



Formulating European work and employment regulation during the pre-crisis years: Coalition building and institutional inertia

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Abstract

This article discusses whether the pre-crisis political right-turn in the European Union (EU) has had an impact on the development of European work and employment regulation. It finds that although pro-regulation actors have been weakened in the year leading up to the crisis, the expected weakening of Social Europe is only seen in a minority of the eight cases of EU-level work and employment regulation analysed. It is argued that two mechanisms can help explain this weaker than expected impact: successful resistance from pro-regulation actors and a certain form of organizational inertia linked to the actor's search for legitimacy, especially the Commission's need for a stronger social profile in order to be reappointed. Moreover, it is argued that stable coalitions have only played a role in some of the cases. The coalitions in action seem less stable and active than previous studies indicate.

Keywords

Social Europe, coalitions, employee involvement, employment policy, posting

Introduction

The period since September 2010 has seen the development of what might become a whole new regime of European Union (EU)-level economic policies with important consequences for work and employment-related policy areas as well. The Six-pact, the Europlus pact, the Fiscal Compact and the Memorandums of Understanding signed by the most troubled euro-countries imply not only a role for EU policies into issues formerly excluded from these, such as the wage issue, but also an even clearer

subordination of work and employment issues to economic policy. This development could imply a challenge to the vision of a social market economy – a Social Europe.

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But when did the policy shift actually occur? This article will analyse and discuss if and to what extent Social Europe was already weakened in the second half of the 2000s. The question is relevant because in the years leading up to the crisis, those actors typically promoting Social Europe – those that we label ‘the pro-regulation actors’ – had already been weakened, while more ‘regulation-sceptical actors’ had been strengthened. Indeed, the number of socialist and social-democratic governments in the European Council had been reduced and the same political forces had weakened in the European Parliament. In addition, the Barroso-led Commissions had followed a more liberal leaning agenda than its predecessors and the European Trade Union Confederation (ETUC) had already lost bargaining power due to its affiliates’ loss of members and challenges from internationalization of production and labour migration. In 2004, the Eastern Enlargement also indirectly strengthened the regulation-sceptical actors, as the enlargement made it increasingly difficult to agree on new regulation, mainly because the new member states tend to have labour standards well below the standards of the old member states.

These changes could be expected to have influenced the development of the European social dimension. A number of studies of EU-policy have already examined the impact of some of the above-mentioned changes on the development of Social Europe in the years leading up to the crisis, but their results tend to be ambiguous.

A common theme addressed in some of these studies is whether the introduction of soft regulation – the Open Methods of Coordination (OMC) and the European social partners’ autonomous agreements – has replaced the usage of hard law regulation when developing new European policies or added to it (e.g. Goetschy, 2006; Hemerijck, 2004). If replacement has taken place, soft law could in itself be seen as a weakening of the social dimension. However, OMCs are often found in slightly different areas compared to the areas regulated by EU directives, just as the specific issues covered by the social partners’ autonomous agreements were not covered by directives. In that sense, overemphasizing the shift from hard to soft law and its potential implications may make for a wrong assessment of Social Europe.

Another strand of studies has focused on what has happened with regard to directives (hard law regulation) in recent years. According to a widespread perception in the research community, the directives should have become fewer and weaker. However, Falkner et al. (2005) have questioned this perception and Pochet and Degryse (2009) found that the number of ‘social’ directives and ‘health and safety’ directives did not decline from the second half of the 1990s onwards. Still, the number of directives adopted does not tell us about the content of the regulation.

A third strand of studies does not necessarily see soft law as a weakening of Social Europe in itself, but has described how the second Barroso Commission was considerably less interested in social matters and how this has contributed to a lack of progress in the development of Social Europe in the years following 2005 (e.g. Barbier, 2012).

In sum, these studies leave us with some uncertainty if and to what extent the quality and quantity of European regulation changed in the years leading up to the crisis and, hence, if the development of Social Europe in fact has slowed down in the area of work and employment. For these reasons, this article includes an analysis of these issues.

Furthermore, the relations between changes in power balances of various European key actors vis-à-vis the policy outcome in terms of regulation agreed have rarely been analysed. And the few studies which have analysed such links have typically focused on only one policy area. While such studies are valuable, they may contain a methodological bias by over- or underemphasizing policy areas that conform to the assumption that shifts in power positions lead to shift in policy content. Therefore, systematic knowledge about changes in power positions and regulation outcomes across work and employment-related areas is limited. For these reasons, this article focuses on the relation between changes in power positions and policy outcome, and it does so across three different policy areas.

We structure our analyses with reference to two broad coalitions: pro-regulation actors and regulation-sceptical actors. We are doing so, because previous studies (e.g. Hooghe and Marks, 1999; Mailand, 2006; Nedergaard, 2005) have shown that, in order to

maximize their influence, the main actors tend to seek alliances and create coalitions with other actors. This is not only the case for the member states in the European Council, but also for the various so-called directorates generals (departments within the Commission), party groups in the Parliament and for the social partners. Tracing down the influence of these coalitions in the European decision-making processes on employment and work will outline who wants what, why and how they get it on the European scene.

Therefore, the aim of the article is to analyse:

1. Whether the strengthening of the regulation-sceptical actors had had an impact on the scope and content of regulation even prior to the introduction of the new EU regime of economic governance;
2. The extent to which a regulation-sceptical coalition and a pro-regulation coalition have successfully influenced decision-making processes.

