign service providers employing workers at lower rates to carry out construction work, or use work agencies to increase flexibility in output, even if they remain attached to peaceful labour relations with their own core workforce. In this context, supranational service liberalization may be a tool for employers to lower costs and curtail the power of trade unions within previously sheltered economic sectors (Menz, 2005, p. 185; Woolfson *et al.*, 2010, p. 341).

In contrast, for employers in non-tradable sectors, such as construction or services and trades, service liberalization can be a threat if foreign service providers can use lower wages or comply with lower regulations than those of the country where the service is provided. It is especially the case if trade unions are well organized, which usually translates into higher wages and rules out a downward wage–price competition. Construction is a case in point here, especially because transnational worker posting has taken massive proportions in this sector (Menz, 2005, pp. 178–179; Lillie and Greer, 2007; Eurofound, 2010, pp. 29–30). However, there is clearly a difference between large companies operating on a transnational basis, who may indeed favour liberalization to subcontract certain tasks, and small- and medium-sized companies operating on a national or regional scale. For smaller inward-oriented construction firms in high-income countries confronted with strong labour militancy, engaging in wage competition with foreign service providers is not really an option, and so is expansion abroad because of their high labour costs. Because their competitive position is threatened, these smaller firms may want to regulate wage-setting—for instance through the universal applicability of collective labour agreements for posted workers, minimum wages or enhanced labour inspection—to ensure that foreign contractors providing services in their country comply with the same rules and wage standards (Fischer, 2002, p. 96).

Since trade unions also have an interest in the protection of local wage standards, cross-class coalitions between smaller employers willing to protect their home market and trade unions willing to protect wage standards may emerge. A very similar political logic was outlined in the field of environmental and consumer regulations (Vogel and Kagan, 2004, p. 9). Hence, some firms have an interest in the maintenance of stringent regulations with which they already

comply as a way to secure their competitive position vis-à-vis other firms. This in turn fosters alliances between these firms and consumer or environmental groups supporting these regulations for health, safety or environmental reasons ('Baptist-bootlegger' coalitions). In the field under scrutiny here, however, agreements are likely to cover minimal standards to ensure a level-playing field, and not a 'race to the top' as observed in some areas of environmental regulation (Vogel and Kagan, 2004, pp. 9–10).

### 3. Determinants of national employer strategies

Set against the potentially conflicting preferences of firms towards wage regulation and labour mobility, how can we explain the strategies of national employer associations in different countries, and their propensity to negotiate measures of labour market protection with trade unions? In this section, I am interested in how the *preferences* outlined in the previous section translate into national *strategies* shaped by concrete power relationships (Hall, 2005, p. 130). My analysis focuses on the role of agency and preferences rather than on institutions, both in terms of dependent and independent variables. First, in contrast to arguments inspired the Variety of Capitalism approach (e.g. Hall and Soskice, 2001, p. 58), my analysis emphasizes factors that are exogenous to institutions alone to explain political strategies (e.g. actor coalitions, market conditions) (Pontusson and Swenson, 1996, pp. 225–226). Second, the dependent variables under scrutiny are employer *strategies* in regulation processes rather than regulation as such, or its effectiveness in preventing downward wage competition. Finally, I investigate regulation processes which involve some form of public legislative intervention and not sectoral or exclusively private regulations.

Drawing on classic work by Schmitter and Streeck (1981), I consider that the strategies of employer associations are influenced by the preferences of their member firms (*logic of membership*), and through interactions with organized labour and the state (*logic of influence*). Using the typology of Korpi (2006), one can consider that employers can be *protagonists*, *consenters* or *antagonists* towards the regulation of market mechanisms. That is, they can: (a) promote market regulation because they can derive economic benefits from it (*protagonists*); (b) consent to it as part of a political exchange involving other issues (*consenters*); or (c) oppose it (*antagonists*). Here, I propose three factors which influence the choice of employers for one of these three strategies: the power relationship between pro-liberalization and pro-regulation firms within peak employer associations, the power relationship with trade unions, and political salience linked to the threat of unilateral public intervention.

