



Economic Liberalisation of Road Freight Transport in the EU and the USA

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Session 2B:9 Comparative Perspectives on Precarity in the Low Paid Sector

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Summary

Free market revolution transformed regulation of
EU and US trucking markets

1. Market regulation replaced institutional regulation
 - The need to regulate trucking safety, to protect the public, has generated political support to guarantee funding for US state and national enforcement agencies
 - The EU governance system requires member states to provide funding for regulatory enforcement, and funding is scarce
2. The institutional asymmetry in EU between economic integration and the social dimension enables east-west regulatory arbitrage
 - This creates race-to-the-bottom in EU
 - Race-to-the-bottom allows eastern European drivers to replace western European drivers
 - This threatens EU integration along the social dimension



EU Led the Free Market Revolution

- Neoliberalism became the unifying principle for the EU
 - Supported European integration
 - Business dominance of institutions
 - Weakened union and social democratic influence
- 1. Key institutional element: European Court of Justice (ECJ)
 - Compliance is mandatory and court-enforced
 - Rulings have overridden EU member states
 - Rulings have undermined labor standards by allowing east-west economic and regulatory arbitrage
- 2. Key institutional element: EU regulations and directives issued by the European Parliament and European Commission (EC)
 - Promote labor standards without enforcement tools or funding
 - Member states have discretion on implementation of this law
 - Regulatory discretion makes them easy to circumvent
 - Data are not widely shared with the public, if at all



US Free Market Revolution Followed

Free markets, adopted to fight inflation, promoted economic deregulation of road freight transport in 1970s

- This cut union density by 90%, so the union plays a small role
- But established national enforcement systems mitigated effects of free markets
- US commercial motor vehicle (CMV) safety data have been maintained and are steadily improving
- CMV safety data are readily available to the public, allowing widespread analysis
- NAFTA prohibited cabotage, limiting transnational race-to-the-bottom



Key Elements of EU Foundation

- EU began with the European Coal and Steel Community (ECSC)
 - Treaty of Paris 1951
 - ECJ founded as an international trade court in 1952
 - Transformed after Treaty of Rome in 1957
 - **ECJ became European supreme court with asymmetric objectives**
 - **ECJ mandate: European integration and competition law**
 - **Not in the mandate: Social dimension**
- ECJ favored private business economic and property rights
 - Undermined efforts to extend European social rights to workers
 - Workers did not have similar status at this trade court
- Favored economic efficiency over equity



Underlying Dilemma in the EU

- Efficiency – not equity – underlies the neoliberal ideology governing Europe (Slobodian 2018)
- Push for efficiency underlies constitutional asymmetry in the EU between market integration and social protection (Scharpf 1999)
- Constitutional asymmetry undermines democratic legitimacy of the EU (Scharpf 1988)
- EU market liberalization allows producers to retain benefits of markets while offloading many costs to the public
 - Economists call offloaded costs ‘externalities’ (not included in price)
 - They are major source of economic inefficiency
- Process promotes race-to-the-bottom across the EU
- Cross-border trucking highlights systemic failure



EU Economic Integration and Democratic Governance

- Free movement and governance have an internal tension
 - Free movement conflicts with democratic institutional legitimacy
 - Free movement allows firms to drive down labor standards using economic and regulatory arbitrage
- Cheap labor may undermine economic efficiency
 - For transport, it creates inefficient shift toward greater road transport and less intermodal and rail/waterway transport
 - Undermines skill levels by replacing truck drivers from wealthy EU countries with drivers from poor EU and non-EU countries
 - Undermines established labor standards
 - Creates higher safety, health, and environmental costs
- Extensive research shows that low compensation is associated with significantly higher health and safety risk to workers and public
 - The fact that trucking safety microdata are not widely available means that scholars cannot estimate and price this risk



US Regulatory Enforcement Mitigates Race-to-the-Bottom

- US CMV regulation and enforcement supports public interest and market efficiency
 - Builds cost of enforcement into cost of operation
 - Enforcement is funded nationally, with funds distributed to state police
 - In road transport, the US is more statist than EU
- EU exemplifies free market governance
 - The EU does not fund regulatory enforcement
 - As a result, the “Sweatshops on Wheels” phenomenon is worse in Europe than in the US (Belzer 2000; Investigate Europe 2018)



Consequences of EU Economic Deregulation of Trucking

- Expansion of trucking
 - Greater modal share
 - More contracted domestic and international trucking
- Deregulation changed trucking industry structure
 - More industrial concentration and bigger companies
 - More international hauling, shifting trucking business to firms in new eastern European member states
 - Western EU firms created eastern European subsidiaries
 - Eastern European share of trucking employment has grown
 - 8 new member states accounted for 78% of market share in 2015
 - Poland alone accounted for 29%
 - Growing number of subcontracted carriers