We will discuss two hypotheses. First, despite the uncertainties left by previous studies, the change in power relations between pro-regulation and regulation-sceptical actors led us to expect a slower development – or even a weakening – of Social Europe in the second half of 2000s. Second, we expect to find a continuation of the strong roles of the pro-regulation and the regulation-sceptical coalitions shown in previous studies, because several of the work and employment-related initiatives in the years leading up to the crisis in a nutshell have been about the extent of the regulation, and because it is likely that the weakening of pro-regulation actors would activate the pro-regulation coalition to defend its positions.

The impact will be evaluated by focusing on empirical questions such as: are these regulation initiatives tightening or relaxing the regulation pressure on work and employment-related issues? How do the content of the initiatives change during the policy process – from the early proposals to the final adopted versions? And to what extent have the changes taken place as a result of actions of coalitions?

The sources of the article are 57 in-depth interviews with key decision-makers and document

analyses of processes and outcomes of eight cases of European work and employment regulation within the three areas of employee involvement, employment policy and posting from the years 2004–2010, with two exceptions – one which starts earlier and one which ends later. Where nothing else is indicated, the source is the interviews. Including no less than eight in-depth cases provides the study with an unusual broad scope which improves the possibilities for generalizations. The downside is that the presentation of case-stories will not fully pay justice to their depth.

Coalitions and European studies

The Advocacy Coalition Approach formulated by Sabatier and Jenkins-Smith (1993) is often used as an analytical framework. These coalitions are knitted together by a common belief system that shares a set of value priorities and causal assumptions about how to realize them. In studies of EU-level decision-making, Hooghe and Marks (1999) were among the first researchers to point to the existence of coalitions in European social and economic policy decision-making. Their approach pays more attention to the interests of actors than Sabatier and Jenkins-Smith's more value-based approach. Although they do not use the word 'coalitions', they nevertheless located two 'projects' backed by groups of actors which could be seen as coalitions. The 'neo-liberal project' aims to minimize the capacity for European-wide regulation, so as to create a mismatch between political regulation, which remains largely national, and economic activity, which they argued is increasingly European. Supporters of this project were the British conservative and German liberal parties, leaders of multinational corporations, UNICE (now BusinessEurope) and the DG for competition (now DG Markt). The opposing project of regulated capitalism aims to create European regulated capitalism through redistribution, regulation, private–public partnerships and social dialogue – all measures that support and enhance markets rather than replace them. This project had first and foremost been driven by Jacques Delors, the president of the Commission from 1985 to 1994. Important supporters also included the Central and Southern European Social Democrats, Christian

Democrats and some left parties, the European Parliament, the Commission as such (despite opposition from some DGs), most green parties, the ETUC, national trade unions and various non-governmental organizations (NGOs).

While Hooghe and Marks describe coalition-like actor-constellations across policy areas, other studies tend to focus on specific policy areas or policy questions. Nearly all of these confirm the existence of the two coalitions. Barbier (2004), Nedergaard (2005), Mailand (2006) and Deganis (2006) have done so in the employment policy area. All these studies locate an Anglo-Scandinavian coalition led by the United Kingdom and with the participation of Ireland, Holland and most of the Scandinavian countries and a Continental coalition led by France with participation of most of the Continental and Southern European countries. While the first three studies included the Commission in the group of pro-regulation actors, Deganis found that their orientation varies from case to case depending on the circumstances. Some member states, especially the new ones, are difficult to place within these coalitions. The cross-area study of Marks and Hooghe, studies of the service directive (Dølvik and Ødegård, 2009) and social policy and economic policy (Nedergaard, 2009) indicate that similar coalitions also exist in other areas. Still, the outcome of specific decision-making processes cannot be read-off from the structural power positions of the various actors.

In our analysis, we start from the assumption that the two coalitions exist. We choose to call them regulation-sceptical and pro-regulation coalitions in order to avoid the overused concept 'neo-liberals', but our assumption is that they have roughly similar orientations as the two coalitions described by Hooghe and Marks. It is important to note that we will distinguish between these two overall relatively stable coalitions and more ad hoc coalitions, which are formed from case to case. It is also important to note that the terminology of 'pro-regulation' and 'regulation sceptical' regards these coalitions' orientation in relation to social end employment policy and not regulation as such. As will be evident from the case-stories, in cases on the edge of the social and employment policy area, the positions will sometimes be reversed in that the pro-regulation

actors might try to prevent or reduce regulation whereas the regulation-sceptical actors will push for it. The case studies below will in a short form analyse the outcome of the decision-making processes of the eight cases and the role played by the two coalitions.

The employee involvement area

The history of EU regulation in the employee involvement area has primarily been a history of directives. Below, the background for the initiatives, the outcome and role of coalitions of two of the most important decision-making processes are summarized: the 2008 revision of the European Works Council (EWC) directive and the attempts to establish a European Company Statute up to 2009.

Revision of the EWC directive

The 1994 EWC directive was only adopted after more than a decade of bargaining. The text asked the Commission to undertake a review of the directive in September 1999. This review, however, did not take place. While the ETUC supported a revision, UNICE blocked it for several years. It was only after a second consultation paper from the Commission in February 2008 that things started to move. In April, ETUC declined Business Europe's surprising declaration of willingness to bargain on the issue, because ETUC thought they would be better off with a Community procedure. The Commission's proposal went out in early July, but it was only following ETUC priorities to a limited extent. Furthermore, the Commission had chosen a 'recast' rather than full revision in order to ease the proposal's way to adoption (Jagodzinski, 2009). A bipartite informal agreement followed in July proposing changing eight issues in the Commission's proposal. This eased the way for an adoption of the revision – which was completed in December 2008 – and minimized the role of the European Parliament.

