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Article

A socialization paradox: trade union policy cooperation in the case of the enforcement directive of the posting of workers directive

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Abstract

The formulation of common political positions from the trade union movement at the European Union (EU) level mainly takes place at the European Trade Union Confederation (ETUC). In the case of the Enforcement Directive of the Posting of Workers Directive, a central cleavage line runs between neither countries nor political parties, but between different vertical levels of the system of European labor relations—the sectoral and interprofessional levels. Here, due to both horizontal and vertical differences, trade unions were unable to effectively formulate and pursue joint positions. On these grounds, we aspire to provide a theoretical argument on political dynamics in the EU's multilevel system. While the ETUC representatives internalize supranational norms through their embeddedness in the EU's institutional landscape, this socialization process does not advance—but rather prevents—integration by disrupting trade union power at the supranational level.

Key words: migration, Europe, organizations, labor market institutions

JEL classification: J610 Geographic Labor Mobility; Immigrant Workers; L380 Public Policy; L310 Nonprofit Institutions; NGOs

1. Introduction

The posting of workers via the free movement of services is a constant point of contention in the European Union. While the trade union movement does not oppose the free movement of services, there is a concern that the European Court of Justice's (ECJ's) interpretation of the Posting of Workers Directive opens the possibility for disregarding the labor standards in the country where the work takes place. The Enforcement Directive of the Posting of Workers Directive addresses the concern of better enforcing the rules laid out in the initial

Directive. Here, our goal is to assess the Enforcement Directive's policymaking process and to analyze the European trade union movement's internal dynamics. The trade union movement has always been an important actor in EU policy formation concerning the free movement of services, albeit with limited results. Instead of seeing the controversy of the free movement of services solely through a lens of class or intergovernmental cleavages, we follow Afonso (2012) and analyze the dynamics and cleavages among interest organizations in this domain. In the case of the Enforcement Directive of the Posting of Workers Directive, as this paper will show, a central cleavage line runs between neither countries nor political parties, but between different vertical levels of the system of European labor relations—the sectoral and interprofessional levels.

Based on in-depth interviews and participant observation, we aim to reconstruct the perspectives of the dominant actors involved in the negotiations of the Enforcement Directive. The objective of this approach is to make sense of the processes whereby these actors are coordinating their specific perspectives and responses to the introduced legislation. Findings show that in the exchange about which political positions to take on, a cleavage line emerges between the sectoral and interprofessional levels.¹ In this article, focus on three developments contributing to this cleavage line, which have ultimately led to the trade union movement's weak position in the policy discussions, as follows: (a) the differing opinions on the form and content of the directive; (b) the divergent lobbying efforts undertaken by the ETUC and other trade union federations; and (c) the different degree of embeddedness in the EU policy circles, influencing how the ETUC and other national trade union federations form and take positions.

The focus on how and why positions are formed and diverge between the European Trade Union Confederation (ETUC) and European sectoral federations is meaningful in three respects. First, examining how this process influences policy outcomes is relevant for EU trade unionism research. EU policy's influence on the trade union movement hinges on factors like the EU institutional framework's complexity (Bieler, 2005), scarcity of union resources, and members' low interest in the European level (Larsson, 2015; Furåker and Bengtsson, 2013). While trade unions have influenced the supranational political process in certain areas, they have encountered difficulties in adapting to changes stemming from European integration. The ETUC aims at extending national bargaining leverage to the European arena. A loose confederation of 90 members, it often takes the position of the 'lowest common denominator' when representing union interests in the EU (Platzer, 1997). Moreover, trade union cooperation has been challenged after EU integration because of differences in the working conditions, wage levels, union structure and interest between old and new member states (Meardi, 2012). Barriers impeding a common political position have emerged along national and ideological lines (Gajewska, 2009). However, research on European trade unionism often employs a "top-down" national systems perspective' (Marginson and Sisson, 2004, p. VI). Institutional differences certainly shape trade unions' political behavior (Höpner and Lutter, 2014). In this article, however, we diverge from classical notions of institutional heterogeneity between countries and argue that analyzing

1 While, in our understanding, 'horizontal' differences refer to national particularities, the dimension referred to as 'vertical' comprises the different layers of the multi-level system of European trade union representation ranging from the shop floor organs over the regional and national representation to the EU-level, with the European sectoral federations and ultimately the ETUC at the top.

institutional differences in the organizational dimension of the European trade union movement is equally important for evaluating policy outcomes.

Second, our findings contribute to European integration theory. The socialization of European elites is at the core of studying European integration (Georgakakis, 2017). It is a key factor in the conversion of certain actors that should hypothetically bring about greater political integration. As in the theoretical realm of supranationalism (Sandholtz and Stone Sweet, 1998), the socialization with European institutions is considered central to further European integration. The findings show that several factors contribute to a cleavage line between the ETUC and sectoral trade union federations based on a partial detachment of the ETUC staff's political goals from their sectoral member federations' interests. However, the Enforcement Directive case shows that increased socialization between the ETUC and European institutions has fostered a divergence in opinion and actions undertaken by the ETUC and its member organizations. We can observe a *socialization paradox*, as such socialization among trade unionists can endanger the internal cohesion of the European trade union movement. While supranationalist positions highlight the constant shift of loyalties and competencies at the European level, this does not necessarily increase the cohesion of the EU's multilayered political system.

