

**The core-periphery division and the social dimension of the EU –  
A case study on the revision of the Posting of Workers Directive  
and the Mobility Package I**

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## Abstract

This thesis aims to assess the magnitude of the division between core and periphery member states with respect to the social dimension of the European Union. To that end, as case studies, the revision of the Posting of Workers Directive and the adoption of the Mobility Package I were assessed. The empirical evidence revealed that the two groups of member states had clearly defined opposing interests, which to an extent reflected in the voting outcomes as well in the Council and the European Parliament – however, not as precisely as expected. Although the cleavage could be partially explained by liberal intergovernmentalism, it was found that the theory does not account for the reforms' success. In the revision of the Posting of Workers Directive, periphery member states' original positions have changed during the negotiations, and they mostly voted in favour of the reform. However, in the case of the Mobility Package I, not only the initial stances, but also the voting outcomes presented a clear core-periphery alignment. The empirical results show the limitations of liberal intergovernmentalism, as events can instead be explained by the role of powerful supranational institutions, i.e., the agenda-setting Court and the strategical Commission.

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## Introduction

The question of a more substantial EU social dimension has gained momentum in the aftermath of the crisis years. One of the main aims of the Juncker Commission (2014-2019) was to give social considerations more prominence and achieve higher European social standards (Lecerf, 2016) to regain people's trust. During Juncker's tenure of office, the European Pillar of Social Rights was established, social priorities were made mainstream, social legislation was modernized, and labour mobility rules were reformed (European Commission, 2019). However, member states' visions regarding a more social Europe were - and still are - clashing. Social protection of workers has become an especially divisive issue.

With the latest enlargements, 13 new countries joined the European Union, most of which from Central and Eastern Europe. Although, despite the new accessions, the EU's decision-making capacity was not affected considerably (Pollack, 2009), a new dimension of contestation could be perceived between old and new member states in the EU institutions - although limited to a few policy areas (Toshkov, 2017). A prominent example of the tension between old and new - or more accurately formulated in the case of the present thesis: core and periphery (in the interpretation of Kukovec, 2014) - member states are the debates on the revision of the Posting of Workers Directive and the Mobility Package I - both part of the aim of the creation of a more social Europe. The initiatives' goal was to achieve the right balance between social protection and the freedom to provide services and ensure the autonomy of welfare states - thereby revealing a trilemma.

Posting is a sensitive topic as it interlinks different labour laws, market freedoms, and social rights – all critical aspects of European integration (Lubow and Schmidt, 2020). After the latest enlargements, the increased number of postings has significantly affected labour-intensive sectors such as construction, and labour cost differentials rose from a factor of 1:3 to 1:10 (Schmid-Drüner, 2017). Thereby low labour costs have become a tool to achieve a competitive advantage. For that reason, the phenomenon of posting got interconnected with social dumping for many member states.

In an already tense environment, the Court (ECJ) rulings - interpreting provisions of the main source of legislation for posted workers, the Posting of Workers Directive (Directive 96/71/EC) - were highly controversial. Because of the growing dissatisfaction, first the Enforcement Directive (2014/67/EU), then a targeted revision of the Posting of Workers Directive was proposed by the European Commission (Schmid-Drüner, 2017). The reform was received with mixed reactions. The core and periphery states had vastly different interests. While the core welcomed the proposed amendments, the periphery member states were very vocal and seriously criticised the idea of a review.

Although the number of postings is relatively small, it is a continuously increasing phenomenon - with almost 3 million official postings registered in 2018 (De Wispelaere, De Smedt, & Pacolet, 2019) - thus, the future of its legislating was a crucial economic - but in reality rather a political - question for all. Posting has two main types, which involve similar numbers. One is driven by labour cost differentials and involves medium-low skilled workers, and the other by the demand of highly-skilled workers (Voss, Faioli, Lhernould, & Iudicone, 2016). Even though posting does not only – and not even predominantly - done from periphery to core, it has become contested for that rhetoric.

The long-lasting negotiation on the revision of the Posting of Workers Directive has evolved into a symbol of the conflict of market freedoms and social rights, and the tension between host countries and sending countries (Rasnača, 2018), proving to be a real test of social cohesion (Surdykowska & Owczarek, 2018). In June 2018, the revision was adopted, and the new rules entered into force on 31 July 2020.