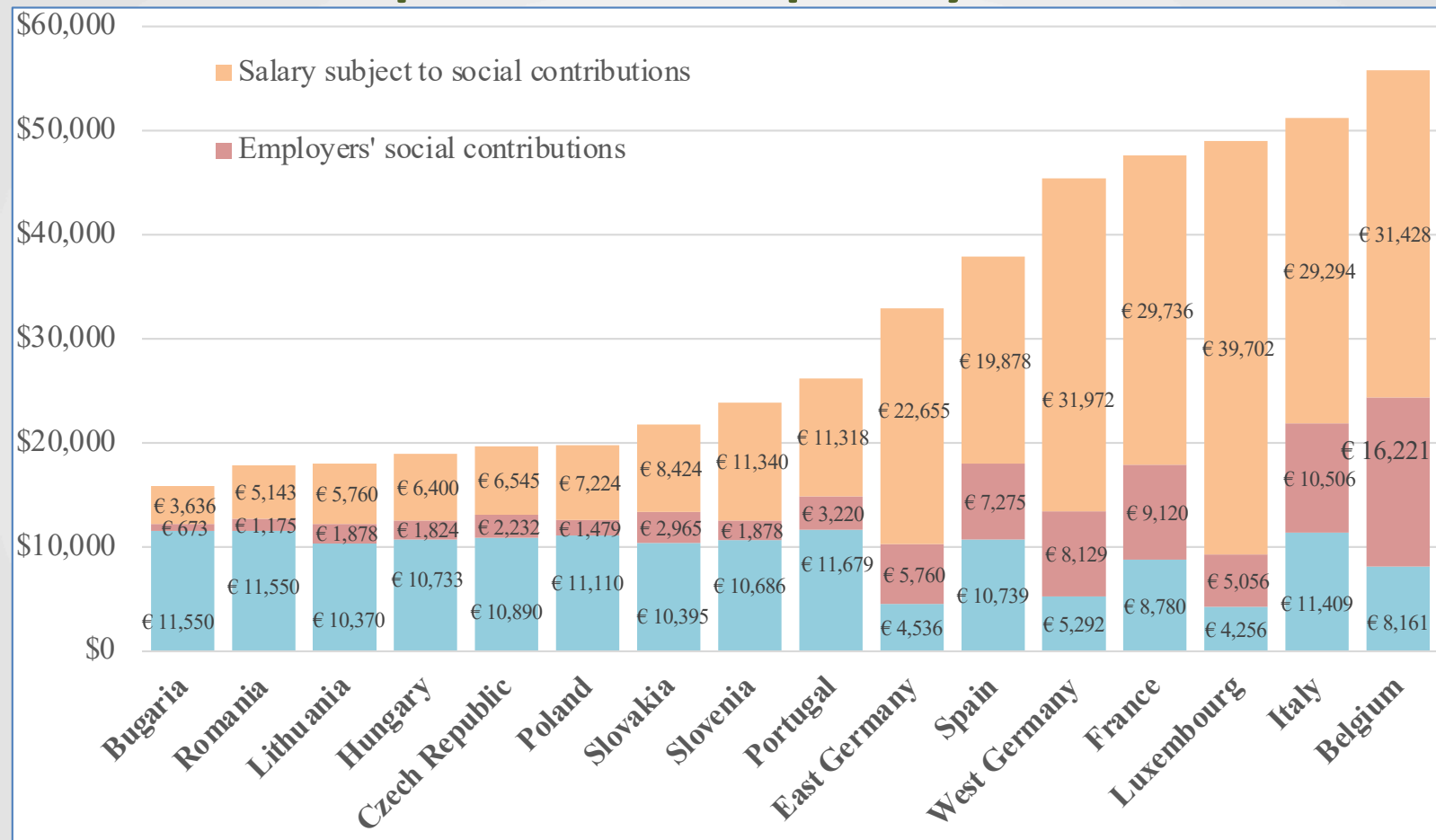


Consequences for Drivers

- Eastern EU truck drivers employed in:
 - Long-distance hauling of unspecialized boxes
 - Combined transport and intermodal trucking
 - Extended and illegal cabotage
- Wages and benefits based on home country standards
 - Trucking companies evade social benefits
 - They evade minimum wage regulations
 - They evade Posting of Workers Directive
- Drivers live in trucks for months at a time
- Truckers violate national and EU rules
 - Working time regulations
 - Equipment maintenance standards



Composition of Yearly Total Cost of a European International Driver for a Transport Company in 2016



Road Freight 'Flag of Convenience'