### 3.1 *Power relationships within employer associations*

The first factor which influences the strategies of peak employer associations is the internal power relationship between pro-regulation firms (non-tradable sectors with strong trade unions) and pro-liberalization firms (tradable sectors). As outlined above, the protection of a minimal wage standard corresponds to the first-order preferences of the former because it can be used as a tool to prevent outsiders from using lower labour costs as a competitive advantage. The influence of pro-regulation firms is determined by their representation among the membership of employer associations, and by the institutional mechanisms of preference aggregation within them. For instance, equal voting rights among firms independent of their size, as found in Austria, tend to favour small firms with protectionist preferences. If employer associations are dominated by firms in non-tradable sectors and confronted with strong trade unions, then employers will adopt a *protagonist* stance with respect to the protection of industrial relations arrangements and wage standards vis-à-vis outsiders. For instance, this can involve making all collective agreements compulsory for companies providing services in one country, and possibly even restricting transnational service provision.

In many respects, macro-economic conditions can influence the intensity of sectoral preferences and conflicts between employers. In a context of growth and labour shortages, both types of employers will be more willing to source labour from abroad, and growth will perhaps lower incentives to seek to protect wage standards. This may contribute to smooth distributional conflicts across economic sectors with respect to the regulation of wage standards, and favour liberalization over protection. In contrast, in periods of slow growth or recession, both sectors will be less willing to push for open policies. Firms in non-tradable sectors will be tempted by defensive reactions in alliance with trade unions, which may favour more closed and protectionist policies.

If preferences for closure prevail among employers, there is no real antagonism with trade unions over the regulation of labour mobility, and measures of labour market protection should be relatively consensual, at least as far as service provision is concerned. However, this does not rule out potential conflicts over labour migration, which is beneficial for all firms but may be opposed by trade unions. In contrast, if employer associations are dominated by pro-liberalization firms, employers are more likely to be antagonists or consenters, and negotiations with trade unions may be more characterized by conflict. In this case, the two following factors play a more important role.

### 3.2 *Power resources of organized labour*

In the configuration where the pro-liberalization stance prevails within employer associations, the power resources which can be mobilized by trade unions in regulation processes play a central role to explain employer strategies (Fischer, 2002, p. 92). The underlying idea is that ‘changes in relations of power among actors are expected to affect actors’ strategies of conflict and cooperation’ (Korpi, 2006, p. 168). If trade unions can mobilize enough bargaining power—by organizing industrial action, calling for political intervention or using other resources of interest to employers such as the compliance of members in wage moderation—then employers are more likely to consent to measures of labour market protection as a way to buy social peace. For instance, employers in countries with strong labour movements have a vested interest in maintaining cooperative systems of industrial relations because the costs of conflict outweigh the costs of cooperation (Thelen, 2000). In the regulation of service and labour mobility, employers whose primary preference may be to liberalize may consent to negotiate measures to protect wage standards if they come to think that pursuing de-regulation will entail political or economic costs that outweigh the benefits of liberalization. The subjective perception of employers regarding the power resources of labour, rather than an objective measure of trade union power such as trade union density, is of central importance here. In the face of declining trade union membership all over Europe, alternative strategies focusing on politicization and mediatization have gained increasing importance for trade unions, and organized labour has increasingly resorted to state intervention to compensate for its weakening in the sphere of industrial relations (Baccaro *et al.*, 2003). In this context, however, employers will be consenters rather than protagonists of regulation, and will try as much as possible to minimize its reach and contain public intervention.

### 3.3 *Political salience and the fear of unilateral public intervention*

The final factor that can influence pro-liberalization employers to negotiate with trade unions about wage regulation is the shadow of hierarchy, or the risk of unilateral intervention by governments when issues become politically salient. The regulation of labour and services mobility has been one of the most representative examples of the increasing politicization of the EU. As noted by Schmidt (2009a, p. 847), the discussion over the Services directive from 2004 onwards gave rise to an ‘unprecedented extent of politicisation of an internal market issue’. If this issue becomes politically salient, national governments may be spurred to intervene and seek to regulate labour markets. Political salience ‘creates a powerful incentive for politicians to develop the tools to intervene, so that they can be seen to

respond to the concerns of voters' (Culpepper, 2010, p. 55). Hence, the politicization of labour mobility may spur governments to step in and impose public regulations or legal wage standards in a domain essentially governed by negotiations between social partners.

In some ways, salience can be related to the mobilization of organized labour mentioned above, as popular concerns may be created at least in part by trade union mobilization. However, it can also play a role independent of trade union power resources, for instance as a result of high salience in the media. In this context, employers may want to engage in regulation processes as a way to pre-empt public intervention when they think that governments might act unilaterally against their preferences. Hence, if issues become politicized and the likelihood of public intervention is high, employers may prefer to negotiate with trade unions and governments in order to shape regulatory outcomes because the costs of cooperation (consenters) may be lower than the costs of defection (antagonists). In this context as well, employers may seek to shape regulation so as to minimize its impact.

