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EU Freedoms at a Critical Juncture?

The Positions of Member State Governments on EU Person and Services Mobility

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Brexit has questioned the paradigm of ever expanding EU freedoms for persons and workers in the EU. Communitarian claims in favour of national sovereignty and social protectionism succeeded in mobilizing voters in the UK for leaving the EU. The study examines how liberal values underpinning the freedom of movement and freedom of services were contested by the governments of France, Germany, and the UK in the early 2010s. The findings of the comparison confirm that EU freedom rights are at a critical juncture. Policy change and underpinning normative claims of the governments of France and Germany suggest that the posting of workers is contested at its core, enabling competition of labour standards and wages in the single market. In contrast, freedom of movement and the right to equal treatment of EU citizens was only criticized at its margins, aiming at restrictions for access to specific benefits or unwanted groups. Regarding the UK, the analysis observes a reverse positioning: a rejection of equal treatment and affirmation of competition. Based on these findings it is argued that shifting support for the conditions for the posting of workers made recent communitarian corrections possible. However, continued support of the French and German government for the equal treatment of EU citizens underpinning the freedom of movement does not suggest radical changes to this freedom and key narrative for EU integration.

The free movement of people and services are among the four liberal principles that build the foundation for socio-political and economic integration in the European Union (EU) (Haas 1958: 12). Both, person and services mobility have a key role in EU integration which explains the continuous expansion of rights for workers and citizens in the EU (Recchi 2015: 25). In the 2010s, member states at the national or EU level adopted changes to rules for both the posting of workers (PoW) and freedom of movement (FoM) of persons. These changes and the Brexit could mark a critical juncture for the paradigm of ever-expanding rights encouraging EU mobility. The right of EU citizens to freely move and establish themselves in the UK had become a highly salient topic on which the 'Leave campaign' successfully mobilised the

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electorate. The decision in favour of a 'Brexit' revealed that voter discontent on EU mobility and migration can promote anti-EU attitudes in society (Balch/Balabanova 2017).[1] Consequently, the public and academic discourse on EU mobility heavily focused on the UK, its government, political parties, and media stances on EU freedoms for persons (Heinikoski 2015; Balch/Balabanova 2014; 2017). However, the question how governments in other EU member states such as Germany and France recently claimed for or adopted policy change on EU mobility has not yet attracted much scholarly attention (Blauberger/Schmidt 2014; Roos 2016; Blauberger/Heindlmaier 2017). At the backdrop of Brexit and increased salience on the topic this analysis sets out to close a research gap and comparatively assesses whether or not EU freedoms for persons and services are at a critical juncture.

The current contention of EU mobility in member states is also a debate on the validity of EU norms and underpinning liberal values against communitarianism seeking social justice within confined national borders (Favell 2014: 277). From this perspective, the demand for regaining national sovereignty over the control of EU mobility and migration in the single market is a position against the liberal values enshrined in the EU treaties. Accordingly, the analysis set out in this article does not only cover positions critical on EU mobility but also tries to locate their normative core within or outside of the liberal values as defined in the EU polity. This approach leaves room for an objective assessment of the normative aspects in political debate as opposed to a legalistic evaluation of how member states live up to or compromise EU norms (e.g. Guild 2016).

The right to FoM as well as the right to provide services by the PoW are crucial cases in assessing a paradigm shift in EU freedoms. Both emphasise different aspects of the single market, competition on the one hand and equal treatment on the other hand. The PoW is covered by the principle of freedom of services provision in the EU Treaty and allows employers to post workers from low-wage to high-wage member states. Thus, member state governments, unions and employers debate whether the rules of the single market should give priority to competition or the protection of social and labour market standards (Dølvik/Visser 2009). In contrast, EU FoM of persons is based on non-discrimination principles, calling for equal treatment between nationals and EU citizens concerning access to the labour market and the welfare state. In this regard, scholars observed positions demanding for welfare state closure against 'non-members' (Blauberger/Schmidt 2014).

The analysis describes the varying positions and underlying normative assumptions in national governments' policy response and debate on EU person and services mobility focusing on the years 2010 to 2015. Within these five years, attempts at reforming services and person mobility took place at the national and the EU level. In light of the developments in the UK, the empirical analysis explores whether and to what extent governments in France and Germany questioned EU policy for services and person mobility and the values that lie at their core. For this purpose, the analysis focuses on positions and claims of governments which were found in EU and member state legal and policy documents. In addition, European and

[1] The article uses the terms EU mobility and EU migration interchangeably acknowledging that EU rights for freedom of movement and residency can promote short and long-term migratory movements. Against the backdrop of political rhetoric the term EU migration is not used to conflate the legal boundaries between EU citizenship and immigration from third countries.

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national media commenting on the specific political debates were taken as a source for positions that support or contest the liberal core of EU freedoms.

