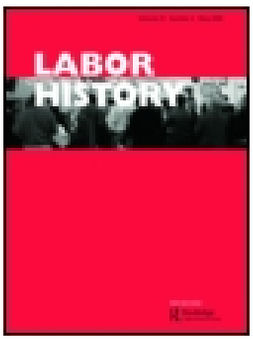

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Promising more to give less: international disputes between core and periphery around European posted labor, 1955–2018

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ABSTRACT

The posting of workers from the European periphery has generated the longest and most tumultuous series of labor disputes in the history of European Integration. On the basis of relevant archives, this article conducts the first historical review of posting rules in the European Union, from the first negotiation in 1955 until the latest directive in 2018. This historical review enables to discard the idea of a neoliberal turn in posting rules from the 1980s onward. It also leads to reject the explanation of disputes by the movement out of the European periphery under posting rules of a *Lumpenproletariat* insensitive to class struggle. Instead, the article identifies the increasing regulation of the labor market at the expense of posting opportunities since thirty years. It reveals the dominant role played by governments and their invariable support for their workers. It highlights the constant asymmetry of power between core richer countries and the Southern and Eastern periphery of the European Union. Eventually, this article locates the long-term problem in the contradictions between the interests of workers and firms in richer destination countries and the enlargements of the Single Market to poorer countries.

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Introduction

Since the mid 1950s, movements of workers in the context of international provisions of services in Europe have gradually become a major point of international disputes. These movements have triggered quarrels between governments, workers' demonstrations, publicized lawsuits, and, since 2006, prolific academic literature. Companies in one member country of the European Union (EU) can provide services in another member country and, for this purpose, send temporarily *posted workers* in that other country. In 2016, there were 2.3 million postings (De Wispelaere & Pacolet, 2018, p. 9). Posted workers coalesced around two ideal types, involving similar numbers (De Wispelaere & Pacolet, 2016, p. 10). One consisted of skilled workers from rich Northern or Western European countries in qualified occupations in the service sector, including financial and technological services. The second type – hereafter, the lower segment – comprised low- or medium-skilled workers from poorer Southern, Central, and Eastern European countries in construction, cleaning services, labor-intensive industries, and transportation (De Wispelaere & Pacolet, 2017, p. 9). In 2014, the construction sector made up 43.7 percent of all postings (De Wispelaere & Pacolet, 2016, p. 16). In June 2018, a new EU directive regulated these various flows. This was the latest in a series of political discussions that started as early as 1955 and have gradually created the current regime governing the international posting of workers inside the Union. Even though most rules did not differentiate between types of postings, this article will focus on the lower segment, particularly the construction sector, where all disputes occurred.

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This article for the first time investigates the initial decades of posting rules in the European Community and connects them to the subsequent developments from the late 1980s onward. This method will complement previous scholarship, which has mostly focused on single episodes or a reduced and recent time frame. This article will thus reveal that all the liberal elements in posting rules date back to before the early 1970s. This finding will challenge the idea that a neoliberal turn triggered the disputes surrounding postings from the 1980s onward (Cremers, 2011, p. 185; Crespy & Gajewska, 2010, p. 1203; Wagner, 2015a, p. 1380, 2015b, pp. 693, 705; Wagner & Lillie, 2014, pp. 403, 407). On the contrary, this article will show that those disputes led rules on a protectionist trend from the end of the 1980s onward. The long chronological stretch of this article also allows studying both the negotiations of rules by member states and their implementation, including in court cases several decades later. By doing so, this article will show that supranational institutions did not play any role in liberalizing posting rules, as some had believed (Cremers, 2011, pp. 182–183, 186; Höpner & Schäfer, 2012; Wagner, 2015b, p. 696; Wagner & Lillie, 2014, p. 404). Instead, governments, represented in the Council, always occupied the central position. The role of the European Commission and the Court of Justice regarding liberalization boiled down to implementing the outcome of intergovernmental bargains. Furthermore, on the basis of archival documents, this article will provide evidence that governments always supported the interests of their workers – rather than neoliberal views. The historical record overwhelmingly demonstrates a convergence of interests between workers and employers in all countries regarding postings. This article will thus challenge the idea that postings have been the vector of a dramatic 'shift in power resources between labour and capital' (Thörnqvist & Bernhardsson, 2015, p. 24; see also Cremers, 2011, p. 185; Crespy & Gajewska, 2010, p. 1185; Lindstrom, 2010, p. 1310; Wagner, 2015b, p. 693).

Eventually, this article will discard the idea that the responsibility for disputes lay in the movement out of the periphery under posting rules of workers presented as a *Lumpenproletariat* insensitive to class struggle (Berntsen & Lillie, 2016, p. 172; Refslund, 2016, p. 616; Wagner, 2015b, pp. 705–706; Wagner & Lillie, 2014, p. 407; Woolfson & Sommers, 2006, p. 50).[1] Instead the article will explain the disputes surrounding postings by the efforts of workers and firms in Northern and Western European countries to protect their rich markets. This backlash occurred after the enlargements of the Single Market to poorer Southern, Central, and Eastern European countries, whose firms operated under lower prices. To protect their markets, workers and firms in richer countries promised posted workers in the lower segment higher wages. This, however, aimed at prohibiting them from being cheaper. In this long series of labor disputes, this article will establish the constant asymmetry of power in favor of richer-country workers and firms – represented by their governments.[2] The latter thus changed the rules, from the late 1980s onward, in a protectionist way to reduce posting opportunities for the workers and firms from poorer new member countries.

This article follows a chronological outline. From 1955 to the 1970s, the posting regime of the European Community started within a concentrated framework, with some uncertainty about winners and losers. From the 1980s to the early 2000s, this framework integrated Europe's southern poor belt and core richer states asserted their national labor standards. Political salience peaked from 2004 to 2018, when the enlarged periphery of the European Union faced a protectionist core.