#### 4. Cases and methods

The empirical evidence for this paper is based on an analysis of employer strategies in processes of labour market regulation in Austria, Ireland and Switzerland on the brink and in the aftermath of the 2004 enlargement of the EU. In each case study, the analysis traces back employer strategies to the three causal factors outlined above (*process tracing*) (Gerring and Thomas, 2007), and uses differences between cases to explore the role of different sectoral configurations of business interests on employer strategies. While employers in all three countries ultimately agreed to measures of labour market protection, the *causal mechanisms* leading them to support, consent and/or change strategies vary significantly.

The three countries analysed are high-wage countries where the incentives for the use of labour mobility to cut down on wage costs are substantial. All three countries have neo-corporatist structures of interest intermediation allowing for employers and trade unions to have an influence on policy-making. This was already the case in the 1970s for Austria and Switzerland (Katzenstein, 1984). Until the economic crisis of 2008, Ireland has been used as the flagship of the revival of 'social partnership' in Europe (Hamann and Kelly, 2010, pp. 57–68). The existence of corporatist forums of negotiation in all three countries allows for a similar systems design despite the fact that they display different setups in their industrial arrangements or varieties of capitalism (Hall and Gingerich, 2004).

At the same time, the selection of cases allows for a degree of variation in terms of employer interests. Austrian employers are dominated by small domestic firms,

Irish employers have been dominated by international, mainly US-owned firms, and Switzerland has a position in-between, with a strong export-oriented sector but also a non-tradable sector (construction, tourism, crafts) with substantial political clout. The trade union movement has traditionally been considered strong in Austria and rather weak in Switzerland and Ireland—although union density rates have been declining in all three countries, and fairly dramatically so in Austria (Visser, 2009). However, as conceptualized above, the perceived strength of labour by employers can vary across issue and time. Finally, Switzerland is not a member of the EU but nevertheless adopted the free movement of workers and services through a series of bilateral agreements with EU countries, extended in 2005 for the EU10 and 2009 for Romania and Bulgaria.

The empirical analysis is based on primary and secondary data sources. The primary data source is 36 expert interviews conducted in 2007 and 2008 with officials of employer associations, trade unions and labour ministries in the three countries (a complete list of interviews is given in Supplementary material). Secondary data sources are official government documents, as well as the national and international press and secondary literature.

## 5. Protagonists, consenters and antagonists: employer strategies in Austria, Switzerland and Ireland

### 5.1 *Austria: employers as protagonists*

Austria is considered a prime example of corporatism by all accounts (Hall and Gingerich, 2004). Austrian business organizations are dominated by small, inward-oriented firms with protectionist preferences, notably due to the historical prominence of state ownership in big industries, which left private interest representation mainly to small firms (Katzenstein, 1984, p. 50; Culpepper, 2007, p. 623). Compulsory membership in the monopolistic employer body, the Economic Chamber (Wirtschaftskammer Österreich, WKÖ), where all firms have equal voting rights independent of their size, gives an advantage to small firms and self-employed workers in construction, retail and crafts. Larger industrial firms have their own independent organization, the Industrielle Vereinigung, but its membership is not compulsory; it does not enjoy the status of 'official' social partner and thus has weaker political clout. Membership in the Chamber of Labour (Arbeitskammer), which represents worker interests in public policy-making, is also compulsory for all dependent employees. However, the Chamber of Labour does not take part in collective bargaining, which is a province of the affiliates of the ÖGB (Österreichischer Gewerkschaftsbund) trade union. Membership in the ÖGB is not compulsory, and trade union density has steadily declined since the 1960s, reaching 28% in 2010 (Visser, 2009). Collective

bargaining nearly covers the whole workforce, essentially because of compulsory membership of all firms in employer associations (Traxler, 1998).

