

This article was downloaded by: [Goldsmiths, University of London]
On: 08 May 2012, At: 11:52
Publisher: Routledge
Informa Ltd Registered in England and Wales Registered Number: 1072954
Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



Journal of European Public Policy

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/rjpp20>

Are you being served? Europeanizing and re-regulating the single market in services

Georg Menz

Available online: 06 Dec 2010

To cite this article: Georg Menz (2010): Are you being served? Europeanizing and re-regulating the single market in services, *Journal of European Public Policy*, 17:7, 971-987

To link to this article: <http://dx.doi.org/10.1080/13501763.2010.499226>

PLEASE SCROLL DOWN FOR ARTICLE

Full terms and conditions of use: <http://www.tandfonline.com/page/terms-and-conditions>

This article may be used for research, teaching, and private study purposes. Any substantial or systematic reproduction, redistribution, reselling, loan, sub-licensing, systematic supply, or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The accuracy of any instructions, formulae, and drug doses should be independently verified with primary sources. The publisher shall not be liable for any loss, actions, claims, proceedings, demand, or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

Are you being served? Europeanizing and re-regulating the single market in services

Georg Menz

ABSTRACT While the freedom of service provision is one of the pillars of the Single Market Project, such deregulation clashes with national wage regulation and social policy-making. This article examines recent attempts by the European Commission to further promote liberalization, epitomized in the so-called ‘Bolkestein Directive’, as well as three case studies of political conflict involving the transnational posting of workers within the framework of service liberalization in Ireland, Sweden and Germany. Re-regulation of service provision by governments is crucially affected by the lobbying efforts of trade unions and employers. Internal organizational characteristics of labour market interest associations are crucial in predicting their effectiveness. The deregulatory effects are felt most severely in Germany, while even in Sweden the former gentlemen’s agreement can no longer be sustained without serious modification. In France, no conflict unfolded. In Ireland, a business-friendly compromise emerges, whilst the European Union directive was severely watered down, though not neutered.

KEY WORDS Bolkestein; employers; labour market policy; service liberalization; single market; unions.

1. INTRODUCTION

Recent debates in comparative political economy have focused on the implications of economic liberalization in Europe. The influential varieties of capitalism (VoC) approach (Hall and Soskice 2001; Hancké *et al.* 2007), which rejected pessimistic predictions of convergence on the liberal Anglo-American model of capitalism, has attracted criticism for allegedly not adequately accounting for change (Pontusson 2005).

A major external driver of change that remains somewhat bereft of scholarly attention is the European Union (EU) Single Market Programme (SMP). The deregulatory liberal nature of the SMP clashes with, and in some cases directly undermines, the pillars of politico-economic governance models by interfering with national authority over labour market regulation. ‘Negative integration’ (Scharpf 1996) potentially weakens national regimes of wage-setting, labour market regulation and access control regulation by permitting trans-European service provision.

This contribution examines the implications of EU-induced liberalization on different models of capitalism, focusing on the impact of the liberalization of service provision (LSP). In line with the VoC approach, it is argued that the 'adjustment process will be oriented to the institutional recreation of competitive advantage' (Hall and Soskice 2001: 63). Thus, actors in various models will seek to re-establish equilibrium and re-adjust the institutional logic of these models, especially influenced by the industrial relations legacies. National actors will be conditioned by the logic of legalistic, corporatist or voluntaristic labour market regulation. However, moving beyond the somewhat static and path-dependent prediction generated by VoC, it is argued that responses are also influenced by the interests and institutional characteristics of unions and employers.

Empirically, the contribution examines recent advances in the liberalization of service provision, especially the EU Services Directive, and subsequent national response strategies. Owing to its methodological design and the reliance on case studies, the ambition is not to prove decisively a causal relationship, but rather to demonstrate linkages between institutional and ideational factors and policy outcomes. The rest of the article is organized as follows: the second section outlines the key arguments in more detail; the third section explores the genesis of the Services Directive and empirical developments in Ireland, Sweden, Germany, and France; and a fourth concluding section briefly assesses the validity of the argument presented and outlines the main contributions to the literature.

2. THE DETERMINANTS OF NATIONAL RESPONSES TO EUROPEAN LIBERALIZATION

The European Commission has recently attempted to revive neglected aspects of the single market, especially regarding service provision, one of the original 'four freedoms' already embedded in the Treaty of Rome. On 13 January 2004, the Commission presented the first draft of a Framework Directive for Services on the Internal Market. Commonly referred to by the name of the Dutch Commissioner for the Internal Market, Frits Bolkestein, the directive sought to curtail national authority over access regulation for service companies and promote trans-European service provision. 'Services' were defined fairly broadly in Article Art. 2.4 (1) as comprising 'any self-employed economic activity, as provided for by Art. 50 of the Treaty, consisting of the provision of a service against consideration'. Excluded from the remit of the directive were services of general economic interest and activities performed by the state without remuneration. This implied that public services which do involve such charge, for example, municipal libraries or swimming pools, could be covered. This definition of services shall be adopted in this article.