The genesis of the Community posting regime, 1955–1970s

In the beginning of European Integration, the first agreement about postings defined the period during which workers moving between member countries of the European Community would remain subject to the social security legislation of their country of origin. In 1951, the treaty creating the European Coal and Steel Community (ECSC) – between West Germany, France, Belgium, the Netherlands, Luxembourg, and Italy – favored the movement of coal and steel workers and arranged for a social security convention to facilitate it. That convention should apply to all migrant workers. In April 1955, the six ECSC member governments' experts met to

prepare it. They agreed that workers should be subject to the social security legislation of the country where they worked. They admitted, however, that this rule should not apply to those posted abroad for up to 12 months. The relevant authority in the country of destination could extend this limit to 24 months in case of unexpected delays.[3] The six governments inserted this formula in the convention, which they turned into a regulation of the European Economic Community in 1958.[4]

There were still a few debates on this matter. The German ministry of the Economy was early convinced of the competitiveness of German firms and favored the mobility of firms in Western Europe to promote German economic expansion.[5] Easy posting opportunities were part of this project. This implied not burdening firms with a different legislation in short-term provisions of services abroad. In addition, there was a financial incentive for German firms to remain under their social security legislation, as employers' social security contributions were particularly high in France – the biggest country in the Community. Contributions had significantly increased in that country after the social security reform of 1945, which aimed at paying high family benefits – an instrument to increase French population. As far as German workers were concerned, they too contemplated the prospect of numerous posting opportunities. And they too preferred to remain under German social security legislation, to ensure continuity in their social security rights. In February 1961, four German trade unionist members of the European Economic and Social Committee (ESC) proposed to abolish the 12- and 24-month limits. In their opinion, posted workers should always remain under the social security legislation of their country of origin. The president of the ESC, German trade unionist Ludwig Rosenberg, supported them.[6] The French opposed that foreign employers could provide services in France and pay lower social security contributions than their employers indefinitely. Even though the ESC voted this German proposal, with French reluctance to it the Council of the Community turned it down and the April-1955 formula remained in force.

Meanwhile, the Six liberalized postings more thoroughly with the project supported by West Germany, the Benelux states, and Italy to create a Common Market. It included the free movement of goods, capital, persons, and services.[7] Postings – for instance in international transport – belonged to the free movement of services.[8] In January 1957, government experts agreed that member states should allow other member states' companies to provide services under the same conditions as national companies.[9] This meant abolishing administrative complexity and any restrictions to the movements of providers and their staff.[10] In March 1957, Article 60 of the treaty of Rome creating the European Economic Community stated this objective. As the Council of the Community accepted in June 1963, 'the fact that a worker accompanies a service provider in another country should not alter the agreements made under civil law between the worker and their employer.' The Council admitted nevertheless that 'certain laws of the country in which the service provision [was] carried out [should be] applied.'[11] According to an ESC report, 'for short-term stays, [...] most of the working conditions [would continue] to fall under the terms of contracts established in the countries of origin.'[12] Hans van der Groeben – an official from the German ministry of the Economy, who chaired the Common Market Group preparing the treaty of Rome – promoted this solution. According to him, the Common Market would lead wages and social security legislation to converge, so that the question of which wages and social security legislation to apply would gradually become irrelevant.[13] As a result of those early steps, the member states had, by the early 1960s, planned to liberalize their rules governing postings. Providers and staff would be free to move, contractual relations between them would persist in the destination country, and posted workers would remain under the social security legislation of the origin country for 12 months.

Community institutions did discuss at that time the project to regulate posted workers' wages. Debates started in the European Parliamentary Assembly at the end of 1960. The commissions on social affairs and on the internal market denounced 'unjustified competitive advantages' for foreign companies employing 'workers from their country at wages lower than those in the host country.'[14] In March 1961, the Assembly considered that 'if wages in the country where services [were provided were] higher, workers [should] receive the wages applicable in that country.'[15] The

French and Luxembourg governments shared this opinion, as they feared competition through postings by foreign firms with lower labor costs.[16] Other governments and the Commission, however, convinced France and Luxembourg that wages would not be lower in origin countries.[17] They believed that competitive companies in developed countries would become the main beneficiaries of the free movement of services. Consequently, the Committee of Permanent Representatives gave up the complex task of regulating wages in temporary provisions of services abroad.[18]

Like the other elements of the Common market, the free posting of workers gradually entered into force during the transition period, which was to end in December 1969. Initially, member states limited beneficiaries to specialized or trusted workers, who also had to be member states' nationals.[19] The poorest country among the six member countries was Italy and the Netherlands were also a country of emigration within the European Community. To promote their firms, the Dutch advocated the largest possible freedom for their employers to choose the workers they wanted to post abroad. As Dutch companies often employed international staff, they proposed to include third-country nationals.[20] German employers too supported the freedom to choose the workers they would post abroad.[21] The Italians wanted to maximize the competitive advantage related to their lower labor costs and for this reason exclude third-country nationals.[22] Reluctant to open their markets because of their employers' high social security contributions, the French backed all restrictive options. In addition to excluding third-country nationals, they wanted to define the terms 'specialized or trusted workers' in accordance with the legislation of the country of destination.[23] They also wanted to apply to posted workers the limitations maintained for other migrant workers under the gradual implementation of the free movement of workers in the Community during the transition period. The French emphasized the risk of 'facilitating certain habits of social dumping.'[24] As this discussion dealt with temporary restrictions, bound to disappear by 1970, the other governments backed down and French demands prevailed.[25] After Regulation 1612/68 of 15 October 1968 had implemented the free movement of workers in the Community, no restrictions or work permits could anymore be imposed on posted workers either. However, the beneficiaries still had to be member states' nationals.[26]

A few labor disputes focused on posted workers already in this initial period. By the mid 1960s, hundreds of Dutch companies provided services to the German construction sector. Although West Germany had invariably promoted free postings, the first disputes started in that country.[27] As was to be the case for all subsequent complaints, the first complaints about posted workers' wages emanated from the unions and firms in the destination country – rather than from posted workers or their unions. As early as 1963, German employers and union in construction accused Dutch companies of unfair competition, putting forward lower social security contributions in the Netherlands. They also accused them, once abroad, of not even paying these contributions and no longer respecting the wages in their collective agreements. German construction union *IG Bau-Steine-Erden* alerted the social security administration in Wiesbaden. The latter claimed German social security contributions from all Dutch companies in its district, without checking whether they had actually established themselves in Germany or were just providing services. These claims however were valid only in the first case and the Wiesbaden administration had to give them up. In August 1963, *IG Bau* contacted Dutch union *Algemene Nederlandse Bouwbedrijfsbond* to check the wages that Dutch posted workers received in Germany.[28] The documents leave no trace that *IG Bau*'s accusations were founded.