Considering the geographical proximity of Austria towards new EU member states, as well as sluggish employment growth on the brink of enlargement,<sup>4</sup> the risks associated with cross-border mobility from neighbouring countries were a major concern for both employers and trade unions from the mid-1990s onwards. Austrian trade unions have been strongly advocating transitional arrangements on the free movement of workers in the run-up to enlargement (Interview AUT2). The prevalence of small sheltered business favoured the emergence of a cross-class consensus between the peak employer association and trade unions towards the protection of the Austrian labour market and encompassing regulation of posted work. This involved both the mobility of services (feared by small domestic firms) and workers (feared by organized labour). Hence, Austrian employers were *protagonists* of this process because labour market protection corresponded to the interests of a majority of member firms in the economic chamber, particularly in construction (Heschl, 2008, p. 14; Interview AUT2; Interview AUT7). Trade union density in this sector is much higher than average, with circa 80% of trade union members in the workforce.<sup>5</sup> Employers would have liked to be able to source migrant labour from new member states, these preferences were tempered down by slow growth, but they preferred to build a broad base of political support with trade unions to protect the Austrian labour market from increased competition in service provision:

It was clear that the trade union side would strongly demand the closure of the labour market, whereas employers would have had a more liberal stance, and would be interested in getting skilled labour from the new member states. But free movement has two sides. There is also the freedom to provide services, which would have deeply affected our companies, especially in the border area, in the construction sector, that is, protected sectors. In the end, this led us to say: 'Ok, we cannot cherry-pick, we cannot open here and close there.' Social Policy Expert, Economic Chamber WKÖ (Interview AUT7)

Hence, both employers and trade unions advocated transitional arrangements to limit labour mobility in the aftermath of enlargement. Export-oriented firms, which may have had an interest in liberalizing transnational service provision,

<sup>4</sup>Between 1994 and 2004, the overall employment in Austria had expanded only by 0.92%. Source: OECD Labour Force Statistics (MEI), accessed at: <http://stats.oecd.org>.

<sup>5</sup>Share of employment: OECD Labour Force Statistics, 2010. Trade union density estimation for the main construction sector (*Bauindustrie und -gewerbe*), and 35% for construction crafts (*Bauhilfsgewerbe*), 2011. Source: Gewerkschaft Bau-Holz, personal communication.

had to align with the position of the WKÖ, while arguing for a sufficient level of flexibility. This convergence of interests between employers and trade unions allowed for a large base of political support for transitional arrangements.

On the brink of EU enlargement, the Austrian government played a leading role at the EU level in the initiative to introduce transitional arrangements on the free movement of workers within the enlargement treaty (Interview AUT2; Interview AUT4). Along with Germany, it adopted the longest possible transitional period allowed by the Treaty, and also managed to impose restrictions on service provision through an ‘adaptation’ law passed by the conservative ÖVP/FPÖ government in 2004 (Osterreichisches Parlament, 2004). By virtue of the strong organizational links between organized interests and parties, this conservative Government in power between 2000 and 2006 also supported the closure of the labour market despite its notoriously hostile stance towards trade unions (Interview AUT2; Interview AUT7). As a result, Austria adopted a protectionist regulation strategy of posted work whereby all national labour standards applied. In the 1990s already, a law on the universal applicability of collective agreements to posted workers (AVRAG) had been adopted to apply all the provisions of existing collective labour agreements to posted workers (Menz, 2005, p. 132). Moreover, posted workers in Austria need a placement permit issued by the Austrian public employment service, and high regulatory requirements have provided for a fairly limited magnitude of posted work in Austria.<sup>6</sup> Recent ECJ rulings on worker posting are expected to have a limited impact on the Austrian case, notably because Austrian law acknowledges the applicability of collective bargaining outcomes on companies that are not signing parties of those agreements (Eurofound, 2010, p. 27). To sum up, in the Austrian case, employers were protagonists in the regulation of labour mobility due to the power relationship within the peak employer association WKÖ, whose mechanisms of preference aggregation give an advantage to pro-regulation firms. In this context, a cross-class coalition in support of labour market protection emerged.

## 5.2 Ireland: from antagonists to consenters

Similar to Austria, corporatist concertation has been a primary channel of decision-making in social and economic policies in Ireland, at least until the economic crisis of 2008. In contrast to Austria, however, export-oriented firms have dominated employer interests in Ireland within the IBEC, the main employer

<sup>6</sup>Between 1 January and 31 March 2009, a total of 2768 foreign nationals were posted in Austria, including both ‘new EU’ and third-country workers (Eurofound, 2010, p. 8). This low number can be understood in the context of the weak incentives to post workers in a context where the whole labour regulation framework is compulsory.

body. Given the very internationalized nature of the Irish economy, foreign companies have constituted an important influence group therein (Begg, 2007; Interview IRE6). Interests in the construction industry, one of the only sectors where a binding—but voluntary—sectoral collective agreement exists, are represented through a separate organization, the Construction Industry Federation (CIF). A system of centralized wage bargaining, which established guidelines for pay increases at the firm level, has been in place between 1987 and 2008 but was characterized by weak mechanisms of enforcement and compliance. This peculiar system has made collective bargaining coverage difficult to measure, but estimates were around 45% in 2008 (Regan, 2010, p. 262). Many companies, particularly foreign-based, do not recognize trade unions. Trade union density was around 34% in 2009, and was therefore higher than in Austria (Visser, 2009).