The SMP permits transnational service provision, but behind the backdrop of substantial wage gaps in the EU-27 this potentially leads to providers offering their services based on significantly lower wages, unless legally barred from doing so. Clever entrepreneurs are availing themselves of new outsourcing opportunities

by seconding employees transnationally and exploiting such wage gaps. In line with Directive 96/71/EC (Art. 2), a 'posted worker' is defined as 'a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works'. By formally registering corporate headquarters in low-cost Latvia or Cyprus, significant savings can be realized and the obligation to pay Irish or Swedish wages can be legally avoided. This applies when and if the country of registration's regulatory regime applies to the transnational service provision even in the destination country ('country of origin principle'). Recent European Court of Justice decisions have interfered with national regulation of transnational service provision.

Though warmly welcomed by economic liberals, any such liberalization of service provision was bound to prove politically contested, for it touches upon both the debates surrounding immigration and fears over social dumping in an EU-27 with significant wage gaps. The first version of the Services Directive sought to introduce the country of origin principle regarding wages and other regulations.

By insisting on a new directive based on a radical interpretation of mutual recognition (Nicolaidis and Schmidt 2007) and this country of origin principle, the European Commission provoked powerful reactions by national governments, unions and employers. This article examines the national response strategies both to the 'Bolkestein' directive itself and related legal developments. It explores how four different countries, representing three different industrial relations traditions, responded to this impetus.

The potential shock to the wage structure and the labour market was most acute in north-western European countries with relatively high wages. Pan-European service provision – especially at country of origin wage levels – would have created a permanent second tier of the labour market, or at the very least led to downward pressure on wages in services.

Building on earlier work (Menz 2005), it is argued that responses are broadly shaped by the self-preserving logic implied by the VoC approach, according to which the recreation of competitive advantage and restoration of past patterns will be the predominant response pattern. System maintenance will be preferred to radical paradigmatic change in reaction to EU-induced change. This can be partly attributed to path dependency and high transaction costs, but is also a consequence of the complementarities between systems of industrial relations and other aspects of politico-economic systems of governance (Hall and Gingerich 2004). However, while the process of adjustment may well entail a period of conflict and suboptimal outcomes, VoC do not specify the dynamics of such conflicts, nor does the predicted eventual outcome of the re-establishment of a system-affirming response appear inevitable. In fact, critics have highlighted the tendency to downplay conflict, ignore politics and struggle with change as weaknesses of early VoC literature (Pontusson 2005; Streeck and Thelen 2005).

The response to an external shock will be conditioned by the dominant logic of labour market regulation; however, moving beyond the somewhat path-dependent bias of VoC, it is argued that the nature of the national response

strategies will also be influenced by the *interests* of the unions and employers respectively and their *power resources*. Following Menz (2005: 64ff.), the latter are conceptualized in terms of degree of centralization (number of actors), internal cohesion (top-down control), representation among clientele (membership levels), and access to government (consultation). Extracting from the relevant literature, and in the absence of quantitative values with the exception of those for representation among clientele (presented in Table 1), values for these variables are considered either 'weak', 'medium', or 'strong'. These values are presented in Table 2. The interests are derived from an analysis of primary documents and interview data and are discussed in the third section.

The logic of labour market regulation (and industrial relations) varies greatly across Europe. Three key categories can be distilled from the industrial relations literature (Edwards 2003; Ferner and Hyman 1998; Traxler *et al.* 2001): a *legalistic-statist* logic, whereby wages are prescribed by law and even the results of collective bargaining are endorsed and bestowed with legal character by the ministry of labour; a *neocorporatist* logic, whereby wages are the exclusive domain of competence for labour market interest associations and the state is either legally barred from wage-setting or *de facto* not inclined to interfere directly; and finally, a *liberal-voluntaristic* logic, whereby wages are set by labour market interest associations either at micro or meso level, but low coverage of these agreements and opt-out clauses prevail.

These three different logics of industrial relations inform the case selection. Liberal-voluntaristic logic coincides with market-based industrial relations systems found in liberal market economies (LMEs), represented here by Ireland. Legalistic-statist logic is found in the Mediterranean political economies characterized as mixed market economies (MMEs), represented by France. Neocorporatist logic is associated with co-ordinated market economies (CMEs). However, CMEs and the neocorporatist logic are also potentially under most stress from an external impetus for two reasons. Firstly, as wages are set through bargaining and are not *ex ante* legally binding, there is no legally binding minimum wage. Secondly, the 'scramble for a response' is more protracted than in the other models because of the need for a response strategy acceptable to both unions and employers, which even in the presence of 'deliberative institutions [to] facilitate ... coordination' (Hall and Soskice 2001: 65) is challenging. For this reason, two cases are included, Sweden and Germany. Methodologically,

Table 1 Union and employer organisational density

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

Sources: Traxler *et al.* (2001); OECD data cited in Ebbinghaus (2003).

Table 2 Power resources of Labour Market Interest Association

<i>Internal Power Index</i>	<i>Germany</i>	<i>France</i>	<i>Ireland</i>	<i>Sweden</i>
Unions				Employers
Centralization	strong– strong	weak– strong	weak– medium	strong– strong
Internal cohesion	medium– medium	weak– medium	weak– medium	strong– strong
Representation among clientele	medium– strong	weak– strong	medium– medium	medium– strong
Access to government	medium– medium	weak– medium	medium– medium	strong– medium
Comparison	medium– strong	weak– medium	weak– medium	strong– strong

measurement of variance among different politico-economic models of governance is maximized.