Focusing on the content of the revision, the amendments were neither extensive nor impressive. Interviewees from both the Commission and the European social partners were of the impression that more changes were expected from the revision prior

to 2008 and that the ETUC would have been better off if they had chosen to bargain with BusinessEurope at an earlier stage. Still, simply getting a revision was a victory for pro-regulation actors even if they were not the cause of this. Many of the interviewees indicated that it was mainly the Barroso Commission's need to achieve new social regulation while still in office that made the revision come through in the first place. During the revision, however, most of the amendments were clearly priorities of the pro-regulation actors. This is the case with the training rights for the EWC representatives; the sanctions for those who do not comply with the directive; the resource amendments, specifying that the EWC representatives must have the means required to do their job; the opportunity for the representatives to seek external assistance, including for EU-level trade unions units; and the abolishment of the 50 employee minimum thresholds for setting up special negotiation bodies. Only a few elements can be seen as priorities of BusinessEurope. This is the case with the formulation that the EWC should have the 'means required' in relation to the 'steaming of the directive' and with changes made to the article on training.

The European private company initiative

The European Private Company (EPC) initiative should be seen in the context of the general European Company Statute adopted in 2001. The official aim of both these initiatives was to enable the set-up of European companies in order to increase their competitiveness. Since the European Company Statute initiative was mainly targeting larger corporations, it was supplemented with the EPC initiative targeting small and medium-sized enterprises (SMEs). At least, this was the official reason. The potential advantages should – according to the Commission – be that the initiatives allow entrepreneurs to set up all their companies and subsidiaries within the same flexible management structure no matter where they are, and that it offers a European label that is easily recognizable throughout Europe. The process was based in the DG Internal Market and Services (DG Markt), not the DG Employment. This was because it was basically a company law regulation proposal, although an EPC statute has consequences for labour law issues.

Although the initiative targeted SMEs, the proposal contains no limits on the size of the companies.

According to the Commission, the initiative to make a separate status for EPCs was developed in business and academic circles in the 1990s. Some interviewees from the European social partners pointed to the role of interest-organizations as important for keeping the issue on the agenda. The French Business organization *Mouvement des Entreprises de France* (MEDEF) was mentioned most frequently. MEDEF was of the opinion that the European Company – the company form at the centre of the European Company Statute – was difficult for big enterprises to handle because of the demands included on employee involvement. Therefore, MEDEF wanted another tool which de facto could allow them to bypass the European Company Statute. Other interviewees saw the need of the Commission itself as the main driver behind the initiative, and pointed more specifically to the role of DG Enterprise and its former influential Commissioner, Günter Verheugen. He wanted to 'do something good for the SMEs' and pressed hard to get the initiative through, although the SMEs themselves did not see the need for it.

As in the case of the revision of the EWC directive, the case of the EPC shows that it was not only the need to address a certain societal problem which drove the decision-making process. The need of the Commission to send certain political signals in order to secure its own legitimacy was crucial also in this case.

Considering how the discussions of the draft EPC directive focused on its potential deregulatory potential and considering that most of the interviewees saw the directive as a way to bypass other directives, indicates that supporting the EPC directive could not be seen as taking a pro-regulation position. Rather, supporting this directive should be seen as taking a regulation-sceptical position. But the pro-regulation actors seem to have been most successful, in that the directive was not adopted.

Assessment across cases

In sum, the two case-stories from the employee involvement area show that the pro-regulation forces were still able – under the right conditions – to get

new regulation adopted (the EWC directive) as well as to prevent the adoption of unwanted regulation (the EPC initiative). Hence, there is little indication of a slowing down or weakening of Social Europe here, although the pro-regulation forces might have wanted more from the revisions of the EWC directive.

Regarding the role of coalitions, *solid coalitions cannot be seen in any of the decision-making processes analysed*. In the *EWC revision*, it is possible to see the division between pro-regulation and regulation-sceptical actors. Among the regulation-sceptical actors, the United Kingdom, British MEPs and the Confederation of British Industry (CBI) clearly had some kind of interaction in order to minimize the impact of the recast process, and they had support from some old and newer member states. However, this support was partial. Likewise, focusing on the pro-regulation actors, although the ETUC and a number of pro-regulation member states with France in the lead were among the strongest drivers in the process, a clear-cut coalition is hard to locate. Among other things, the pro-regulation actors were divided on the extent to which a European social partners' bipartite agreement should be added to or not and the usually good relations between the ETUC and left-leaning MEPs became tense and unusable.

In the *EPC initiative*, Germany was the most sceptical member state, supported by Austria, Hungary and France – all four member states often found among the pro-regulation actors. The Netherlands, however, was also found among the most sceptical members alongside member states with whom they are often not in line. The positions of the ETUC (sceptical) and BusinessEurope (supportive) are not surprising, whereas the sceptical position early on of the UEAPME emphasizes that the initial reason for the proposed directive might not have been to support the SMEs. In sum, no real coalitions were formed in this case either.