Adopting a radically different stance from its Austrian counterpart, the Irish government fully opened its labour market for both labour migration and services after the 2004 EU enlargement. This decision was taken in large part in response to business needs for labour in a context of strong economic growth and labour shortages (Interview IRE5; Interview IRE6). In sharp contrast with the Austrian case, employment in Ireland expanded by nearly 50% between 1994 and 2004, and both tradable and non-tradable sectors, and particularly construction, were booming.<sup>7</sup> Between 2003 and 2007, the number of EU 10 nationals employed in Ireland grew six times (Hughes, 2007).

Even though most political parties and organized interests—including trade unions—had endorsed the view that EU enlargement would not lead to downward pressure on wages (Doyle *et al.*, 2006, p. 22), a few highly mediatised industrial disputes caused significant concern on the part of trade unions, and contributed to the politicization of this issue. In particular, the case of Irish Ferries—a company which laid off Irish workers to replace them with Latvian agency workers paid at lower rates—led to significant political debates in 2005, and instigated mass protests and industrial action (Interview IRE8; Krings, 2009, p. 49). Based on the initiative of the Services, Industrial, Professional and Technical Union (SIPTU), Irish trade unions sought to use the structures of social partnership to put labour market protection on the agenda (Interview IRE8). At the end of 2005, the terms of the nationwide centralized wage agreement ‘Sustaining Progress’ were coming to an end, and the government issued an invitation to the social partners to participate in a new round of negotiations on pay increases. Trade unions announced that they would not negotiate pay terms before commitments were made by the government and employers to protect the Irish labour market against downward wage pressures (Interview IRE8). Trade unions asked for the reinforcement of a continental-style system

<sup>7</sup>OECD Labour Force Statistics MEI, accessed at: <http://stats.oecd.org>.

of collective bargaining to protect the labour market. While the only wage standard enforceable by law was the minimum wage introduced in 2000, unions asked for a legal guarantee of wage standards above the minimum wage, corresponding to the going rates for particular occupations (EIRO, 2006; Interview IRE3).

These requests were met with heavy resistance from employers because they were perceived as a threat to inward foreign investment, especially with regard to US companies working in a non-union environment (Begg, 2007, p. 183). In particular, employers strongly opposed the attempt of trade unions to institutionalize wage norms that would apply to all firms in a given economic sector (Interview IRE7). In contrast to Austria, power relationship within employers were not favourable to initiatives to regulate further the labour market. While dominant export and FDI companies have an interest in the maintenance of a liberal framework (Interview IRE6), the construction industry is highly dependent on the export sector and trade union density in the sector is lower than average.<sup>8</sup>

In this context, the political power resources of organized labour and the fear of government intervention played a leading role in shaping employer strategies. First, the agreement of Irish trade unions in the negotiations of a new wage pact was of great importance for employers, thereby providing bargaining power to organized labour on this issue (Interview IRE7). The costs of a failure of wage negotiations, which were considered a cornerstone of Irish economic success, would be greater for business than the costs of labour market regulation. Second, after the trade unions increased the politicization of labour mobility, employers were afraid that the government would try to intervene unilaterally to defuse public anxiety towards a ‘race to the bottom’—especially given that elections would be held the following year (*Irish Times*, 2006). As confirmed by interview data, consenting to negotiate measures of labour market protection was a way for employers to pre-empt and limit the reach of a unilateral regulatory intervention by the government:

Given the political kind of commentary at the time [...] there was a concern from our point of view that if we weren’t involved and didn’t engage and try to influence the shape and nature of discussions in a way that suited our own objectives, there would have been some other regulatory intervention by the government that probably would have been very damaging from our point of view [...] I suspect the government would have travelled a much greater distance into those issues

<sup>8</sup>Trade union density in construction was 25% in 2009, against 34% nationwide. Central Statistics Office, Quarterly National Household Survey, accessed at: [http://www.cso.ie/releasespublications/documents/labour\\_market/2009/qnhsunionmembership\\_q22009.pdf](http://www.cso.ie/releasespublications/documents/labour_market/2009/qnhsunionmembership_q22009.pdf) consulted on November 14, 2011.

than we would have wanted, and certainly than what was ultimately agreed in the agreement itself. Director of Industrial Relations, Irish Business and Employers' Confederation ([Interview IRE7](#)).