In France too, the provision of services in the construction sector by foreign companies worried French employers and workers. French employers set up a European Standing Committee to study it. It was supposed to be European but was heavily dominated by the French. Based in Paris, this Committee was chaired by Henri Courbot. He belonged to the board of French employers' association CNPF and also chaired the French Professional Association of Public Works Companies. In July 1969, the Committee demanded special rules for the construction sector. According to the Committee, foreign companies in that sector should respect immediately and entirely destination countries' social security contributions and wage levels for low-skilled workers.[29] The views of French employers and workers

converged. These concerns hardened the French government's positions. Even for short missions, the French wanted posted workers to hold a residence permit. During the transition period, this was to restrict the movement of non-specialized workers, and afterward, to enforce the 12-month limit after which foreign employers had to pay French social security contributions.[30] The French also claimed that foreign companies sent successive workers to the same position to avoid paying their contributions after 12 months. According to them, some companies resorted to foreign partners to use postings as a way to hire workers subject to lower-cost legislation.[31]

By contrast, the delegates from Italy – the poorest country in the Community with the lowest labor costs – considered the application of the legislation of the country of origin 'an important stimulus.' They also opposed residence permits for posted workers on short missions.[32] The Germans too – despite the anxiety in the construction sector – wished to simplify postings and avoid excessive reference to the destination country's legislation to favor their highly productive firms. They pointed out that, beside higher social security contributions, French direct wages were lower than theirs, so that French and German total labor costs matched each other.[33] Ultimately, the preferences of France – which could unilaterally regulate its own market – prevailed and other governments had to agree that posted workers should hold a residence permit, with validity limited to the duration of the mission.[34] When revising the 1958 social security regulation, they also agreed, in new Regulation 1408/71 from June 1971, that the 12-month limit could not be used if a worker had been sent to replace another one.[35]

In the decade following the end of the transition period on 31 December 1969, free postings did not trigger any major disputes. By 1980, Italian GDP per capita had reached the Western European average. Without important differences in economic development and labor costs between countries, companies in the lower segment posted few workers (Kaitila, 2004, p. 7).

The integration of Europe's southern poor belt, 1980s–2004

The integration of Greece in 1981, then Spain and Portugal in 1986 changed the context and led core richer states onto a more protectionist path. These three countries' average GDP per capita in purchasing power parity amounted to less than two thirds of that of the other member countries of the Community (Krings, 2009, p. 52). In 1989, average hourly earnings of manual workers in all industries equaled 1.6 European units of account (ECU) in Portugal against 9.1 in West Germany. In 1990 in the construction sector, average hourly wages amounted to ECU 1.5 in Portugal, ECU 2.12 in Greece, against ECU 7.11 in reunified Germany (Menz, 2001, p. 143). Accordingly, standard wages in collective agreements and social security contributions were lower in new member countries. The fact that certain old member states had scaled up their legislation in the 1970s further exacerbated differences. From 1968 to 1982, France increased its minimum wage by 170 percent at constant prices. Social security contributions also rose as a result of increasing unemployment, so that the total minimum cost of labor increased threefold at constant prices in France (Comte, 2016, p. 3). The employment legislation of new member countries therefore provided an unprecedented competitive advantage.

Yet, by the 1980s, old member states had forgotten the risks of disputes associated with postings. They only regarded the free movement of services as an instrument to allow their firms to expand into Southern Europe against weaker local firms. In accession negotiations, they only focused on immediate and complete application of the free movement of services. In January 1980, the Community was ready to declare to Spain:

> The provisions [regarding the free movement of services] […] are now (1) directly applicable. […] Nationals of Member States (2) who carry on an economic activity in other Member States cannot be subject to […] any condition more restrictive than those imposed on nationals.[36]

Recognizing that there should not be any delay, the declaration continued: 'The only exceptions are those of the Treaty.' Faced with a similar declaration, Portugal pledged in February 1980 to

'accept [...] the direct application of the' free movement of services. Portugal agreed to 'put an end to all discriminatory practices against nationals of the Member States.'[37] In April 1982, Portugal stated that 'at the moment of Portugal's entry [...] the measures provided for by the Community *acquis* to facilitate [...] the freedom to provide services [would] have been adopted.'[38]

Community posting rules then did not require modifying employment contracts, so that these rules let workers receive the same wages as in their country of origin (Menz, 2001, p. 142). Based on such competitive advantage, by the first half of the 1990s, EU companies posted between 100,000 and 200,000 workers to Germany, with wages between 25 and 34 percent below local standards (Meier, 2004, p. 410). In France, as early as 1986, the labor inspectorate identified several cases of Portuguese posted workers paid below French standards (Cremers, 2011, p. 58). Whereas the accession treaty for Portugal and Spain had postponed the free movement of workers for up to seven years, it had not provided for any delay for the free movement of services. Nevertheless, after discovering those cases, the French unilaterally referred to the precedent of the transition period of the treaty of Rome. According to them, during the transition period defined by the accession treaty for the free movement of workers, new member states' companies could only post specialized workers (Eichhorst, 1998, p. 20). Consequently, they denied those Portuguese posted workers the right to work in France. In May 1987, the French National Office of Immigration filed a suite with Versailles' administrative court against Portuguese firm Rush Portuguesa. The latter used posted workers in construction sites for new high-speed-train railways in western France.[39] The case eventually reached the European Court of Justice, which overturned French arguments in March 1990. Yet, the Court recognized that 'Community law [did] not preclude Member States from extending their legislation, or collective labor agreements [...] to any person who [was] employed, even temporarily, within their territory.'

