

**Gerhard Bosch**

# **Transnational labour markets and national wage setting systems in the EU**

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## Research question

Impact of different forms of migration on labour standards in Europe?

# Contrasting views on the impact of cross-border labour movements on labour markets in the EU

## Two different views

1. Migration will not give rise to serious imbalances in labour markets or other disruptions in the countries of destination (European Integration Consortium 2009)
2. Substantial displacement effects in some industries and pressures on national wage setting institutions

## „Paralell communities“ in research:

- macro-economic models simulating impact of migration vs.
- studies of impact of cross-border posting on specific industries and institutions

# Structure of presentation

1. De-territorialisation of labour law in the EU
2. Different effects on national wage setting systems
3. Impacts of postings on the wage systems in the construction industry in six countries
4. Transnationalisation of wage setting systems
5. Conclusions: Negative or positive integration of the EU

## 1.1 De-territorialisation of labour law

Territorial principle fundamental characteristic of modern nation state: All citizens equal before the law

Territorial principle also basic principle for industrial citizenship: All employees in a state equal before the law

Individual migration in EU left the territorial principle unaffected: EU-Treaty – equal treatment of nationals and foreigners alike

Migrants enter a new legal system and become subject to the legislation of the country of destination - left to national state to regulate the labour market

„Pacification“ of the potential social conflicts of migration through principle of equal pay

## 1.2 De-territorialisation of labour law

Increasing wage differences in the extended EU

Incentives to use long existing freedom to provide services to reduce labour costs

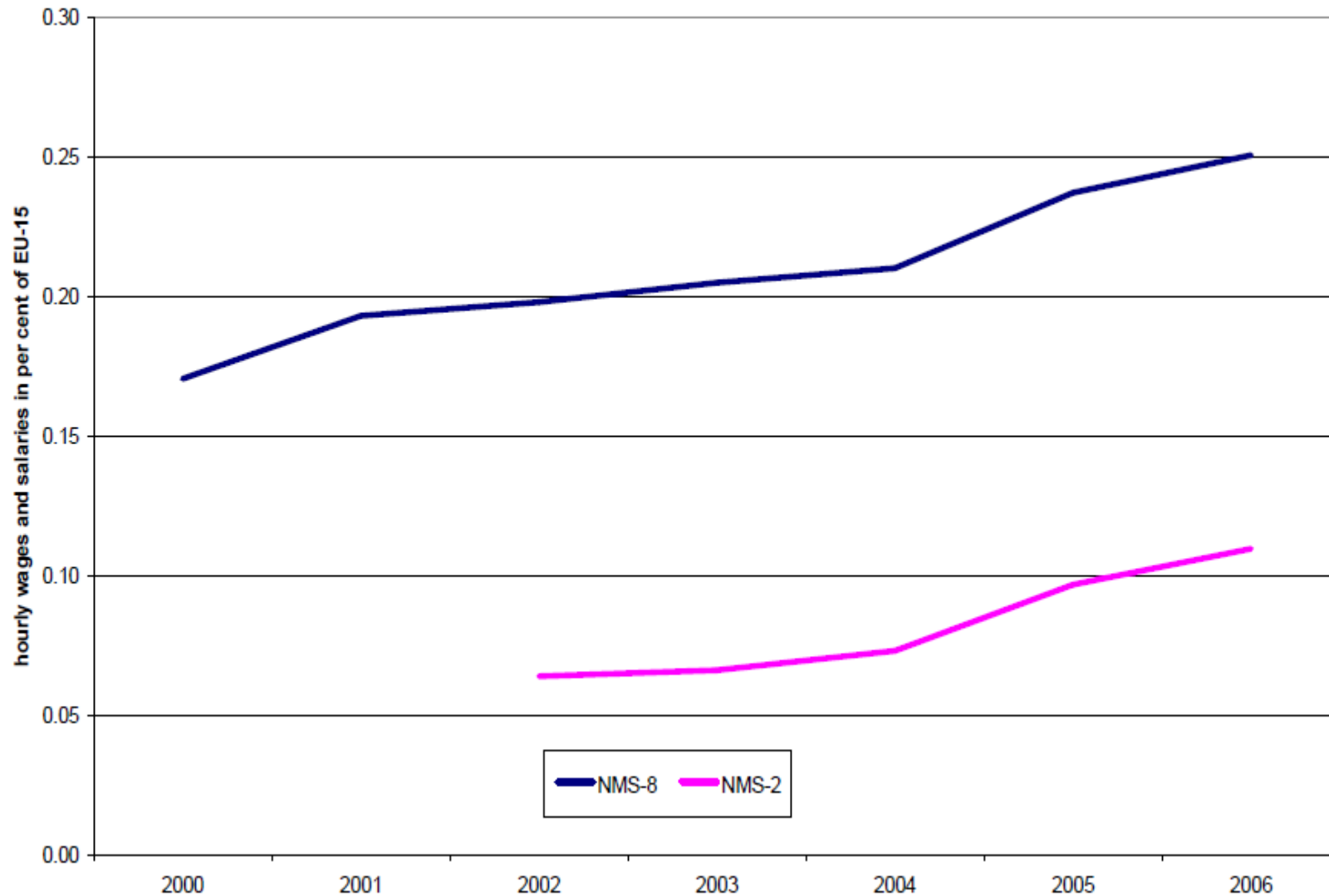
Principle of equal pay in an geographical area does not apply to foreign contractors