Employers ultimately agreed to a series of measures to prevent wage dumping in the framework of the social partnership agreement *Towards 2016*. This notably involved the creation of a government agency dealing with compliance with labour law, the National Employment Rights Authority (NERA), increased penalties for non-compliance of employment law, and a new law to prevent job displacement ([Department of the Taoiseach, 2006](#), pp. 91–109). Even if these regulatory measures were considered by one trade union leader as the 'single biggest leap forward' in social policy in Ireland ([Begg, 2007](#), pp. 185–186), the Irish regulatory response emerged as a fairly export business-friendly solution wherein both labour mobility and transnational service provision remained weakly regulated, and where only minimal legal standards were enforced<sup>9</sup> ([Menz, 2010](#), p. 980). There is, for instance, no reporting or monitoring system of posted work in Ireland, making the number of posted workers difficult to estimate ([Eurofound, 2010](#), p. 12).<sup>10</sup> In summary, Irish employers shifted from an antagonist to a consenter position on labour market regulation due to a combination of the power resources of organized labour in centralized wage agreements, and the fear of unilateral public intervention in a highly politicized issue.

### 5.3 Switzerland: protagonists and consenters

The Swiss political economy features both strong export-oriented firms and small inward-oriented business with significant political clout. The Swiss Employers' Union SAV (Schweizerischer Arbeitgeberverband) represents the interests of both dominant export-oriented companies as well as the construction industry for matters of industrial relations. The Swiss Union of Crafts (Schweizerischer Gewerbeverband) represents the interests of small- and medium-sized, inward-oriented companies. *Economiesuisse* represents the export economy and banks for matters of public policy not directly related to labour relations (finance, taxation) ([Kriesi, 2006](#), p. 52). Similar to Ireland, the Swiss labour market is characterized by its low level of regulation, even if industrial relations

<sup>9</sup>In Ireland, the Posted Workers directive is not transposed in a standalone piece of legislation but in the Protection of Employees (Part-Time Work) Act 2001.

<sup>10</sup>In a context of strong employment growth, a study carried out in 2007 argued that mass immigration to Ireland in the aftermath of the first enlargement had not caused adverse labour market effects in terms of earnings, employment or unemployment ([Hughes, 2007](#)). However, the radically changing labour market conditions in Ireland since the 2008 economic crisis have dramatically altered the context in which migration and worker posting take place.

are definitely more coordinated at the sectoral level. Collective labour agreements can notably be extended to whole economic sectors and made universally applicable if they satisfy certain criteria in terms of representativeness. About 50% of the workforce is covered by collective labour agreements, and there is no national minimum wage. Union density was below 18% in 2009 (Visser, 2009).

As part of a package of agreements on Swiss-EU relations, Switzerland agreed to open its labour market to EU workers in 2000 (for the EU15) (Fischer *et al.*, 2002), and to extend it to new EU member states in 2005. The regulation processes for both these openings unfolded in a similar manner. In Switzerland, these types of international agreements are subject to optional referendum votes if 50 000 citizens so demand. Emphasizing the low degree of regulation of the Swiss labour market, Swiss trade unions stated that they would support labour market opening only if ‘accompanying measures’ to protect Swiss wage standards were provided, particularly in a context of slow employment growth (Fischer *et al.*, 2002). Set against the fact that the national-populist Swiss People’s Party (SVP)—the biggest electoral force in the country, with about 30% in the elections of 2007—opposed labour market opening as part of their anti-immigration agenda and threatened to call for a referendum vote, Swiss trade unions assumed a pivotal role. Given the importance of the EU–Switzerland bilateral agreements for export companies, the government and employers could not afford the opposition of both trade unions and the SVP in a popular referendum, which would certainly lead to a refusal by voters. This gave a decisive bargaining power to trade unions to establish measures of labour market regulation.