Information retrieved from expert interviews add to the proper interpretation of the data. Between June and December 2015, I conducted 22 semi-structured interviews with experts from the EU and the member state level. Experts are staff from the Commission DG Employment and Justice, staff from the major political factions in the EP, policy advisors from the member state permanent representations, and actors speaking for social partners and civil society (see list of interviewees in the Annex). The sample comprises government response and political debate in the UK, Germany, and France. The three countries represent the three largest EU economies, labour markets, and share in EU mobility. Therefore, the study of government positions is highly pertinent for an understanding of whether and how the paradigm of EU liberal freedoms is shifting.

The study finds that government positions in Germany and France locate on opposite ends on EU freedoms for persons and services compared to the UK. While not uncritical of EU mobility, governments in the continental countries did not fundamentally question the right to EU FoM but called for corrections on the conditions determining the PoW. Reversely, UK actors rejected conditions for FoM but supported services mobility, the PoW. An assessment of positions at a critical juncture, the UK preparing to leave the EU, indicates the extent to which these EU freedoms still resonate with the positions and underlying values of domestic actors. By way of conclusion it is argued that, despite restrictions, the equal treatment principle underlying FoM enjoys continued support and is unlikely to change. However, a shift in paradigm came about with posting where competition in terms of labour standards and wages is no longer tolerated by France or Germany.

Ideational misfit? Member state response to EU liberal values

From the Europeanization literature and the misfit school, "ideational misfit" emerged as an important factor in examining domestic response to EU policy. The "goodness of fit" between EU rules and prevailing domestic policies is taken as an indicator for adjustment pressures and compliance of member states (Börzel/Risse 2000: 5). In addition to "policy misfit", ideational misfit means that beyond the possible disagreement between EU and domestic policy, EU integration can challenge collectively held beliefs and values with regards to identity, society, and state. Ideational misfit describes how collectively held beliefs, as well as the preferences of domestic policy makers, relate to EU integration and policy (Ibid). For the purposes of this analysis values are defined as the shared agreement about certain end states such as justice and freedom, or beliefs about proper behaviour such as fairness and solidarity. Norms, comparable to law, prescribe and constrain behaviour in concrete situations whereas values comprise trans-situational expectations of groups or individuals of the desirable (Hitlin/Piliavin 2004: 361-362). The preferences of governments are not only rational and aimed at maximizing interests but also embedded within values that are contested and dynamically changing (López-Santana 2009: 146; Schulz-Forberg/Stråth 2010: 115). From this perspective, an analysis of governments' response to EU freedoms needs to consider both, conflicts based on disagreement of EU freedoms with domestic interests and domestic values. A sensible interpretation of the positions of governments at the backdrop of conflicting values brings us closer to the identification of ideational misfit. If evidence for this misfit was found,

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a paradigm shift in terms of discontinued government support for EU FoM and services could be confirmed.

Normative positions in debating the EU

Values are core to EU integration and policy. However, the debate and commentary on what kind of values the EU embodies are ambiguous. Some scholars, often those with an explicit leaning to the left, consider the EU as a project aiming at liberalisation by promoting open markets, flexibility, and deregulation of labour standards. The focus on economic freedoms would come at the detriment of collective goods such as democracy, equality, and social justice (Schulz-Forberg/Stråth 2010; Streeck 2013: 190 cf.). Others consider EU integration as a balancing act between preferences for regulated capitalism and market freedom (Hooghe/Marks 2008: 16-17). However, considering the EU as a polity that responds to demands from both sides, it seems hardly possible to pin down the EU to a coherent set of values (Bellamy 1999).

A departure from the ambition to determine the normative core of the EU proper and a focus on the level of policy allows for a more precise assessment. The freedoms granted in terms of person and services mobility seem to be unambiguously liberal (Höglinger et al. 2012: 236). EU integration has effectively limited state sovereignty on controlling intra-EU mobility of persons and services as well as the access of EU citizens to the labour markets and welfare systems of member states (Favell 2014: 277; TFEU Art. 21, 45, 49, 56). EU citizens enjoy the right to travel unrestrictedly, take up work, or establish themselves for leisure in another EU country. They have a right to equal treatment but need to live up to conditions such as having sufficient means of subsistence and causing no public security or health concerns for legally staying in another member state (Directive 2004/38/EC, Art. 7, 27). Scholars focusing on citizenship interpret these legal norms as bringing liberal values to effect. Within the confinements of the EU territory, EU freedoms establish a universal understanding of equality in rights and liberties for all EU citizens and prescribe a legal framework for cultural diversity in the EU (Maas 2013). Others highlight EU freedoms being based on market building principles and the idea of an economically liberal EU (Favell 2014: 282; Höglinger et al. 2012: 236). Based in economic theory, FoM as well as PoW allow for optimal allocation of labour in the single market. Thus, mobility rights have a utilitarian notion in promoting general economic prosperity for the entire EU (Mundell 1961). In a nutshell, at the normative core of EU freedoms lie liberal economic and cultural values: a universal conception of equality in rights, diversity, and economic prosperity resulting from the exercise of individual freedom (see Figure 1 below).

