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Title: European Integration and the Reconfiguration of National Industrial Relations : Posted Work as a Driver of Institutional Change

Year: 2020

Version: Accepted version (Final draft)

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Please cite the original version:

Arnholtz, J., & Lillie, N. (2020). European Integration and the Reconfiguration of National Industrial Relations : Posted Work as a Driver of Institutional Change. In J. Arnholtz, & N. Lillie (Eds.), Posted Work in the European Union : The Political Economy of Free Movement (pp. 1-30). Routledge. Routledge Research in Employment Relations, 46. https://doi.org/10.4324/9780429031021-1

Chapter 1 – European Integration and the Reconfiguration of National Industrial Relations: Posted Work as a Driver of Institutional Change

Jens Arnholtz and Nathan Lillie

Free movement is at once the European Union's most and least popular achievement, and nothing illustrates this contradiction better than the phenomenon of worker 'posting'. When an employer sends a worker to another country to work temporarily, that person is said to be posted. Posting of workers occurs every day within the European Union, and in many ways, it illustrates the benefits of the European integration project. Professionals can fly across the continent and work without cumbersome visa procedures; frontier workers can easily perform work on the other side of the local border, and transport workers can drive through multiple countries without needing new employment contracts for each one. Posting of workers, in other words, provides an easy and flexible solution for promoting European market integration. However, just as posting illustrates some of the benefits of European integration, it also highlights the tensions and controversies. The removal of administrative requirements for cross-border service trade also allows the development of 'cheap labour' business models based on circumventing the receiving country's national employment regulation and employing workers from low-wage countries on their home country´s conditions. Additionally, problems of tax avoidance and non-payment of social contributions surround posted work because its transnational nature makes enforcement of rules complicated and cumbersome.

For these reasons, posting of workers within the European Union has proven highly controversial. From the massive politicisation of Services Directive and the uproar following the 'Laval quartet' of European Court of Justice decisions to the open political conflicts surrounding the adoption of the Enforcement Directive and the revision of the Posting of Workers Directive, posting-related EU policy is among the most highly politicised issues in recent European integration. Posting has come to symbolise the tension between east and west, between free trade and social protection, between employers and workers – and most of all, it has come to symbolise a struggle about what the EU should become. To understand how these workers can cause such political controversies, we need to understand the political economy of posted work and its relation to European integration more broadly. This volume aims to provide such an understanding by showing the links between large-scale socio-economic differences, complex legal details and everyday company practices within the European Union. We contend that the growth of posted work is both driven by and a driver of institutional change, which occurs mostly through regulatory arbitrage generated by firms' transnational practices and adaptive responses by actors defending national

labour market regulation. These actors, which we refer to as 'enforcement actors', are trade unions, government labour and financial inspectors, and in some cases, firms or employer associations.

The existing literature on posting tends to focus on the labour market implications of posting and the legal principles around it. As a result, it has difficulty coming to terms with the varied and multilevel ways in which posting reconfigures industrial relations systems, just as it also misses the dynamic implications of local and national resistance to such pressures. Much of the existing literature seems to have an exaggerated belief in the immediacy and effectiveness of formal rule changes. Looking only at formal rules changes, the diffuse effects of introducing practices from outside are invisible. However, as the chapters in this volume show, institutional changes caused by posting often come from below – from the practices of companies, individuals, unionists, and labour inspectors. These take time to manifest because the companies spend time experimenting with different strategies for using the rules and enforcement actors typically try to offset changes by re-enacting institutions. On the one hand, adaptation by enforcement actors might ensure that pressures for potential change never manifest since the system has stabilised itself without the need for formal rule changes. On the other hand, the interaction between companies and enforcement actors may cause changes in institutional enactment to be drawn out in a manner that makes significant changes almost invisible. Either way, both company strategies and the practices of local enforcement actors are of significant importance for the changes brought about by European integration and EU labour mobility – and thus for our understanding of these changes.

We hope that the findings of the volume may stimulate debate about how best to study the interaction between European integration and national institutional change more generally. Debates on European integration often occur without regard for how institutional developments in Member States affect EU politics. Likewise, debates in comparative political economy about institutional change in European countries often ignore the pressures exerted by European integration. Early works on European integration, and particularly the neo-functionalist work of Haas (1958), did indeed emphasize the role of subnational actors, such as firms, who, motivated by new transnational market opportunities, drove forward both political and economic integration. However, gradually, studies of European integration shifted their focus to grant political bargaining (Moravcsik, 1998). As a supranational political structure was gradually formed, scholars started to study its top-down influence on domestic institutions (Risse et al., 2001). From this perspective, domestic change came about in response to legislative or juridical change from above. More recent studies re-introduce subnational actors through the concept of 'multi-level governance', in which actors manoeuvre for political advantage both within and between local, national, and supranational systems (Hooghe and Marks, 2001). While we find the multi-level framework useful for understanding the complexities of the EU as a political system, it too misses the importance of transnational economic transactions. The emphasis is on the political system and formal rule-making rather than on how rules are used in the market. This is true even of industrial relations work such as Sisson and Marginson (2004) and Keune (2013), which follow political scientists in emphasising formal institutions and bargaining structures. There is an abstract theoretical recognition of transnational economic transactions as drivers of market integration, which then sets in motion multi-level political responses. However, the empirical focus is primarily on the interplay between these different levels of political responses rather than on the immediate institutional changes caused by companies' regulatory arbitrage and the way regulatory actors seek to contain the societal damage these changes can bring about.

Consequently, we aim to place more emphasis on companies as drivers of everyday European integration, and this means going out into the field to study how rules are used in everyday practice. This is hard work because it involves investigating the micro-level market actors – firms, shop stewards, workers – as well as national and EU actors, and tracing the links and influences between them. When doing this, we seldom find that the behaviour of micro actors can be directly deduced from the formal rules or national institutional configurations. Instead, we observe that the rules can be used, abused, and circumvented in many different ways. Indeed, the various ways that posting firms strategise around the use of formal rules is at the heart of our framework. Compliance with labour laws, industrial relations norms, tax rules, and social security regulation is not a given, but a variable, which makes it fruitful to investigate why firms comply or how they manage their non-compliance. Additionally, it raises questions about the effects companies' rule engagement strategies have on the institutions they engage with, and how rule enforcers adjust their behaviour as a result.

This focus on firms speaks to another academic tradition, namely comparative political economy, where the Varieties of Capitalism perspective has long promoted a firm-centred analytical perspective. However, while the VoC approach places the firms at the centre of its formal theory, VoC-inspired studies rarely examine what companies actually do. Company behaviour is often presented as institutionally determined, rather than firms being actors in their own right. Even if this assumption is somewhat justified for firms operating in a single insular institutional context, posting companies are by definition operating in two or more and thus have to arbitrate between the two. By contrast, therefore, we stress the 'actorness' of companies and thereby the unruliness (Streeck, 2009) that they potentially bring to any institutional context. At the same time, we offer the same actorness to the enforcement actors that try to constrain company strategies; trade unions, employer associations, and labour inspectorates are not simply institutional background, but also actors that seek to cause or prevent institutional change. Therefore, this book offers detailed empirical studies of practical, everyday strategies that typically fly below the radar of comparative political economy or studies of European integration. We maintain that these everyday practices are not only important in their own right – as reflections of policy outcomes — but are also important drivers of political and legal changes and ultimately of the European integration process.