If employers were very reluctant towards measures of labour market regulation (Economiesuisse and Union Patronale Suisse, 2003, pp. 2–3; Interview CH2; Interview CH8), they were nevertheless drawn to negotiate with trade unions in order to gain their support for labour market opening (Interview CH8). For its part, the government was convinced that negotiating a package of labour market protection with trade unions was the best way to defuse popular anxiety about wage dumping. Hence, employers also had an incentive to participate in order to contain public intervention—similar to the Irish case. A working group composed of employers, trade unions and the government was set up to develop measures of labour market protection which could be presented to voters together with the opening of the Swiss labour market. The issues on the agenda were the loosening of extension rules of collective labour agreements, the possibility for public authorities to set minimum wages in cases of ‘observed abuse’, the creation of a law on posted workers, the creation of cantonal tripartite commissions to monitor labour market developments, as well as increased staffing of the labour inspectorate.

At the outset, employers in export sectors, particularly metal manufacturing and machines, were firmly opposed to these measures, arguing that it would impose a 'straightjacket' of regulation, more red tape and additional costs on competitive industries (Interview CH2; Interview CH8). Moreover, opening the Swiss labour market to transnational service provision was a way to lower their fixed costs within Switzerland and increase their competitiveness (Interview CH1). As pointed out by interview data, the peak employer body SAV, which counts both export industries and construction companies among its membership, was torn apart between these interests and those of companies in non-tradable sectors worrying about unfair competition:

We had fairly violent discussions within the employer association. There were two camps, or rather three. Representatives of the construction sector were clearly in favour of protecting their businesses, especially in border regions. [...] On the other hand there were those who said that they wanted nothing. Nothing needs to be done. In-between, there were those who were negotiating, those who defended our position vis-à-vis both sides, and vis-à-vis the unions. Member of Management, Swiss Employers' Union (Interview CH8; similar argument in Interview CH5).

Similar to the Austrian case, Swiss construction companies had an interest in securing minimum standards that foreign service providers would have to comply with, especially given that there is no legal minimum wage in Switzerland (Interview CH2). Construction is a highly unionized sector by Swiss standards, with about 45% of trade union members in the workforce.<sup>11</sup> This translates into higher wages compared with other private non-tradable sectors (such as hotels, restaurants, retail or tourism), and a high risk of industrial action that makes employers more sensitive to labour demands (Fischer, 2002; Mach and Oesch, 2003). In this context, wage competition with foreign competitors paying lower rates was not an option, so that a cross-class coalition between these firms in non-tradable sectors and trade unions emerged to champion measures of enhanced wage regulation (Interview CH8).

Eventually, a compromise around an encompassing package of domestic regulation to regulate service provision was eventually agreed to by peak employer organizations. Contrary to Ireland, the posting of workers in Switzerland is subjected to compulsory notification to cantonal authorities, work permits are required for periods exceeding 90 days, and companies wishing to post

<sup>11</sup>Trade union density in the construction sector and crafts together is estimated at 45% in 2010, against 21% for the whole economy. Source: personal communication with Daniel Oesch, University of Lausanne.

workers in Switzerland must prove that they meet Swiss obligations regarding minimum working conditions and pay (*State Secretariat for Economic Affairs, 2011*). After its acceptance in Parliament, the bill on labour market opening and the package of domestic ‘accompanying measures’ was approved on 25 September 2005 by 56% of Swiss voters. The bill was supported by all other major parties, employers and trade unions, and was opposed by only the SVP.

Interestingly, the opening of the Swiss labour market to EU workers resulted in a substantial increase in the number of sectoral collective labour agreements made universally applicable—from 35 in 2000 to 69 in 2009—and the proportion of the workforce covered by these agreements—from 8.6% in 2003 to 15.2% in 2009.<sup>12</sup> The overall degree of bargaining coverage remained stable (at approximately 48%) despite an increase by 8% of the size of the workforce during this period. Among other factors,<sup>13</sup> what underpinned this phenomenon was again an alliance between employers and trade unions in many non-tradable sectors where there was no ‘minimum floor’ to use extension mechanisms to prevent foreign companies from undercutting Swiss wage standards. However, this did not fully offset incentives to post workers in Switzerland, and problems of compliance with these minimum standards still persist (*Interview CH2*).<sup>14</sup> To sum up, a majority of Swiss employers shifted from antagonists to consenters of regulation in the face of the power resources of organized labour conferred by the referendum, while a minority—essentially the construction sector—assumed a role as protagonists because their interests converged with those of organized labour, similarly to the Austrian case.

