

FORMULA –Free movement, labour market regulation and multilevel governance
in the enlarged EU/EEA – a comparative and Nordic perspective

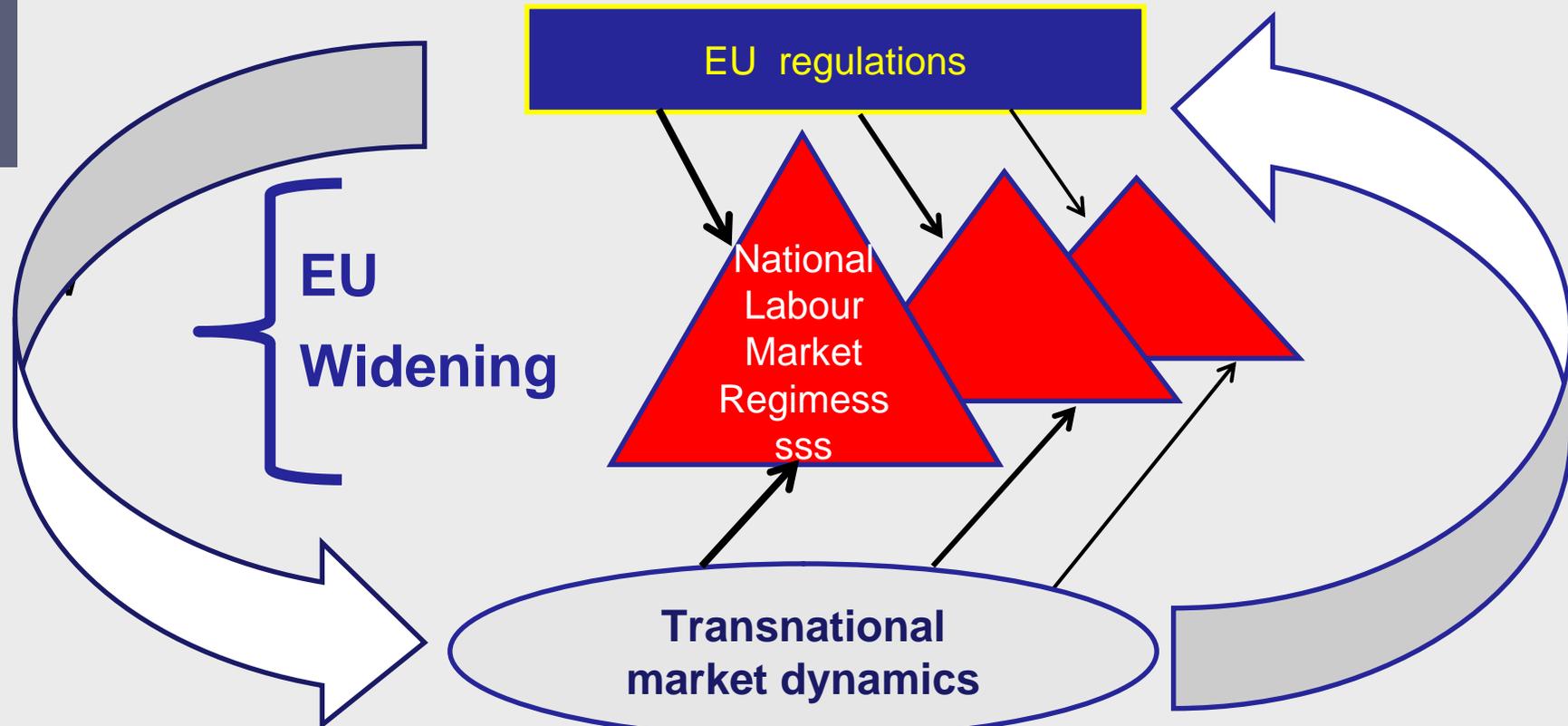
Governing cross-border mobility of labour and services: Industrial relations and social science perspectives

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the 'Europe in transition' programme of
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Growing Europeanization of markets for services and labour

- Eastward enlargement - widening gap in welfare and working standards
- Transnational, market-driven dynamics of free movement and economic integration,
- Supranational processes of political, legal, and industrial relations (re)regulation, and
- National processes of legal-political, institutional, and socio-economic adjustment



Dynamics of European labour market governance

“.... [a] prototypical case of multi-layered governance where previously strong, semi-sovereign national regimes are challenged by market erosion from below & European regulation from above, spurring new patterns of interaction & re-regulation of the interfaces between national systems, between national and European modes of regulation, between law and collective agreements, and between economic, political, judicial and industrial relations dynamics of labour market integration and fragmentation.”

How to reconcile bounded social protection with borderless market dynamics?

The industrial relations and social science dimension

- Comparative analyses of implications of rising mobility of services and posted workers for employment conditions, workers' representation, and collective bargaining at national and European levels

Publications:

The Services Directive Strife: A Turning Point in EU Decision-making?

J.E. Dølvik & A.M. Ødegård, FORMULA Working Paper 7/2009

Free Movement, Equal Treatment and Worker Rights: Can the EU solve its trilemma of fundamental principles?

Dølvik, J.E. & J. Visser, Annual European Review 2009, *Industrial Relations Journal* 40:6



The struggle over the Services Directive – a turning point for EU-decision-making?