Employment policy area

The more or less persisting high level of unemployment across Europe for the past 30 years is one of the most important reasons why the EU decided to introduce an employment policy. Also, pressure from the

Delors Commission (1985–1995) to balance the Economic and Monetary Union (EMU) and the single market with a social dimension no doubt played a role. Following advice from the Commission, it was decided to establish a common European framework for employment policy at the Essen summit in 1994.

With the Amsterdam Treaty in 1997, following a proposal from the Commission, the European Council became obliged to agree on a series of guidelines setting out common priorities for Member States' employment policies every year and was given the opportunity to issue country-specific recommendations. At the Luxembourg summit later that year, it was agreed that the member states' employment policy should focus on actions within four pillars: improving employability of the workforce; entrepreneurship; adaptability of employees and companies; and equal opportunities for men and women. The four pillars became the backbone of the European Employment Strategy (EES) and remained so until 2003 when the EES was first revised. The following two revisions – and the intermediate agreement on the European Common Flexicurity Principles – will be analysed below.

The revision of the Lisbon strategy

In the run-up to the revision, most actors found that the Lisbon process – initiated in 2000 and including the EES – had developed into far too broad a process. They claimed that it was about everything and therefore nothing and that it contained too many guidelines and targets. Although not all criticism was justified, because it ignored at least partly positive evaluations and academic studies (Zeitlin, 2010), most main actors agreed that the Lisbon process needed to be more focused.

The Communication with the draft guidelines went out from the Commission in April (European Commission, 2005). The draft Broad Economic Policy Guidelines and the draft Employment Guidelines were hereafter in the same document. Whereas there were 10 employment guidelines in 2003–2004, the number was reduced to eight in the communication. The proposed changes were minor, which might be one of the explanations why the

Council's Employment Committee's (EMCO) decision-making process on the draft guidelines – according to the interviewees and compared to the revision process in 2002–2003 – ran much more smoothly. The two coalitions were not activated to the same extent as in the 2002–2003 revision, analysed by, for example, Mailand (2006), Nedergaard (2005) and Deganis (2006). This is because the process was less conflict prone, but also because the greater number of member states made the coalitions even less stable than they were before.

Despite the more smooth process, the outcomes of the revision in 2005 could be said to have been influenced by the strengthening of the regulation-sceptical actors. The new Commission clearly refocused the Lisbon process more on growth and jobs and downplayed the role of social inclusion and environmental issues; but in relation to the 2005 revision of the EES, no major changes at the formal level are found. However, some interviewees indicated a change. After the revision, the quantity of jobs could increasingly be debated without considering the quality of jobs, and discussions on making work pay could be conducted without always also discussing security for workers. Also the use of peer pressure on the member states through 'naming and shaming' seems to diminish after the revision.

The common European flexicurity principles

The initiative to deepen and widen the use of the flexicurity concept at the EU level came from civil servants in DG Employment in 2005, who wanted a tool to bridge the visions for Europe represented by the minimalist and the regulation coalitions and give new life to the EES, to which the member states were paying less and less attention.

Many of the sceptical member states gradually changed their position on this initiative during the decision-making process that ended in 2007. Whereas a number of continental and Southern European trade unions, as well as the Parliament, remained sceptical all the way through, important member states such as the UK, the Netherlands, France and (to some extent) Germany shifted position. The same was the case with BusinessEurope,

and to a lesser degree the ETUC. The change of government in France in May 2007 was, according to the interviewees, very important for this development, in that it weakened the position of other sceptical member states and made them change their position. These changed positions facilitated DG Employment's work on its communication presenting proposals for the common principles (European Commission, 2007). The responses to the Communication from employers' federations and the Northern European member states were mostly positive. Southern European member states and trade unions, as well as Continental trade unions, remained sceptical. The reaction of the Parliament was also cautious and ETUC expressed scepticism, especially about what it saw as an attack on job security. On the other hand, the feedback from BusinessEurope was highly positive.

Further barriers arose to reaching agreement on the joint principles. One of the most sceptical countries, Portugal, took over the EU Presidency in July 2007, and trade unions organized big demonstrations protesting against flexicurity in Lisbon as well as in Brussels. However, following protracted negotiations, the European social partners, in the context of a joint publication on key challenges facing the European labour markets to be presented at the annual tripartite summit in Brussels, agreed a concise compromise on flexicurity and methods of achieving it (ETUC et al., 2007) that did not greatly differ from that proposed in the Commission's Communication. Also in this case, it was extremely difficult to reach common ground. With the European social partners' report, the basis for the sceptics was yet again weakened and the European Council reached an agreement on the principles at its meeting in December 2007.

Europe 2020: the employment policy part

In 2008, as the end of the Lisbon Strategy approached, reflections and discussions on its successor intensified. Further steps to streamline the economic and employment policy were foreseen.

Following the publication of the communication Europe 2020 (European Commission, 2010a), a process started which can be divided into three parts:

first, a phase took place with reactions to the communication in early spring 2010 and discussion of these in EMCO. The interviewees pointed to four controversial issues at this point in the decision-making process: a rather short decision-making process meant lack of time to discuss the Communication; the Commission's idea to integrate Europe 2020 and the Growth and Stability Pact to have a single document and a single governance structure (the member states rejected this idea); the educational target, which especially Germany had problems with, but also other member states found controversial; and the poverty target and related indicators – and more generally the inclusion of social policy issue in Europe 2020 in general. The United Kingdom, Denmark, Sweden, the Netherlands (mainly regulation-sceptical actors) and Italy (that did not want any targets at all) and possibly other member states too were sceptical with regard to the legal basis of including the poverty issue, and the UK stated that no recommendations on the issue would be accepted. Second, a phase followed from late spring to early autumn 2010 where the draft guidelines were issued. The draft guidelines did not include anything unexpected. The guidelines were generally welcomed. Third, the final process took place in autumn 2010 and early winter 2011 and led to the adoption of the guidelines (European Commission, 2010b).