Briefly stated, we argue that the EU regulatory framework for posted work opens possibilities for regulatory arbitrage on labour standards by firms performing work within a defined regulatory space (i.e., without a need to move production to a different legal jurisdiction). While some scholars might label this as social dumping or fraud, we find these vague and highly politicised concepts (Bernaciak, 2015) are less suitable for our analysis. Instead, we talk of companies' regulatory engagement to understand how they use the legal tensions and inconsistencies between national labour regulation and EU regulation to gain competitive advantages. More specifically, we argue that the rules surrounding posting can be used to create a business model based on 'cheap labour' because they allow companies to escape partially the regulatory constraints of the country in which they operate. While the initial consequences of this are the creation of zones of exception within the host country´s labour market, the competitive dynamic set in motion by company strategies will gradually cause institutional change. This often takes the form of institutional drift, where new employment practices proliferate although national rules are unchanged, and institutional conversion, where the meaning of the institutional rules are reinterpreted to allow for the new employment practices.

Importantly, while firms are the actors who start the process, by disrupting more or less settled institutional relationships, other actors, such as trade unions, labour inspectors, and potentially politicians respond. They may try to limit or prevent institutional change and conversion by trying to re-enact institutions, sometimes in creative ways. Nationally, actors may try to re-regulate posting with everything from a minor adjustment of rules to layering completely new institutions onto the established institutions. At the supranational level, actors challenge the legal exceptions (by re-legitimising national regulatory sovereignty) or limit their implications (by limiting the use of posting or by limiting the economic benefit of using posting as a business strategy). However, such response strategies, in turn, are met with counter-responses by individual companies, employers´ representatives, and politicians. In sum, everyday posting sets in motion several interlinked processes that have led to highly contentious political struggles at multiple levels. In the rest of this introduction, we elaborate this argument while linking it to previous studies and chapters in the rest of the volume.

1.1 The socio-economic drivers of EU posting

There can be no doubt that the contemporary debates about intra-EU labour mobility generally – and posting specifically — have their roots in increased socio-economic differences of the European Union. A short history of posting shows how its politicisation correlates with the differences in wage and welfare levels of the sending and receiving countries. Posting arrangements have been used at least since the 1970s to send highly skilled or specialised workers abroad; this use of posting attracted little controversy. With the accession of Spain and Portugal in 1986 came two new member countries with significantly lower wages than the rest of the EU. This was the starting point for contemporary political debate, as the inflow of posted workers from these two countries set off the first round of labour market competition and national re-regulation, resulting in a flurry of precedent-setting CJEU judgements on posted work. Receiving Member States tried to uphold their domestic labour standards, while the Commission and European Court of Justice (ECJ) aimed at securing market access for posting companies. Ultimately, a compromise between these two positions was instituted by the adoption of the 1996 Posting of Workers Directive (henceforth PDW), which accepted mobility on sending country work contracts but allowed host states to apply certain aspects of their labour law to posted workers. Adopted after years of political struggle (Eichhorst, 1998; Streeck, 1998; Evju, 2009), the PWD was a compromise that balanced between different interests and lent itself to very different interpretations, and when it was evaluated in 2003, no one wanted to challenge this compromise by suggesting a revision of the directive.

The accession of the Central and Eastern European countries beginning in 2004 and the resulting unprecedented increase in intra-EU labour mobility (Dølvik and Eldring, 2015), threw posting back into the spotlight. The high levels of unemployment and low-wage levels of the new Member States gave an enormous economic incentive for the new EU citizens to try their luck in the old Member States. While this new labour mobility took many different forms, posting became one of the favoured devices for bringing Eastern European workers to Western Europe. One reason for this was that most Western European countries implemented 'transition periods' of restricted labour mobility from new EU Member States. Posting allowed firms and workers to circumvent these

transition periods because posted workers move under free movement of services rather than free movement of labour (Dølvik and Eldring, 2008; Wagner and Hassel, 2016).[1] Although the posting status was originally intended for sending abroad workers as part of a pre-established employment relationship, this requirement was not enforced. Transnational work agencies sprang up to serve as recruitment vehicles for western firms seeking cheap labour, and these agencies became important actors in the more precarious segments of the pan-European labour market (Pijpers, 2010). Even after the transition periods expired, such agencies continued to operate because they had become an established part of the market. In this sense, posting became one option among others for employers to engage workers from abroad.

1.2 Competing legal principles and the fundamental tension of posted work

Nonetheless, posting is of extra interest to employers because it allows them to conclude employment contracts in the sending country, meaning they can access alternative frameworks of employment regulation for posted workers. While taking advantage of the lower wage expectations of migrants to pay them less is nothing new, collective agreements, minimum wage laws, and immigration restrictions often constrain the degree to which migrants can be exploited. Posting offers a way around such constrains. To understand this aspect of posting, we have to look beyond the socio-economic differences that have been the driver of labour mobility more generally and focus on the legal tensions and inconsistencies that companies can use to gain competitive advantage by posting workers. Market making has always been an explicit goal of the European Union, based since the 1957 Treaty of Rome on the 'four freedoms' of movement of goods, capital, labour, and services. However, the principle for this market making varies between the four freedoms. The free movement of goods has, at least since the Cassis de Dijon (Case 120/78) decision, been governed by a home country and mutual recognition principle. This implies that a company established in one Member State has only to abide by the rules and standards of that state, even if it wants to sell its products in other Member States around the EU. With a few exceptions, the country in which the product is sold should recognise the standards of the company´s home country as equally as valid as its own. However, labour mobility was always a sensitive issue, and migrant work has since the inception of the European Economic Community been governed by a host country and non-discrimination principle (Baldoni, 2003; Engels, 2006). Under the free movement of labour, the rules and regulations of the country where the work occurs should apply. Furthermore, these national rules should not discriminate against workers from other countries. Consequently, the country in which the work is performed determines how the employment relationship is governed. This is consistent with the principles of territorial sovereignty, which mediate our understanding of human rights and equal treatment under law and from which labour rights are derived. At the same time, non-discrimination resolved the political dilemma of preventing labour market competition through regulatory arbitrage.

Based on free movement of services, however, posted work is governed by different legal principles. On the one hand, the country where the posted worker's employer is established is also the country where the employment contract is based. In the first instance, the laws of the sending country regulate the posted workers´ employment relationship (in line with the home country

principle). On the other hand, the country where the posted workers perform their work also regulates certain aspects of the employment relationship (which is in line with the host country principle). This was made clear already in the 1991 Rush Portuguese (C-113/89) decision. However, there is a clear legal tension between the home country principle and the host country principle, and since Rush, there has been an ongoing legal and political struggle to determine the proper balance between the two. While the PWD outlines the basic contours of the current legal situation, ambiguity, inconsistencies, and imprecisions mark the directive. This left plenty of room for diverse national implementation and prompted a large number of ECJ rulings clarifying how the directive should be interpreted. Furthermore, other pieces of secondary EU legislation – such as the Rome 1 Regulation (No 593/2008), Temporary Workers Directive (2008/104/EC), the Public Procurement Directive (2014/24/EU), and the Written Statement Directive (91/533/EEC) – influence the regulatory compromise as well, just as the interpretation of all of these are subject to the wording of the EU Treaty and international standards like ILO conventions. In other words, a complex, ambiguous, and multi-layered set of rules, which has at its core a contradiction between two opposing principles, governs the employment conditions of posted workers.