A similarly heated debate followed the Commission's proposal in 2017 to adopt the Mobility Package I ('Package') - within the program of 'Europe on the Move' - consisting of three legislative amendments. The revision aimed to improve the working conditions of drivers and eliminate market distortions. In this case, achieving a compromise lasted for a long time as well, including a clearly defined core-periphery alignment in which the periphery showed resistance until the very end. Despite the considerable opposition, the Package was successfully adopted by the European Parliament on 9 June 2020. While the rules on driving times regulation already applied 20 days after the legal act entered into force, the rules on market access regulation and on the posting of drivers will become applicable only 18 months after.

The present thesis aims to emphasize the relevance and assess the magnitude of the core-periphery chasm in EU decision-making on social questions with the case studies of the revision of the Posting of Workers Directive and the Mobility Package I by focusing on the following research question:

*How dominant was the core-periphery division in the cases of the revision of the Posting of Workers Directive and the Mobility Package I?*

In order to answer that question, the thesis will proceed as follows:

Chapter 1 will firstly introduce the core-periphery dichotomy, the grid of legal thought described by Kukovec (2014). Secondly - for clarifying the context of the case studies elaborated in Chapter 3 – the chapter will provide an overview of the legal development of posting in EU law by including its definition, the creation of the original Posting of Workers Directive (Directive 96/71/EC), the Enforcement Directive (2014/67/EU), and the emergence of the need for a review. The shortcomings of the protection of drivers in the road transport sector (including posting aspects) are also explained. This section also includes the relevant case-law on posting that facilitated its regulation at the EU level.

Chapter 2 will introduce the theoretical background, describing the main assumptions of the theory of liberal intergovernmentalism, the theory's role in explaining the functioning of the Council, and the main observations in political science scholarship on the voting behaviour in the European Parliament. In this chapter, two hypotheses will be deduced, presupposing that *(H1) The main assumptions of liberal intergovernmentalism can explain the negotiations and the voting outcomes of the revision of the Posting of Workers Directive and the Mobility Package I* and that *(H2) Nationality trumped EP political group affiliations in the voting outcomes of the revision of the Posting of Workers Directive and the Mobility Package I*.

In Chapter 3, empirical evidence will be presented as the basis of the analysis in the form of reasoned opinions (accessed from IPEX), joint letters submitted by member states, statements, and voting outcomes in the Council and the European Parliament (accessed from

Votewatch). After that, in Chapter 4, the empirical results will be interpreted with the help of liberal intergovernmentalism (using the theory's main assumptions on the formation of preferences, bargaining strategies, and institutional choice) to assess whether it can explain the events. Finally, the thesis will conclude and enhance the future relevance of the topic.

# Chapter 1: Clarification of Context and Legal Background

In this section, the core-periphery dichotomy is first introduced to describe the division's nature and its importance in the political and legal discourse. Then the legal development of posting in EU law (Directive 96/71/EC, Enforcement Directive 2014/67/EC, and the emergence of the need to review), the shortcomings of EU social protection in the road transport sector (including the applicability of Directive 96/71/EC), and the relevant case-law is explained. This section clarifies that posting has always been a controversial topic, difficult to legislate; however, it has become particularly salient after the number of workers coming from the new countries started to grow.

## 1.1. Core-periphery grid

The present thesis uses the core-periphery distinction instead of old/new, Western/Eastern member states of the European Union. The concept has been analysed based on economic, political, geographical, and historical perspectives depending on the way of differentiating between member states. The historical aspect considers the founding six countries (Belgium, Netherlands, Luxembourg, Italy, France, (West) Germany) and the ones followed until 1995 (Greece, Portugal, Spain, UK, Ireland, Denmark, Austria, Sweden, Finland) the core countries and the ones joining after 2004 (Malta, Cyprus, Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Slovenia, Hungary, Bulgaria, Romania, Croatia) the periphery. The economic perspective differentiates based on economic achievements or Eurozone memberships. From a political point of view, countries can also be categorised by the level of democracy gap (Kersan-Škabić, 2020).