Companies have the right to provide time-limited services with their own workers in accordance with their employment conditions

Territorial principle undermined by „islands of foreign labour law“ (Hanau 1997)

Posted Workers Directive (PDW) of EU 1996 leaves in to nation states to regulate employment conditions of posted workers

## 1.3 High wage differences in the extended EU



Source: Eurostat (2008). In : European Integration Consortium, IAB, CMR, fRDB, GEP, WIFO, wiiw: 2009: *Labour mobility within the EU in the context of enlargement and the functioning of the transitional arrangements*. P. 14

## 1.4 De-territorialisation of labour law

### Migration

Territorial principle  
(lex loci)

Labour law

EU-Directive: Equal  
pay for foreigners and  
nationals

No challenge to  
inclusive wage  
systems

### Posting

Principle of origin.  
Import of labour  
standards

Competition law

Posted workers  
directive: Equal Pay  
possible, but  
„appropriate“

Exit options



## 1.5 „Domestication“ of PDW through the European Court of Justice

EU-Treaty excludes Community activity in respect to pay, strikes and lock-outs

But ECJ in four landmark judgements (sometimes called „Laval Quartet“ )

- confirmed a hierarchy of norms with market freedom highest and social rights of CB and action in second place
- Interpreted the PDW in a restrictive way (no equal pay, only minimum conditions, no voluntary only extended agreements ) limiting the scope of Nation states and social partners to demand equal treatment of posted workers

ECJ favours legalistic models of industrial relations like in FR, BE and NL

## 1.6 Domestication of the Posted Workers Directive (PDW) through the ECJ

Even from a pure market perspective less interventionist approach possible:

- By following the principle „*No discrimination of domestic or foreign companies*“

Contradiction in Laval Case: Unions can go on strike against Swedish companies but not against foreign companies:

- Result: *discrimination of domestic firms in competition*

## 2.1 Impact of postings on national wage setting systems

Postings like an external shock for inclusive wage systems – create exit options for employers

Filtered by business models: Two different types of subcontracting (Harvey 2003):

- Cooperative: Based on knowledge and specialisation
- Competitive: based on low wages – often successive subcontracting

Both types found in the EU: competitive subcontracting dominant between low – high wage countries

Filtered by national wage systems: Different levels of inclusiveness

## 2.2 E101 certificates for posting by sending and destination country 2009 (in 1000)

	<b>Sending country (only E12)</b>	<b>Destination country (only E12)</b>
<b>DE</b>	170,3 (13,7)	221,2 ( <b>165,4</b> )
<b>FR</b>	160,8 (19,6)	155,6 (32,9)
<b>HU</b>	36,4 (3,2)	25,0 (1,4)
<b>NL</b>	9,9 (0,0)	81,9 (21,8)
<b>PL</b>	204,4 (5,8)	14,7 (1,7)
<b>UK</b>	32,3 (0,1)	34,8 (7,4)
<b>EU -15</b>	651,2 (46,1)	852,1 (346,9)
<b>EU - 12</b>	346,9 (20,7)	66,9 (20,7)