Third, our findings speak to the burgeoning research on posted work in the EU. The article gives an in-depth account of the controversial Enforcement Directive of the Posting of Workers Directive and is thus part of the antagonistic history of the EU's free movement of services. Moreover, it is also a significant case concerning how the European trade union movement formed positions in the EU policymaking process around the free movement of service; of the internal diversity of trade unionism at the supranational policymaking level and how collective policy formation processes and policy influence have been experienced differently by the ETUC and several sectoral federations.

The article proceeds as follows: first, we discuss the politics of trade union interest intermediation in the EU. In particular, we focus on the ETUC's role in this context, as well as on how cleavage lines emerge in the context of the freedom of services. We then discuss the content of the Enforcement Directive, and after describing the research methods, empirically examine the process of position making between the ETUC and its sectoral organizations during the policy negotiations for the Enforcement Directive. Finally, we discuss the findings and conclude.

2. Trade union interest intermediation in the EU

During European integration, a central challenge for trade unions lies in establishing joint political positions on European labor market regulation. Since the 1980s, the notion of 'Social Europe'—aimed to impose common labor market and welfare standards at the EU level while preventing downward competition (Vaughan-Whitehead, 2003)—has become the trademark of European trade union internationalism. However, the institutional heterogeneity among the member states hinders such common positions; discrepancies in wage levels or labor law generate different national class interests. Historical trajectories have led to different traditions and perceptions, and thus, action repertoires, between trade unions from different countries (or even sectors or regions; see Gumbrell-McCormick and Hyman, 2013).

To overcome these differences, trade unions have become active participants in European integration. As labor's central political actor, trade unions represent workers' interests in the EU political system as 'intermediary organizations' (Müller-Jentsch, 2009). As Schmitter and Streeck (1999) pointed out, the political conduct of such organizations oscillates between the 'logic of influence' and 'logic of membership'. Leaders in intermediary organizations may establish and follow an agenda of what they perceive to be necessary and desirable for the organization (or themselves), but these goals can be in opposition to the interests of the organization's regular members. In such a context, 'conflicts over the balance between the meta-organization and its members tend to be strong because they concern fundamental aspects of all these organizations' (Ahrne and Brunsson, 2008: 110). Member organizations' decisions are made in a flat hierarchy, and internal conflict is resolved via negotiation. Formal voting procedures tend to be ceremonial, and agenda setting takes place in the framework of working groups and discussion circles. It is in these microcontexts that common socialization occurs.

Socialization theory assumes that, instead of following pre-established ends, actors' goals can be shaped and transformed through ongoing interactions (Dewey, 1960; Emirbayer and Mische, 1998, p. 967f.; Ansell, 2011). As Ebbinghaus and Visser (1994) stated, organized labor is structurally disadvantaged by both the particularities of the EU's decision-making machinery (logic of influence) and specific challenges of internal interest intermediation (logic of membership) that the highly diverse associations of European trade unionism face. While structural factors are vital in policymaking, the existence of common goals depends equally on the presence of a common identity. Socialization as the 'process of inducting actors into the norms and rules of a given community' (Checkel, 2005, p. 804) and how opinions are formed and transformed in this process are significant factors in creating and/or developing such an identity (Woll, 2008, p. 14).

Socialization dynamics are profoundly significant across the multiple dimensions of the EU's political system (Cini and Borragán, 2007). At the core of early integration theory, Haas (1958, p. 16) described the formation of political positions as 'the process whereby political actors in several distinct national settings are persuaded to shift their loyalties.' Similarly, Zürn and Checkel (2005, p. 1065) identified the European institutional context as a 'most likely case for socialization dynamics', while Lewis (2005, p. 940) described the "thick" socializing effects on actors, which go beyond adaptation and strategic calculation to include the internalization of norms and rules into self-conceptions'. Definitions of supra-national norms vary between EU institutions, but formally, they all have a mission of 'working for Europe'. By shifting representatives' subjective feeling of belonging, the EU's political system is assumed to improve its capacity for cross-level coordination. Thus, the ongoing interaction of national delegates will presumably lead to overcoming country-specific differences.

In some instances, European integration can generate a different effect of European-level socialization. For example, it is uncertain whether the increase of political competency processes at the EU level will solve the problems of European integration (Höpner, 2015). Due to self-referential networking in Brussels and financial dependency on the European institutions, European trade union organizations could be expected to identify the European arena as the central locus of regulation (Martin and Ross, 2001). To develop a closer understanding of the practices such dynamics translate into, the next section introduces the ETUC's practical, representative work.

3. Representation of ETUC and EU interests

Founded in 1973, the ETUC consists of 90 national trade union organizations from 39 countries and 10 European industry federations. The main purpose behind its creation was to counter multinational companies' increasing activity in the European market. The ETUC gradually established its organizational identity, concerning both its member organizations and the European arena.

As a “superstructure” for European cross-national collaboration’ (Turner, 2005), the ETUC aims ‘at the construction of a European identity’ (Gajewska, 2009, p. 96). This generates what can be identified as a core challenge of the ETUC—the creation of a common political agenda (Gumbrell-McCormick and Hyman, 2013, p. 169). Weinert (2009, p. 75) stated that such high representativeness is a strength, but it is also a weakness. He regarded internal heterogeneity as one of several features determining the ETUC’s recent development. A joint reference frame gains especial importance against the background of increasing competence allocated at the EU level (mainly through the common market and European Monetary Union). Moreover, while the European regulatory space becomes increasingly important, trade unions struggle with resource restrictions (e.g. personnel, money and logistics). Furthermore, decreasing membership fees play an important role in the ETUC’s political engagement.