## 6. Conclusion

In this article, I have shown that the preferences of employers towards the regulation of wages in the context of service and labour mobility are not uniform, and that their strategies are shaped by internal power relationships and by strategic interactions with organized labour and the state. First, some employers can

<sup>12</sup>Source: Oesch (2007, p. 349) and own calculations from Swiss Statistics Office, <http://www.bfs.admin.ch>.

<sup>13</sup>One of these factors is the opening of public sector employment to collective bargaining after the tenure for civil servants was abolished, as well as the partial privatization of state industries such as post and telecoms (Oesch, 2007).

<sup>14</sup>In 2010, 59 000 workers were posted in Switzerland for a period up to 90 days. A study carried out in 2011 by the federal administration showed that 36% of controlled foreign companies posting workers in Switzerland did not fully comply with pay and work standards set in collective labour agreements, and only 30% of those were eventually sanctioned with financial penalties (*Secrétariat D’Etat à l’Economie, 2011, p. 62*).

champion enhanced labour market regulation as a way to prevent outsiders from undercutting them with lower wages. In this sense, labour market regulations function as a non-tariff trade barrier used by employers to secure their competitive position on the market. Second, even employers who would prefer no or low regulation of wages and employment conditions may consent to measures of labour market protection in order to secure the acquiescence of organized labour about other issues (e.g. wage settlements or political support), or to seek to shape public intervention when wage dumping becomes politically highly salient. However, in this latter configuration, they mainly engage in regulation processes to shape and contain the extent of public intervention. The comparative analysis of the Austrian, Irish and Swiss cases has shown how power relationships within employer associations, the power resources of organized labour and the threat of public intervention help shape employer strategies. In Austria, the dominance of firms in non-tradable sectors within the peak employer association fostered a protagonist stance, and a relatively unproblematic cooperation with trade unions to secure existing wage-setting arrangements. In Ireland and Switzerland, where the power relationship within employer associations is different, the power resources of organized labour—conferred by the referendum in Switzerland and centralized wage bargaining in Ireland—and the threat of public intervention played a more important role in making employers' consent to measures of labour market protection. Finally, macro-economic conditions help shape employer preferences: employment growth fostered preferences for labour market opening among employers in both tradable and non-tradable sectors in Ireland, yet it did not rule out trade union mobilization to regulate labour markets.

These results contribute both to the political economy of European integration and to the politics of preference formation in comparative capitalism. First, without discarding claims regarding a 'liberal turn' of European integration, this article brings a nuanced view to analyses arguing that the co-existence of different capitalist arrangements is ultimately deemed to disappear as a result of supranational market integration (Höpner and Schäfer, 2010; Scharpf, 2010). If the analysis carried out here does not rule out a 'race to the bottom' in wage and social standards because it does not evaluate the effectiveness of labour market regulation, it still shows that the conflicts surrounding liberalization in the EU may cut across the class divide, and that different coalitions in different countries may shape different 'counter-movements' to market integration in different countries (Menz, 2005, 2010). At present, there is still considerable uncertainty about the domestic margin of manoeuvre of member states in processes of re-regulation (Schmidt, 2008), and the strategies of business in different countries need further investigation. For instance, the pro-liberalization stance of Swedish employers in the case of *Laval* (Woolfson *et al.*, 2010) contrasts with the

encompassing measures of labour market protection put in place in Norway (Alsos and Eldring, 2008).

Second, this analysis has provided insights into the process of preference and strategy formation among employers in Europe. In particular, it has shown that deriving employer strategies from institutional settings alone, such as the variety of capitalism in which they are embedded, is insufficient. Both Austria and Switzerland are considered ‘coordinated market economies’, yet the configuration of interests among employers in these countries is clearly different. In contrast, Ireland is considered a ‘liberal market economy’, yet the strategies of Irish employers bear much resemblance with those of the dominant segment of Swiss employers. Rather than stability and path dependence, conflict about the maintenance of existing institutions is a prominent feature of institutional change. This was notably supported by recent research challenging the idea that employers in coordinated market economies are always protagonists of cross-class cooperation (Emmenegger and Marx, 2011; Paster, 2011). As a whole, this shows the necessity to delve deeper into the strategic and sectoral context of employer strategies, and their relationship with the state and organized labour (Korpi, 2006; Schmidt, 2009b).

### Supplementary material

Supplementary material is available at *SOCECO* online.

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