Opposition to these values is forming on both a cultural and economic dimension within a communitarian conception of society and state (Höglinger et al. 2012: 238). Accordingly, true democracy and self-determination of people lie in preserving communities of belonging. Those are based on a common history, cultural heritage, and language that often developed within the concept of the nation state. An egalitarian and just society that allows for solidarity among its members calls for countries that are “at least potentially closed” (Walzer 1983: 38). In terms of level of government, communitarians support the formation of community on the local or national level rather than creating new and larger collectives on the international level (Bellamy 1999: 194-195; Walzer 1983: 41). Authors such as Walzer (1983) emphasise the

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necessity of self-determination of a group of people for preserving the production of identity and meaning. Borders are crucial to communitarians, not only in terms of the cultural identity of a group such as the nation but also in terms of access to social rights and provision for social justice within a welfare state. An egalitarian society can only be established by maintaining boundaries towards non-members (Walzer 1983: 31; 38-39). EU freedoms subvert the idea of national sovereignty and the preservation of community values within defined state borders. Conceptions of national identity and sovereignty are transcended by migration. National communities of solidarity become rescaled since social security and opportunities on the labour market are open to EU citizens (Eigmüller 2013). Therefore, communitarians blame the EU for inhibiting social justice in member states by pushing for more competition in and deregulation of labour markets (Schulz-Forberg/Stråth 2010: 51).

Figure 1 Normative positions in debating EU freedoms

Dimension / **Position**	Liberal	Communitarian
Cultural	Cultural diversity and universalism: equality in rights, non-discrimination	National identity and sovereignty
Economic	Utility of economic prosperity: competition and equal opportunity	Social and labour market protectionism

The following empirical section examines normative positions in domestic policy response to EU person and services mobility in terms of ideational misfit between the positions of member state governments and the values underlying EU freedoms. The empirical analysis explores whether and how member states respond to EU policy and thereby defect from the liberal core of EU freedoms. The extent of ideational misfit becomes visible in claims made during debates on policy reform at the EU or domestic level.

EU person mobility and equal access to the welfare state

Political debate over FoM of persons intensified in the beginning of the 2010s over the implied abuse of welfare benefits by EU citizens. Based on the equal treatment principle, EU citizens, economically active or not, can have a conditional claim to benefits; among others those are social assistance, means-tested unemployment benefit, and child allowance (Groenendijk 2013: 4). In the early 2010s, the Home Affairs ministers of Austria, Germany, the Netherlands, and the UK explicitly criticized the equal treatment rights of EU citizens (Interview Social Partners #19, #20; ECAS #21). They called upon the then Irish Presidency of the Council to act against EU citizens that allegedly ‘abused’ their FoM rights.

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"This type of immigration threatens our common goal, which is to promote the mobility of those European citizens wishing to work, study or set up a business in another Member State, and to strengthen the social cohesion in the host societies by integrating new immigrants." (Letter to the Council Presidency 2013).

Implicitly, the letter referred to problems with EU mobility of members of the Roma minority and expressed the limited acceptance that these people have in western European societies (Parker/Catalán 2014: 380; Interview PermRep #10). Allegedly, "social cohesion" was threatened by a "type of immigration" that was not directly related to economic activity. In fact, large scale and intentional abuse of welfare benefits by EU citizens could hardly be supported by data. At the same time, some municipalities in member states observed that poor and destitute EU citizens fraudulently claimed benefits such as access to social housing, subsistence level support, or child allowance (CEC, 2013, 837; Interview Commission #16, #17; Eurocities #18). This critique of EU FoM was also a reaction against EU induced societal heterogeneity and goes beyond the question whether EU citizens accessed certain benefits unduly or not. According to a staff member of the EP, the EU norm of non-discrimination epitomizes a universalist understanding of equality in rights irrespective of nationality or cultural background of the EU citizen (Interview EP#3). Apparently, the ministers' protest letter rejected this notion of EU FoM and reduced the norm's scope to the utility that economically active EU migrants have for member state societies. In the three countries, to a greater or lesser extent governments' normative positions challenge the cultural and economic values underpinning EU FoM by claiming adverse effects on the welfare state or social cohesion in society.