Since the organization’s early days, national members have hesitated to transfer money to the ETUC. To gain agency, ETUC officials ‘had to seek its building materials elsewhere [...], accepting help from European institutional elites that were well-disposed toward labor but [...] had their own political agendas’ (Martin and Ross, 2001, p. 74). Simultaneously, an integrationist tendency unfolded from this resource dependency among ETUC representatives: ‘In return for these resources [...] the ETUC was drawn into a coalition to advance the initiatives of those supplying them’ (Martin and Ross, 2001, p. 74). Similarly, ETUC trade unionism contributed to ‘the growing autonomy of a trade union elite, characterized by a specific culture’ (Wagner, 2013, p. 193). As the ETUC engages in professionalization, personnel distance themselves from the regular member base. Accordingly, Hyman (2011, p. 22) critically addressed a softening of political discourse, from which a representation problem arises:

To the extent that Eurospeak has become the working language of the ETUC (and national union representatives active within its structures), their logic of membership is undermined by the fact that they speak a different language from those they seek to represent.

Trade union confederations cannot represent all workers’ interests; thus, worker representation involves strategic choices (Gumbrell-McCormick and Hyman, 2013). What is important in European integration and in finding common positions in the policy process are the cleavage lines along which trade union leaders act strategically to advance most union members’ interests. The European integration literature has dealt extensively with how such political and social conflict is structured at the supranational level (Marks and Steenbergen, 2004). While some cleavage lines are reproduced from the national to supranational levels (Wessels, 2004), Grande (2006) argued that new ones emerge in the EU integration process. Various studies have identified a territorial cleavage based on nation-state interests or a left-right divide, where national interests barely play a role and interests develop according to party politics (Hix *et al.*, 2006, 2007). Using this categorization, labor would likely adopt a

strategy relating to either a territorial or ideological cleavage (Streeck, 1998). On the one hand, a territorial dimension of political conflict relates to a split in interest groups between ‘old’ and ‘new’ member states, following the Eastern Enlargements in the ETUC. On the other, ideological cleavages occur in the trade union movement between union representatives advocating for a more ‘liberal’ policy approach and those wanting stronger regulation. This can cut across nationalities; equally, the national cleavage line can cut across ideological lines. However, it is especially interesting that, in the case of the Enforcement Directive, the ETUC and sectoral confederations act according to neither class nor territorial loyalties. Rather, their interests and actions are structured according to the sectoral and interprofessional level.

While territorial and ideological factors played a role in the European trade unions’ development of political positions, we argue that it is equally necessary to consider their internal dynamics to understand the policy formulation process. Interests do not generally arise unambiguously from the world, as most actors have multiple aims cutting across previous loyalties (Berger, 1981). Adding a vertical cleavage line to existing accounts of horizontal cleavage lines aims to further our understanding of the ‘complex web of relationships among the different actors participating in the daily workings of institutional Europe’ (Georgakakis and Rowell, 2013, p. 1).

4. The free movement of services and cleavage lines

In the Maastricht Treaty of 1992, freedom of services was implemented as one of the fundamental principles of the common market. The struggle over protection of national labor standards has become a central challenge for European labor. Posted work is a crucial feature of employment practices, where workers are ‘posted’ to one country by their employer to carry out work, usually for a limited time, but remain employed in another country. The Posting of Workers Directive, passed in 1996, entitles posted workers to minimum working conditions of either the host or sending state, whichever is better for the worker. Many studies have shown that the regulations applicable to posted workers have created regulatory gaps, and posting workers can provide companies with a competitive advantage by using regulatory arbitrage and/or evasion (Berntsen and Lillie, 2016). Although firms’ employment practices fall under both sending and receiving country regulations, unions and labor inspectorates face fundamental limitations in compelling foreign service providers to respect them. They are constrained by their national jurisdictions as well as European Court of Justice (ECJ) decisions (e.g. Cremers, 2011), and face organizational challenges in developing transnational cooperation (Hartlapp, 2014). European regulations on the free provision of services have made it difficult for countries to enforce labor standards, and transnational workplaces have developed dynamics with autonomous rules and regulations (Wagner, 2015a).

Posted workers may not know their rights or be afraid to claim them; employers may be uncertain about their obligations or feign ignorance to gain a competitive advantage. Labor inspectorates (and other rights-enforcing bodies) must handle cases involving complex, challenging issues (often several at a time) like false posting, social security fraud, bogus self-employment, questionable subcontracting, artificial firm arrangements and dubious tax behavior (Cremers, 2018), while acting within legal competencies that may be quite restricted (Wagner 2015b). Firms exploit these complex issues to operate in workspaces

with different or no regulations (Lillie *et al.*, 2014), complicating labor rights enforcement and raising serious capacity issues for unions (Meardi, 2012) and labor inspectorates (Wagner and Berntsen, 2016).