Kukovec by the dichotomy referred to centre/core countries with the examples of Austria, Finland, France, Germany, the Netherlands, Sweden, and the UK and peripheral countries with the examples of Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Hungary, Latvia, Poland, Portugal, and Slovenia. The author placed Spain and Italy into a semi-periphery category based on the differences within the countries (Kukovec, 2014, p. 409). However, the present thesis

considers them as part of the core countries for simplicity (justified by economic indicators as median equalised disposable income (Eurostat, 2018), relatively high GDP (OECD, 2020), minimum wage (Eurostat, 2020)). Although Kukovec's contribution did not give an exhaustive list, for providing adequate analysis this thesis considers Belgium, Denmark, Luxembourg, Ireland, Germany, Austria, the Netherlands, France, Finland, Sweden, (UK), Italy, and Spain core countries and Bulgaria, Romania, Latvia, Lithuania, Slovenia, Slovakia, Hungary, Poland, Cyprus, Malta, Estonia, Czech Republic, Greece, Portugal, and Croatia periphery countries.

Kukovec emphasized that centre countries have a higher GDP per capita, more investment in research and development, more capital, and more ingoing and outgoing foreign direct investment. Actors, products and services are prestigious, and companies have a higher position in global production chains. By contrast, periphery member states have a lower GDP per capita, generally have a lower position in global production chains, and their actors, products and services are less prestigious compared to the centre countries. The wages are much lower, and so is life expectancy.

The core-periphery dynamic explained in Kukovec's contribution aimed to emphasize its importance in the daily legal decision-making and stress the presence of a hierarchy. Structural issues revealed in the past decade between the two groups of member states have not been addressed sufficiently. Kukovec did not aim to reflect on a relationship of poor and rich countries (as the distinction does not necessarily end at the borders, and also exists within countries), but the existence of "hierarchical subordination and structural disadvantage of the actors of the periphery in the particular constellation of the social and economic structure" (Kukovec, 2015, p. 410).

In the social debate of the EU usually two competing values, social rights and economic freedoms arise, however, Kukovec argued this hinders a "meaningful distributional discussion" (Kukovec, 2015, p. 412) as social concerns and free movement considerations are not general as such in the EU. He argued that what constitutes social and what economic is a "matter of perspective" (Kukovec, 2015, p. 414), meaning that a particular issue can be either one based on the point of view. An excellent example is the *Laval* case (C-341/05), which will be detailed later in the thesis. The author explains the importance of perspective with Wittgenstein's duck-rabbit illustration (Wittgenstein, 1958), allowing two types of interpretations of the same picture (or situation).

In the cases of the revision of the Posting of Workers Directive and the Mobility Package I the conflict between the two groups of member states was clearly defined. Completely opposing interests were perceivable in both debates. Ensuring a higher level of social protection and better working circumstances was not considered a noble aim by both groups, as a lower level of social standards was an asset for the periphery to be successful in the market.

## 1.2. Posting – an atypical form of employment

After the Southern Enlargement, heated debates started on the phenomenon of transnational *posting*. The conflict resulted in a deadlock of negotiations for new legislation, which was only resolved after the 1995 enlargement (Voss et al., 2016). The atypical form of cross-border work was not explicitly legislated in EU law. Although in private international law, the ‘Rome Convention’ (now replaced by Rome I Regulation (593/2008)) did set rules of the choice of law in cross-border employment, this created a legal burden as it was not clear which labour rules are applicable exactly as all member states’ rules must be continuously taken into account.

The ECJ’s role is often emphasized in paving the way for new legislation, particularly with its ruling in the case of *Rush Portuguesa* (C-113/89). The said case involved a Portuguese company entering the French construction market by posting workers from Portugal. It was often argued the case gave the original impetus for creating the Posting of Workers Directive. In the ruling, it was emphasized that a posted worker is different from a regular worker as “such workers return to their country of origin after the completion of their work without at any time gaining access to the labour market of the host Member State”(C-113/89 para 15), referring to the fact that posted workers do not integrate or become part of the labour market of the host country. The Court also ruled that "Community law does not preclude member states from extending their legislation, or collective labour agreements entered into by both sides of the industry, to any person who is employed, even temporarily, within their territory, no matter in which country the employer is established; nor does the Community law prohibit Member States from enforcing those rules by appropriate means" (C-113/89 para 18).