Jon Erik Dølvik and Anne Mette Ødegård, Fafo

Presented at the conference

'Service Mobility, Posting of Workers and Labour market Governance',
FORMULA, Oslo 28 May 2009,

Formula Working paper 7/2009

<http://www.jus.uio.no/ifp/forskning/prosjekter/formula/publications/papers/>

Case study of the decision-making process – key issues:

- Who were the key actors, institutions, and coalitions in different phases?
- What were their main interests, concerns, and strategies?
- How were their approaches influenced by
 - The legal ramifications of the decision-making process?
 - The constellations of views and power in the other EU institutions?
 - Member State actors?
 - Pressure policies by the social partners and social movements?
- **Kjernestridspunkt: Opprinnelseslandprinsippet og arbeidsrett**

Background: From Lisbon to Bolkenstein

- The Lisbon Agenda: opening of the service markets key to completion of the Internal Market - well received
 - The Prodi Commission was in a hurry (2003) → no proper consultations before the launch of the Bolkestein draft
 - Legal framing: Co-decision procedure - grants EP legislative partnership
 - If no reconciliation - unanimity can be required in the Council (= "veto" power)
- **Actors in either institution must take the views and balance of power in the other into account** (to avoid a blocking minority in the Council)

The positioning phase (from January 2004...)

- Initially little attention, well received, focus on Accession
- But gradually questions and public opposition arose
- Fuelled by enlargement, the 'Polish Plumber', EP elections, and the rising campaign on Treaty ratification in France
- EP public hearing October 2004

→ Political drama in the making



Late 2004-2005: Mounting protest, shift of actors, and political re-positioning

- Brought the issue into the public space
- Shift of Commission: Bolkestein replaced by the misty McCreevy
- Employment Summit 19 March – ETUC manifestation gathers 75,000
 - Chirac declares the Directive "unacceptable to France"
 - The Council calls on the EP to fundamentally rework the Directive "to preserve the European Social Model"
- French and Dutch NO to the Constitutional Treaty -> paralysis in the EU establishment, the Council fearing East-West deadlock



→ All look to the EP to find a way out of the conundrum

The final "hot" phase of negotiations in the EP



Inside the European Parliament

- Main actors: The Conservative party (EPP-ED) and the Socialist party (PES) – despite liberal-conservative EP majority
- Antagonistic views both within and across the main party groups
 - But they wanted a Directive and to prove ability to deliver on issue that mattered
- How to find a solution that could be acceptable for the Commission and not blocked by a minority to the left or the right in the Council of 27?
- EPP-DE realized that a broad compromise across the center was needed

The final stage:

- **A small, high-level negotiating was set-up, working until the last hours before the EP decision**
- The employers were split, ETUC was floating texts in all channels *
- EPP actors with cross-cutting (union) ties played bridge-building roles
- **Finally, the EPP let go and grabbed the floated "Freedom to provide services" formula replacing the CoOP**
- **Uncertain whether the settlement could be sold → intense lobbying from national parties & governments to ensure EP majority**
- **Fragile compromise – swift adoption process**

While employers were split, the ETUC pursued a "dual strategy" – working from within and without

- Initiated its largest transnational campaign ever – how avoid protectionist stamp, secure East-West unity, French YES to Constitution and NO to the directive?
- Multi-level approach – targeted central Capitals, high-level contacts in all EU bodies, provided EP with labour law expertise
- Served as broker within the EP and vs the Council, the Presidency, and the Commission top...
- while mobilizing in the streets outside

Review: How can the puzzling outcome be explained?

- East-West conflict, Treaty failure, EU credibility crisis
 - Poor preparation, actor structure in flux, 'orphan directive'
 - Legal framing – co-decision
 - Unforeseen, multi-level public mobilisation
- Decisive scoring opportunity: the MEPs could not afford to fail
- The power-relations in the Council required broad compromise to avoid minority blockage (from left or right)
- Constrained the EP majority
- The employer split and the ETUC's dual role with control over the public reception of the outcome
- ETUC consent
Litmus test for success
- The EP controlled a legal good the Council & Commission urgently needed, and the outcome hinged on PES consent
- Least interested actor gained bargaining power

Conclusions

- No turning point – but Council of 27 can strengthen the EP
- The contingent character of decision-making in the multi-institutional EU system can sometimes enable unexpected events
- The case was special: context, timing, scope, and public mobilisation
 - **The EU crisis: the key to resolve the Gordian knot was in the hands of EP**
- The procedural interdependency boosted the exchange power of the least interested actors
- **The decisive role of the European Parliament (and the ETUC) was distinct and atypical, but not exceptional – can re-occur again**

Free Movement, Equal Treatment and Worker Rights: Can the EU solve its trilemma of fundamental principles?

- Three fundamental principles: free movement, non-discrimination & equal treatment, and the rights of association and industrial action
 - With rising East-West mobility, this conflict of rights has triggered industrial disputes and judicial strife (Laval, Irish Ferries, Lindsay etc)
 - The ECJ view (in Laval Quartet: Some principles are more fundamental than others
- Destabilisation of the EU 'dual track' combining supranational market integration and national autonomy in industrial relations and social policies
- Our claim: The supremacy of free movement over basic social rights implied by the ECJ judgements is leading Europe in a politically and socially unsustainable direction.
- To prevent erosion of the European Social Models and of popular support for European integration, the politicians have to reinsert themselves into the governance of the project.
- A pertinent start would be to secure cross-border service workers equal rights and standards with their fellow host country workers