In response to the loophole between posted workers' established rights and their appropriation, or what has become the rule in practice (Streeck 2001, p. 142), policy negotiations on the so-called Enforcement Directive (ED) began. So far, most policy discussions related to the original directive have been understood by examining territorial and ideological divides at the supranational level. The territorial cleavage line that emerged regarding the Posting of Workers Directive was the divide between old and new Member States; it has been argued that political and economic actors in new Member States favor the liberalization of services because their constituents can capitalize on competitive service providers and lower wages. Keating (1997, p. 32) predicted a transformation of interest group cleavages into 'place-based inter-class coalitions of political, economic and social actors devoted to the economic development in a specific location'. A large gap in prosperity levels could presumably undermine the basis for trade unions' united mobilization in lower and higher wage countries, as trade unions from lower wage countries could be reluctant to support harmonization of labor standards, considered a protectionist device used by party and union representatives to protect jobs at home (Streeck, 1998, p. 146). Thus, actors' preferences regarding European integration are not only bound to their socioeconomic status in their countries, but also other countries' standards.

The ideological cleavage is the opposition between 'the liberals' and 'the regulators' (Crespy and Gajewska, 2010). The former are advocating more liberalization and deregulation as a means of stimulating growth and employment in the internal market. The latter are looking to maintain the status quo, or to re-regulate at the EU level. For example, an analysis of trade unions' response to the liberal version of the Services Directive revealed that there was no east-west cleavage based on competition between workers from low- and high-cost countries. Polish trade unions, similar to their western counterparts, argued that liberalization could have disadvantages for the eastern workers and defined the conflict in class, not territorial, terms (Gajewska, 2009). A cross-national, cross-party line emerged between the ideology of reducing boundaries in the interests of free movement provisions and seeking tighter regulation of those provisions (Crespy and Gajewska, 2010).

The common political line pursued by the European trade union movement in the case of the Posting of Workers Directive constitutes a joint position despite national differences. Years later, however, the ECJ reinterpreted the Posting of Workers Directive in decisive ways. Initially, it allowed member states to improve the conditions for posted workers further than specified in the Posting of Workers Directive. In the *Laval* case, the ECJ referred to the list of core rights for posted workers as defining the *ceiling* on the *maximum* standards that member states can impose on posted workers, constraining them from enforcing conditions for posted workers beyond the minimum conditions set out in law or extended collective agreements. Thus, the ECJ effectively limited the host countries' latitude for regulating the labor market; European trade unions again required a joint position on how to achieve sufficient regulation. The knowledge that business was using these new opportunities to undermine national labor standards led to a new regulatory effort—the Enforcement Directive. The ED's main purpose is to ensure the consistent application and enforcement of posted workers' rights as outlined in the Posting of Workers Directive.

The attempt to establish a joint political position on the issue has caused friction among European trade union federations.

5. The Enforcement Directive

The European Parliament adopted the Enforcement Directive in April 2014. Its goal was to improve the regulatory framework for the enforcement of the Posting of Workers Directive rights. In the run up to the adoption of the Enforcement Directive several points of critique were highlighted by the European trade union federations. One of the contentious issues raised by the legal text of the Enforcement Directive is the specification of which rights apply when the worker is deemed to fall outside the posting framework. For example, it is often unclear whether the worker *de facto* falls under the free movement of persons or services (here, the added complication is the person being employed via a subcontractor or agency contract) or is (possibly unknowingly) bogusly self-employed. Trade unions demanded a clear text on which law would apply to a worker in a *de facto* but not *de jure* posted employment relationship. The demand was for the Enforcement Directive to state clearly that the worker would be covered by the host country's legislation. However, the Directive does not state which framework applies, and therefore, leaves open the possibility that the country of origin's framework will apply. The danger is the creation of a loophole allowing the *de facto* enactment of the country of origin's principle.

Another item of debate was the issue of liability in the subcontracting chain. Social partners of several EU countries pushed for main-contractor liability for all elements in the subcontracting chain. According to Article 12 of the Directive, only the direct subcontractor can be held liable. It is left to the member state to determine the exact tool for enforcing protection from such abuse in the subcontracting chain. However, this restricted from the outset because, although the Enforcement Directive leaves room for the member states to decide relevant enforcement measures, it cautions that additional measures must be 'justified' and 'proportionate' to avoid creating a barrier to the free movement of services. In fact, throughout the Directive, the attention to 'proportionate' measures alerts member states to the need to maximize their tools to avoid infringement procedures. The European Commission emphasizes that it will monitor whether the Directive is effectively translated into national law. Although the European Commission has an institutional duty to monitor compliance, this responsibility is usually not written into Directives.

In certain respects, the Enforcement Directive does advance transnational administrative cooperation. It sets time limits by which the authorities of other member states must respond to requests for assistance (e.g. a 2-workday limit to respond to urgent requests and a 25-workday limit for non-urgent requests). However, the fine collection method is unspecified. Fines imposed on a posting firm cannot be executed effectively, as they are based in a different jurisdiction. Article 18(1) introduces the service provider's right to contest the fine, penalty and/or underlying claim. This is not a codification of case law; its inspiration was drawn from the provisions of regulations and directives in the field of social security and tax law (Houwerzijl 2013). If a dispute arises, the cross-border enforcement procedure of the fine or penalty will be suspended pending the decision of the appropriate national authority. Companies making a business model out of worker posting may use this provision as a tool for postponing legal consequences. In this sense, companies can still profit and develop strategies based on their registration in another jurisdiction.