The contradictions inherent in the legal situation were brought to a head when the CJEU handed down a series of posting-related decisions in 2007 and 2008. In Laval (C-341/05), an industrial action by Swedish unions to obtain a collective agreement from a Latvian contractor on a building site was deemed a restriction on the freedom to provide services because the ECJ found that imposing a collective agreement on the contractor was 'liable to make it less attractive, or more difficult, for such undertakings to carry out construction work in Sweden' (Laval, para 99). While the Court acknowledged that there is a fundamental right to strike, which presumably allows unions to impose collective agreements on employers, it maintained that this right should be balanced against the firms' right to free movement and, in this case, that balancing act won out in favour of the posting company (Rønnmar, 2008). The company´s right to free movement also won out in the Rüffert case, where the ECJ restricted the use of wage clauses in public procurement tenders. An underlying reason for this restriction was that wages should be regarded as a legitimate factor of competition in the European market for services (Rödl, 2009). In Luxembourg, the Court restricted the scope for using 'public policy' as a justification for imposing national employment law on posted workers and thus made it clear that only a narrow list of labour law elements mentioned in the PWD could be applied to posted workers by host countries. In sum, these rulings restricted the ability of host Member States and trade unions to re-regulate the conditions of posted workers.

What this entails in material terms is that posting companies are exempted from some parts of the host country´s labour regulation. They get to treat their workers differently – more poorly — than host country workers can be treated by their employers. In other words, posting is an example of a classical issue within the study of employment relations, namely the ability of employers to draw competitive advantages by circumventing the rules regulating labour market standards. However, this circumvention is legitimised by reference to EU rulings on the free movement of services. In analytical terms, we can understand this situation by drawing on Ong´s (2007) concept of 'neoliberalism by exception', by which she means that social rights are determined differently depending on the citizenship, ethnicity, or home country of the individuals or firms involved. In other words, companies can use the posting legal framework to create spaces of exception around their work arrangements and thereby enhance their competitiveness (Lillie, 2010). For immobile

industries, posting is a functional equivalent to outsourcing in that it allows employers in home-market sectors to import cheap labour (Cremers, 2011). However, this is done without directly challenging national institutions and the class compromises behind them (Lillie, 2010). It is exactly the existence of such institutionalised compromises that allows posting to provide companies with a competitive advantage, because posting allows them to circumvent partially these compromises while their competitors are still bound by them.

However, the competitive advantages gained by posting companies come at the expense of workers – first and foremost, the posted workers. As survey data consistently has shown, posted workers experience wages and working conditions that are inferior to those of both natives and labour migrants moving under the free movement of workers (Friberg and Eldring, 2011; Friberg and Tyldum, 2007; Arnholtz Hansen and Hansen, 2009; Snel et al., 2015). In a study of Estonian migrant workers in Finland, Sippola and Kall (2016) show that, of the forms of employment present in their sample, posted work contracts offered the poorest conditions and were regarded by the Estonians as the least desirable form of employment. So, while socio-economic differences between Member States are an underlying driver of recent increases in labour mobility, the legal framework surrounding posted work allows companies to draw a greater economic advantage from these differences by opening an avenue for channelling cheap labour into high-wage countries – and this happens at the expense of workers.

1.3 Firm practices as the driver of change

While these legal ambiguities and tensions are the fundamental backdrop of the issues surrounding posting, they are also what has received the most scholarly attention. This is true for the extensive labour law literature on posting and the CJEU rulings (for instance, Evju, 2010; Bruun and Malmberg, 2011; Deakin, 2008; Eklund, 2008), but it is also true for works in political science, which treat changes in EU rules and case law as the main source of pressure on national institutions (Menz, 2005; Blauberger, 2011; Seikel, 2015). However, we argue that there is a need to focus on the ways that the legal inconsistencies and ambiguities are utilised and contested in practices to understand fully the pressures posting puts on national institutions and the kinds of response we observe. While legal inconsistencies open the door for the creation of zones of exception, the actual existence of such zones depends on company practices and a labour force willing to accommodate such practices. Furthermore, several other groups of actors (such as trade unions, employers´ associations, national policymakers, labour inspectors, client firms, and posted workers themselves) are involved in negotiating the extent of such zones and their implications for national employment relations institutions.

Therefore, the starting point for our argument is to emphasise the importance of posting companies and their actions. To gain a competitive advantage and make a greater profit, many businesses are constantly testing the boundaries of what is acceptable and what they can get away with (Streeck, 2009). An increasing number of employers reject existing employment norms – if not in principle, then certainly in practice. Some companies play a double game in which they appear to support and conform to the traditional normative frameworks of industrial relations while operating

in ways that allow them to remain price-competitive in unconstrained markets. For unions and society as a whole, the challenge is to enforce normative constraints upon such 'unruly' employers (Streeck, 2009). In the case of posting, the 'foreignness' of both employer and employee vis-à-vis the industrial relations system of the host country often enhances this unruliness (Arnholtz, forthcoming). Domestic firms´ embeddedness in the tacit norms and unwritten rules of national industrial relations systems typically limits this unruliness. It may even make them into supporters of these systems as predicted by the VoC literature (Hall and Soskice, 2001; Thelen and van Wijnbergen, 2003). However, this is not the case for the posting companies, who often bring very different norms with them. Additionally, their 'foreignness' also implies that these companies often need to use low cost to compete for market share with established domestic firms. Therefore, the competitiveness of posting companies has in certain contexts and industries come to depend on their ability and willingness to skirt, evade, or even violate laws and norms and not get caught doing so.

Not all companies are alike – and this goes for posting companies as well. To get a better analytical grasp of companies' diverse businesses strategies, Lille and Berntsen (2015) talk of regulatory engagement strategies, and they identify three categories relevant to posting. At one end of the spectrum, regulatory evasion refers to the violation of formal and informal rules and to the concealment of these violations. An example of this would be paying workers less than the statutory minimum wage in the host country, which is illegal even for posting companies. At the other end of the spectrum, regulatory conformance means conforming to the formal industrial relations system. Regulatory conformance does not involve breaking industrial relations rules directly, but it may still hold the potential for manipulating the rules for cost advantages and thus put national institutions under pressure. Based on their home country conditions, posted workers may, for instance, be willing to accept worse treatment than natives on an informal level or they may receive lower wages in a flexible wage setting system (Lillie and Berntsen, 2015). Still, in regulatory conformance, companies take care to stay within the bounds of what enforcement actors see as 'the rules.'