With *Rush Portuguesa*, “the Court effectively established a new legal basis for the movement of workers “(Evju & Novitz, 2012, p. 15), placing it under the freedom to provide services, which was used later for the new directive as well. Those explanations included in the ruling essentially prepared the environment for introducing the Posting of Workers Directive.

### 1.3. Directive 96/71/EC

Net recipient and net sender member states conflicted on how posting should be regulated. Thus the first negotiations resulted in a deadlock. When negotiations shifted towards an agreement including a promise for better working conditions, a compromise was finally reached, and in 1996 the Posting of Workers Directive (‘Directive’) was adopted (Lubow and Schmidt, 2020). Directive 96/71/EC defined a *posted worker* a worker “who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works” (Article 2 Directive 96/71/EC). Posting is thus a temporary form of labour mobility with a transnational setting. It can take place in the context of sub-contracting, intra-group posting, hiring out via a temporary agency or placement agency (Article 1 (3) Directive 96/71/EC). Since the adoption of the Directive, posting has been considered a legally differentiated institution from EU mobile workers - the main argument is that posted workers are not integrated into the destination country’s labour market because of their limited length of stay. The main goal of the legislation of posting was to ensure the freedom of services while providing employees fair working conditions and adequate protection. For these reasons, Directive 96/71/EC established a set of core rights (‘nucleus of mandatory rules for minimum protection’ Recital 13) posted workers can rely on in the host member state - despite being subject to the law of the sending member state.

These were the maximum work periods and minimum rest periods; the minimum rates of pay; minimum paid annual holidays, the conditions of hiring out workers through temporary work agencies; health, safety, and hygiene at work; protective measures concerning the terms and conditions of employment of pregnant women or women who have recently given birth, of

children and young people; and equal treatment between men and women (Article 3 (1) Directive 96/71/EC).

Notably, the rules on social security contributions for posted workers are not included in the Posting of Workers Directive but based on Regulation 883/2004 (Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems). Although it is usually argued that wages are the main elements of competition, social contributions can have an even more significant role.

The creation of the Posting of Workers Directive was controversial. After its adoption, there was much uncertainty regarding its meaning and scope, which led to many cases of abuse. For that reason, the ECJ had to deal with several cases on the interpretation of the Directive, and its case line revealed disagreement between member states regarding market freedoms, social protection, and the role of the trade unions.

#### 1.4. Relevant case-law of the ECJ

Four (in)famous case - scholars usually referring to as the Laval-quartet - took place at a time when old member states already feared that free movement would lead to a 'race to the bottom' of labour standards (Zahn, 2008). These were *Laval* (C-341/05), *Viking* (C-438/05), *Rüffert* (C-346/06), and *Commission v Luxembourg* (C-319/06). The cases illustrated the difficulty of balancing between market freedoms and the right of collective bargaining and action (Article 28 CFR). However, the cases also revealed tensions between old and new member states (Lindstrom, 2010). Usually, not many member states intervene in a case; thus, in *Viking* and *Laval*, the number of written observations indicated the issues' salience.

The case causing the most indignation was *Laval* (C-341/05). Laval un Partneri was a Latvia-based company that won a contract and sent workers to Sweden to carry out a construction service at a building site operated by Sweden. The work was performed by employees of a Swedish subsidiary company, L&P Baltic Bygg AB. The applicable directive on posting (Directive 96/71 EC) laid down the requirements, which were quite flexible. Laval and the

Swedish construction union started to negotiate; however, they did not reach an agreement. Laval did not accept the construction union's demands as it did not intend to sign a more protective agreement than what was laid down in the Directive (Rasnača, 2018, p. 134). It finally signed collective agreements with a Latvian Building Workers' Union (of which 65% of posted Latvian workers were members) (Lindstrom, 2010, p. 1313). As a result, the posted workers got a wage which was nearly double the amount they would have gotten in Latvia. However, Swedish construction workers still earned almost twice as much as the posted Latvian workers at the same place.