In *France*, the trade unions are impeded by a low level of representation among their clientele (eight per cent of the workforce). Analysts highlight a low degree of organizational centralization owing to ideological divisions, underdeveloped internal cohesion and problems in exercising control over the rank and file, and underdeveloped links with the government (Lallement 2006; Mouriaux 1997). The employer association Medef represents primarily large French business, but also organizes a significant number of small- and medium-sized enterprises. Its centralization is much more strongly developed and membership comprises 75 per cent of French business; however, divergent interests limit internal cohesion (Woll 2006). Common socialization patterns facilitate access to governmental actors (Hall 1986). The minimum wage SMIC creates a floor and wages are routinely declared universally applicable (*etendu*) and legally binding.

In *Germany*, the unitary union movement encompasses 23 per cent of the workforce, and its internal coherence is low (Menz 2005). Sectoral unions, especially the powerful metalworker union IG METALL and service sector union ver.di, command strong power (Traxler *et al.* 2001). Access to government is secured through informal ties to the Social Democratic Party and formal hearings during legislative deliberations.

The employer camp is similarly represented by one association only, and the BDA is also organizationally subdivided along sectoral and regional lines. Membership levels reach 73 per cent, recent atrophy notwithstanding (Hassel 2007). The employers rely on strong sectoral members, especially in the metal sector, and maintain informal contacts to the ministry of labour and social affairs. Negotiated wages are binding on members of German employer associations only. Recently, some employers have quit the association to dodge such obligation.

In *Ireland*, the trade union movement organizes 35 per cent of the workforce; most union members are concentrated in the public sector. Though most unions are affiliated with umbrella organization ICTU, the movement is hampered by persistent organizational subdivisions and low internal cohesion (von Prondzynski 1998). The institutionalization of social partnership has created new avenues for informal consultation with government (Hardiman 2002).

Employer association IBEC comprises 38 per cent of all companies. It is more centralized and internally cohesive than the unions (von Prondzynski 1998) and regularly consulted by ministries, playing an active role in the social partnership. Wages are negotiated sectorally and in some instances at the company level with some guidance proffered by the national framework agreement. However, they are binding only on the negotiating parties and deviations from this norm are possible.

In *Sweden*, the trade union movement entails 78 per cent of the workforce, its internal cohesion and centralization remains high despite the division into blue- and white-collar employees (Kjellberg 1998), and access to the government is principally secured through close ties to the Social Democratic Party.

The unitary employer federation Svenskt Näringslivet organizes 54 per cent of all companies and internal cohesion is generally guaranteed (Swenson 1991). Wages are negotiated sectorally, but employers generally adhere to these terms, with no similar tendency of membership losses among employers being discernible.

In sum, the organizational characteristics of unions and employer associations in the four countries lead one to expect a particularly strong position for French and Irish employers, a potential stand-off and compromise solution in Sweden and a somewhat stronger position for German employers.

3. NEW INITIATIVES REGARDING THE LIBERALIZATION OF SERVICE PROVISION (LSP)

Though originally already contained in Articles 59–66 of the Treaty of Rome and one of the ‘four freedoms’, considerable legal uncertainty clouded trans-European service provision and it remained of little practical significance well into the 1980s. The relatively equal levels of wages in the then-EC meant that transnational service provision only occurred in cases where highly specific niche know-how had to be sourced internationally. *De facto*, European service sectors remained well within the legal remit of national regulatory authorities. EU activity was largely focused on banking and other financial services, as evident in the 1977 and 1989 banking directives, establishing a one-stop home country ‘passport’ for financial service providers. Somewhat vague wording in the Treaty of Rome permitted particular protection of public service domains, historically particularly cherished in France.

The Commission grew increasingly frustrated with this state of affairs. The 1990s had witnessed a substantial increase in transnational service provision, especially in the construction sector. ‘Posted workers’ from low-wage southern

countries detached to high-wage destinations were heralded by economic liberals as an expression of the SMP, whilst critics perceived the emergence of islands of foreign law that imported Portuguese wages to Germany as a nightmarish neoliberal harbinger. A 1990 ECJ decision (*Société Rush Portuguesa Lda vs. Office National d'Immigration* 27 March 1990; C-118/89) clarified that 'communal law does not oppose the practice of [member states] imposing their legislation . . . on any person performing a paid service . . . on their territory'. However, EU eastward enlargements in 2004 and 2007 re-ignited this problem and created much more substantial east–west wage gaps.