Positions on EU person mobility

The UK stands out as the country in which far-reaching changes in terms of EU citizens' access to benefits were adopted. Against the backdrop of the British EU agenda that traditionally prioritised market access and liberalisation over the extension of social rights (Geddes 2013: 158) the debate on EU citizens' access to welfare benefits in the UK became highly salient since EU eastern enlargement of 2004. EU citizens' rights touch upon the very core of defining the boundaries of a national community of solidarity. The accusation of EU citizens being 'welfare tourists' strongly appealed to an agenda of social protectionism and welfare chauvinism (Balch/Balabanova 2014). EU citizens' rights and their residence in the UK had become more and more contentious since general elections and a change in government in 2010. Then, the conservative Tories entered into a coalition government with the Liberal Democratic party. The simultaneous rise of the UK Independence Party (UKIP) mobilised on an anti-immigration agenda against the EU and succeeded in putting pressure on the government (Balch/Balabanova 2014: 4; Ford/Goodwin 2014; Heinikoski 2015). Consequently, the conservative government introduced restrictions on access to benefits for EU citizens within a general immigration policy reform in 2014. Acquiring a EU residence status and accessing benefits as self-employed, worker or jobseeker was made more difficult for EU citizens in the UK (UK Government 2014a). In addition, restrictions included the abolishment of housing benefits for EU migrants and more stringency in terms of access to child allowance (Interview ECAS #21).

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While FoM became more salient as a welfare state issue, the populist right put increasing emphasis on British national identity and sovereignty being threatened by intra-EU mobility (Favell 2014; Ford/Goodwin 2014). Giving into this pressure from the populist right as well as Eurosceptics within the conservative party, Prime Minister Cameron won the general elections in 2015 promising a popular referendum on the country's EU membership. In the run-up to the 2016 referendum, scope and composition of general immigration into the UK and the government's partial inability to reduce the numbers of EU migrants had become the key topic of the campaign to leave the EU. Not only the populist and radical right or the media framed issues with EU FoM in terms of a 'migration control crisis' but also members of the government. Then minister of the interior, Theresa May, as well as Ian Duncan Smith, minister of social affairs, claimed that the migration crisis could only be overcome by re-imposing control on intra-EU mobility (Paul 2016; Interview Commission #15; #17; PermRep #7). As this freedom is core to the EU integration project, the call for control on numbers of EU migrants directly challenged the UK's membership in the EU. The populist and conservative right rejected the EU which found a powerful channel in terms of discontent with FoM. The two major claims made during the debate leading to policy reform as well as the success of the leave campaign in the Brexit referendum were the (ab)use of social rights and the necessity for control of FoM (Interview PermRep #7). These claims link to normative positions in favour of social protectionism and national sovereignty. These values contrast sharply with the liberal values underpinning EU FoM: a belief in equal treatment, cultural diversity, and economic prosperity due to the exercise of individual freedoms.

In comparison to the UK, the claims made in the political debate on EU person mobility in Germany did not question the principle of EU FoM. This means neither the government nor the general public discourse claimed a 'loss of control' on EU FoM. It was the migration and refugee crisis of 2015 that motivated communitarian claims in favour of border control safeguarding national sovereignty and identity. The major debate on FoM took place earlier, in 2013 and 2014, and focused on 'poverty migration' from Eastern European member states and not FoM in general. At the time, EU migration of Roma and their destitute living conditions in some German cities drew most public and political attention (Interview PermRep #10). Then, residency in Germany could be established simply by claiming the EU status of self-employed worker (Art. 56 TFEU). The result of status acquisition allowed for access to a generous child allowance (184 Euros per child) that could be claimed for under-aged dependents living in Germany or in the home country. Most of the poor mobile people were eligible for benefits within EU law too, but their low socio-economic status worried policymakers in Germany (Interview PermRep #9, #10, #13). Incidents of fraud and the strain on municipalities' budgets had rendered the claims for benefits of this group of mobile EU citizens a highly salient political and public issue (Interview PermRep #10, EP #1, #3).

The minister of interior from the conservative Christian Social Union (CSU) took the issue to the European level by signing the protest letter to the Council Presidency. His party used the issue for the campaign to the elections for the European Parliament (EP) in 2014, specifically aiming at support from Eurosceptic voters (Interview PermRep #6, #10). In contrast to this attempt of exploiting the issue for voter mobilization, the federal government, a conservative and social democrat coalition, had no interest in mobilizing on the issue further. Politicians such as the minister of labour confirmed that equal rights should be protected for the wanted EU citizens that work or study in the country (Interview Commission #16). The economic utility of FoM for Germany in times of economic growth and shortages for skilled workers was repeatedly mentioned in the policy debate on restrictions for social rights of EU citizens

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(Denkler 2014; BMI/BMAS 2014). Policy response targeted the circumvention of fraud by restricting access to child benefits and more stringency in acquiring the status as self-employed service provider (Gesetz zur Änderung des Freizügigkeitsrechts EU).