- Many non-EU truck drivers commute to the EU, especially via Poland
- Carriers and drivers have 'license of convenience'
 - Hard to trace truckers
 - Hard to trace violators
 - Hard to get reliable statistics
- Low wages for truck drivers has caused the truck driver labor market to fail throughout EU
 - Led to 46% increase in imported drivers in 2015
 - The increase in imported drivers continues:
EC data show a 33% increase from 2018 to 2019
- Labor market failure causes international trade to deliver benefits unequally across classes



Blurred Borders of Employment

- Fissured labor market (Weil 2014; 2017)
 - EU, US and others have created a ‘precarious worker’ problem
 - About 25% of truckers are “owner-drivers” in the US
 - Are they owner-operators if they don’t operate their own firms?
 - Are they dependent contractors?
 - Are they misclassified employees?
- Is lower cost due to efficiency or due to contractors’ lack of eligibility for employment benefits?
 - Pervasive problem in the US extends from taxis and last-mile delivery all the way to long-haul trucks
 - ‘Lease-purchase’ plans transform employees into dependent contractors
 - Growing problem of debt peonage in US further damages the labor market while providing free labor to the economy



Regulatory Responses to Liberalisation

- Economic liberalisation creates a need for regulation to counteract negative externalities created by free-market competition
- Increased safety law and regulation in the US
 - Regulation of driver quality
 - Regulation of motor carrier safety performance
- EU directives regulate working conditions and safety
 - Hard to enforce for mobile workers
 - Funding comes from member states



Social Dimension

- European Pillar of Social Rights (2017) proposed to reinforce the 'social dimension'
 - European Labour Authority (ELA) created in 2019 to ensure that benefits of integration flow to European workers
 - Critics oppose it because it limits business's liberty of free trade and cheap labor
- Mobility Package, adopted August 2020, tightens rules on cross-national trucking
 - Extends applicability of PWD ('equal pay for equal work in the same place') to international transport sector, including cabotage
 - Stricter regulations for driving time and rest, as well as prohibition of drivers living in their trucks for months
 - Limits foreign drivers from undermining member states' labor standards
- Opposition
 - Eastern Europe member states that now take advantage of arbitrage
 - Blocking action by eastern Europe member states supports Scharpf's argument that the EU governance structure creates an asymmetry between market integration and social protection



The Enforcement Problem

- Social regulatory enforcement never an EU priority (Scharpf)
 - Policies requiring economic integration and liberalisation have been required by the ECJ (free trade)
 - Policies and directives made by EU legislators and regulators have no EU funding source and are very hard to enforce
- Political institutions require strong consensus in the EU, leaving Europe unable to make decisive policy change
- Even after full implementation of NAFTA, cabotage still prohibited in North America
 - 10:1 gap between the rich and poor EU member states similar to gap between the US and Canada, and Mexico
 - Free trade among such disparate countries will distort economies
 - US goal is efficiency but not North American political integration



US Enforcement Permanently Funded

- Federal fuel taxes pay for state-level enforcement
 - Law enforcement coordinates via the Commercial Vehicle Safety Alliance (CVSA)
 - Both regulation and regulatory enforcement funding is centralized in the US
- Federal Motor Carrier Safety Administration (FMCSA) regulates inter- and intra-state drivers and carriers
 - FMCSA delegates highway enforcement to states and provides funding
 - FMCSA also maintains the Motor Carrier Management Information System (MCMIS)
 - All motor carrier safety data available to the public
 - FMCSA also runs the Commercial Driver's License Information System (CDLIS), which coordinates individual driver records with motor carrier records



Conclusions

- The European trucking case supports Fritz Scharpf's argument that the EU suffers an institutional asymmetry between economic integration and social protection
- While the USA has weak but enforceable highway regulation, the EU creates supranational regulations that are relatively easy to evade and difficult to enforce



Implications for the EU

- The EU's regulatory framework was designed to reconcile market liberalisation and free movement with human rights and worker rights
- Without sufficient regulatory enforcement, promotion of market liberalization implies deterioration of fundamental human rights
- These weaknesses threaten public perceptions of the EU's governance legitimacy, creating a breeding ground for populist movements.
- Regulation of road haulage signals failure to achieve these objectives



Equity Failures Threaten the EU

- Revolutions occur when middle classes experience declining opportunities — wages, working conditions, wealth and opportunity — for decades
- The middle class (not the peasants or the proletariat) may rebel successfully (Brinton 1965)
- The Milanovic 'elephant' (2016) showing international distribution of income suggests that the European and US working class — losers in the great free trade movement of the current era — may have reason to revolt and the result may destroy the post-Enlightenment democratic experiment



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