Looking at the outcome of Europe 2020, there are – when they are accessed as a whole – no indications that they have strengthened the regulation-sceptical actors. The lack of references to the gender issue could be seen as such a strengthening, but is more than counterbalanced by the introduction of the poverty guidelines and target. Also here coalitions played a relatively limited role in the decision-making process. The poverty issue did activate resistance from a number of the classically regulation-sceptical actors. And cooperation between the pro-regulation Belgium Presidency and the Parliament's Employment and Social Affairs Committee during the final phase of the decision-making process might also have facilitated the changes made to the recitals of the guidelines. However, apart from these examples, there does not seem to have been much coordinated action among the two groups of actors referred to as the regulation-sceptical and pro-regulation actors.

Assessment across cases

Regarding the *scope* of the policy, the employment guidelines have been reduced in numbers over the years – a development which in itself represents a weakening. However, this development is less dramatic when seen in the context of the attempts to streamline the strategies, which has also led to a diminished number of economic guidelines. Also the 2007 adoption of the flexicurity principles included so many concessions to the pro-regulation actors that they could not be seen as weakening Social Europe. In a sense, social policy aspects were emphasized more in the end of the decision-making process (Bekker, 2011). Still, the bottom line is that the range of the employment policy has been diminished over the years, and the employment policy now has a more subordinate position to the economic policy than it did 10 years ago. Focusing on the *content* of the employment policy, there are only a few signs in the selected cases that a development in line with a weakening of Social Europe has taken place. Taken together, although the changes of the scope and the content of European employment policy are important and to some extent confirms that 'social policy' discourses as well as practices have weakened already in the pre-crisis period as described by Barbier (2012), the changes in the employment policy area are much more limited than could be expected from the change in the power relations between the pro-regulation and the regulation sceptic forces.

Remarkable in this regard is the inclusion of poverty issue including targets in Europe 2020. Following a campaign spearheaded by social NGOs to include a stronger social profile, back-up by some member states from the pro-regulation coalition and the Parliament, Barroso started in the autumn of 2009 to emphasize the need to give the post-Lisbon strategy a much stronger social profile (Zeitlin, 2010). All but one of the interviewees saw this as a tactical step to be reappointed. The poverty initiative has with some justification been criticized for, inter alia, having loose targets (the member state can choose between various indicators) and therefore risking being inefficient (Daly, 2012), but it is nevertheless remarkable that the issue was included at all, the political context considered.

Regarding the role of coalitions in the employment policy area, coalitions seem to have played a limited role in the second half of the past decade, where neither the common flexicurity principles nor the Europe 2020 activated the coalitions more than sporadically. One explanation could be that the weakening of the pro-regulation actors has weakened the pro-regulation coalition too – and this to such an extent that it is not able to organize resistance. However, despite the weakening of the role of coalitions and of the pro-regulation coalition in particular, at least parts of the pro-regulation coalition played an important role in the amalgamation of the social OMCs in 2006, the change of the European flexicurity concept during the decision-making process 2006–2007 and the inclusion of the poverty issue in Europe 2020.

The posting area

Within the EU, employers are allowed to post their employees to another member state to provide services. However, it is a matter of contention how the terms and conditions of these posted employees should be regulated. The legal tensions involved in the regulation of the working conditions of posted workers have been on the EU agenda since the 1960s, but the issue only got covered by EU regulation – European Court of Justice (ECJ) rulings and the Posting of Workers directive (PWD) – in the 1990s. As the scale of posting and the wage differences it involves have increased since the eastward EU enlargements, the issue of posting has become more and more contentious. Furthermore, as the phenomenon of posting is placed between service law and labour law, the regulation of posting takes place in both legislative fields.

The services directive

The Commission presented a proposal for a general directive on services in January 2004 (European Commission, 2004). It marked a shift in the strategy to liberalize the service sector from a sector-specific approach of simultaneous harmonization and liberalization to a general cross-sectorial approach with no harmonization efforts (De Witte, 2007; Loder, 2011).

Nonetheless, the proposal for a Services directive was initially welcomed by all the formal decision-makers (Commission, Parliament and Council). Still, pro-regulation actors holding no institutionalized position – especially trade unions – started to voice their concerns (Dølvik and Ødegård, 2009). They feared that the broad horizontal scope of the directive combined with the general ‘country of origin’ principle could potentially undermine the legality of existing labour law regulation for posted workers. Furthermore, the proposal contained provisions on administrative cooperation that they felt would limit host state control with enforcement of labour law in relation to posted workers.

The proposal was faced with massive mobilization by trade unions, which slowly started to influence the political struggle in the European Parliament and the debates in Council (Leiren and Parks, 2014). As these struggles dragged on, the Services directive was linked to debates about the EU in general. Thus, the French and Dutch ‘no’ votes in the constitutional referendum made a number of member states (with France and Germany in the lead) change their mind about the Services directive (Crespy, 2010). Therefore, the proposal was heavily revised during Parliament’s first reading and a number of the concerns mentioned were addressed in the revisions. The ‘country of origin’ principle was removed and new paragraphs explicitly excluding labour law from the scope of the directive. Also, restrictions to destination states control efforts were removed from the directive.