In-between these two strategies, however, Berntsen and Lillie identify a third strategy, regulatory arbitrage, which consists in strategically using the inconsistencies between two (or more) alternative regulatory regimes from different sovereign territories (Fleischer, 2010). This is what happens in many posting situations. For instance, companies may argue that the collective agreement they signed in their home country makes it redundant or administratively too burdensome also to sign or abide by a collective agreement in the host country. While the employment conditions secured by these different agreements can be vastly different from those in the host country, the CJEU has recognised this as a valid argument in some cases (see for instance Guiot, C-272/94). In the same manner, some posting companies are exempted from paying social security contributions in the host country by referring to the (often much lower) contribution paid in the home country. Other related strategies include dodging control and enforcement by challenging the authority of host country labour inspectors to regulate posted work, or challenging the legality of enforcement efforts because they make it more cumbersome for foreign companies (see, for instance, Cremers in this volume). Such strategies blur the distinction between regulatory arbitrage and regulatory evasion. The right not to be inspected in the host country is regulatory arbitrage, but it is often used in the service of concealing regulatory evasion because home country labour inspections are not possible for sites in host countries.

To us, such strategies are the starting point for understanding the pressure for institutional changes raised by posted work. First, the variability in company practices and strategies means we cannot deduce from formal rules to actions on the ground. For instance, the fact that some posting companies rely on a systematic violation of rules (no matter how clear those rules are) implies that adoption of new formal rules at both the national and European level will only affect their behaviour slightly (Lillie and Berntsen, 2015; Arnholtz forthcoming). Therefore, our analysis cannot focus only on the formal rules but must also take into account how firms strategise between different sets of rules, and how practices and rule systems interact. Second, when some posting companies can successfully legitimise their practices via EU law, despite being in clear violation of national laws, the boundaries between evasion, arbitrage, and conformance become unclear to enforcement actors trying to uphold host country labour standards.

1.4 Pressure on domestic institutions and incremental change

It is important to note that firms´ strategical engagement with regulatory regimes do not necessarily put direct pressure on national labour standards and rule systems. As already mentioned, the zones of exception created by posting companies supply only a competitive advantage because institutions, such as collective agreements and labour laws protecting host country workers, remain intact for firms and workers outside those zones (Lillie, 2011). However despite this being the case, posting companies often act like the 'parasites' described by Mahoney and Thelen (2010, 24): 'While they rely on the preservation of the institutions, parasites themselves carry out actions that contradict the 'spirit' or purpose of the institution, thus undermining it over the longer run'. To understand the pressure posting companies put on national industrial relations institutions we, therefore, draw on theories of incremental institutional change.

Where many prior theories of institutional change focused on critical junctures and specific political decisions that caused major change (Capoccia and Kelemen, 2007), new approaches focus on more incremental forms of change. For instance, Streeck and Thelen (2005) define drift as a gradual process where formal rules stay the same, while everyday practices change. Examples of drift include minimum wages staying the same in the face of high inflation or the official conception of an employment contract staying unchanged despite new forms of atypical employment revealing loopholes in those old rules (Jaehrling and Méhaut, 2013). The concept of drift can, therefore, raise our awareness of the fact that when posting companies introduce radically different employment standards, this may cause institutional change even if the formal rules regulating the labour market are not changed. The new practices they bring, the different standards they set, and the novel understanding of how to interact with employees, trade unions and state authorities create institutional changes all on their own. The mere existence of zones of exception in societies previously regulated by encompassing labour market institutions is a sign of drift. This is the kind of change often observed when posting is used as a business model for channelling cheap labour, but it is a kind of change that is all but ignored by those legal scholars and political scientists who focus only on changes in the formal rules.

Adding to this, Streeck and Thelen (2005) use the concept of conversion to grasp processes of change where institutions are put to new use or acquire new functions without formal changes in rules. Of particular importance to us is how such conversion can come about via the reinterpretation of the formal rules. Again, the rules are not formally changed but only interpreted or used differently. A case in point is the Laval decision, which reinterpreted the PWD from a directive presumed to outline a list of minimum requirements to a directive outlining an exhaustive list of maximum demands. However, the political controversy raised by Laval and the other high-profile cases mentioned above may leave the impression that conversion necessarily becomes politicised. However, the concept should also sharpen our awareness of the many unnoticed reinterpretations or re-utilisations of rules. It is, therefore, important to recall that Laval, Rüffert, and Luxembourg are only the tip of the iceberg, originating like many other cases in particular situations where posting companies engaged in regulatory arbitrage to reinterpret the national rules of the host country. Because posting companies often bring both different standards and different perceptions into a national context, they test the consistency of national rules. As Wagner (2015) has shown, posting companies are constantly trying to renegotiate rules in their local practices, and as illustrated by Arnholtz and Andersen (2018), some companies even challenge fundamental aspects of national labour law in the courts of the host country. Few of these cases reach the CJEU but are resolved in national courts or even before litigation. Many of them will uphold traditional interpretations, but occasionally new interpretations will allow posting companies to adopt new employment relations practices legally.

As the literature on European legal integration has shown, singular CJEU rulings are often not enough to cause major changes in national institutions. Such cases can either be contained (Conant, 2003) or accommodated for by regulatory reforms (Blauberger, 2011). This is exactly why an overdone emphasis on CJEU rulings — or EU legislation for that matter – misses important aspects of how European integration functions in practices. In the case of posting, the legal ambiguities have been there for decades, but have only started to matter as a multitude of posting companies have started to use them in different forms of regulatory arbitrage. Furthermore, it is important to recognise the difference between posting companies, mainly focused on the immediate profit to be made from different forms of regulatory engagement, and actors, such as EU activist lawyers or employers´ associations, who may want to use posting to promote long-term institutional change. While the former group may mainly cause drift, the latter groups will typically promote conversion. As is well known, the Swedish employers´ association financed the Laval case to challenge the power of Swedish trade unions and gain leverage in a national dispute by involving the EU (Woolfson and Sommers, 2006). However, even when cases do not go to the EU level, some national cases illustrate how employers' representatives use posting to test what is possible and impossible. Posted workers´ low wage expectations and their dependency on their employers, the legal inconsistencies of legal framework, and the variety of firm strategies gives a solid base for finding cases where hard won labour rights can be set aside because they are framed as obstructing EU freedoms in a disproportionate manner. Meticulous studies of posting are, therefore, well suited to illustrate how the articulation of the different regulatory level is far from apolitical but is rather something done strategically by different actors (Lillie and Greer, 2007: Alsos and Østergaard in this volume).

1.5 Enforcement actors and creative re-enactment of institutions

Why then have national institutions not simply crumbled under the pressure from posting? Political scientists often point to the regulatory reforms performed by decision-makers when faced with new legislation and rulings from the EU (Menz, 2005; Blauberger, 2011; Seikel, 2015). Such formal changes are important to take into account, and we will return to them below. However, we will highlight that the first reactions to the practices of posting companies often come from trade unions or labour inspectors that try to uphold the ordinary enactment of national industrial relations institutions. Grand theories of European integration, political economy, liberalisation, and institutional change often overlook the everyday actions of such local, on-the-ground actors. Nonetheless, these enforcement actors make up the first line of defence against the labour standard erosion and institutional change potentially caused by company strategies. While institutional theories often assume that socialisation, feed-back mechanisms, and vested interest ensure institutional stability (Pierson, 2000), these mechanisms do not apply to posting companies because they come from a different regulatory and institutional context. Instead, institutions have to be upheld by active enforcement that usually only supplements the reproductive mechanisms mentioned above. In that way, posting brings into focus the active enactment of institutions performed by enforcement actors (Jaehrling and Méhaut, 2013).