The Swedish trade union reacted by establishing a blockade of the construction sites, and prevented entering with signs saying "Swedish laws in Sweden". Furthermore, as an act of sympathy, the Swedish Electricians' Union launched a strike and a blockade for electric installation sites (Lindstrom, 2010, p. 1314), which resulted in bankruptcy for Baltic Bygg. Laval brought an action before the Swedish Labour Court by arguing that the blockade breached its right of freedom to provide services (ex Article 49 TEC, now Article 56 TFEU). The Swedish Labour Court then referred the case to the ECJ for a preliminary ruling (Rasnača, 2018, p. 134). The Advocate General issued an opinion in May 2007, and the ECJ published its ruling in December 2007. The Court ruled that Article 56 TFEU and Article 3 (96/71/EC) preclude a trade union of the host member state to form a blockade as such and force the service provider to sign a collective agreement with „more favourable conditions than those resulting from the relevant legislative provisions" (C-341/05). Thus the Court with that judgment considered the standards provided for posted workers in the Posting of Workers Directive as maximum, instead of minimum.

As a result, 14 member states submitted written observations (+ Iceland and Norway). An apparent clash could be seen between member states who considered that industrial actions could restrict the freedom of services and who did not, which fits the core-periphery division in question (Lindstrom, 2010, p. 1316). The Czech Republic, Estonia, Latvia, Lithuania, and Poland argued the non-compatibility with the free movement of services and the Posting of Workers Directive, and the UK and Ireland - to different extents, but - also supported the new member states view. In contrast to that, old member states (Austria, Belgium, Denmark, France, Italy, Denmark, Spain, along with Iceland and Norway) believed that the free movement of services could not impede the right to industrial action (Lindstrom, 2010, p.

1317). It was argued that the EU's social model had been undermined, and countries condemned social dumping (Kukovec, 2014).

In the *Viking* case, Viking Line ABP, a Finnish ferry operator, sought to reflag one of its ships (Rosella) - which provided services between Estonia and Finland - and register it in Estonia to avoid collective agreements with the Finnish trade unions and decrease labour costs. The ECJ here ruled that the collective action must be proportionate and should not restrict the freedom to provide trans-border services. The observations submitted by member states mirrored the positions taken in the *Laval* case (Lindstrom, 2010, p. 1320). In the case of *Rüffert* and *Commission vs. Luxembourg* the ECJ has decided similarly. Market freedoms prevailed, and social protection stayed behind.

The cases brought attention to the link between competitive advantage and cheap labour force (Kukovec, 2010). Notably, workers posted from periphery member states were usually satisfied with the amount they earned as they could finance life projects that otherwise could not have been realized. Workers deemed bad conditions endurable for the limited time-span they performed the service (Thörnqvist & Bernhardsson, 2014), and from the perspective of sending member states the employment boosted economic opportunities. Following the rulings mentioned above, the political status-quo was under pressure as some dissatisfied core member states and stakeholders demanded a change (Lubow and Schmidt, 2020).

As a reaction, the Commission proposed the so-called Monti II Regulation aiming to reconcile the freedom of services with the freedom to take strike action. Although the proposal failed – as 12 member states shared their subsidiarity concerns via the yellow-card procedure and the Commission in the end withdrew it - the initiative itself is an excellent example of the Court's agenda-setting power. Although the regulation did not go through, the Court has started to rule continuously (*Regio-post* (C-115/14); *ESA*(C-396/13); *Altun* (C-359/16); *Alpenrind* (C-527/16) being more permissive to regulation and allowing social standards to prevail which prepared the environment for first the enforcement, then the revision of the Directive (Lubow and Schmidt, 2020).

## 1.5. Directive 2014/67/EU

In the Commission Report of 2003 and Communication of 2007, several shortcomings were identified. Amongst the main problems were incorrect implementation (European Parliament, 2003), non-adequate level of administrative cooperation, and lack of information (Commission of the European Communities, 2007). As the Commission acknowledged the weak points of the Posting of Workers Directive via various activities, in 2012, it proposed a legislation (European Commission, 2012) for the Enforcement Directive (Directive 2014/67/EU), which was adopted in May 2014 and the deadline for its national implementation was set on 18 June 2016.