The restriction of conditions for FoM in Germany was the result of issue politicization over the scope and rightfulness of EU citizens' welfare state access. It was largely driven by a conservative and rightist party in an election campaign as well as the coalition government's assertion of national welfare state boundaries against abuse (Blauberger/Schmidt 2014). At the same time, a misfit of domestic normative positions with EU liberal values on both the cultural and economic angle was not explicit in the German case. While the debate on Roma migration can be considered a rejection of EU imposed diversity it did not lead to a rejection of EU rights for equal treatment or the right to FoM. A policy advisor from the ministry of interior explained that there was awareness of the problem scope of the Roma issue. But, the government considered the problems with FoM to be minor as compared to the gains and did not change its general position which was in favour of promoting the policy for the sake of economic prosperity (Interview PermRep#10). However, the government's relatively firm stance in favour of equal treatment and social rights was challenged anew in 2016. The CSU, but also the Merkel led Christian Democrats, supported parts of the restrictive stance on social rights pushed by Prime Minister Cameron in his attempt to renegotiate the terms of British EU membership (Müller 2016). Shortly before the Brexit referendum, the EU heads of state had made concessions to the UK in terms of legitimate infringements on the equal treatment principle for EU citizens. Among other measures, the Council conceded to the indexation of child allowance to country of origin levels as well as the introduction of an 'emergency break', the cut of non-contributory in-work benefits for the first four years of a worker's residence in the country (European Council 2016: 22-23). Merkel and the CSU found particular interest in the indexation of EU citizens' child benefits as a tool for fighting incentives of benefit abuse. While Brexit impeded adoption of these restrictions for the EU, the incident shows that equal treatment rights were, hiding behind the UK, indeed seriously challenged by Germany too. Therefore, a misfit between EU liberal and emergent national communitarian positions was less explicit and pronounced compared to the UK but certainly an issue in policy discourse.

In France, the debate on FoM was very nuanced on its cultural and economic dimensions. The utility of FoM and the corresponding social rights of EU citizens were not questioned by politicians in the government. Instead, critique targeted EU migrants on the cultural angle pointing to an increase in diversity due to FoM. The issue of Roma settlements in the country is legally connected to FoM, but isolated from the issue of social rights of EU citizens (Interview PermRep #11). Distinct from Germany, politicians from the left and right in France did not shy away from openly criticizing the Roma and some of the minority's members' nomad way of life. Among others, in 2013 then minister of the interior of the socialist government Manuel Valls noted:

Ces populations ont des modes de vie extrêment différents des nôtres et qui sont évidemment en confrontation avec les populations locales (Libération, 2013).

This rhetoric was followed by a tough stance of French authorities on Roma settlements (Baumard 2015). Since 2007 eviction of settlements and deportation of Roma to Romania and Bulgaria has become government practice. While the Roma that lived in camps hardly met the EU subsistence level requirements for legal residency in France, they could not have been expelled easily. Neither on grounds of public security nor on grounds of them posing an

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'unreasonable' burden to the French social system (Art. 14, 27, Directive 2004/38/EC). By executing expulsions, the French authorities disregarded the rights of EU nationals. Nevertheless, then President Sarkozy made the Roma issue part of his anti-crime and immigration control agenda. Step by step the legal grounds for declaring camps (*bidonville*) illegal and begging a public offence were widened (Loi no 2011-672), targeting the Roma in particular (Parker/López-Catalán 2014: 384-386; Interview Commission#16).

The French government hardly challenged the general social rights of EU citizens or the principle of FoM because EU legislation leaves some room for member states to determine how the right becomes effective. Parker highlights that EU FoM and associated rights are conditional on the "ability of the EU citizen to assume the responsibilities of 'settled national citizen'" (2012: 484). Accordingly, the French government could separate a debate pertaining to EU citizens and their claims for equal treatment from a debate concerning Roma as a group that a priori does not meet the conditions to attain EU rights (Parker 2012). This position is further supported by the fact that the French did not support the protest note sent to the Council Presidency by some ministers of the interior in 2013. To the opposite, the French government supported the Commission in its critique of the letter and emphasized some problems with social coordination in the EU (Interview PermRep #10). At the EU level and in rhetoric, France protected FoM as a core normative condition for EU integration. A policy advisor to the French government strongly emphasized the then Socialist government's strong conviction for "citoyennetée Européenne" ruling out second class citizenship status for some, "Roma or British retirees in southern France" (Interview PermRep #11). The advisor's response might as well be considered hypocritical noting the de facto exclusion of Roma from EU rights in France. Accordingly, an assessment of the French government's position shows that EU freedoms were indirectly opposed on the cultural angle: diversity was rejected concerning the Roma, however, not directly linked to a discussion on EU FoM. A liberal conception of equal treatment by means of EU citizenship was defended rhetorically at the EU level, but its conditionality was highlighted domestically.