6. Methods and approach

We draw on qualitative data from 2012 to 2017 gathered from 20 open-ended interviews with representatives from the Brussels-based organizations ETUC; European Federation of Building and Woodworkers (EFBWW); European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT); European Transport Workers' Federation (ETF); European Public Service Union (EPSU); and the European Commission. The lobbying process in the discussions on the Enforcement Directive involved the ETUC and national trade union federations, most prominently, the EFBWW, EFFAT, and ETF.²

The main aim of this article is to explore the relationship between the ETUC and European sectoral federations in the realm of worker posting. The socialization of elites in Brussels, including trade unions, has always been central to theories of European integration (Georgakakis, 2017). There is a tendency toward elitism and decoupling in the political orientation informed by resource dependency (Martin and Ross, 2001), and ETUC officials lean toward overidentifying with European institutions at the cost of loyalty to their affiliates (Hyman, 2013). Thus, in the interviews, we focused on the relationship between the ETUC and sectoral organizations to gain insight into the actors' subjective experiences with other trade union organizations in the Enforcement Directive policy process and their feeling of embeddedness in Brussels. When referring to factors like resource dependency, the research reconstructs what counts as reality from the informants' perspective, rather than the accurate state of affairs. By carving out their positions and the policy process they are embedded in, we aim to understand these actors' divergent policy behavior.

We focus on the sectoral federations because the issue of posted work is mainly relevant for certain sectors. The EFBWW represents the construction sector, which has been most affected by cross-border posting. Over time, the EFBWW has taken the lead in European-level interest representation on posting. In fact, an ETUC representative went so far as to claim that 'the Posting of Workers Directive was basically their [the EFBWW's] directive' (Interview, ETUC, 2014). Construction trade unions have acquired the most expertise, but they have also developed the strongest political initiative. Especially since Eastern Enlargement, other sectors, like transport or meat slaughtering in Germany, have seen an increase in the employment of posted workers. The EFFAT and ETF were equally invested in and affected by the policy discussions around the ED, and they were more involved than in previous policy negotiations pertaining to posted work (Interview, EFFAT, 2014). Yet, the EFBWW led the ED discussions, cooperating with other trade union associations. The high political salience ascribed to the topic of posting is reflected in the publications of the federations involved,³ while the academic discourse highlights the importance of posting for these sectors (see e.g. Cremers, 2011). The interviews with two representatives from the EPSU and the European Commission were conducted because of their expert knowledge on the case from related cooperative ties. Collecting information from actors with different points of view was also a means of preventing interviewee perspectives and personal viewpoints from having undue influence over the result, allowing a less biased narrative to emerge (Stake, 1995).

2 Parts of the empirical data used stem from a project on trade union politics in the EU, which is summed up in Seeliger (2019).

3 See the EFBWW manifesto 'Building Together—For Jobs and Justice', where 9 of 17 demands in the 'Social Justice' section relate to posting.

The interviews were recorded with the participants' permission and transcribed verbatim, lasting 1–2 hours. We conducted follow-up interviews in 2017 to trace the evolution of the policy debate and fact check past events in light of new developments. The data were stored and coded using MAXqda qualitative data analysis software. We used the interviews as the primary data collection source, complemented with participant observations. 'Observer-as-participant' (Waddington, 1994) data collection, in which the researcher overtly observes, was employed. One author conducted participant observation of informal meetings and everyday conversations at the European Trade Union Institute in Brussels from January until May 2014, an important timeframe in the sequence of negotiating positions on the ED. Participant observation is useful for gaining an understanding of the relationships between people and contexts (Mack *et al.*, 2005). On some occasions, a significant conflict developed in meetings between on the relationship and the policy formulation between representatives. Observing participants informed the interview questions on the relationships between the ETUC and sectoral organizations.

7. The Enforcement Directive: trade union position making and policy influence

Several factors contributed to the cleavage line between the ETUC and sectoral trade union federations in the policy discussion on the Enforcement Directive. We focus on three contributing developments that ultimately led to a weak position for the trade union movement in the policy discussions, as follows: (a) competing ideas on the form and content of the Directive, (b) the deviating lobbying efforts undertaken by the ETUC and other trade union federations and (c) the different degree of embeddedness in the EU policy circles, influencing how the ETUC and other national trade union federations form and take positions.

7.1 Competing ideas on the form of regulation

There is widespread agreement that the Posting of Workers Directive as it currently operates falls short of effective enforcement, but there is not always a consensus that further regulation via an additional directive is required. Analysis of the trade union organizations' responses to the notion of regulating the enforcement of posted workers via the Enforcement Directive indicates the absence of any clear consensus on the most productive approach. There was a strong cleavage line between several members of the ETUC—the EFBWW, EFFAT and ETF—and the ETUC itself as to whether they should reject the ED proposal outright or try to improve it by lobbying the respective institutions. The ETUC member federations thought the answer to the current difficulties rested in finetuning the Posting of Workers Directive and rejecting the proposal of a separate, albeit connected, Enforcement Directive. The ETUC supported the lobbying strategy aiming to improve the existing proposal.