The Court's judgment thus reopened the question left pending in the 1960s regarding the regulation of posted workers' wages and recognized member states' sovereign rights on this matter. The judgment created a spillover effect. Richer destination states unilaterally modified their national labor laws to protect their workers and firms from competition from new poorer member countries. France acted first, with a May-1991 circular and a November-1993 law forcing foreign employers to respect the French minimum wage (Eichhorst, 1998, p. 20). In Norway, a new law allowing the government to declare collective agreements universally applicable took effect on 1 January 1994 – the day when Norway joined the European Economic Area (Rogstad, 2013, p. 46). In Austria, unions mobilized in the summer of 1995 against the coming of posted workers in the lower segment and the Austrian Parliament adopted a stricter bill on posted workers' wages in December 1995 (Eichhorst, 1998, p. 22). Stakes were the highest in Germany. In 1996, foreign companies posted 165,000 workers to the German construction sector. This number equaled that of unemployed German construction workers (Menz, 2001, pp. 141–142). *IG Bau* and employers' sectoral association *Hauptverband der Deutschen Bauindustrie* advocated higher employment standards for foreign posted workers. A February-1996 law extended collective agreements to foreign employers in construction, but only for 3.5 years. In addition, it led to a new minimum wage in that sector, which the minister of Labor declared generally binding, but only for eight months (Eichhorst, 1998, pp. 23–24). General employers' association *Bundesvereinigung der Deutschen Arbeitgeberverbände*'s reluctance to implement a high minimum wage explained those time limits (Menz, 2001, p. 153). Lastly, posted workers had to register and provide documentation about their working conditions (Cremers, Dølvik, & Bosch, 2007, p. 531).

The European Commission tried to mediate in this evolution. In August 1991, the Commission reacted to the Court's Rush Portuguesa judgment and presented a draft directive to the Council. This aimed at a controlled extension of destination countries' legislation in a way that would not hinder most postings by overwhelming administrative complexity. The Commission proposed a list of matters in which destination states could have their legislation applied, while declaring the list exhaustive and defining a threshold period – below which this legislation should not apply. In the Council, Portugal and the United Kingdom – major sending countries of posted workers in the

lower segment – opposed any extension of destination countries' labor laws to posted workers (Eichhorst, 1998, pp. 17–19). If forced, they would back the attempt to create an exhaustive list, which Greece, Ireland, and Italy also supported.[40] With their lower GDPs per capita, these countries – including the United Kingdom – had lower labor costs. By contrast, France, Germany, the Benelux states, and Denmark favored complete freedom to extend the application of their legislation. These richer countries had higher labor costs (Rogstad, 2013, p. 21). Receiving many Portuguese posted workers, Spain oscillated between the two groups. Given that richer destination states had already extended the application of their legislation to posted workers or remained free to do it in the absence of a European agreement, they occupied a strong position. The Council then adopted a directive matching their preferences via qualified majority. The United Kingdom voted against and Portugal – then the poorest country of the EU, with the lowest wages – abstained.[41]

The resulting Directive 96/71 of 16 December 1996 matched all the protectionist preferences voiced by richer destination states. The list of matters it specified – in which labor laws in the destination country had to be applied to posted workers – was non exhaustive. Destination states remained therefore free to complete it. It included, inter alia, working hours and minimum rates of pay.[42] The directive mentioned no general threshold period. Only for assembly works of up to eight days was a statutory minimum wage inapplicable.[43] For missions of less than a month, destination states remained free to apply their minimum rates of pay or not.[44] Specifically in construction, the eight-day threshold period was not applicable and foreign companies had also to respect collective agreements or arbitration rulings declared universally applicable.[45] In other sectors, the directive left destination states free to have foreign companies apply the collective agreements or arbitration rulings that they had declared universally applicable.[46] The Belgian legislator used this option for all sectors (Cremers et al., 2007, p. 532). In the absence of agreements declared universally applicable, destination states could impose other forms of collective agreements, as long as they respected the equality of treatment between national and foreign companies.[47] As the unique, but not explicit, enlargement of posting rights, the directive did not specify that beneficiaries should be nationals of member states. This happened as most firms in the periphery had national staff, while firms in the core – in particular in the upper segment – were more international. After the Directive came into force, the number of posted workers in the lower segment declined markedly. In the German construction sector, it fell by 60 percent to 68,000 in 2006 (Cremers et al., 2007, pp. 530–531).

The new framework created no few difficulties – in particular in the upper segment of postings, which directly interested Northern and Western European countries. Companies had to modify contracts for short missions (De Vos, 2006, p. 363). As the secretary general of the European Banking Federation, Nikolaus Bömcke, underlined, these 'administrative and fiscal obligations […] [had] the effect of preventing […] short-term postings.'[48] This contradicted the objectives of the Single Market, repeated in the preamble of Directive 96/71,[49] to make 'the posting of workers […] easier.'[50] A few destination states then implemented Directive 96/71 softly, with the objective to facilitate postings in the upper segment. The Netherlands applied universally binding collective agreements to foreign companies only in the construction sector. Beside construction, Germany only extended collective agreements for maritime transports. Norway did not make collective agreements universally applicable to impose them on foreign companies. Sweden and Denmark did not extend their minimum rates of pay, defined under non-universally binding collective agreements, because they wanted to preserve their casuistical industrial relations system (Cremers, 2006, p. 178; Rogstad, 2013, p. 47). Those states were not underrating the interests of their workers. Most did enforce protectionist rules in the construction sector, where most disputes occurred, and adopted a more lenient position for the upper segment, which was beneficial for their firms and workers. Moreover, even in the construction sector, the impact of Directive 96/71 could appear problematic in Northern and Western European countries. Eleven among the 15 EU countries experienced indeed a 60-percent rise in their housing price index between 2000 and 2007.[51] In a context of declining flows of posted workers, the incompatibility between local workers' interests and the integration of the Single Market appeared doubtful. Such integration could increase productivity and reduce inflation.

In March 2000, the European Council under Portuguese presidency, in Lisbon instructed the Commission to design a strategy to remove the obstacles to the free movement of services. In November 2002, the Council gave high priority to this problem to reinforce competition and control inflation.[52] In January 2004, European Commissioner Frits Bolkestein presented a proposal for a new directive. To facilitate international provisions of services, the Commission proposed that companies should be mostly subject to the regulatory provisions of their member state of origin – the country of origin principle. The proposal however excepted from this principle *the 'matters covered by Directive 96/71/EC' or Regulation 1408/71*.[53] The country of origin principle therefore mostly applied to technical rules of production. The innovation concerning postings precluded destination states from forcing companies to declare their posted workers, obtain authorization, or have a representative in their territory.[54] Instead, the proposal entrusted states of origin with ensuring the respect of destination states' rules, although the former were interested in supporting their companies abroad.[55] This created some opportunity for fraud, even though destination states remained free to carry out inspections and take actions.[56] Last but not least, the proposal coincided with the EU enlargement to Central European countries.