Response to EU person mobility positions on an economic and cultural angle in line with or opposed to EU freedoms. The extent of ideational misfit of member states with EU FoM and equal treatment norms varied and was strongest in the UK. There, parts of the government and a strong populist and right-wing movement rejected EU membership of the country. In this vein, politicians more and more emphasised communitarian values such as national sovereignty as well as social justice that were allegedly undermined by intra-EU mobility. In contrast, in France and Germany politicians nuanced their positions. They did not contest the general principle of EU FoM as an issue of immigration control. However, at the margins the equal treatment rights of EU migrants were challenged. In this regard, the German government positioned closer to the UK then the French government. Claims for social protectionism and a rejection of EU imposed diversity mostly targeted Roma as an unwanted group rather than mobile EU citizens in general. Therefore, a misfit with EU liberal norms was mainly evoked by explicit or coveted communitarian claims against increasing heterogeneity in society.

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EU services mobility: competition versus protection

The political dispute over posted workers in the EU reveals a conflict over market freedoms and measures protecting social standards and local workers from competition. In terms of EU law, the equal treatment norms adjacent to FoM do not apply to posted workers since they 'stay' attached to the labour law of the state where they usually work. The PoW within the free movement of services (Art. 56 TFEU) supports the temporary cross-border provision of the services of companies in the single market. The removal of barriers to worker mobility is supposed to trigger economic growth by making businesses in the single market more competitive and by realizing better prices for consumers (Monti 2009: 3-4). The freedom to provide services allows for 'posted' workers to be employed in member states with higher wages and social security standards on conditions prevailing in their home countries. Since employment conditions vary considerably across member states, social standards in sectors of the economy can compete with each other (Dølvik/Visser 2009). Studies pointed to local labour being substituted by posted workers in certain sectors of some member states, for example construction in Belgium (De Wispelaere/Pacolet 2016: 25). The potential of competition for social standards and wages questions how EU market freedoms, enhancing competitiveness, and the call for social and labour market protection can be reconciled. Countries with high standards claimed that "competition should not replace equality" (Interview PermRep #5). On the EU level, the political struggle to find a balance dates back more than two decades. In the 2010s, the debate on 'social dumping' and 'equal pay for equal work in the same place' has not stopped challenging EU legislation (1996/71/EC; 2014/67/EU) that is criticized for institutionalizing wage inequality in the EU labour market. Incidents of letter box companies set up in member states with low standards or subcontracting chains with the aim to circumvent social security payments added to the general critique on posting. Reported fraud fuelled calls for reform of key stakeholders from the left, such as trade unions and social democratic parties (CEC, 2012, 131: 7). As a response, the EP and the Council adopted the PoW enforcement directive in 2014 (2014/67/EU). It aims for the better protection of workers and suggests measures that step-up control efforts and assure the compliance of companies with the posted workers' directive (96/71/EC). However, the key element of posting persisted: the opportunity to employ workers at lower wages because of lower income and social security standards in the home country as well as insufficient coverage by collective agreements in certain sectors of the host country economy. Thus, the political debate on the issue led to a Commission proposal aiming at the introduction of equality of posted workers in terms of remuneration with nationals (CEC 2016, 128: 7).

Positions on posted workers

East and West European member states are divided on the issue of posting. The divide broadly reflects mobility flows and the preferences of member state governments for access to markets or the protection of local labour against competition. In 2014 Poland was the country from which most workers were posted (266.000) and almost 90% of all posted workers (1.9 million) were employed in old EU-15 member states, most of them in Germany (414.000), France (190.000), and Belgium (159.000). Compared to 2010 posting increased by 44 per cent (Pacolet/De Wispelaere 2015: 17-22; CEC 2016, 128: 2). Eastern European countries claimed that the economic prosperity that comes with the right of FoM and services mobility was the main reason for them joining the EU. Unequivocally, interviewees representing Eastern

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European member states questioned the *raison d'être* of their EU membership without mobility rights for services, workers, and persons (Interview PermRep #12; #13; #9).

Next to the Netherlands, France is the country that pushed strongest for equal treatment concerning social standards and pay, questioning the principle of posting (Interview EP #2, PermRep #5). There, issues related to posting attained an enormous public salience in the 2010s and earlier. Politically, parties of the left, unions, and the right-wing Front National criticized the practice of posting incessantly (Chanut 2015). With the increase of postings, French courts and law enforcement authorities have intensified the control of companies employing posted workers. Media reported regularly on abusive practices as well as fraud (Milevska 2014; Jouffe 2014). In response to these practices and parallel to negotiating and promoting the enforcement directive at the EU level, the socialist French government adopted legislation against 'concurrence sociale déloyale' (Loi no 2014-790) that went beyond the provisions laid down in EU legislation. For example, the French transposition of the EU directive is more stringent on sub-contractor liability for the treatment of posted workers (Dupont-Fargeaud/Spira 2014).