3.1. Bolkestein directive

In 1999, Dutch Liberal Frits Bolkestein became Commissioner of Internal Market and Services. In a 2002 speech, he outlined his political views on the goals of European integration, highlighting 'removing obstacles, 'solving cross-border problems' and 'utilizing economies of scale'. No mention was made of social policy (Kowalsky 2007: 32). Perhaps inspired by the Lisbon Agenda of promoting economic growth largely through neoliberal deregulation and Bolkestein's previous activities on behalf of the Hayekian think tank Mont Pelerin Society, the DG MARKT presented its draft directive on service deregulation on 13 January 2004, following an internal draft inventory of remaining 'barriers' to services. Little consulting of stakeholders was conducted and the European Trade Union Congress (ETUC) was ignored altogether. The directive's remit was extremely broadly defined.

The section containing the most political dynamite was Article 16, containing the 'country of origin' principle regarding applicable contract law. Host country wages and working conditions were applicable only where they constituted statutory law and were thus part of the *ordre public*. Draft Articles 14 (3) and 24 outlawed existing obligations to carry appropriate wage and working conditions documents and the requirement to appoint a national representative. Any new administrative requirement introduced by national governments would become subject to approval by the Commission (Art. 15 (6)). Article 15 further sought to abolish quantitative, regional or financial restrictions.

Substantial political controversy ensued. In *France*, the response of employer organization Medef was lacklustre. In its 6 April 2005 statement (Medef 2005), the employers acknowledged social dumping potential and expressed concern over the abolition of documentation requirements. The trade unions strongly opposed the directive (CGT 2008), expressing their concerns to the government. Though there was no direct potential for undercutting of wages, as wages are legally enshrined, there was some concern over the practical ramifications of lax documentation requirements. During the first half of 2005, a vociferous public debate over the merits of the Constitution unfolded, during which the Bolkestein directive was invoked as representative of the neoliberal fundamentalism informing the European project (*Le Monde* 2005a). Desperate to rescue an affirmative vote in the referendum, President Chirac proclaimed

that the directive 'does not exist anymore' (*Le Monde* 2005b: 5) in the original form.

In *Sweden*, the trade unions insisted on the abolition of the country of origin principle and Swedish wages and working conditions for posted workers (LO 2005). Their national level lobbying activities proved successful, with the Swedish government assuming a very reserved stance towards Bolkestein. Employer organization Svenskt Näringslivet (2004) dismissed the social dumping argument as 'unfounded concerns' and strongly supported the directive, yet did not insist on the country of origin principle. Generally, the directive was seen as potentially compromising the neocorporatist logic of labour market regulation.

In *Germany*, the trade union very vehemently opposed the directive and the country of origin principle in particular. The head of DGB, Michael Sommer, referred to the project in a speech during a demonstration in Berlin on 11 February 2006 as 'madness'. The trade union also very strongly lobbied against ending national enforcement of local labour standards and the coverage of temporary work agencies in the directive and in favour of broader exemptions, especially regarding health and education. The German government proved open to these concerns and assumed a deeply sceptical stance. Chancellor Schröder declared that 'those willing to offer services in this country must be willing to respect the criteria which we have developed in this country' (*Rheinische Post* 2005: 2). Even the employers were concerned about possible negative ramifications regarding national labour and health standards (BDA 2004) and accepted that certain 'contradictions' regarding the rights of posted workers seemed to exist and needed to be 'clarified' (BDA 2006: 2).

In *Ireland*, the government assumed a broadly supportive stance, partly informed by employer positions. The liberalization of services was broadly characterized as potentially beneficial for Irish companies. However, the Irish Ferries case which attracted a lot of public attention demonstrated potential negative ramifications. The trade unions were very strongly opposed to the directive, portraying it as a 'Frankenstein directive' that would set in motion a downward spiral in wages and working conditions (SIPTU 2006). The employer association IBEC supported the directive as a reduction of unnecessary restrictions and considered the fears over social dumping misplaced. The Department of Enterprise, Trade and Employment organized a number of consultation exercises with the social partners, receiving the positions of both unions and employers. Notwithstanding union reservations, the overall Irish government position was broadly favourable towards the directive and the employer position. The directive seemed to complement or at least not challenge the voluntarist mode of labour market regulation.

Significant concerns arose regarding this directive, perceived by many of the national labour market interest associations as being excessively liberal, a position clearly communicated to the respective national governments. Though other factors obviously coloured the public debate, notably the poor timing, the botched and incomplete consultation by the Commission, and a very

successful mobilization campaign by ETUC, the opposition by national trade union associations and the lacklustre reception even among employer associations helped shape the national negotiation positions and in turn indirectly influenced the Commission's decision to withdraw the initial draft directive. In light of the clearly and strongly expressed concerns, the German, Swedish and French governments all decided to adopt a fairly critical stance towards the directive and the country of origin principle in particular.

During the debates in the European Parliament it was once again this issue which led to the most heated exchanges. A compromise between the major two parliamentary groupings abandoned the home country principle, employing the term 'freedom to provide services'. Host countries retained the right to conduct monitoring exercises. A concession to the Left was the exclusion of services of general interest, including healthcare. The Posted Workers Directive (96/71/EC) would be incorporated as setting the basic framework for working conditions. This meant that statutory wages and working conditions of host countries became binding on posted workers. The amended proposal was presented by the Commission on 4 April 2006. The Austrian Presidency during the first half of 2006 had played an important role in ensuring that voices critical of Article 16 were being heard. Austrian Minister for Economic Affairs Bartenstein had signalled in an interview that he would 'fight for exceptions and exemptions' (*International Herald Tribune* 2005: 3). One year to the day after the rejection of the European Constitution in the French referendum, the Council of Ministers accepted the Austrian compromise solution, akin to the Parliament's proposal. With the exception of one abstention from Lithuania, the approval by the Council of Ministers was unanimous. The final result is the Directive on the Single Market (2006/EC/123), which had to be implemented into national law by 28 December 2009.