Political salience at its peak, 2004–2018

From May 2004 onward, the periphery became larger, including countries with much lower GDPs per capita. The core became more protectionist and the political salience of postings reached a peak (Cremers et al., 2007, p. 525). Eight in 2004, Central and Eastern European member states amounted to one third of EU states – 40 percent by 2013, when they were 11. In 2001, the GDPs per capita of 2004 entrants stood at 45 percent of that of the EU15 (Krings, 2009, p. 52). Consequently, new entrants had legislation that allowed lower labor costs. In 2015, the minimum wage stood at €1.04 in Bulgaria against €8.5 in Germany (Wagner & Hassel, 2016, p. 168). As the Bolkestein proposal coincided with this Eastern enlargement, debates became acrimonious. Polish minister for European affairs Jarosław Pietras and social-democratic leader Marek Borowski backed the country of origin principle. Polish MEPs supported almost unanimously the Commission's proposal to remove 'the most important barriers that prevent free movement.' The Hungarian socialist government and Hungarian MEPs shared this opinion (Crespy & Gajewska, 2010, p. 1193).[57]

By contrast, in March 2005, a demonstration in Brussels against the proposal gathered 50,000 people (Crespy & Gajewska, 2010, pp. 1195). In France, employers' association Medef and the union *Confédération Générale du Travail* (CGT) attacked 'social dumping' (Menz, 2010, p. 977). Once again, French employers and workers voiced identical concerns. The left used this question in the campaign against the Treaty establishing a Constitution for Europe, which resulted in the rejection of this treaty by referendum on 29 May 2005 (Crespy & Gajewska, 2010, pp. 1193–1194). The most vocal consisted of lobbies of labor-intensive sectors, such as plumbing or taxi driving (Hagemejer, Michałek, & Michałek, 2014, pp. 215, 223). In February 2006, 30,000 people demonstrated in front of the European Parliament in Strasbourg, as MEPs were discussing the Commission's proposal (Crespy & Gajewska, 2010, p. 1192). In Germany, strong opposition to the text endured in the East, where competition from Central Europe was closer and appeared more dangerous (Bachmann, Bauer, & Frings, 2014, p. 343). Southern European states, Ireland, and the United Kingdom became less favorable to free postings, given the new configuration of wage differences and competitive advantages in the enlarged Union.

The European Economic and Social Committee (ESC) adopted opinions by a simple majority vote, providing therefore new member countries with more weight. In that body, two opposing sides clashed on the text of a final opinion about the Commission's proposal. This matched the opposition between poorer sending countries and richer receiving countries of posted workers in the lower segment. 68 ESC members backed – unsuccessfully against 127 – the country of origin principle. 74 denied – unsuccessfully against 140 – that there would be difficulties to ensure controls with the Commission's proposal. 84 favored – unsuccessfully against 132 – forbidding the requirement to maintain a representative in the destination country for companies providing

services.[58] In the European Parliament too, in February 2006, a majority voted down the Commission's proposal.[59]

In December 2006, the European Parliament and the Council adopted a new directive on services in the internal market.[60] This new text fulfilled all the protectionist concerns that richer destination states had voiced against the Bolkestein proposal. It did not include the emphasis on the country of origin principle and the section on posted workers of the Commission's initial proposal. It did not preclude destination states from asking companies to declare posted workers or have a representative in their territory.[61] Regulation 1408/71 and Directive 96/71 remained the sole texts regulating posted workers' terms of employment.[62] Meanwhile, at the national level, destination states implemented new restrictions. For the EU enlargement to Central European countries, Germany – under the insistence of *IG Bau* – and Austria limited the free movement of services in construction, building, cleaning, and interior works for at least two years (Kahmann, 2006, p. 187). In October 2004, Norway imposed several collective agreements on posted workers (Rogstad, 2013, p. 47). In August 2005, France passed a new law extending to them additional provisions related to the minimum wage and sanctions against illegal work (Lalanne, 2011, p. 238). In the Netherlands – where the Bolkestein polemic had also led to the European Constitution being turned down in June 2005 – a new law came into force in December 2005. It covered all industries with universally binding collective agreements regulating various wage levels – not only the minimum (Cremers, 2006, pp. 178–179). In 2007, Norway introduced a statutory minimum wage in construction, before making a collective agreement in maritime construction universally applicable in 2008 (Eldring, Fitzgerald, & Arnholtz, 2012, p. 26; Rogstad, 2013, p. 47).

After the Eastern enlargements, the number of posted workers did increase as could be expected. The main reason was that those enlargements largely increased the population of EU workers that could be posted freely. Three other factors also played some role. Firstly, most old member countries temporarily restricted the free movement of workers after each enlargement, so that postings – where they were not limited – represented the main open channel (Lillie & Sippola, 2011, p. 298). Secondly, certain regulatory loopholes still allowed posted workers from poorer countries to be cheaper. Collective agreements had to be made universally applicable before they could be imposed on posted workers. In Denmark, Sweden, and Italy, this had still not happened (Cremers et al., 2007, p. 534; Pallini, 2006, p. 274). Even with a universally binding collective agreement, specifying the remuneration for each qualification profile, differences in qualification profiles between countries could make posted workers' wages uncertain (Cremers, 2011, p. 39). Also, even when posted workers received the same salary as local workers, employers' lower social security contributions in the origin country could make posted workers cheaper. Thirdly, a few companies – in the German meat industry, Finnish shipbuilding, and public works in particular – exploited these loopholes to recruit a cheaper workforce (Lillie, 2012, pp. 158–159; Menz, 2010, p. 982; Thörnqvist & Woolfson, 2012, pp. 530–531; Wagner & Hassel, 2016, p. 173).