In retrospect, it seems that a number of actors and member states resumed their predictable position within pro-regulation and regulation-sceptical coalitions – the former trying to limit the deregulatory effects of the initial proposal and the latter trying to maintain the Commission’s initial proposal. In fact, Crespy and Gajewska (2010) argue that a cross-cutting opposition between ‘regulators’ and ‘liberals’ structured the process more than pure left–right or East–West oppositions. However, this sorting of actors very much happened during the adoption process as almost all actors had endorsed the initial proposal when it was published. It seems that intense politicization and links with other political issues played an important role in getting these coalitions established.

The temporary agency work directive

The Temporary Agency Work (TAW) directive started as a negotiation issue between social partners in 2000. However, they were fundamentally divided on the concept of non-discrimination and the time threshold before non-discrimination of temporary workers would apply. Despite several attempts, these differences could not be overcome. Instead, the Commission made a proposal for a directive in March 2002. The proposal entailed that non-discrimination was understood in relation to the workers of user firm (as trade unions had asked for), but also contained a number of exceptions from this principle. The proposal caused a good deal of debate in the Parliament and was completely deadlocked in the Council. There were several points of disagreement, among them the issue of a possible time threshold for the non-discrimination principle to enter into force. The main opponent was the UK, allied with Germany, the Netherlands and others. From the end of 2002 and onwards, these disagreements marked the debates and by 2005 the Commission considered withdrawing the proposal (Broughton, 2006).

However, in the fall of 2007, the Portuguese presidency managed to link the TAW to the Working Time directive, while making compromises that accommodated the concerns of Germany and the Netherlands. Slowly, the blocking minority started to erode, with the UK being one of the only member states still upholding its opposition. As a response, the UK government encouraged the British employers association, CBI, to conclude an agreement with the British trade unions in TUC. A deal was made that allowed for a 12-week exemption for the non-discrimination principle. This allowed the United Kingdom to approve the final directive, which applied non-discrimination from Day 1 and with the non-discrimination relating to employees of the user firm just as trade unions had wanted. However, it also includes a number of possibilities for exceptions from these general principles, including the possibility for national-level social partners to negotiate exemptions from the no-threshold principle. In that sense, the effect of the TAW directive depends very much on the national implementation and it is hard to tell whether Social Europe has been strengthened

by its adoption. With regard to the issue of posting, it is still more complicated as it is not quite clear whether the TAW directive or the PWD will apply to posted temps. The difference is important as the TAW directive requires non-discrimination not just to certain elements of the host states labour law, but to a much broader range of working conditions at the work place level. In any case, the TAW directive has not weakened the social dimension.

As for coalitions, United Kingdom is a classical regulation sceptic. Other members of the blocking minority, however, seem to have had very issue-specific concerns (the Netherlands) or have supported the UK in return for the UK backing them on other issues (Germany). Still, the many possibilities for exemptions in the final compromise indicate that a number of member states had reservations against too general a regulation of temps.

Political responses to the 'Laval-quartet'

The rulings in the so-called Laval quartet (Malmberg, 2010) – consisting of the cases *Viking*, *Laval*, *Rüffert* and *Luxembourg* – caused uproar from pro-regulators. They argued that the rulings had set limitations to the right to take industrial action, transformed minimum standards for the PWD into maximum standards and had limited member states' potential to make demands on issues that went beyond those listed in the PWD (Andersson, 2008). For this reason, pro-regulation actors made strong calls for a political response at the EU level that would correct what they perceived as a misinterpretation by the ECJ.

The Parliament's Employment Committee initiated a report that would call for change to both the Treaty and the PWD. The ETUC set up an expert group that would elaborate in detail the changes needed to 'resolve' the problems caused by the rulings. However, they were faced by opposition both from regulation sceptics – such as BusinessEurope and a number of new member states that saw no need for legislative initiatives at the EU level – but also from within their own ranks, where it was feared that legislative initiatives could backfire and worsen the situation. Instead, legislative initiatives were taken in a number of member states to handle the challenges raised by the rulings (Blauburger, 2011). Still,

pro-regulators felt that the rulings had caused a fundamental imbalance that could only be solved by EU legislation (Fabbrini and Granat, 2013).

In that regard, any legislative initiative would have to come from the Commission. After the Irish ‘no’ referendum to the Lisbon treaty, the Commission started to acknowledge the need for action on the issue. Still, it was reluctant to launch an initiative that would in all likelihood end up deadlocked in Council. However, when Barroso wanted to renew his presidency of the Commission in 2009, socialist MEPs made their support for him dependent on his taking an initiative with regard to posting. Thus, the new Commissioner of Employment and Social Affairs was charged with the assignment of making a legislative proposal with regard to the posting issues. After years of delay, the Commission presented two legislative proposals in the spring of 2012.

One was the so-called Monti II regulation, which aimed at clarifying the relation between market freedoms and the right to take collective action. Still, the attempt made by the Commission to ‘balance’ these two kinds of rights did not satisfy pro-regulators, who felt it would not resolve the problems raised by *Viking* and *Laval* (Bruun and Bücken, 2012). Furthermore, 12 national parliaments declared the proposal in breach of the principle of subsidiarity and the Commission withdrew the proposal in the September of 2012 because it regarded it as unpassable in Council (Fabbrini and Granat, 2013).