Aside from the nascent Services Directive, EU-induced liberalization also spawned national conflicts over the (re)-regulation of labour markets and wages, as the three following country studies will illustrate. Strikingly, *no* such conflict emerged in *France* where the entire framework of wages is routinely declared universally applicable and thus legally binding on all service providers. This *status quo* is accepted by both the trade unions and employers (Interviews 1, 2).

3.2. Ireland

Concerned about ferocious competition pressures from low cost airlines, ferry operator Irish Ferries announced in late 2005 that it was re-flagging its fleet, outsourcing management to Cypriote subcontractor Dobson, and replacing its workforce with Eastern European, predominantly Latvian, agency crew. This proved a shrewd manoeuvre, as temporary restrictions on service provision did not apply to Cyprus and Malta. The company claimed that Latvian hourly wages, which stood at €3.60, with the minimum hourly wage in 2004 only at €0.71, should be applicable to these ostensibly temporarily posted workers. The Services Industrial Professional and Technical Union (SIPTU) and the

Seamen's Union of Ireland (SUI) responded immediately and robustly with industrial action. Management deployed security guards to assist the introduction of agency crew, leading to a number of violent confrontations and the blocking of vessels in Irish and Welsh ports in December 2005. A major nationwide demonstration organized by the union on 9 December 2005 attracted a turnout of 100,000, widely viewed as a considerable demonstration of strength (*Irish Independent* 10 December 2005). However, despite the negative publicity the company was courting, its management seemed unwilling to budge.

The conflict had commenced on the Rosslare–Cherbourg service as early as 2004, when the company had flagged out its vessel *Normandy* to the Bahamas, announcing subsequently a lay-off of 700 employees (SIPTU 2004) and locking out SIPTU-organized seafarers to apply additional pressure.

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

Following intensive negotiations at the Labour Relations Commission and intervention of the National Implementation Body, a compromise agreement was eventually found in late 2005. It accepted the planned outsourcing, but safeguarded existing wages and working conditions for Irish crew members. Crucial for unions was the concession to pay all employees the statutory Irish minimum wage of €7.65 per hour and thus accept host country conditions. Though ostensibly an agreement that ended wage dumping, its nature is employer-friendly, as it permitted the effective de-unionization of a formerly state-owned enterprise, significant wage cuts and the outsourcing to a company incorporated abroad.

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

3.3. Sweden

When the Swedish town of Våxholm invited tenders for a school renovation project in 2004, it received a highly attractive offer from Latvian construction company Laval and Partneri, a vehicle established to carry out construction work in Sweden using Latvian employees. Construction commenced in 2004, with 14 employees posted directly from Latvia. A conflict over pay quickly ensued between the sectoral construction union Svenska Byggnadsarbetareförbundet and the company. No collective wage agreement had been signed and the company paid its workers an hourly wage of SEK 80, thus exceeding

standard Latvian wages, but still falling well short of local sectoral hourly wages of SEK 130 to 145. The union justified its blockade of the building site on 2 November 2004 by reference to the 1991 *Lex Britannica*, according to which industrial action can be taken to support foreign workers against foreign companies active in Sweden even if said workers are bound by a valid foreign work and wage contract. The Electricians' Union (*Svensk Eletrikerförbundet*) supported the blockade. The company demonstrated willingness to raise the hourly wage to SEK 105, but refused to be bound by standard wages or sign a Swedish collective wage agreement. Work on the site continued for a few days, but eventually came to a halt on 14 December after the company had exhausted cement supplies from non-unionized cement suppliers.

Unable to complete the job in time, with the school scheduled to open in June 2005, the company withdrew from the site and took legal action against the union in the Swedish labour court (*Arbetsdomstolen*). For the first time ever, the gentlemen's agreement enshrined in the 1991 modification to the Swedish Law on Co-determination was put to a serious practical test. An intriguing question was whether the key component of this agreement – the right to impose a blockade to ensure the payment of Swedish wages – was consistent with EU law. The Swedish labour court felt that this issue could not be resolved domestically and referred the case to the ECJ. Having exhausted conflict resolution within the neocorporatist framework, the conflict evolved into a legal case as the rules of the game were contested given the involvement of a foreign company.