Source: EU 2011b

## 2.3 Coverage by labour standards in exclusive vs inclusive labour markets

	Within an establishment	Within an industry	Across industries	Trans-national
<b>Exclusive</b>	Not all employees	Only establishments with strong employee bargaining power	Only industries with strong employee bargaining power	Only posted workers in companies with strong bargaining power
<b>LOW WAGE</b>				
<b>Inclusive</b>	All employees	All establishments within an industry	All industries + low wage differentiation between industries	All posted workers

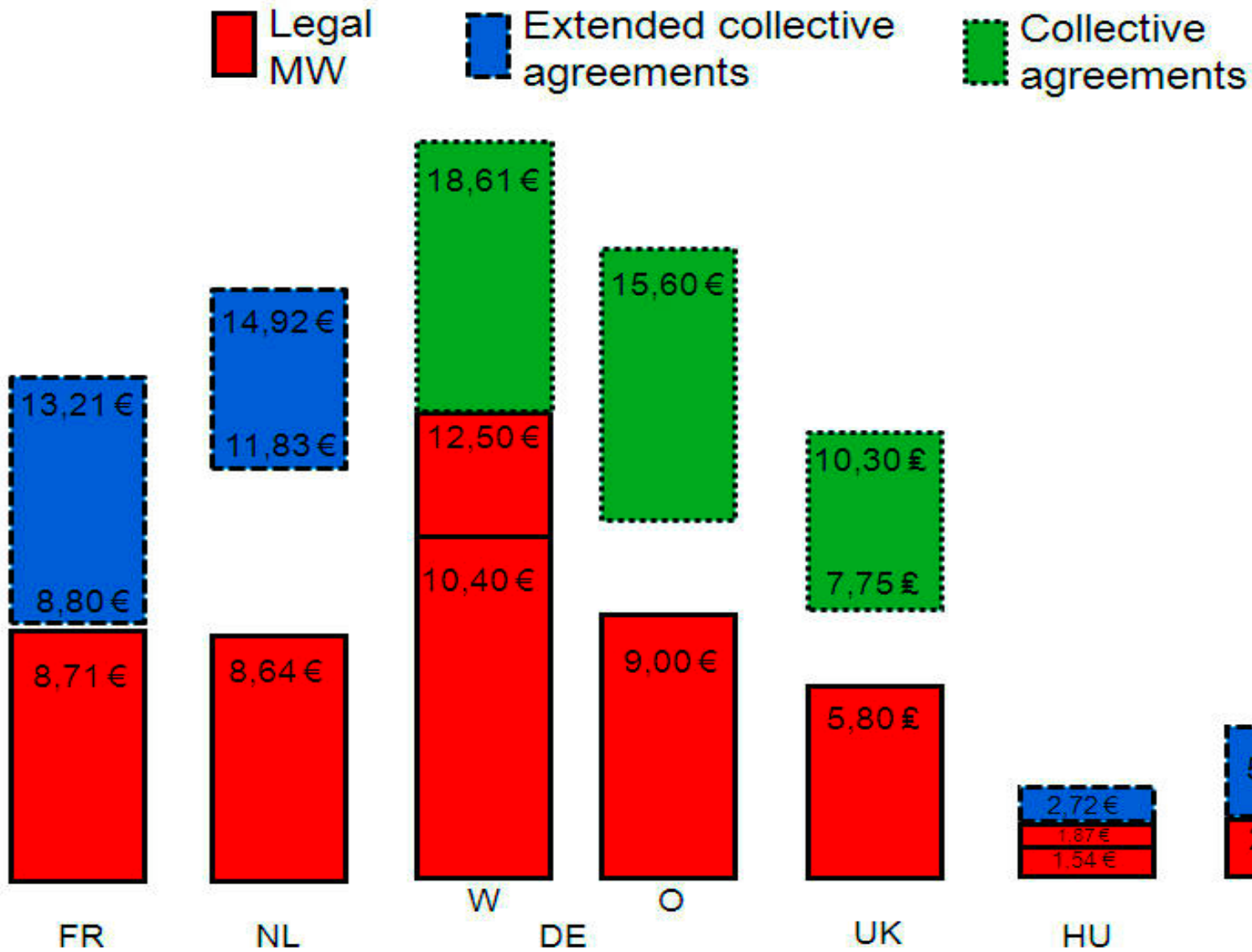
## 2.4 Collective bargaining coverage, employers' organisations and union density 2006

