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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.

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