The other proposal was an enforcement directive aimed at improving the implementation of the original PWD. This proposal became the centre of intense political struggle in both Parliament and Council, but a compromise has been reached and will be adopted in the spring of 2014. While trade unions are not satisfied with the compromise, the introduction of this new directive can to some extent be seen as a victory for pro-regulators. However, the new directive does not resolve the problems raised by the ‘Laval quartet’ and pro-regulators must therefore be regarded as being unsuccessful in producing a political response to the rulings. As such, this case shows the clear weakening of the pro-regulators, because they stand faced with a very solid regulation sceptic coalition.

Assessment across cases

The three cases point in different directions. Despite the many possibilities for exemption, the adoption of the TAW directive – after years of deadlock and with the non-discrimination concept favoured by trade unions – must be seen as a clear victory for pro-regulators. With regard to the Services directive pro-regulators were also able to make substantial amendment to the proposal despite being in a minority in both Parliament and Council. As for the EU-level responses to the Laval quartet, which is claimed to have seriously undermined the possibility for regulating the terms and conditions for posted workers, none have come. Here the diminished strength of pro-regulation actors can clearly be seen. In sum, pro-regulators still hold enough power to prevent deregulatory legislative initiatives and even promote some regulatory measures (as long as enough exemptions are made to make them less effective), but have been unable to respond to the increasing challenges posed by the ECJ rulings and the increasing use of low wage posting after the EU enlargements (although the new Enforcement directive may help a bit).

Regarding the role of coalitions, looking at the two cases where posted workers have been most directly debated, it seems that the issue has become more and more contentious, moving from initial consensus on the proposal for Services directive to clearly distinguishable coalitions with regard to the issues raised by the Laval quartet. While some pro-regulation member states might not want to revise the PWD, this is mainly so because they acknowledge that regulation sceptics are in the majority. When it comes to the TAW directive, however, the process seems to be reversed, from initial oppositions between two groups to the gradual construction of a compromise. In that sense, coalitions seem to be less solid and more content specific than assumed in previous studies.

Conclusion

Table 1 summarizes the most important findings from the case studies related to the research questions.

In this section, the answers to the research questions and most important findings are specified.

Table 1. Findings from case studies.

	Changes of content/drafts during the process	Tightening or relaxing regulation pressure	Role of coalitions
<i>EI1: Revision EWC directive</i>	Went through several decision-making arenas, content changed accordingly. No clear direction.	Getting the revision through was a priority of pro-regulation actors, but outcome had no clear direction.	The coalitions played a role and the division between the two could be seen, but it was not clear cut.
<i>EI2: European Private Company initiative</i>	After several Presidencies' attempts, the initiative was blocked by actors mainly from pro-regulation coalition.	An adoption of the initiative would might have implied relaxing the regulation pressure.	Several actors took positions in line with expectations from coalitions, but no real coalitions were formed.
<i>EP1: Lisbon revision, employment policy</i>	No major changes re employment policy. The fight about which OMCs to include took place elsewhere.	Although no major changes took place re EP, they got a more subordinate position on economic policy. Some relaxation.	The coalitions did not play an important role during the revision process re employment policy, although it did in defending the social OMCs.
<i>EP2: European flexicurity initiative</i>	The initiative clearly got a stronger social profile during the decision-making process.	The ambiguous nature of the FC concept and the many concessions made implies that the FC principles cannot be seen as relaxing regulation.	The coalitions were only activated sporadically, although parts of the pro-regulation coalition played an important role.
<i>EP3: Europe 2020, employment policy</i>	The most controversial initiatives regarding education and poverty survived, but the 'pick and choose' poverty indicator is taking some bite out of it.	The inclusion of the poverty implies that the Europe 2020 cannot be seen as relaxing regulation pressure.	Although the education and poverty targets did meet active resistance from regulation-sceptical actors, the two coalitions played minor roles.
<i>PW1: Service directive</i>	Complete reversal of main principle in pro-regulation direction and increasing recognition of labour law.	Despite of being an overall liberalizing directive, some parts may have strengthened labour regulation.	From an initial consensus, the coalitions are mobilized during the process and play a major role in producing the final compromise.
<i>PW2: TAW directive</i>	Long process with many changes. Main non-discrimination principle was maintained but with lots of exemptions possible.	The main principles are tightening regulation pressure, but lots of exemptions exist.	The blocking minority is not formed by one of our two coalitions, but runs across them.
<i>PW3: Response to Laval quartet</i>	Monti II regulation withdrawn before the real negotiations began.	No tightening of regulation as a response to a clear relaxing in the rulings.	The two coalitions clearly opposed, but unable to find a compromise with regard to the Laval quartet.

OMC: Open Methods of Coordination; FC: flexicurity.

Impact of the development in power relations more limited than expected

The analyses of the eight cases within three work and employment-related areas show that the expected

impact in the form of a weakening of Social Europe is seen in only three of eight cases analysed, and some of these only to a limited extent. None of two cases in the employee involvement area – the revision of the EWC directive and the EPC initiative

– marked a general weakening of Social Europe, although the pro-regulation actors obtained far from all their goals in any of the cases. In the employment area, the employment policy parts of the Lisbon revision and the Europe 2020 showed signs of a weakening of Social Europe, but only to a limited extent and less so than expected. The third case, the common European flexicurity guidelines included so many concessions to the pro-regulation actors that it could not be seen as weakening Social Europe. In the posting area, the Laval quartet itself has seriously weakened Social Europe, and the response (the case analysed here) has not yet come. The two other cases, the TAW directive and the Service directive, did not represent weakening of Social Europe.