Its primary aim was to improve and enforce the rules included in the Posting of Workers Directive. The Enforcement Directive was technical, and it did not affect the main provisions of the existing Directive. It mainly provided administrative instruments to counter frauds and circumventions. The Directive also aimed to provide more legal clarity and improve cooperation between member states (European Commission, 2012). Thus, it focused on curbing regulatory evasion and fraud instead of making significant changes (Rocca, 2019). The facilitation of better cooperation and respect of rules was welcomed by most member states, as it did not change the standard rules and the most fundamental questions remained untouched (Voss *et al.*, 2016).

## 1.6. The need for a review

Although the Enforcement Directive was adopted in 2014, already in 2015 then President of the Commission Jean Claude Juncker expressed as one of his main policy priorities to achieve a “Deeper and Fairer Internal Market with a Strengthened Industrial Base” and deemed the stronger implementation and the review of the Posting of Workers Directive to be of great importance. He expressed that in the Union “the same work at the same place should be remunerated in the same manner” (Opening Statement in the European Parliament Plenary Session, 2014). Then in the Juncker Commission’s work program for 2016, it was announced

that it would present “a targeted revision of the Posting of Workers Directive to address unfair practices leading to social dumping [...] by ensuring that the same work in the same place is rewarded by the same pay” (European Commission, 2015). With that proclamation, the Commission also indicated the will to shift the existing approach regarding posting by bringing closer the wages and working conditions to ones of local workers (Rocca, 2019) and aimed to eliminate social dumping.

Although *social dumping* as a term is highly politicized and debated, the fact that wages and employment came under pressure in core member states as a result of labour mobility is indisputable (Berntsen & Lillie, 2015). The concept has no official definition; however, Bernaciak conceptualised it as a “practice of undermining or evading social norms and regulations, undertaken with the aim of gaining a competitive advantage” (Bernaciak, 2015, p. 226).

Social dumping can be put in different categories based on the cost-saving strategies of firms: *regulatory evasion* (violation of formal/informal rules), *regulatory arbitrage* (strategy of selecting to adhering to the rules of the more cost-effective regulatory regime), and *regulatory conformance* (compliance with formal rules but manipulation for cost-advantage). The Commission meant to address the latter two, which can also be called *legal social dumping* (as by Bernaciak, 2015, p. 230). Part of the problem was that workers from the periphery even supported their own exploitation (Wagner, 2015, p. 1379), by willingly accepting wages below the minimum standards laid down in the specific country they provided cross-border service in. However, it must be added that although some agreed, most of the workers had no idea about their rights or that the Posting of Workers Directive exists (Thörnqvist & Bernhardsson, 2014) - proving their precarious position.

## 1.7. EU Road Transport Sector – in need of legal clarity and modernization

### (i) Applicability of the Posting of Workers Directive

Transnational road transport is a crucial part of the transport economy. It involves a highly mobile form of employment during which the drivers continuously cross borders. As it is an extraordinary employment segment, it was debated whether the posting rules apply at all. One of the problems was that since the legislation on the posting of workers is mainly formulated for the construction industry, it should not be applied for transport as it is very different in nature. Some business organisations were entirely against the very idea of the term posting applied to transnational transport activities (Riesco-Sanz, López, & Maira Vidal, 2019). Firstly, in the road transport sector subcontracting is particularly present. Thus it is often impossible to determine the direct link between contracting parties. Secondly, employees often spend only a couple of hours in a specific member state and do not necessarily provide any service there (Riesco-Sanz *et al.*, 2019).

According to employers' discourse, posting legislation concerns those who spend a longer time in the host member states and not just pass through them as a transit. However, it was also acknowledged that there is a trend of workers going from east to west to perform transport services remaining in host countries for weeks at a time (Riesco-Sanz *et al.*, 2019). According to employers' associations, it is impossible to adequately calculate what salary the driver gets and what labour regulations should apply and the calculations and supervision would result in such an administrative burden for the labour authorities that it could risk the collapse of the road transport industry.