Actors across the political spectrum perceive freedom of services in the single market to incentivize 'unfair competition' and 'social dumping'. Unions in the building and transport sector but also small- and medium-sized employers strongly advocated for stricter enforcement of EU posting (Eurofund 2014). Not only on the left but also on the right, the electoral success of the right-wing Front National at elections to the EP in 2014 was a result of mobilizing voters against 'unfair competition' in 'neo-liberal Europe' (Milevska 2014; Jouffe 2014). The EU policy touches upon the French belief in and concept of equality. Basically, *égalité pour tous* (equality for all) excludes forms of differential treatment in all sectors of society, before the law and in the economy (Interview PermRep #11). The French conception of equality has a liberal and communitarian notion; it demands for equality in rights and social justice. In normative terms, EU posting undermines equality because it treats workers differently and allows for the competition of standards and social systems. Not equality, but economic prosperity by incentivizing competition and opportunity in the market for services is its main goal. The French government and other collective actors in the country opposed these normative underpinnings of services mobility and called for more equality via protectionism.

In contrast to France, the German debate on posting shifted from a discourse highlighting unfair competition in the labour market in the 1990s to a broader discussion on minimum wages in the 2010s (Eurofund 2010a). Posting of EU workers was particularly salient in relation to the German construction sector, where the practice had disruptive effects on the employment of local workers (Hunger 2000: 194). In preparation for implementing the directive 1996/71/EC, the German government enforced the extension of collectively agreed minimum wages to all businesses in the construction sector so posted workers would also be covered (Menz 2002). As a reaction to unfair competition due to posting, more and more sectors such as building-cleaning or mail delivery followed and were covered by collectively agreed minimum wages (Eurofund 2010a). The debate on employment conditions of posted workers factored into the claim of unions for a statutory minimum wage that would cover the entire labour market. Next to posting, the most important argument for a legally binding minimum wage was the tremendous expansion of low wage employment in Germany (Bosch 2015). After much internal debate as well as external pressure from neighbouring France and

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Belgium over unfair competition and wage dumping (Peter 2013), a statutory minimum wage took effect in 2015.

Germany is the country that received most posted workers over the years. Still, the issue of EU-induced unfair competition was less salient than in France. Posting did not contradict practices on the labour market. The fact that no statutory minimum wage existed allowed for unfair and abusive practices of conditions for many workers, not only those posted (Bosch 2015: 14-15). Employers as well as business friendly liberals and conservatives considered wage competition as a necessary requirement for a prosperous economy. Thus, a misfit between EU freedom of services and the preferences of domestic actors was less pronounced. The unions and the political left directed its resources towards changing national labour market rules rather than EU posting. As new legislation was introduced aiming at more equality for all workers in the labour market the German conservative and socialist government moved closer to the protectionist position of France, the Netherlands and the Northern European member states. Together they supported the recast of the PoW directive initiated by the Commission in 2016 (Interview PermRep #5, #15). The German government was in favour of the French efforts in promoting the adoption of the enforcement directive in 2014 despite opposition from Poland and the UK (Robert 2013). Due to a change in government in 2013, including the social democrats in the Merkel III cabinet, the leftist positions in Germany became stronger and thus motivated the changing claim on posting: less competition and more equality in terms of equal pay for equal work in the same place.

The position of various UK governments towards posting remained rather consistent since the 1990s. The conservatives now and then criticized attempts for restriction on the freedom to provide services as “anti-competitive” (Hunger 2000: 202). The business-friendly and pro-liberalization position of the conservative government in the 1990s and the early 2010s explains opposition to policy change. The British formed coalitions against restrictions of EU freedoms of service provision with Southern and Eastern EU member states in the 1990s and in the 2010s (Menz 2002; Interview Commission #17). With 43.000 workers posted to and 33.000 sent from the UK in 2013, the country did not belong to the group of main receivers or senders (UK Government 2015: 8; Interview PermRep #17). Compared to roughly 3 million EU citizens that resided in the UK in the 2010s the low number of posted workers had no mobilizing potential in the Brexit campaign. Aside from the numbers, British business and politicians endorsed posting in the 1990s and 2010s as it fits a pro-liberal and market-oriented approach that stands in opposition to the call of France and others for social and labour market protections.