The conclusion that the cases within the three areas only to a limited extent show a weakening of Social Europe does not necessarily imply that the work and employment-related regulation in the period analysed represent a correct or adequate answer to the structural and cyclical challenges Europe faced in that period. Nor does it imply that this regulation is sufficient to balance the economic integration. Analyses of these questions have not been the aim of this study. Our aim has only been to assess whether improvements in social regulation (or resistance to deregulatory measures) can occur at a time when pro-regulation actors have been weakened.

Occasional successful resistance from pro-regulation actors

The analyses of the eight cases show that the weakening of Social Europe is less widespread than expected and that this can be explained by two factors in particular.

The first is actor/action oriented: successful resistance and ad hoc coalition-building from pro-regulation actors. This factor played an important role during the decision-making processes of the Service directive, but was also of importance for the decision-making process of the European Private Company statute and the Common flexicurity principles. Successful attempts by the pro-regulation actors to adopt new regulation are mainly found in the case of the TAW directive (and to a lesser extent by the EWC directive – lesser for a reason which

will be addressed below). Even in one of cases that to some extent can be seen as weakening Social Europe, Europe 2020, successful resistance from pro-regulation groups were important for the outcome – in this case, especially, Parliament successfully raised their demands for a greater role for social issues as a prerequisite for the re-appointment of Barroso as leader of the Commission.

Yet, sometimes the lack of progress towards new regulation or the content of the regulation adopted can also be explained by failure in the strategies of the pro-regulation actors. This was the case with the revision of the EWC directive and to some extent the Lisbon revision (because of the content of the regulation adopted).

The European Commission's search for legitimacy

The second factor is institutional and has to do with a certain form of organizational inertia linked to the actor's search for legitimacy, especially the Commission's need for a stronger social profile in order to be reappointed. This factor was the most important reason that the EWC directive was finally revised and that the poverty issue got a prominent place in Europe 2020. It was also influential in making the Commission come up with any kind of response to the Laval quartet (although this response was rejected in the end). This second factor is important for the decision-making processes in that it works as a sort of 'stabilizer': in times where the regulation sceptics should be strong enough to introduce more sweeping changes, it can – to some extent – prevent this from happening. And it must be expected that the same will be the case in times where the pro-regulation actors hold the stronger power position. As such, it should be added that a similar mechanism was also among the reasons that the Commission proposed the European Private Company Statute, which was in line with the regulation sceptics rather than the pro-regulation actors' wishes.

The declining role of solid coalitions

Regarding the role of the coalitions, these seem only to have been playing a role in some of the cases. In

general, coalitions seem less stable and solid than described in the previous research. While there are contours of pro-regulation and regulation-sceptical coalitions in many of the cases, and several actors took positions as could be expected from previous studies of coalitions, it is noteworthy that none of the eight cases could be seen as clear examples of the pro-regulation vs. regulation sceptic coalitions in action. The cases that come closest might be the EWC revision, the Service directive and the response to the Laval quartet. The reason that stable coalitions seem to be more or less absent in the case seems to be that content-specific institutional interests often stand in the way of the formation of stable coalitions and that some issues – for instance flexicurity – are not so easy to place on the pro-regulation regulation sceptic axis. However, this is not sufficient to explain the development from a situation in the 2000s where the two coalitions were influential to the present situation where they are less so. Two possible explanations can be suggested. One explanation could be that the weakening of the pro-regulation actors has weakened their capacity to maintaining a coalition too – and this to such an extent that it is not able to mobilize for new initiatives for Social Europe or organize more than partial and ad hoc resistance on attempts to weaken Social Europe. Contributing to this development might be that a number of the new member states are not easily placed within the two coalitions, although these member states' governments on average tend to take more regulation-sceptical positions than the old member states.

What has replaced the clear-cut coalitions are member states that instead of joining forces to defend and develop Social Europe to a larger extent than before defend their own national model and national interests on an ad hoc basis.

Perspectives: what will the new EU-regulation regime imply?

It is important to point to a reservation regarding the findings. As mentioned in the introduction, the period hereafter – or more accurately from September 2010 onwards – has seen the development of what some see as a whole new regime of EU-level economic governance. The introduction of these initiatives reflects,

first, a further direct as well as indirect weakening of the pro-regulation actors and, second, a development in a direction where the regulation-sceptical actors to a larger extent are those who push for new regulation. Not regulation to protect employee rights or the quality of work, but regulation in order to stabilize national economies and secure more market-based wage-setting. Hence, perhaps, the crisis has destabilized the above-mentioned stabilizing mechanism, thus allowing regulation sceptics to use their position of power more extensively.

To what extent these developments have also had an impact on the three work and employment-related areas included in the present research project – employee involvement, employment policy and posting – is a question for further research. An impact is likely to have taken place, but it is noteworthy that actors such as the member states' representatives in EMCO and the Social Policy Committee during the past couple of years with some success have been 'striking back' to prevent their policy areas being marginalized within Europe 2020 (Barcevičius et al., 2014; Vanhercke, 2013).

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