Despite the debate between stakeholders, it was clarified and confirmed by the Revised Posting of Workers Directive ((EU) 2018/957) that the Posting of Workers Directive is applicable also in road transport until the adoption of specific legislation:

“This Directive shall apply to the road transport sector from the date of application of a legislative act amending Directive 2006/22/EC as regards enforcement requirements and

laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector.” (Article 3 (3) Directive (EU) 2018/957)

It was again reiterated by the EU institutions that: “The new elements of this Directive will apply to the transport sector once the sector specific legislation [...] enters into force. Until that moment, there is a clear understanding by the three institutions and the Member States that the rules of the 1996 Posting Directive apply” (Eurofound, 2018).

(ii) The need for a review

As already mentioned, as a result of the latest enlargements, the wage differences between member states increased remarkably. Since the most considerable expense in the transport sector is labour cost, the enlargements particularly affected the industry. The gap created a substantial competitive advantage for the periphery member states' service providers, which resulted in the complete alteration of the transport sector after fifteen years. The industry became highly fragmented, as some member states (e.g., France, Germany) introduced national minimum wage legislation applicable to transport operations on the member state's territory in question. The fragmentation put the workers in an even more precarious social position. As the Posting of Workers Directive was mainly created for the construction sector, because of the transport sector's highly international and atypical nature the Directive was interpreted differently in member states and often was simply not applied with regards to road transport (Kruger, 2020).

The 2016 Commission proposal for amending the Posting of Workers Directive also indicated the complexity of the possible inclusion of the road transport sector in the new posting rules by including in the recital that:

“[...]the implementation of the posting of workers directive raises particular legal questions and difficulties (especially where the link with the concerned Member State is insufficient). It would be most suited for these challenges to be addressed through sector-specific legislation

together with other EU initiatives aimed at improving the functioning of the internal road transport market” (Recital 10 Commission Proposal, 2016)

In the road transport sector, companies have a high tendency to reduce their operating costs with specific strategies, the primary way being the reduction of labour costs. The increase in labour competitiveness achieved by that is the reason behind the high mobilization of workers from the periphery. Reducing workers' cost is used by western companies as well, which mobilizes drivers from the east. In the contribution of Riesco-Sanz et al., an interviewee described the phenomenon in the following way:

“[...] because if you look at the cost structure of the companies [...] regardless of where you come, whether you come from West, from East, it is all the same. [...] The only cost that remains that you can work with, is of course social cost, and that is the driver [...]” (Riesco-Sanz *et al.*, 2019, E10, International Road Transport Union-IRU).

Because of the controversy, this specific area of posting was postponed during the revision process until a sector-specific legislation was adopted, which was indicated in the recital of the Revised Posting of Workers Directive the following way:

“That sector raises particular legal questions and difficulties, which are to be addressed, in the framework of the mobility package, through specific rules for road transport also reinforcing the combating of fraud and abuse” (Recital 15 Directive (EU) 2018/957)

On 31 May 2017, the Commission took action within the context of ‘Europe on the Move’ initiative to modernize mobility and transport and remain competitive while attaining a cleaner and more digitalized sector (European Commission, 2017). As part of the program, in the framework of the ‘Mobility Package I’ three legislative proposals were submitted to harmonize and simplify rules for the European road transport sector, achieve better enforcement by member states, and support fair competition as well as social rights.

The three pieces of legislation concern the social legislation of posting of drivers, the access to the road transport market, and rules on drivers' rest periods including tachograph systems. The Mobility Package I and its controversy is explained in Chapter 3 of the thesis.

After having introduced the context and the legal background of the topic, the thesis moves on to Chapter 2 to establish the theoretical framework. The necessary theoretical points on liberal intergovernmentalism and parliamentary behaviour patterns are presented in that section, which are later used in the analysis in the last chapter (Chapter 4).

## Chapter 2: Theoretical Framework

This chapter explains the main assumptions of liberal intergovernmentalism (national preference formation, interstate bargaining, and institutional design) along with the theory's main criticism. The section also elaborates on the importance of the theory in the Council literature (including the bargaining power aspects in the institution) and explains the general voting behaviour perceived in the European Parliament.