We must, therefore, take seriously the efforts, resources, and strategies of local enforcement actors if we want to understand the varied outcomes that posting causes across Europe. Posting presents a moving target: The focus on the particular legal formulations and policy instruments is deceptive because at the core of the issue is the constant regulatory engagement of firms. Successful local regulation has as much to do with the ability of regulation enforcers to change and update their strategies, as it does with the underlying conditions and institutional configurations. For instance, statistics generated by Danish construction unions show that they perform more than 2,000 yearly control visits on construction sites with posted workers in a sector where approximately 2,600 posting companies operate in a given year. Compared to the size of the sector (with around 6,000 Danish companies) and the resources the trade unions have, this is a massive effort, indicating the high priority placed on this issue (Arnholtz, forthcoming). Only by considering this effort can we understand why the formally weak Danish institutions – lacking both statutory minimum wage and extension of collective agreements – seem to prevent erosion of labour standards better than countries where unions have much stronger formal institutions but weaker enforcement capability. In Germany and the Netherlands, unions increasingly rely on the support of labour inspectors or on formal legal processes to enforce their own legally extended collective agreements (Wagner and Berntsen, 2016). An analytical focus on company practices and enforcement actors implies that studies focusing on the challenges labour inspectors face when trying to enforce rules on posting companies (Kall et al., 2018) address key issues in our understanding of European integration and the political economy of European labour mobility.

We should, as with companies and their regulatory engagement, take seriously the term 'actor' with regard to trade unionists, labour inspectors, and other enforcement actors. This means studying the everyday innovations they deploy to handle the constantly changing challenges posed by companies' regulatory engagement. These actors have their own repertoire of enforcement strategies, and we suggest the term creative re-enactment to capture the ways these local enforcement actors try to uphold the usual functioning of institutions under changing conditions.

Some enforcement actors may, for instance, mobilise public awareness about problems and thus force big clients or main contractors with concerns about their reputation to help with the enforcement (Arnholtz and Refslund, 2019; Grimshaw et al., 2018). We note that some of these enforcement actors also exploit the legal uncertainties that posting companies make use of in their practices. For instance, these enforcement actors may sometimes ignore the finer details of EU law in the hope that legal issues will be contained at the national level where their enforcement practice is accepted. Very strict and systematic control of posting companies and a more random and lose control of domestic companies may, for instance, be discriminatory in the eyes of the CJEU. EU competition rules only matter, though, if employers choose the make them matter: Main contractors may, for example, decide to enforce collective agreement compliance on transnational subcontractors because it minimises industrial conflict, even if that conflict might be illegal according to the EU. Such cases would be unlikely to make their way to the CJEU (Lillie et al. this volume).

This points to labour courts as another important institution-enforcing actor who does not always comply fully with CJEU rulings – or at least may not always test the legality of national rules and practices vis-à-vis EU law. As Bengtsson (2014) has shown, the Laval case was exceptional in going before the CJEU because all previous similar cases had been handled by the national courts even though the same legal issues were at stake. Furthermore, Danish trade unions had more than a hundred posting-related cases pending before the Danish labour court when Laval happened (Blauberger, 2013), but none of these cases was ever referred to CJEU, and the first Danish posting ruling after Laval simply approved regulatory adjustments as in line with EU law (Refslund, 2015). Unions might have quite reasonably expected the case to be heard by a national court under national law, and in the Laval case Swedish unions were clearly blindsided by the move to an EU decision venue.

1.6 National institutional change in response to posted work

Still, legal uncertainty combined with large economic incentives ensure that enforcement actors often find themselves outmatched, and so they seek support from national policymakers. In this way, local disputes between posting companies and enforcement actors often generate national debates. In many countries, trade union have used news media to direct public attention towards the problems surrounding posted work. In doing so, they have often been successful in compensating — partially at least — for their loss of associational and structural power by mobilising political power (Meardi, 2018). Beyond the local enforcement practices and creative re-enactments of institutions, posting has motivated reforms of formal national institutions. However, notice once again that our emphasis on practices, incremental change, and enforcement actors generates a very different explanation for these changes than those that have predominated in comparative political economy and Europeanisation studies. While Blauberger (2011) may be right in arguing that Member States have Luxembourg (and the CJEU placed there) in mind when reforming their institutions, most of the reforms observed have been aimed at solving issues that have arisen from below. This is not to say that there is no liberalising pressure from above as outlined by Menz (2005) but simply to remind us that often these pressures materialise not as infringement procedures from

the European Commission or new regulations adopted by the Council, but rather as regulatory engagement practices from posting companies.

Either way, many countries have changed their formal institutions due to posted work. Surveying several European countries, Bosch and Weinkopf (2013, 8) argue that 'no system is resistant to the shocks produced by transnational postings and the country of origin principle' and that 'all countries are forced to take steps to adapt their wage systems'. However, the direction of changes is not always predetermined. While the pressure coming from both above and below is towards liberalisation, actors at the national level may also mobilise resistance against such pressures (Dølvik et al., 2014). In some countries, new institutions have been layered on top of traditional institutions to secure minimum standards. This was seen in Germany in the 1990s, and it has been the case in Norway after the EU enlargements (Eichhorst, 1998; Alsos and Eldring, 2008). At the same time, Blauberger (2011) and Seikel (2015) argue that Member States have managed to preserve their national models even under the increased liberalising pressure of the CJEU rulings. While their assessment is based on a rather superficial reading of the implications of the rulings, they still point to the important fact that pressures are mediated by different national responses.

That said, the idea of 'national' responses strategies suggested by Menz (2005) has some inherent problems. Drawing on the varieties of capitalism literature (Hall and Soskice, 2001), Menz showed that the liberalisation of services within the European Union did not have the same effect everywhere because it was mediated by national responses strategies developed by trade unions and employers. The basic premise of this argument is that employers have an interest in preserving their national institutions. On the one hand, we agree that the real effect of service liberalisation in the EU cannot be deduced from the EU policies as written but instead are mediated by national and sector-specific contexts. On the other hand, underlying assumptions about employer preferences, the static nature of national constellations, and the homogenous nature of national response strategies are problematic. They ignore how posting may transform all of these things through an incremental process. First, employer preferences for preserving national institutions may be affected by new opportunities, which is exactly what posting brings. The institutions that kept domestic firms from undercutting each other may now stand in the way for increasing profit by using posting subcontractors. Second, national models are dynamic. Many national models are undergoing re-configuration as a consequence of the increase of posting (Cremers et al., 2007; Bosch and Weinkopf, 2013; Dølvik et al., 2014). One example is the way the posting of workers law put in place in Germany to tackle the inflow of posted workers in its construction sector has gradually been expanded to encompass more and more sectors and is now used as the legal basis for the national minimum wage. In that way, posting has contributed to transforming the German model from one where statutory wage regulation was constitutionally prohibited to one where extensive statutory wage regulation is in place. As detailed by Alsos and Ødegård in this volume, a very similar process of gradual expansion of new institutions has occurred in Norway as the inflow of both posted and migrant workers put pressure on the wage regulation system.