Posted workers totaled 86,500 in Spain – including 35,000 from Portugal – and 217,000 in Germany in 2007; 48,000 in Norway in 2008, 62,500 in the Netherlands in 2009 (Cremers, 2011, pp. 21, 72, 113, 135). From 2010 to 2014, the total number of posted workers in the EU grew annually by 8.5 percent. From 2011 to 2016, it increased overall by 58 percent. Numbers from Slovenia, Poland, Greece, Romania, and Bulgaria increased faster (Cremers, 2011, pp. 113, 125; De Wispelaere & Pacolet, 2016, p. 10, 2018, p. 9). The proportion in construction was high: over 50 percent for Portuguese posted workers in general, 42 percent of posted workers in France in 2013, 62 percent in Belgium in 2015 (Cremers, 2011, p. 135; De Wispelaere & Pacolet, 2017, p. 7; Lhernould & Palli, 2017, p. 120). By 2015, posted workers from Poland, Portugal, Spain, and Romania amounted to 45 percent of posted workers in France.[63] Germany constituted the primary destination, with 311,000 posted workers in 2011 and 440,000 in 2016 (Cremers, 2011, p. 72; Wagner, 2015a, p. 1372).[64] In 2013, 30 percent of posted workers within the EU headed toward Germany (Wagner & Hassel, 2016, p. 169). A majority of them – 72 percent in 2007 – came from Central

Europe, which represented a higher share than in other destination countries (Cremers, 2011, p. 23).

Destination countries' unions hunted down artifices, including unpaid overtime, making posted workers from poorer countries cheaper (Thörnqvist & Bernhardsson, 2015, p. 30; Thörnqvist & Woolfson, 2012, p. 531; Wagner, 2015a, p. 1377). In Lombardy, the Italian Confederation of Workers' Trade Unions (*Confederazione Italiana Sindacati Lavoratori*) denounced temporary work agencies that placed as posted workers, with sub-standard wages, Romanians who were sometimes already living in Italy (Cremers, 2011, p. 99). In 2010, the Spanish *Federación de Construcción y Servicios* of the *Comisiones Obreras* (FECOMA-CCOO) denounced violations of minimum wage rates among Portuguese posted workers in the Basque Country (Cremers, 2011, p. 142). Swedish unions carried out dozens of blockades against foreign construction companies using posted workers. Swedish law defined basic employment conditions – except the minimum wage – but authorized unions to use blockades to force companies to enter collective agreements for higher protection on a case-by-case basis (Ahlberg, Bruun, & Malmberg, 2006, p. 158).[65] Hundreds of foreign companies thus signed agreements (Cremers, 2011, p. 149; Dølvik & Eldring, 2006, p. 221).

Yet, one blockade generated a European crisis. In May 2004, the Swedish subsidiary of Latvian company *Laval un Partneri* won a bid to refurbish and build classrooms in Vaxholm, near Stockholm. Laval had based its expected costs on Swedish legislation and its Latvian collective agreement. Swedish construction union *Byggnads* did not recognize this agreement and proposed to negotiate another. In addition to paying higher wages and contributions to *Byggnads*, Laval would have remained unable to assess its costs until the completion of this agreement.[66] Laval refused and, in November 2004, *Byggnads* initiated a blockade. By Christmas 2004, Latvian workers, unable to work, had returned to Latvia. In March 2005, Laval's Swedish subsidiary filed for bankruptcy. The flexibility of the Swedish system had not worked in that case, because *Byggnads* had lacked the information or trust to refrain from carrying out action against Laval. In April, the Swedish Labor Court referred the case to the European Court of Justice. This affair triggered an international crisis. Latvian foreign minister Artis Pabriks condemned *Byggnads*. Latvian employers and unions supported a boycott of Swedish firms. Swedish unions threatened that Sweden could leave the EU (Dølvik & Eldring, 2006, p. 222; Donaghey & Teague, 2006, pp. 659–660; Lindstrom, 2010, pp. 1313–1314). Seventeen governments submitted observations to the Court of Justice about the case. In December 2007, the Court's judgment precluded unions from using blockades against EU companies to enter non universally binding collective agreements, while general legislation covered most matters of Directive 96/71. The Laval case featured notoriously in the however long list of actions that took place throughout the EU against companies using posted workers from Central Europe (Meardi, 2012, p. 112; Wagner & Hassel, 2016, p. 164).

Destination countries' unions tried to organize posted workers along their views (Wagner, 2015a, p. 1379). *IG Bau* provided a €1.5 million loan to start up a new European Migrant Workers Union (Kahmann, 2006, pp. 190–191). The *Deutscher Gewerkschaftsbund* established 'fair mobility' centers to inform posted workers about their rights (Wagner, 2015a, p. 1379). In Sweden, *Byggnads* hired Eastern European ombudsmen to reach out to posted workers (Thörnqvist & Bernhardsson, 2015, p. 28). In a few cases, posted workers mobilized with local unions (Thörnqvist & Bernhardsson, 2015, p. 32). In 2008, Polish workers at the construction site of a power station in Porcheville – a Parisian suburb – received with CGT help €10,000 more earnings from their employer. Greek posted workers in Saint-Nazaire, France, started with CGT help a hunger strike against deplorable employment conditions (Cremers, 2011, p. 66). Yet, most posted workers held a positive opinion of the free movement of services, which allowed them to accumulate savings to fund life projects. Even when not receiving destination countries' wages, they could still attain much better pay than in their home country (De Wispelaere & Pacolet, 2016, p. 14). One Polish worker, interviewed in 2012, summed up: 'If someone offers you to work in Germany for €8.50 and you earn €3 in Poland then you agree, even if €8.50 is less than the German minimum wage' (Thörnqvist & Bernhardsson, 2015, pp. 31, 33–35; Wagner, 2015b, p. 700). These opportunities

boosted economic activity and standards in the periphery: Romania's construction sector stood second in Europe already by 2008, with an annual turnover of €14.3 billion (Cremers, 2011, p. 125; Refslund, 2016, p. 605).