The ECJ 18 December 2007 *Laval* decision (C-341/05) declared industrial action unlawful

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

Swedish business cheered the result (*Svenskt Näringslivet* 2007), while the union was exasperated. As Swedish wages are not legally binding and there is no statutory minimum wage, the ECJ ruling opens up room for lower wage tiers for foreign posted employees. However, following detailed inquiry and consultation, the government will introduce legislation in April 2010 (Prop. 2009: 10/48) that modifies the *Lex Britannica*, rendering strikes in support of posted workers possible only where their wages and working conditions do not meet the standards of Swedish collective agreements. While unions are concerned about limitations to the right to strike and the reduction of applicable conditions to a minimum hard core, the employers wanted to clarify this core and suggest the introduction of a minimum wage (EIRO 2009), a suggestion that was ignored. While strike rights have been curtailed, the new legislation limits opportunities for undercutting wages and thus represents a union-friendly response strategy.

3.4. Germany

Outsourcing to East European subcontractors in the German meat processing sector commenced in earnest in 2004, following EU eastward enlargement. Regular employees were replaced with more than 15,000 posted Eastern Europeans, especially Romanians. Sectoral union Nahrung-Genuss-Gaststätten (NGG) even claimed 26,000 job losses (Czommer and Worthmann 2005). Remunerated at hourly wage levels of three to five euros and thus well below standard wage levels, the posting of workers offered the additional advantage of circumventing regulations regarding holiday payment, sick pay and social security contributions. In the absence of a national minimum wage, sectoral wage agreements apply. Recent trends suggest that businesses are leaving employer associations to avoid the legal obligations such agreements entail. Thus, *de facto* wages in certain service sectors, especially private security, gastronomy and personal care including coiffeuring, are truly minimal. In other sectors, notably meat processing, there is no recognized employer association and hence no applicable and legally binding sectoral minimum wage.

The sectoral subdivision of the union movement impaired timely and robust responses akin to the Irish and Swedish. It lobbied both for the legislative introduction of a statutory minimum wage and an extension of the existing legislative national response strategy to cover additional sectors. This so-called Posted Workers Act had been amended in 1999 to enable the Ministry for Labour and Social Affairs to declare wages and working conditions universally applicable even in the absence of employer consent.

While umbrella association BDA remained staunchly opposed on ideological grounds to accept the introduction of a statutory minimum wage, some, though not all, sectoral employer associations agreed to render their sectoral minimum wage universally applicable (Interview 3). Between 2007 and 2008, a major political battle between the union and employers ensued, which was represented respectively by the Social Democratic Minister for Labour Olaf Scholz and the Christian Social Minister for Economic Affairs Michael Glos within the Grand Coalition. Both camps used their political access channels to lobby actively in this matter. The long drawn-out battle ended in 2008, when a two-tier legislative response strategy emerged: firstly, existing legislation will be amended to permit sectoral minimum wages to be declared universally applicable if at least 50 per cent of employees in the sector are covered by existing wage agreements and both sectoral unions and employers agree to such measure. Secondly, a modification of the 1952 Act on Minimum Working Conditions permits the creation of sectoral minimum wages even in sectors in which employer associations either do not exist or possess very low levels of membership. No agreement could be found on whether or not to permit such sectoral minimum wages for the sector of temporary work agencies, where the sectoral employer association remains fiercely opposed (personal communication to the author, 2 July 2008).

In the meantime, a second EU-induced liberalization avenue emerged. The remarkable ECJ Ruffert ruling struck down the obligation imposed on

companies tendering for public bids in the *Land* of Lower Saxony entailed in the Land's public procurement directive to pay standard regional wages (*Tarifstreue*). In its very liberal ruling, the court found that 'to impose on service providers registered in one member state where minimum wages are lower an additional economic burden which is likely to prohibit, inhibit or render less attractive the service provision in the host country ... can be considered a restriction in the sense of Art. TEU 49'. This decision thus bans regional laws that go 'beyond ... minimum protection'.

After long-winded political battles and considerable lobbying activity, the amended legislative acts present a revamped version of the German national response strategy, enabling the government to create sectoral minimum wages based on the recommendations of a bipartisan expert commission on low wages, to be modelled on the UK Low Pay Commission. Remarkably, this creates fairly powerful legislative tools to introduce sectoral minimum wage regulations in sectors affected by transnational service provision. However, the Ruffert decision has undercut supplementary regional re-regulation, which will contribute to the bifurcation of wage structures.

4. CONCLUSION: VARIETIES OF CAPITALISM, VARIETIES OF RESPONSES

EU-induced liberalization has unleashed considerable conflicts over labour market and wage (re-)regulation. In an EU-27 with significant wage gaps, both the Services Directive and the general liberalization of LSP prove politically contentious because they can undermine national sovereignty, creating islands of foreign law and promoting wage and social dumping.

Employer associations generally welcomed the new services directive, but many expressed concerns over distorted and unfair competition and henceforth did not attempt to defend the home country principle. While the French labour market regulation style allows no avoidance of standard wages, this emerged as a concern among the neocorporatist CME cases of Sweden and Germany, while in voluntarist Ireland such possibility was welcomed by the employers.

The national responses to the Services Directive reflect both the attempt to safeguard existing patterns of labour market regulation associated with CMEs and MMEs and the interests and power resources displayed by the employers and unions. Thus, the Irish government embraced a business-friendly position, while the Swedish, German and French governments were decidedly sceptical and directly opposed to the country of origin principle. In the three latter countries, the employers' interests lay in liberalization but, unlike their Irish counterparts, they did not embrace the home country principle. Union interests focused on defending the *status quo*. Despite the employers' superior organizational characteristics in France and Germany, their stance was guarded.