Normative claims in debating EU freedom of services demand for competition on the one hand and more equality in terms of standards and pay on the other. In this debate member state governments hardly appealed to national sovereignty or identity arguing for policy change. The claim of the UK and Eastern European countries in favour of market access and competitiveness stands in opposition to the call for equal treatment on the labour market of western European member states (Jouffe 2014; Kukovec 2014: 3). From the perspective of the French, a fundamental overhaul of the practice of posting was a necessity to abate Euroscepticism feeding off EU ‘social dumping’. The policy contradicts key actors’ conception of social justice and equality in rights. The position of the German government shifted from competition friendly to a call for more equality and protection. A misfit between the preferences of domestic actors and those included in EU policy emerged as a statutory minimum wage was finally introduced. As the UK announced its withdrawal from the EU in

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March 2017, the group of countries staunchly supporting a liberal and competition minded approach to freedom of services in the single market became less powerful. Thus, in the fall of 2017 the Council adopted a substantial reform of the PoW directive that introduces a communitarian correction to EU freedom of services (Council of the European Union 2017).

Communitarian corrections and shifting paradigms

The comparison of government positions and debate on EU FoM and PoW revealed the normative positions of governments in the three case countries. The UK referendum and the leave campaign's successful claim for controlling EU FoM showed that communitarian conceptions of society and state put EU liberties into the defence. After decades of an expansion of EU rights for the freedoms of persons and workers the Brexit signifies a critical juncture. This juncture describes a likely paradigm shift for EU FoM and services mobility in the UK post-Brexit. In comparison, Germany and France shifted less radically by adopting certain communitarian corrections of these freedoms.

In the three observed member states, governments from the left and right contested EU freedoms for persons and services and their underpinning liberal values. They challenged the normative core of these EU freedoms to different extents: the universalist understanding of equality in rights for EU citizens, the belief in the instrumental role of EU mobility in promoting prosperity, as well as a tolerant attitude towards cultural diversity. On a cultural and/ or economic dimension governments opposed these liberal values with communitarian values. They justified restrictions of EU freedoms by reference to national sovereignty and identity as well as the protection of social standards and the welfare state. EU freedoms on the mobility of persons and services strongly embody a liberal core that underpins EU integration. The critique of EU person mobility in the UK was motivated by a rejection of liberal values on the cultural and economic dimension. By claiming migration control for EU citizens as well as restrictions on welfare state access, a majority of British voters rejected the idea of equality in treatment for EU citizens underpinning the exercise of individual FoM in the EU. In comparison, critique on EU FoM in Germany or France was less radical and more nuanced. Governments did not challenge the principle of EU FoM by calling for migration control and only marginally questioned equal treatment rights of EU migrants (e.g. child allowance). Claims for social protectionism and a rejection of EU imposed diversity targeted fraudulent behaviour and Roma as an unwanted group rather than EU citizens in general. Therefore, misfit with EU liberal norms and values was mainly evoked by open or hidden communitarian claims against more heterogeneity in society.

While positions in the UK rejected EU FoM in principle, the governments of France and Germany increasingly opposed the conditions underlying EU services mobility. There, a commitment to equality in rights and labour market standards is contradicted by EU induced competition of standards and a differentiation in rights between posted and local workers. The freedom for services in the single market and its underlying premise, better prices for consumers and more competitiveness for businesses, has lost support. The centrist governments of France, Germany and other western European member states tolerate less the employment of posted workers at substandard conditions. Eastern European countries that benefit most from the PoW have lost their most important ally, the UK. With the country

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leaving the EU, communitarian corrections to the conditions of posting have already taken shape.

Indeed, the Brexit can be considered a critical juncture for EU FoM and services. The paradigm of ever expanding liberal norms seems to have ended. However, looking at the normative positions of member states it is only the conditions for posted workers that actually change by reforming EU policy. For France and Germany, despite the introduction of certain restrictions at the domestic level the analysis does not support expectations for a reassertion of communitarian values at the EU level. There is limited support for a re-introduction of migration control for intra-EU mobility or the abolishment of equal treatment for EU citizens. Much more than services mobility, FoM defines the cultural and economic narrative for EU integration. For the time being this narrative of equal treatment and opportunity for EU citizens has not lost its traction.

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Annex: List of interviewees

Interviewee	Interview 2015	No

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European Parliament, Political Groups: European Peoples Party, Socialists and Democrats, The Greens European Free Alliance.	26 June 29 June 24 July 27 July	#1 #2 #3 #4
Member State Permanent Representations: Austria, Bulgaria, Germany, France, Netherlands, Poland, Romania, Sweden, UK.	30 June 27 July 1 September 18 September 18 September 16 October 2 December 7 December 14 December	#5 #6 #7 #8 #9 #10 #11 #12 #13
European Commission, DG Employment and DG Justice.	15 September 30 September 8 October 2 December	#14 #15 #16 #17
Eurocities	17 July	#18
Social Partners, European Trade Union Federation and Business Europe	13 July 14 July	#19 #20
European Citizen Action Service (ECAS)	17 September	#21
European Federation of National Organisations working with the Homeless (FEANTSA)	13 July	#22

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