Third, while attention to national specificities is important, Menz's concept of national response strategies gives an overly homogeneous representation of regulation within national spaces. Response strategies differ across industries, industry segments, or even production sites, and the development of a common national response strategy is far from universal. Even categories such as employers and trade unions may be too underspecified if we want to understand the struggles

that occur in the real world. Differences between big and small companies often matter, and employer responses to posting are often determined by the power balance between the two groups (Afonso, 2012; Seikel, 2015). Furthermore, posting also reveals differences between employers and trade unions in posting-exposed sectors (such as construction), who may develop joint strategies to protect their sector, and employers (and sometimes even trade unions) in export sectors like manufacturing, who will often be more pro-liberalisation (Lillie, 2012; Arnholtz et al., 2018). Additionally, politicians and top bureaucrats may be torn between those wanting to protect labour standards and the state´s right to regulate the labour market, and those who want to 'use' the EU to get through otherwise impossible reforms, such as liberalising the inflow of cheap labour. Therefore, it is far from certain that employers, trade unions, and government will come together to form a common national response strategy, and if they do, such national response strategies may often be the provisional outcome of complex and lengthy struggles between shifting coalitions of employers, trade unions, and politicians (Arnholtz and Andersen, 2018).

Furthermore, even stable coalitions may have problems finding the right solutions to problems raised by the ambiguities of posting rules. As Hacker et al. (2015) point out the tension between drift and conversion creates a fundamental dilemma which is seen very clearly in debates about posting – namely that vague rules often open up opportunities for conversion while very precise rules invite drift. The more precise the rules, the clearer are their limits and the greater is the possibility for actors to find ways of escaping the rules via regulatory arbitrage. In contrast, vaguer rules, which can be adjusted to avoid companies' attempts to escape them, can potentially also be adjusted to make such forms of escape perfectly legal. Regulatory arbitrage entails companies constantly exploring and exploiting the overly strict or overly loose nature of rules. This also explains why we can observe continuous adjustments of rules and practices in different host countries, and it also makes clear why there has been such a strong opposition to making exhaustive lists of legitimate enforcement measures in the Enforcement Directive. Host Member States know that they need to retain their ability constantly to adjust to the changing practices of posting companies.

1.7 Feedback and European level changes

Beyond the difficulty of finding the right balance between legal precision and adaptability, there is the issue of what is legally possible within the bounds of EU law. The liberalising pressure of the EU rules does set limits on national rule enforcement. The effect of this is contested, both within national systems but also at the EU level. While often somewhat detached from the complex every day practices surrounding posted work, the legal and political aspects of posting have repeatedly attracted major political attention. The Services Directive, the Laval quartet, the Enforcement Directive, and the revision of the Posting of Workers Directive are just the main highlights in a long saga of intense politicisation. Posting has developed into a European 'policy field', where politicians, lawyers, social partners, and academics participate in an EU-focused policy debate that concerns more than the specific regulatory issues related to posted work. As a policy issue, posting is constantly linked to overall debates about the direction of European integration (social or liberal, supranational or national, etc.). Rather than being a simple case of European integration, posting

shows how the very definition of European integration becomes contested (Cremers et al., 2007; Arnholtz, 2013).

Strong opposition to the European Commission´s initial proposal for a Services Directive and the vocal protests against the CJEU rulings highlight the political nature of the liberalising pressure. Furthermore, the politics of posting shows that the direction of European integration is not set in stone when it comes to market making, but that the rules of the game can be subject to modifications. Not only was the Services Directive radically changed, but the CJEU rulings have been met with a partial legislative overwrite in the form of, first, a new Enforcement Directive, aimed at improving Member States' ability to enforce their rules vis-à-vis posted workers (Sindbjerg Martinsen, 2015), and then, a revision of the original PWD aimed at granting Member States more scope for determining those rules (Zahn, 2017). Additionally, the establishment of a European Labour Authority (ELA) seems also to be a response to challenges associated with posting. A change toward a more regulation-friendly approach from EU institutions can also be seen in the CJEU´s most recent case law, such as Sähköalojen Ammattiliitto and Regiopost, which has softened the hardline market logic of the Laval and Rüffert (Peonovsky, 2016). As Blauberger et al. (2018) observe 'ECJ judges read the morning papers' and may be influenced by the fierce debates that their rulings have caused. Although justified in legal logic, there is a tendency also to moderate decisions to prevent political backlash. Within the European Commission, the issue of posting has been moved from DG internal market to the DG employment. This is important because Commission DGs have different ideological predispositions and priorities based on their portfolios. The switch from DG Internal Market to DG Employment suggests a prioritisation of employment relations and social concerns over free competition and movement. One consequence of this shift is that the Commission's yearly number of infringement procedures alleging the free movement of services has declined sharply since the mid-2000s. The number of infringement procedures on free movement of services is an indicator of the extent to which the Commission regards national social and labour market policies as constraints on free movement, that is, the degree to which it prioritises market creation over social and labour issues.

These changes have come because of a long-term mobilisation. After intense trade union politicisation since 2008 and with increasing support for action in the European Parliament, initiatives from Member States came when the Dutch 2016 presidency of the Council of the European Union put improving protection for posted workers on its 'Programme for the Presidency'. Later, France threatened to stop applying EU law if the PWD was not revised, and French President Macron made the revision of the PWD a campaign promise, which on being elected he fulfilled by brokering a deal winning the acquiescence of most Eastern European countries to the reformed directive.

That said, the political responses – even at the EU level – are constantly constrained by a space of both political and legal possibilities. Exactly because previous legislative steps have shown themselves interpretable in ways that undermine national authority, many Member States have become hesitant to engage in new legislation. Countries such as Germany, Denmark, and Finland have shown a certain reluctance in their support for the revision exactly because they have feared that their current national compromises would be undermined. Furthermore, our emphasis on the everyday practices of companies and enforcement actors may also indicate that while the above-mentioned legislative reforms have been portrayed as major victories for Social Europe, their

practical implications are likely to be relatively modest. The Enforcement Directive brought little in the way of new policy but rather sought to define areas in which national regulators could take action to enforce national laws without these being struck down as restraints on the free movement rights of firms. The 2018 revision of the Posted Workers Directive expands the understanding of which wage elements can be demanded from posting companies. While it sets out 'equal pay for equal work at the same place' as a principle, which is important, actual implementation can occur only through the interactions of actors in diverse national systems. Therefore, posted work will continue to be contested at both the European, national, and local levels for many years to come.

1.8 The chapters and their contribution to the argument

In line with this theoretical framework, most chapters of the present volume engage with a core research question: How does the regime of transnational regulatory arbitrage promoted by the posted work system drive institutional change in the European Union? Due to the multilevel nature of this question, the chapters are varied in content but nonetheless contribute different pieces to a joint puzzle.

Chapter 2 stands out by answering the question of why we have posting at all. De Wispelaere and Pacolet draw on available statistical data to outline the basic contours of posting within the European Union. Importantly, they show that far from all instances of posting can be assumed to be driven by a business model of low-wage competition. In many cases, it is highly skilled professionals who are posted without wages or working conditions being a competitive factor. Also, posting is ubiquitous: While many flows are labour-cost-driven, some reflect proximity. Many old Member States send substantial numbers to other countries, and East European countries also host posted workers. These points are the first step in reminding us that posting has many benefits for different sets of actors. De Wispelaere and Pacolet elaborate extensively on these benefits from an economic perspective. Beyond drawing a statistical picture of posting, the function of the chapter in the overall volume is to remind us of the many actors that have a vested interest in the preservation of posting as a form of labour mobility and thereby underscore the point that there are no easy fixes to the problems identified in other chapters.