At the national level, the response strategies will be conditioned by the logic of existing labour market regulation plus the outcome of political conflicts between

unions and employers regarding the exact nature of the new equilibrium. This claim is largely borne out by the evidence.

In Ireland, LSP has permitted new avenues for outsourcing by using posted workers, in line with the aspirations of the organizationally superior employers and the spirit of liberal voluntarism. Thus, the Irish Ferries case has been resolved through a business-friendly solution that permits outsourcing, flexible personnel policy and the payment of minimum wages.

In France, a legacy of legalistic industrial relations is reflected in wages that are legally binding, permitting no room for the undercutting of wages. There appears to be no such interest by the institutionally superior employers.

In Sweden, European liberalization challenged existing union rights and led to unregulated spaces outside of the neocorporatist framework. Though the initial response followed classic neocorporatist lines and the strong unions were successfully able to stop the undercutting of wages, the involvement of a foreign company induced ECJ activity. The impending Swedish legislation will curtail strike rights, but clarify the applicability of standard wage conditions to posted workers, thus reflecting the union interests and power resources.

The German case is particularly instructive. The response strategy reflects the neocorporatist legacy. The superior organizational characteristics of German employers have helped impede a general minimum wage despite union advocacy. Yet new legislation permits sectoral minimum wages, of interest where undercutting of wages through posted workers is not welcomed by sectoral employers. Unlike the Swedish case, no comprehensive re-regulation of the LSP was found originally, meaning sectors outside of construction were exposed to posted workers. Since only the sectoral minimum wages are applicable to posted workers, their use remains potentially lucrative, especially in low skill jobs.

EU-induced liberalization thus interacts with different institutionalized models of capitalism. The original VoC framework does not account for change particularly well and neglects the liberalizing role of the SMP. This contribution seeks to address this lacuna. Building on my earlier work on 'national response strategies' to the SMP (Menz 2005), it is possible to analyse the outcomes of political battles over new equilibria following an external liberalization shock. Generally, the prevailing logic of industrial relations continues to influence response patterns. The different varieties of capitalism generate self-preserving re-regulation. However, in line with Menz (2005) and Kinderman (2005), but *pace* Thelen (2000), the German case highlights a somewhat more liberal interest position among German employers than is often assumed in the VoC approach. Low-wage posted workers are welcomed in some sectors of the economy and a general minimum wage is rejected. The article also highlights how 'Scandinavian gentlemen's agreements' have come under siege and had to be re-calibrated. The effects of a generally liberalizing impetus are thus far from uniform.

Biographical note: Georg Menz is Reader in Political Economy at Goldsmiths College, London.

Address for correspondence: Georg Menz, Department of Politics, Goldsmiths College, New Cross, London SE14 6NW, UK. email: g.menz@gold.ac.uk

ACKNOWLEDGEMENTS

Field research was facilitated through a grant from the University of London's Central Research Fund.

REFERENCES

- BDA (2004) 'Arbeitgeberpräsident Dr. Dieter Hundt: Vorrang für Wachstum und Beschäftigung in Europa – Binnenmarkt für Dienstleistungen schnell vollenden', press release 76/2004, 8 December.
- BDA (2006) 'Arbeitgeberpräsident Hundt: Europäischer Rat muss den Weg für eine Dienstleistungsrichtlinie mit klaren Regelungen ebnen', press release 20/2006, 23 March.
- CGT (2008) 'Coup d'arrêt à la directive Bolkstein: un premier succès à mettre à l'actif de la mobilisation sociale', press release, 28 July.
- Czommer, L. and Worthmann, G. (2005) 'Von der Baustelle auf den Schlachthof: Zur Übertragbarkeit des Arbeitnehmer-Entsendegesetzes auf die deutsche Fleischbranche', IAT Report 2005/03: Institut für Arbeit und Technik, Duisburg.
- Ebbinghaus, B. (2003) 'Ever larger unions: organisational restructuring and its impact on union confederations', *Industrial Relations Journal* 34(5): 446–60.
- Edwards, P. (ed.) (2003) *Industrial Relations: Theory and Practice*, London: Blackwell.
- EIRO (2009) 'Social partners have differing views on Laval Enquiry', available online at <http://www.eurofound.europa.eu/eiro/2009/05/articles/se0905029i.htm> (accessed 20 September 2009).
- Ferner, A. and Hyman, R. (eds) (1998) *Changing Industrial Relations in Europe*, Oxford: Blackwell.
- Hall, P. (1986) *Governing the Economy: The Politics of State Intervention in Britain and France*, Cambridge: Polity Press.
- Hall, P. and Gingerich, D. (2004) 'Varieties of capitalism and institutional complementarities in the macroeconomy: an empirical analysis', MPI discussion paper 04/5, MPIfG, Cologne.
- Hall, P. and Soskice, D. (2001) *Varieties of Capitalism*, Oxford: Oxford University Press.
- Hancké, B., Rhodes, M. and Thatcher, M. (eds) (2007) *Beyond Varieties of Capitalism: Conflict, Contradictions and Complementarities in the European Economy*, Oxford: Oxford University Press.
- Hardiman, N. (2002) 'Economic governance and political innovation in Ireland', *West European Politics* 25(4): 1–24.
- Hassel, A. (2007) 'The curse of institutional security: the erosion of German trade unionism', *Industrielle Beziehungen* 14(2): 176–91.
- Irish Independent* (2005) 'Major demonstration in Dublin', 10 December.
- Kinderman, D. (2005) 'Pressure from without, subversion from within: the two-pronged German employer offensive', *Comparative European Politics* 3(4): 432–63.
- Kjellberg, A. (1998) 'Sweden: restoring the model', in A. Ferner and R. Hyman (eds), *Changing Industrial Relations in Europe*, Oxford: Blackwell, pp. 74–117.
- Kowalsky, W. (2007) 'The Logic of the internal market versus social standards', in O. Jacobi, B. Keller and M. Weiss (eds), *Social Embedding and the Integration of*