The cleavage was a break with the patterns of cooperation between the EFBWW and ETUC. In the negotiations around the Posting of Workers Directive, both organizations cooperated closely, but when it came to the ED, the ETUC called this division of labor into question. The trade unions originally demanded a change in the Posting of Workers Directive. The European Commission proposed the introduction of a whole new directive aimed at enforcing the original one, as this procedure would be much quicker than changing the existing legislation:

If we had decided to revise the existing directive, an acceptable compromise would have been quite unlikely. The Posting of Workers Directive negotiations were immensely complicated. It took six years until the negotiations were finalized. Now, the interests diverge even further, and therefore, it is likely that it will be at least as complicated as the Posting of Workers Directive discussions. That is why we said we did not want to discuss Article 3 again but focus on the enforcement. (Interview, European Commission representative, 2012)

The reaction to the introduction of the Enforcement Directive was minimal, but the organizations' degrees of skepticism showed important differences. While the EFBWW openly rejected the proposal, the ETUC was more cautious in voicing concerns about the actual policy process of the Enforcement Directive. An EFBWW representative rejected the idea of putting the Enforcement Directive on the agenda, reiterating that neither the trade unions nor the employers' associations were previously interested in pushing this agenda: 'The Enforcement Directive as such was not needed. Nobody asked for it. Not even employers. Not even us. It was Barroso's idea' (Interview, EFBWW, 2014). The legislative efforts should be contextualized against the backdrop that the Barroso II Commission was approaching the end of its term. Therefore, it lacked sufficient time for comprehensive legal initiatives, which were expected to trigger controversial political reactions.

The ETUC was equally suspicious about the ED, but it was more nuanced in its criticism. One ETUC representative stated, 'it is actually very difficult to say whether it is useful, this weak Enforcement Directive. Or that you should adopt it and say, okay, we have something and we will improve it. Both positions are legitimate in a way' (Interview, ETUC, 2014). The views of the EFBWW, EFFAT and ETUC were expressed with varying degrees of uncertainty, and they did not differ that starkly on this topic.

Opinions were divided as to how one should proceed in the political discussions. From the ETUC's perspective, to improve the content, the best way of dealing with the situation was engaging in further political discussion. According to one interviewee, after discussing the document internally, the ETUC representatives 'identified some room for improvement. In fact, we see some positive signals, so for instance, the responsibilities in this chain of subcontractors is positive' (Interview, ETUC, 2014). In contrast to this opinion is a view on subcontracting liability, where one EFBWW representative stated, that 'it is an Enforcement Directive that tries to improve the situation, but the solution they are proposing is a one-step liability system that can be exonerated by due diligence; in real terms, this means absolutely nothing' (Interview EFBWW, 2014).

Like for the details of the ED, the ETUC and its member organizations disagreed on whether to accept the Directive altogether. The sectoral organizations clarified that they were against accepting the whole document. The EFBWW was concerned about its influence on the ability to enforce rights. As stated in a common EFBWW/EFFAT (2012) press release, the Directive increased the likelihood of social dumping through 'less control powers for labor inspectors, more possibilities for labor providers to post workers abroad and more information websites'. Due to its unclear content, a representative of EFFAT saw the Directive as

a text that leaves much to interpretation. It does not give any legal clarity or legal certainty. And, in fact, it would seem the way it is drafted, that it does restrict control measures and enforcement measures that the member states can take. (Interview, EFFAT, 2014)

Another concern was that the ED identifies the pitfalls of the Posting of Workers Directive, but it does little to change how rights can be enforced, namely to extend the scope in which

nation states can protect workers' rights in their territory. Another EFFAT representative explained this concern:

The whole concept of an Enforcement Directive that acknowledges that an existing directive doesn't work is a bit strange. I think [...] there was so much evidence mounting that the posting workers directive wasn't enforced. And in response, you have a directive [...] that basically lists all the areas in which the worker posting directive can't be enforced. (Interview, EFFAT, 2014).

Following the European Commission's proposal, European trade union federations and the ETUC did not manage to establish a common position on the issue. Thus, there is a clear lack of consensus on the best ways of dealing with regulation of the enforcement of the posting regulation impacting on their influence in the pursuing policy negotiations.

7.2 Deviating lobbying efforts

Cooperative lobbying efforts can benefit an organized interest by putting its issue on the political agenda, increasing the information about the policy process, or reducing lobbying costs. However, due to their different viewpoints about the policy initiative, the sectoral federations did not streamline their campaign efforts as much as possible. In 2013 and 2014, two public demonstrations occurred Brussels, one organized by the EFBWW and one jointly called for by the EFBWW and EFFAT (2012). Moreover, the EFFAT and ETF joined the EFBWW in collecting and publicly sharing hard evidence about social dumping by creating a repository of cases, symbols and posters against this practice. These organizations also joined a big protest at a Council of Ministers meeting, as well as smaller protests. However, there were some disagreements as to how involved the ETUC should be in 'the visual campaign. That was something we hoped the ETUC would join. And, in the end [...] it was just us who joined the visual campaign initiated by the EFBWW' (Interview, ETF, 2014). Another instance in which the ETUC abstained from joining the EFBWW, EFFAT and ETF was when these organizations wrote two open letters—one to all Members of European Parliament (MEPs) and one to the European Ministers of Labor—explaining their reasons for rejecting the Enforcement Directive. The following statement from the letter to the MEPs illustrates the fundamental criticism directed at the proposal: 'After careful consideration, we can clearly state that the current agreement will deteriorate the situation in the workplaces and increase legal uncertainty!' (EFBWW, 2012; EFFAT, 2012). While the sectoral union federation undertook an initiative to publicize the insufficient reach of the proposed enforcement directive, underpinned by case study examples of posted workers in many EU member states, the ETUC did not support these efforts publicly.