In Chapter 3, Alsos and Ødegård start our journey from on-the-ground-business strategies towards EU regulation by investigating the business strategies used by Norwegian shipyards after the eastward enlargement. In the wake of the EU east enlargement, the booming Norwegian economy caused labour shortages in the competitively exposed shipbuilding industry. In response, the industry started to recruit Eastern European labour, who were often paid wages below those of Norwegian employees. Many of these Eastern European workers were posted to Norway to circumvent transitional arrangements and collective agreements. In response, the government legally extended the collective agreement for the industry, and this extension made it more expensive to have workers posted to Norway. The chapter shows how posting became increasingly contested because response strategies by trade unions and politicians led employers to counter-responses. These took place at different levels and in different forms. On the one hand, employers started, in an act of regulatory conformance, to re-employ the posted workers as regular employees

to avoid paying for board and lodging. On the other hand, employer associations, seeking to preserve opportunities for regulatory arbitrage, challenged the decision to extend collective agreement in both national courts and before the European Surveillance Authority (ESA). In sum, the chapter is a perfect illustration of the multilevel acts of regulatory engagement that employers deploy in relation to posting in their efforts to circumvent, challenge, and re-negotiate national institution.

In Chapter 4, Matyska goes even closer to the ground by focusing on the posted workers and their understanding of their own situation. The focus on the posted workers themselves has often been absent in studies (although see Berntsen, 2016; Thörnqvist and Bernhardsson, 2014), which may be explained by language issues, their mobility and the fact that they are hard to reach. Nonetheless, Matyska has performed multi-site ethnographic studies to highlight the ambiguity inherent in the posting situation and the way posted workers, as the least powerful actors in the institutionalised regime they move under, still contribute to the enactment and incremental transformation of the posting phenomenon. Beyond the meticulous analysis of how this happens in practice, at least two important points should be taken away from this chapter. First, she shows that while the Polish posted workers´ background in the post-communist capitalist system predisposes them to distrust their employer; the legacy of the communist regime inclines them to understand that everyone (including one's employer) has to bend the rules to get by. Therefore, they may give their employer too much benefit of the doubt or even help him avoid the attention of the authorities.

Secondly, however, the chapter shows that posted workers do not accept everything from their employer. While many studies have referred to the 'dual frame of reference' (Waldinger and Lichter, 2003) to explain why labour migrants and posted workers are willing to accept inferior labour standards, Matryska argues that posted workers mainly focus on their (implicit) agreement with their employer rather than the rules of host or home country. Only when the posted workers perceive that this unwritten agreement has been violated, do they go to the authorities or trade unions. This shows that in the posting situations there are often three sets of labour standards in play: the standards prescribed by the understanding between workers and employers, the standard prescribed by the formal rules, and the real labour standards of workers in the host country. While the dual frame of reference can explain why posted workers tolerate employers who ignore both formal rules and host country standards, Matryska's observation offers us a better understanding of why and when posted workers occasionally rebel against their employer's exploitation. These reactions play a significant, though usually diffuse, role in the regulation of posted work, and they shape the context that enforcement actors must navigate to re-enact national institutions.

In Chapter 5 Lillie, Berntsen, Wagner and Danaj then turn towards one group of enforcement actors, namely trade unions. Comparing the Netherlands, Finland, Germany, and the UK, they describe the institutional pressures caused by posting within the construction industry and stress how posting makes enforcement of even legally binding labour standards difficult for trade unions. At the same time, however, they show how unions have developed several response strategies to deal with this by re-enacting existing institutions. However, despite their innovative efforts, the experience is mainly one of patching the holes in national and sectoral regulatory institutions made by CJEU rulings and the regulatory evasion strategies of transnational contractors. A process of institutional drift is still occurring as a result of posting, as the behaviours of firms

diverge from those agreed to in formal institutional settings. Trade unions then adapt their behaviour, and formal settlements change as a result. In some cases, these patch the holes in the old settlements, and re-establish a degree of union labour market influence.

In Chapter 6, Iannuzzi and Sacchetto study the Italian labour inspectors' efforts in relation to posting. Italy is in some ways a strange case because it is a net sender of posted workers. Italian construction companies have, for instance, been adept at gaining major contracts across Europe, posting a combination of Italian and Eastern European workers (see for instance Arnholtz and Refslund, 2019). However, as with many countries, Italy is both a sending and receiving country. The chapter offers three striking observations. First, posting is not a widespread phenomenon in Italy because there is already a substantial part of the labour market that is dominated by irregular employment. Posting, therefore, is mainly seen in the Northern part of the country, where the labour market is more regulated. This shows that, for many employers, posting is just a way to undermine labour regulation, and it becomes redundant if labour standards can be undercut in other ways.

Second, the chapter highlights the way posting is, in the words of Jan Cremers, an 'artificial arrangement', by showing how Italian firms fire their workers, reemploy them in a Rumanian subsidiary and then 'post' them back to Italy on Rumanian labour standards. This goes to show that posting is not an East-West issue, but one of exploiting vulnerable workers all over Europe. While some Italian workers will clearly refuse such conditions, the most vulnerable groups in the Italian labour market may have to accept them. It is not posting that creates these vulnerable groups but posting allows creative firms to circumvent the rules that were put in place to protect these vulnerable workers – be they Rumanian or Italian. Third, Ianuzzi and Sacchetto show the increasing importance of government labour inspectors in regulating posted work; the non-union nature of the firms employing posted workers' demands increased attention from labour inspection. The ephemeral and often artificial nature of these firms, the reference to foreign and EU law in the workers' contracts, and the unwillingness of most posted workers to cooperate with authorities brings new challenges and resource demands for national labour inspectorates, as is evident from the Italian case.

The expanding role of the labour inspectorate is also the main topic of Jan Cremer's contribution in Chapter 7. He first outlines the institutional changes that have been adopted to expand the Dutch Labour Inspectorate's competences in response to growing concerns about irregular employment standards. The process has involved the development of closer cooperation between the labour inspectors and the trade unions. As in many other countries, such formal institutional changes have formed the basis for new data generation, which gives researchers, policymakers, and enforcement actors a better understanding of what is going on. Based on evaluation of case reports instituted by these recent reforms, he then catalogues a variety of 'artificial arrangement' companies used to employ posted workers at illegal below-collective-agreement wages and conditions. The evaluation also shows that, despite greater inspection intensity, the inspectorate continues to experience difficulties due to the transnational nature of the problem, which prevents them from comprehensively inspecting targeted companies and ensures that they cannot simply ban the operations of repeated offenders. From this, the pressures on labour inspectors to transnationalise their reach is clear, although whether they will succeed in doing so remains an open question.