Most importantly, the risk for posted workers from poorer countries was that, with local wages fully applied, they could lose their jobs. Once effectively prevented from being cheaper, poorer countries' firms lost their shares in richer countries' markets. In Eemshaven, Netherlands, at the construction sites of energy plants, after posted workers protested to receive local wages, the consortium in charge of the works stopped working with the subcontractor who employed them and they lost their jobs (Berntsen & Lillie, 2016, pp. 181–183). This sometimes matched local workers' expectations, which reinforced suspicions. In 2009, at the Total refinery in Lindsey, England, local workers claimed 'British jobs for British workers' against Italian contractors (Meardi, 2012, p. 112). A Federation of Dutch Trade Unions (FNV) official also declared in an interview:

> These Poles [...] all we have to do is make sure that they don't earn [...] they're not supposed to be cheaper than the Dutch guy that is a member because we don't want them to push our people out of the market. That is [...] our main interest as a union (Berntsen & Lillie, 2016, p. 177).

The failure of local unions to organize posted workers along their views led destination states to take new actions. In May 2014, the European Parliament and the Council adopted Enforcement Directive 2014/67 on the posting of workers, to ensure compliance with destination countries' labor standards (Seeliger & Wagner, 2016, pp. 8–9). In June 2015, richer states with higher labor costs – Austria, Belgium, France, Germany, Luxembourg, the Netherlands, and Sweden – jointly expressed the need to revise Directive 96/71. In August, poorer states with lower labor costs – Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, and Slovakia – tried to delay it (Mitkov Mitev, 2016, pp. 1, 36). In March 2016, in line with destination states' preferences, the Commission proposed a revision of Directive 96/71. In the context of those negotiations, in July 2016, the French left attacked the free movement of services. Socialist Prime Minister Manuel Valls threatened to unilaterally stop it if the EU did not change the rules. Valls' statement repeated destination countries' governments' traditional bargaining strategy since the beginning of the negotiations on the postings of workers. He highlighted French capacity to unilaterally revert to the national level to restrict postings if he could not reach a satisfactory agreement at the European level. Valls targeted the payment of origin countries' social security contributions, while French employers' contributions reached high levels.[67] Fiscal difficulties prevented France from significantly reducing them in construction, like Belgium had done (De Wispelaere & Pacolet, 2017, p. 17).

Negotiations at the European level led to Directive 2018/957 of 28 June 2018.[68] More than just minimum rates of pay, the new text required destination states to ensure posted workers the same 'remuneration' as local workers, for all wage levels. Employers should provide workers with the accommodation conditions defined in the host country. Reimbursements of travel and lodging expenditures in case of moving around the place of work in the destination country should also respect that country's standards.[69] For postings of more than 12 months, the new directive compelled destination states to ensure posted workers 'all the applicable terms and conditions of employment.'[70] The directive did not apply to international road transport, which should be regulated by a future sectoral directive.[71] As soon as the Council had accepted the text, hundreds of French transport workers demonstrated against this delay by blocking French borders in November 2017. All the five unions in that sector in France supported the movement. They claimed 'equal pay for equal work.' This slogan was improbably voiced by those who had the highest pay – not out of a deep sense of workers' solidarity but to protect their market and oust poorer workers from Central and Eastern Europe.[72] In December 2016, the Commission also submitted a proposal to amend the social security regulation – by then Regulation 883/2004 – about postings. The new version, still under discussion within the Council, provides that posted workers should be affiliated

during at least three months under a national social security scheme before being posted. There should also be a two-month gap between two consecutive postings.[73]

Conclusion

To conclude, the disputes surrounding posted workers in the lower segment did not emerge as a result of neoliberal turns in posting rules, abuses against posted workers, or because posted workers' products could have harmed consumers. Complaints about posted workers' wages never originated from them or their unions, but always from local workers and firms in richer destination countries. Disputes followed the enlargements of the Single Market to poorer countries, creating risks for the wages and revenues of workers and firms in richer countries. Unions in destination countries promised posted workers higher wages, but this was essentially a way for local workers and firms to maintain their primacy in their richer markets. Posted workers were not cheaper because they were devoid of class-consciousness. The historical record of labor disputes surrounding posted workers involved only workers from poorer countries. The lower level of economic development of their countries explained the lower level of their wages. Origin countries' governments always backed liberal posting rules inside the Union – not because they favored management over labor, but because postings provided opportunities for their workers. Destination states' governments invariably backed their workers and firms and settled those disputes by prohibiting posted workers from being cheaper. They wielded more power in international negotiations because they could unilaterally modify their national labor laws. They thus drove the European posting regime toward stricter obligations and controls of foreign companies. Labor disputes surrounding posted workers have therefore been part of the asymmetry of power between core richer countries and the Southern and Eastern periphery of the European Union. The former have been ready to change European rules when they turned fundamentally in favor of the latter.

Notes

1. For elements in the literature that have already cast doubts on this presentation, see: De Wispelaere & Pacolet, 2016, pp. 14, 18; Moses, 2011, p. 824; Streeck, 1998, p. 146. 'Periphery' in this article refers to Italy and the Netherlands from 1955 to the 1960s, to Italy and Ireland in the 1970s, to the countries that joined the Community in 1981 and 1986 in the 1980s and 1990s, and, since 2004, to the countries that joined the Union in 2004, 2007, and 2013. 'Core' refers to the other member countries, with an emphasis on France, Germany, the Benelux countries, and then Austria and Nordic countries.
2. For analyses of this asymmetry on single case studies, see: Bachmann, Bauer, & Frings, 2014, p. 339; Eichhorst, 1998, pp. 27–28; Kahmann, 2006, p. 188; Meier, 2004, p. 410; Mitkov Mitev, 2016, p. 36; Streeck, 1998, p. 182.
3. Central Archives of the Council of the European Union, Brussels (CACEU), CM1 1955 294, meeting of the committee of social security experts, Geneva, April 13–23, 1955, preliminary draft convention presented by the experts.
4. Historical Archives of the European Union, Florence (HAEU), CM1 1957 372, Convention européenne concernant la sécurité sociale des travailleurs migrants, Art. 12, 13; *Journal officiel des Communautés européennes* (JOCE), 561–596/58, 16 December 1958, Regulation 3, Art. 12, 13.
5. Auswärtiges Amt, Politisches Archiv, Berlin (AAPA), B15 Sekretariat für Fragen Schuman-Plans, 123, Preliminary opinion on free movement by the Federal Ministry of the Economy to the Foreign Ministry, 20 September 1950.
6. CACEU, CM2 1961 354, Record of proceedings of the ESC on the General Program for the abolition of restrictions on freedom to provide services, CES 22/61, meeting of 2 February 1961.
7. AAPA, B10, 224–23–41, 883, 1, Interim Report of the Economic Committee of the Commission for the European Political Community, 22 January 1954.
8. CACEU, CM3 NEGO 1231, MAE 120/56, Spaak Report, Chapter 3; Common Market Group, Doc. st. 553/56, meeting of 24 October 1956, draft proposals on transport issues.
9. CACEU, CM3 NEGO 1231, Common Market Group, 8 January 1957, Draft articles on services, Art. 33.
10. CACEU, CM2 1961 341, III/COM(60)92 final, Proposal of a General Program for the abolition of restrictions on freedom to provide services, 28 July 1960.
11. HAEU, CM2 1964 1169, 966/63 (SOC 91), note by the Council secretariat, 3 July 1963.