- Markets: An Opportunity for Transnational Trade Union Action or an Impossible Task*, Düsseldorf: Hans-Böckler-Stiftung, pp. 30–47.
- Lallement, M. (2006) 'New patterns of industrial relations and political action since the 1980s', in P. Culpepper, P. Hall and B. Palier (eds), *The Politics that Markets Make*, Basingstoke: Palgrave, pp. 50–79.
- Le Monde* (2005) 'Dire non, pour rendre un immense service aux Européennes', 6 April.
- Le Monde* (2005) 'Chirac et Schröder veulent vaincre le pessimisme de leurs peuples', 28 April.
- LO – Landorganisationen (2005) *Letter to Frits Bolkestein*, Stockholm: LO.
- Medef (2005) *Bolkestein: Premier bilan*, Paris: Medef.
- Menz, G. (2005) *Varieties of Capitalism and Europeanization: National Response Strategies to the Single European Market*, Oxford: Oxford University Press.
- Mouriaux, R. (1997) *Le Syndicalisme en France*, Paris: Presses Universitaires de France.
- Nikolaidis, K. and Schmidt, S. (2007) 'Mutual recognition "on trial": the long road to services liberalization', *Journal of European Public Policy* 14(5): 717–34.
- Pontusson, J. (2005) 'Varieties and commonalities of capitalism', in D. Coates (ed.), *Varieties of Capitalism, Varieties of Approaches*, Basingstoke: Palgrave, pp. 163–88.
- Rheinische Post* (2005) 'Schröder für Änderung der EU-Dienstleistungsrichtlinie', 6 May.
- Scharpf, F. (1996) 'Negative and positive integration in the political economy of European welfare states', in G. Marks, F. Scharpf, P. Schmitter and W. Streeck (eds), *Governance in the European Union*, London: Sage, pp. 1–14.
- SIPTU (2004) 'Layoffs at Irish Ferries condemned', Press Release, 8 December, available online at <http://www.siptu.ie/PressRoom/NewsReleases/2004/Name,1981,en.html> (accessed 20 September 2009).
- SIPTU (2006) 'The Frankenstein Directive', available online at www.siptu.ie/CampaignsandCurrentIssues/EUServicesDirective (accessed 20 September 2009).
- Streeck, W. and Thelen, K. (2005) *Beyond Continuity: Institutional Change in Advanced Political Economies*, Oxford: Oxford University Press.
- Svenskt Näringslivet (2004) 'Europe needs modern, simple rules for services market', available online at <http://www.svensktnaringsliv.se/material/debattartikel/article3532.ece?> (accessed 20 September 2009).
- Svenskt Näringslivet (2007) 'A welcome judgment and a victory for Laval', available online at <http://www.svensktnaringsliv.se/english/article41232.ece?> (accessed 20 September 2009).
- Swenson, P. (1991) 'Bringing capital back in, or social democracy reconsidered: employer power, cross-class alliances, and centralization of industrial relations in Denmark and Sweden', *World Politics* 43(4): 513–44.
- Thelen, K. (2000) 'Why German employers cannot bring themselves to dismantle the German model', in T. Iverson, J. Pontusson and D. Soskice (eds), *Unions, Employers, and Central Banks: Macroeconomic Co-ordination and Institutional Change in Social Market Economies*, Cambridge: Cambridge University Press, pp. 138–72.
- Traxler, F., Blaschke, S. and Kittel, B. (2001) *National Labour Relations in Internationalized Markets: A Comparative Study of Institutions, Change and Performance*, Oxford: Oxford University Press.
- Von Prondzynski, F. (1998) 'Ireland: corporatism revived', in A. Ferner and R. Hyman (eds), *Changing Industrial Relations in Europe*, Oxford: Blackwell, pp. 55–73.
- Woll, C. (2006) 'National business associations under stress: lessons from the French case', *West European Politics* 29(3): 489–512.

INTERVIEWS

- 1 Representative of French Employer Association – Paris, July 2006
- 2 Representative of French Union CFDT – Paris, April 2005
- 3 Representative of German construction sector employers - Berlin, July 2008