In chapter 8, Houwerzijl and Berntsen explore the tensions between the EU legal framework governing posting and the realities on the ground. Too often, they argue, policy debates are dominated by a narrow understanding of posting, which focuses mainly on legal definitions rather than on the practices of posting actors. Combining legal analysis with primary interviews with posting actors, as well as drawing on the empirical literature on posting, Houwerzijl and Berntsen show that firms see posting as a way to engage a highly flexible and exploitable workforce. Firm posting practices center around reducing labour costs and increasing flexibility, if necessary by evading local labour laws and norms, as a way of gaining a competitive edge. Posting is not so much a discrete form of employment as it is one of several parallel recruitment modalities used to establish a flexible European labour market governed by neither host nor sending country. This contrasts with the underlying assumptions behind the European legislation and CJEU case law regulating posted work, which insist that posted workers are embedded in their home country labour markets and never enter into nor impact the host country labour market. The chapter offers up hope in the form of regulatory initiatives being undertaken at the EU level, based on the now increasingly influential "broad" notion of posting: these initiatives, however, remain politically controversial.

In Chapter 9, the focus shifts towards institutional change at the EU level. Marco Rocca traces the changes to the European Union legal framework with specific emphasis on the revision of the PWD. The Laval decision of the CJEU, Rocca contends, revealed a split between those who favoured an EU driven by wage-cost competition and those concerned about the market-driven dismantling of national level labour and social protections. Consequently, a revision of the PWD was a controversial issue. There is a political story about the mobilisation of support for this political reform, but Rocca focuses on several legal changes, which made the re-regulation possible. One legal stepping stone was Sähköliitto ruling from the CJEU, which established precedents supporting principles of equal work for equal pay for similar work in the same context. Rocco maintains that although the 2018 revision expands greatly on the 1996 PWD, for the most part, it puts into legislation principles which were already established by CJEU in precedent. Other stepping stones came in the form of national reforms. In that sense, the chapter is a perfect illustration of the fact that institutional change in the EU is not solely a top-down process of Europeanisation but also a process of bottom-up re-negotiation of EU rules.

In the final chapter, Wagner and Shire expand the discussion beyond the European scope by comparing the regulation of posted work in Germany to the similar systems of temporary agency work and trainee internships for migrants in Japan. They characterise the regulatory changes around these as regulatory arbitrage, which results in regulatory displacement, as foreign (in the case of Germany) or alternative national (in the case of Japan) rule sets are referenced. These rule systems regulate labour standards but do so in ways which make these same standards difficult or impossible to enforce. This suggests a theme in common with many of our chapters, that liberalising institutional change is often fuelled not by overt changes in formal rules but by violation and/or undermining of those rules. Furthermore, there are a variety of institutional frameworks which can be used to create functionally similar results; semi-deliberate weakness of rule enforcement is a common characteristic allowing structurally stronger actors on the micro level (in this case employers) to shape social relations in their favour regardless of formal macro-regulation.

Each chapter thus has a different contribution to make to the volume's overall argument. Hopefully, however, this introduction will have made the reader attentive to the interlinked nature of the different processes analysed in the chapters. An example of this is the Sähköliitto v Elektrobudwa decision of the CJEU. The case arose from the Olkiluoto 3 power plant construction site in Finland, where Finnish unions had long been frustrated by their inability to apply their extended collective agreements to posted workers, due to a lack of strike leverage on-site, due to the prevalence of foreign contractors. The case is, therefore, an illustration of the challenges trade unions face and the strategies they deploy to overcome these (Lillie et al., this volume). At the same time, the case originates in quite mundane, everyday conflicts. As Matryska shows, the court case arose in 2011 when Polish posted workers working for Elektrobudwa at the site approached the Finnish Electricians' Union (Sähköliitto) for help regarding underpayment of contractual wages. While many workers would have been content to work for the below-Finnish level wages they had originally agreed to before coming to Finland, Elektrobudwa did not pay them that. In contacting the Finnish union, they instead made a claim for Finnish level wages and benefits (Matryska, this volume). The Sähköliitto brought the case to the Finnish labour court.

However, when the Finish labour court referred the case to the CJEU, the workers mundane wish for getting paid was replaced by principled question of EU law, such as 1) the Finnish union's right to represent workers on Polish contracts, when Polish law prohibits collective representation and 2) the legality of using skill-based wage scales and benefits such as travel per diems in the Finnish collective agreement covering posting companies. On both issues, the CJEU supported the Finish union, and, as Rocca argues, the Sähköliitto ruling thereby became instrumental in shaping a legal pathway to the PWD revision.

However, while the Sähköliitto decision was viewed as a victory for trade unions in their efforts to re-regulated posted work, it was so far a pyrrhic victory for the 32 Elektrobudwa workers, who were dismissed for joining the union and who, as Matryska notes, seven years after the conflict commenced have still not received the pay they are owed. This underlines that despite the tightening up of legal rights of posted workers, enforcement remains a problem, and regulatory evasion a viable option.

1.9 Conclusions

This brings us back to Ernest Haas' original notion of an EU integration process driven by feedback loops in which political integration projects drive economic decisions which feed into social changes, which in turn motivate further political integration. We have opened up this process further using the vocabulary of institutional change, which allows us to see how national actors such as companies, employer associations (Alsos and Ødegård), unions (Lillie et al.), individual workers (Matryska), and labour inspectorates (Cremers, Ianuzzi and Sachetto) change their behaviour as a result of transnational opportunities, and the consequences of those opportunities. Actors struggle to assess and make meaning of these processes (Berntsen and Houwerzijl), which eventually results in EU level political changes and new regulation (Rocco).

In Haas' neo-functionalist interpretation, 'integration' as an outcome seems preordained, as the rules of the game are set up so that European level solutions tend to be in the interest of all actors — although the nature of those solutions can be very different for different kinds of actors. Integration can and frequently does mean deregulating labour markets by allowing firms to circumvent and undermine existing regulation and regulatory enforcement by, for example, using letterbox companies to post workers. It also motivates and channels the growth of cooperation between regulatory actors and the development of further political regulation. Integration is, therefore, the creation, reproduction, and expansion of new trans- and supra-national political spaces, via these kinds of mutually reinforcing processes, which do not compel actors to specific actions but rather gives them various strategic options that all incentivise in the direction of (different kinds of) further integration. The direction can deregulate or re-regulate, and the political struggle over posting is a struggle over which way this will go. Of course, as Brexit shows, actors can also ignore the integration incentives and seek to change the nature of the game, but only at a price. Neo-functionalist integration theory assumes a certain kind of political-economic rationality, and actors that ignore the incentives also confound its predictions. Brexit, though, is perhaps the exception that proves the rule; the importance of the 'low politics' of integration incentives is all the more visible when someone pays the cost of ignoring them.

Neo-functionalist integration theory is about the low politics of subnational actors such as firms, regulatory agencies, unions, and individuals; its explanatory variables could be characterised in institutionalist language as institutional drift, institutional conversion, and regulatory displacement. Institutionalism has tended to ignore the actions of transnational actors and supranational institutions. However, as our authors will show, the politics of posted work demonstrates the usefulness of institutionalist concepts applied to the problem of European integration.

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[1] Having experienced a massive inflow of posted workers in the 1990s, Germany (and Austria) had secured the right to let their transitional scheme govern posted workers as well.