12. CACEU, CM2 1961 350, Doc. R/CES 261/60, Economic and Social Committee, proposal to supplement the report by Mr. Schäfer, 8 December 1960.
13. CACEU, CM3 NEGO 1231, MAE 131/56, Suggestions from von der Groeben on the common market, 5 July 1956.
14. CACEU, CM2 1960 779, Letter by Nederhorst to Turani, 28 November 1960; CM2 1961 346, APE 5189/def, Report by Gaston Thorn, 1 March 1961.
15. CACEU, CM2 1961 348, 234 f/61 (AG 183), Opinion of the European Parliamentary Assembly, 10 March 1961.
16. CACEU, CM2 1961 343, 985/61 (E.S. 9), minutes of the meeting of the Economic Affairs Group (EAG) of July 18–19, 1961.
17. CACEU, CM2 1961 344, 1188/61 (E.S. 14), EAG meeting, July 27–29, 1961; CM2 1961 350, Doc. R/CES 261/60, 8 December 1960.
18. CACEU, CM2 1961 345, 1338/61 (E.S. 24), Annex III, Opinions expressed by the Coreper, 25 October 1961; CM2 1961 346, APE 5189/def, 1 March 1961; 1188/61 (E.S. 14), EAG meeting, July 27–29, 1961; CM2 1964 1169, T/248/63 (SOC), note by the Council secretariat, 24 June 1963.
19. CACEU, CM2 1961 341, III/COM(60)92 final, 28 July 1960.
20. CACEU, CM2 1961 343, 985/61 (E.S. 9), EAG meeting, July 18–19, 1961; HAEU, CM2 1964 1169, T/360/1/63 (SOC), Proposal of the Dutch delegation, 18 September 1963.
21. HAEU, CM2 1964 1026, CES 62/63, ESC meeting of 30 January 1963.
22. CACEU, CM2 1961 343, 985/61 (E.S. 9); 1118/61 (E.S. 11), EAG meeting, September 12–14, 1961.
23. CACEU, CM2 1961 343, 1118/61 (E.S. 11); 1188/61 (E.S. 14), EAG meeting, July 27–29, 1961; CM2 1961 344, T/407/61 (E.S.), draft resolution to be inserted in the minutes of the Council, 29 September 1961.
24. HAEU, CM2 1964 1169, 1059/63 (SOC 95), meetings of the Social Affairs Group, July 8–10, 1963.
25. CACEU, CM2 1961 345, 1338/61 (E.S. 24), Annex II, Declarations and resolutions adopted by the Council, 25 October 1961; CM2 1964 1018, 1136/63 (E.S. 42), note by the Council secretariat, 2 August 1963.
26. JOCE, L 257, 19 October 1968, pp. 2–12.
27. Historical Archives of the European Commission, Brussels (HAEC), BAC 8 1966 53 (1964), V/1071/64, Note by Heinz Umrath on behalf of the ICFTU and ICCTU secretariats.
28. HAEC, BAC 8 1966 53 (1964), V/1071/64, Annex 2.
29. CACEU, CM2 1971 1298, Letter of the Committee to the President of the EC Council, 24 July 1969.
30. HAEU, CM2 1964 1169, 1059/63 (SOC 95), 18 July 1963; CM2 1968 1019, 350/68 (SOC 48), Annex, Revised proposal for a directive, 29 February 1968; CM2 1971 1257, 1524/68 (SOC 206), meetings of September 22–23, 1968; CM2 1971 1264, 915/69 (SOC 82), meetings of May 28–30 and 2 June 1969.
31. HAEU, CM2 1964 1204, V/COM(63)420 final, Proposal for a Council Regulation, 6 November 1963; CM2 1971 1257, 1524/68 (SOC 206), 8 October 1968; CM2 1971 1264, 915/69 (SOC 82), meetings of May 28–30 and 2 June 1969.
32. HAEU, CM2 1964 1204, 116/64 (SOC 12), Annex II, Statement by the Italian delegation, 27 January 1964; CM2 1968 1019, 350/68 (SOC 48), Annex, 29 February 1968.
33. HAEU, CM2 1971 1264, 915/69 (SOC 82), meetings of May 28–30 and 2 June 1969.
34. JOCE, L 257/13–16, 19 October 1968, Directive 68/360/CEE, Art. 6.
35. JOCE, 746–747/64, 18 March 1964, Regulation 24/64, Art. 1; L 149, 5 July 1971, Regulation 1408/71, Art. 14.
36. CACEU, CM5 ADH3 36, EEC–Spain Substitutes' 4th session, 1 February 1980, Working document 14, 11 January 1980.
37. CACEU, CM5 ADH3 118, EEC–Portugal Substitutes' 7th session, 20 February 1980, CONF-P/11/80, 25 February 1980.
38. CACEU, CM5 ADH3 90, EEC–Portugal Ministers' 7th session, 26 April 1982, Working document 71.
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40. For what follows: CACEU, Red List 67237, 11359, 11360/94 SOC 336, Coreper meeting of 25 November 1994; 11,360/94 SOC 337, Results of the work of Coreper, 25 November 1994; 5290/95 SOC 78, note by the Council Secretariat to Coreper 10 March 1995.
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43. Art. 3(2).
44. Whereas 16, Art. 3(5).
45. Art. 3(1) and (2).
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