From the federations' perspective, the ETUC's political approach appears insufficiently confrontational. As a representative from the ETF stated, 'ETUC prefers a bad deal over no deal. ETUC representatives are ready to compromise on levels that are not really acceptable, but just for the sake of an agreement, they prefer to have little' (Interview, ETF, 2014). In a similar vein, one representative from EFBWW stated, 'You pour a lot of water into your wine, but there is an agreement. Will it be beneficial? Well, that's another issue' (Interview, EFBWW, 2014). Generating consensus with the European institutions, he explained, has become a goal for the ETUC: 'It is pure political window dressing. It is nothing else, nothing more. The situation would have been much better without the directive. They could have

resolved it in a different way.’ In the EFBWW’s view, the ETUC could have approached the issue by lobbying for revising the posting directive and against the ED.

Despite these differences, the ETUC representative reiterated that frictions between the ETUC and EFBWW have not endangered a joint lobbying process: ‘The construction workers are ETUC members, so our common position is the position of the members, who have agreed’ (Interview, ETUC, 2014). At the same time, the interviewed representatives from the sectoral federations described cooperation with the ETUC as difficult. One interviewee from the European Transport Federation explained that the ETUC refused to grant either his organizations or the EFBWW a seat in a joint discussion group:

They said, we don’t have enough seats. And then the Commission said, there is a clear reference to transport in the Directive, as for the construction sector. So, the construction and transport federations were invited directly, not through the ETUC. (Interview, ETF, 2014)

This reiterates the diverging perspectives between the sectoral union federations and ETUC on how the lobbying initiatives should proceed and how they did not develop in unison.

7.3 Different degrees of embeddedness in Brussels

Another factor influencing the formation of common positions between the ETUC and its member organizations is the concern over the ETUC’s overidentification with the European project. All the interviewees were critical of the ETUC’s close orientation to the European level. Explicitly assigning it what he termed ‘an integrationist ideology’, an EPSU representative described the following problem: ‘There are issues, where you think, the ETUC does want an agreement on the European level, whereas at the federation level, we don’t necessarily want an agreement at all costs’. The ETUC’s political vision is ‘in a different sphere’ (Interview, EPSU, 2014). Enhancing the European arena with additional capacities for stronger rule setting appears to be a legitimate goal: As the representative from EFFAT explained, it simply did not fit the immediate needs of the different sectors:

And we [EFFAT] don’t want to wait for 50 years, because then we would have a longer term concept. ETUC was pushing it in parallel. Sometimes there is a bit of a misunderstanding on that. [...] It is a trade union movement, not a European movement. (Interview, EFFAT, 2014)

At the same time, while generally acknowledging their expertise in posted work. An ETUC representative described the EFBWW as pursuing more specific interests than a comprehensive trade union position would allow: ‘They have really good ideas, but they are related to the construction sector and perhaps not so relevant for other unions’ (Interview, ETUC, 2014).

Another suspicion concerning overidentification with the European project was expressed by unionists from the ETF and EFBWW, who said that ETUC employees ‘are more involved in these high polished debates, these fancy lunches’ (Interview, EFBWW, 2014). Similarly, an ETUC representative described a negotiation style among the construction workers’ representatives as inappropriate: ‘Their language is very tough, their tone is very hard. They are construction workers’ (Interview, ETUC, 2014). Likewise, an ETF representative explained how their habitual proximity corresponded to little conflict between ETUC and Commission representatives:

Now they are invited to meetings and many people feel they are in paradise when they sit at the same table as the president of the commission. What more can you ask? I am representing the ETUC. And we are passing our message to them. They don't give a shit, but we are using the opportunity to pass the message to the ETUC. (Interview, ETF, 2014)

A representative of the ETUC expressed a similar perspective:

Yes, I think, the federations have less trouble in being more objective on the European discussion. But here at the ETUC, as I say, there is this mix with another discussion of saying 'let's watch out as ETUC, because we have to be part of the European setting. So we can't step aside, out of the discussion by saying all the time that Europe has no competence.' (Interview, ETUC, 2014).

Beyond such habitual aspects, the ETF representative saw another important reason for the ETUC's compliance with Commission proposals in its financial support; it is funded by European institutions:

There is the big problem of dependency on EU funding. Or many areas of the ETUC's work. And there is too much feeling of what they call responsibility. If we want to be respected and listened to by the Commission, we must behave. (Interview, ETF, 2014)

An ETUC representative stated similarly:

Perhaps not consciously, but subconsciously[...] there is the idea, 'let's look at the amount of money we are getting from the European Commission.' And indeed, it is sometimes a lot of money. So, they don't want [...] they might subconsciously be thinking, let's not endanger this.

The political initiative run by the sectoral federations and ETUC had different targets. While the ETUC was in favor of negotiating an Enforcement Directive, the sectoral federations blocked the proposal early on. Trade unionists from the sectoral federations ascribed this to the ETUC representatives. Their acceptance of an insufficient proposal of the European Commission can be traced back to an integrationist tendency generally favoring comprehensive regulations at the European level connected to resource dependency on the European Commission. Representatives of the ETUC showed greater identification with the European level. It was not possible for the groups to join forces on the issue of the Enforcement Directive; as the representatives from the sectoral federations stated, a more fruitful regulatory outcome would have been possible had that been the case.