	1-10	11-20	21-30	31-40	41-50	51-60	61-70	71-80	81-90	91-100
<b>France</b>	<b>U</b>							<b>E</b>		<b>Cov</b>
<b>Netherlands</b>			<b>U</b>					<b>E</b>	<b>Cov</b>	
<b>Denmark</b>						<b>E</b>		<b>U</b>	<b>Cov</b>	
<b>Germany</b>			<b>U</b>			<b>E</b>	<b>Cov</b>			
<b>UK</b>			<b>U</b>	<b>Cov, E</b>						
<b>USA</b>	<b>E</b>	<b>U, Cov</b>								

Cov = Bargaining coverage non-standardised;  
 E = Employer organisation rate (private sector);  
 U = Union density rate

Source: J. Visser 2011, ICTWSS database, own calculations

### 3. MW and CB in the construction industry in six European Countries 2010



Source: Bosch, Weinkopf, Worthmann, 2010; Neumann 2011; Nestic 2011

## 4.1 Transnationalisation

- European integration always been bound up with the hope that the restricted room for manoeuvre that nation states possess might be overcome by new transnational level of action.
- ‘Transnationalisation’ denotes ‘economic, cultural, political and social relations and interconnections that cross the borders of nation states but are not maintained primarily between the states themselves and their governments...’ (Pries 2008)
- Collective bargaining optimal locus for transnational standard setting - enable standards to be set autonomously within national frameworks but below the level of central government



## 4.2 Transnationalisation

- Few examples of functioning transnational relationship in IR sphere
- One example: bilateral agreements between social funds in construction industry (AT, BE, DK, DE, FR, IT, HE)
- Requirements for transnational agreements:
  1. Institutional similarities
  2. Employers and employees interest organized at national level
  3. Negotiations on equal footing
  4. Strong joint interests in reaching an agreement

## 5.1 Positive or negative integration

Posting strong example of negative integration (Scharpf):

1. challenges national labour standards,
2. limits the scope of action of national actors
3. does not create new EU-wide standards

Changes within given institutions: “institutional avoidance” (Applebaum 2010) possible – once used often with cumulative effects – leads to “erosion” of institutions (Streek/Thelen 2005)

Some readjustment at national level: Industry minimum wages in Germany – new hybrid model of IR – combination of French legalistic and German voluntaristic tradition

## 5.2 Positive or negative integration

Hopes for improvements of the PWD  
disappointed by new proposal  
(Enforcement of PDW-Directive 2012)

- No clarification of the goals by introducing a goal oriented interpretation of the PDW (strengthening the social dimension)
- Weakening enforcement possibilities in the host country – reintroduction of the country of origin principle through the backdoor
- No chain liability if company has „undertaken due diligence“

Interest in the extended EU diverse – no  
chance for new EU directives in the field of  
laboru law and social

## 5.3 Positive or negative integration

### European project endangered

**Controversy fuelled by the rulings „has the potential to alienate from the Single Market and the EU a segment of public opinion, workers ‘ and trade unions, which have been over time a key supporter of integration“. He further added that „the Court ‘s cases have exposed the fault lines between the Single Market and the social dimension at national level“ (Mario Monti)**

(A new strategy to the single market - at the service of Europe ‘s economy and society – Report to the President of the EC, José Manuel Barroso, by Mario Monti 9 May 2010)