Interestingly, policy negotiations have advanced since the adoption of the Enforcement Directive. In 2018, the European Parliament has adopted the revision of the Posting of Workers Directive. The revision of the Posting of Workers Directives provides for remuneration of posted workers in accordance with host member state law and practices; a new and limited timeframe for exercising posting; universally applicable collective agreements for posted workers across all sectors; and equal treatment of temporary agency workers and local workers. While these are legal advances, the revision of the Posting of Workers Directive still does not address the issue of enforcement of legal rules at the local level. Since the discussions on the Enforcement Directive, there has been a change not only in the ETUC leadership, but also the liaison between the ETUC and its member organizations. So far, follow-up interviews have revealed that a change of personnel in these key positions—who are not yet as embedded locally—changed the interaction between the organizations toward more

transparency and information sharing. However, it is too early to determine the exact level of cooperation and future influence on policy outcomes.

8. Discussion and conclusion

Worker posting continues to challenge European trade unions in trying to protect national standards. Previous research found that policy formulations around the freedom of services was divided along national and/or ideological lines on the labor side, specifically between representatives from countries with high and low employment standards. In the case of the ED, this paper shows that a central cleavage line runs between different vertical levels of the system of European labor relations—the sectoral and interprofessional levels. In the case presented here, due to both horizontal and vertical differences trade unions were unable to effectively formulate and pursue joint positions. The focus on the socialization experiences of European-level representatives helps in explaining the different actors' diverging interests. The focus on key actors and variegated cleavage lines in trade unions not only provides a more diversified picture of cleavage lines in supranational politics, but it also has implications for labor power in its struggle for a 'Social Europe', as the internal structuring of the European trade union movement plays an important role in advancing European labor's political strategies.

The case of posting remains a contentious topic from perspectives beyond industrial relations. If the central challenge of the EU as a political system lies in effectively integrating political interests across its various levels, then the relationship between the ETUC and sectoral federations highlights an important dysfunction. As an intermediary organization, the ETUC must maneuver between logics of influence and membership. Using international socialization literature, we have shown how ETUC representatives gradually shifted their orientation away from their members' interests. This insight reflects the well-known paradox of trade union identity, according to which, unions are social movements with the goal of social betterment, but they often have conservative bureaucracies. This paper sheds light on the latter part of this paradox, namely how the sectoral and interprofessional dynamics play an important structuring dimension in trade union influence at the supranational level.

From the literature on socialization processes in multilevel systems, we have borrowed the assumption that a shift of loyalties to the EU-level facilitates coordination processes across the different levels. While international socialization processes were highlighted as fostering the internal cohesion of multilevel systems, our findings show how internal preference formation was not only contentious, but also problematic to a degree that prevented a common position from emerging. Dynamics of socialization and persuasion that could lead actors to arrive at a common standpoint did not emerge in their cooperation with the ETUC. What does seem interesting, however, is that socialization dynamics, as described by [Zürn and Checkel \(2005\)](#), seem to have taken effect among the ETUC's staff. Here, the reference group of these dynamics was primarily found, not in the ETUC as a meta-organization, but in the local environment in Brussels; ETUC representatives coupled their political position to that taken by the European Commission, thereby effectively decoupling their political goals from the interests of the sectoral federations. Therefore, the position represented by the ETUC did not reflect that articulated by the sectoral trade union federations. To use an image drawn from the literature on socialization dynamics in supranational contexts, a 'transfer of loyalties to the European level' (Risse, 2010, p. 88) among the ETUC

representatives does occur. Simultaneously, the representatives from the sectoral level stick with their national members from the respective sectors as their immediate reference group.

In the case at hand, the institutional relationships are visibly strained. While the ETUC representatives internalize supranational norms from the European political process and its institutional landscape, this socialization process does not *advance*, but rather *prevents*, integration because it disrupts trade union power at the supranational level. This *socialization paradox*, as one could call it, results from the distance of the ETUC from the sectoral—and ultimately, the shop floor—level. In the complexity of the EU's multilevel system, ETUC representatives developed unique ideas on how European integration should be handled as a political process. This 'logic of influence' advances a certain form of European integration. However, despite a generally positive identification with the project of European integration, representatives from the sectoral federations are more critical of the European institutions because of 'the logic of membership', through which they are more immediately bound to the interests of their national members.

While the traditional perspective of intergovernmentalism suggests that national trade union delegates would control the ETUC agenda, scholars from the supranationalist school assume that ETUC representatives would gradually establish independent capacities (as happened in the ECJ; see Höpner and Schäfer, 2012). The supranationalist literature on socialization in international government organizations regards it as helpful because it triggers processes at the international level that would otherwise be impossible. Such processes even become necessary for the cohesion and further integration of the European political space. Actors' interests and actions converge in the European policymaking space, leading to institutional change at the policy level.

This study's findings show that socialization processes can also have an adverse effect: in our case, the strong socialization among the ETUC representatives did not increase its internal cohesion. In fact, the socialization in international organizations led to a divergence of opinions between actors in the trade union movement. This is important because this divergence hinders integration, while diminishing trade unions' power to influence policymaking at the European level. The implications for the literature on international organizations (in research on international relations, organization studies and European integration) are that further research on organizational cohesion across the different layers of multilevel political systems is necessary to better understand the mediation of interests. Such research could explore the question of whether dynamics like those observed here are shaping patterns of international socialization in other political organizations, such as among parties, lobby groups, or government officials.

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