### 2.1. Liberal intergovernmentalism

Andrew Moravcsik developed the theory of liberal intergovernmentalism (LI) in the 1990s to explain the process of European Integration. The theory, since then, has become one of the grand theories. He identified two main elements of LI with respect to assumptions about European politics. Firstly, he argued that states are actors ('masters of the treaties') and achieve their objectives through negotiations and bargaining. Secondly, he emphasized that states act rationally and strive to maximize utility (Moravcsik & Schimmelfennig, 2009). Moravcsik's LI is a three-step model with a " 'liberal' or societal theory of national preference formation, a bargaining theory of international negotiations, and a functional theory of institutional choice" (Moravcsik & Schimmelfennig, 2009, p. 69).

According to the theory, the primary determinant of national preference is economic interdependence and it is assumed that states always act according to the current domestic aims (Moravcsik, 1993). Thus to be able to analyse interstate negotiations, domestic politics should be understood first. As mentioned, national preference formation is based on liberal theories, in which state-society relations matter the most. The principal-agent (societal groups-government) relationship allows national interests to emerge, which then influence international negotiations. The influence of societal groups can be indirect, and their interests are not always well-defined. In the case of 'agency slack', rationally behaving governments have more discretion to form a preference (Moravcsik, 1993). Importantly, it is assumed that

national preference formation is issue-specific. Preferences are complex; however, they are entirely determined domestically and not shaped by EU participation (Pollack, 2005).

As the interests of member states differ, they have to bargain and achieve a mutually acceptable outcome. In the context of LI,

“bargaining theory argues that the outcome of international negotiations, that is, whether and on which terms cooperation comes about, depends on the relative bargaining power of the actors”(Moravcsik & Schimmelfennig, 2009, p. 71).

Bargaining power can be determined through several factors, however in LI, asymmetrical interdependence is a key term. In theory, the actors with the lowest interest are in the best position to “threaten” with non-cooperation and bargain concessions, and the most informed actors can manipulate the outcome the easiest (Moravcsik & Schimmelfennig 2009, p. 71). The greater the benefits of cooperation, the less a government is willing to risk the future of an agreement; thus, its bargaining power can be weaker. However, the more benefits an agreement can bring, the bigger the government's effort is going to be. Negotiation/bargaining theories assume that decisive factors in interstate bargaining are unilateral policy alternatives (threat of non-agreement), alternative coalitions (threat of exclusion) and the possibility of compromise/issue-linkage (Moravcsik, 1993, p. 499).

Liberal intergovernmentalism views international institutions as tools for durable international cooperation. States deliberately delegate power to institutions to reach a superior outcome by reduced transaction costs and the necessary information provided by the institutions (Moravcsik & Schimmelfennig, 2009). Institutions are to increase the credibility of member states’ mutual commitments (Pollack, 2005).

LI generally argues the Council to be the most powerful institution compared to the European Parliament and the Commission, which have limited power. It deems the Commission the weakest institution, which is restricted in acting autonomously (Moravcsik, 2008; Thomson, 2011), and as a supranational institution, it has little influence over concrete policy outcomes (Pollack, 2005).

LI was critiqued that it cannot explain everyday decision-making, as it was designed as a theory of grand bargains (as treaty-amendments) and rational-choice institutionalism could be a possibly better theory to explain everyday decisions (Moravcsik & Schimmelfennig, 2009).

Despite the criticism, Moravcsik argued that these claims are overstated, however, admitted that LI works best in case of unanimity rather than in complex decision rules.

### 2.1.1. Liberal intergovernmentalism and bargaining in the Council

Although most of the literature written about the Council does not refer to LI – and even those who mention it mostly critique the theory- it is still the most used theory to explain aspects of the Council's functioning in relative terms (Naurin, 2018). Even though LI was initially developed to explain grand-bargains, Moravcsik (2009, p. 74) argued that “LI theory applies far beyond treaty-amending decisions, well into the realm of everyday EU-decision-making”. LI's key features were rarely challenged to the core, and the basic assumptions remain relevant in the present era. The concepts that member states' power is issue-specific and interdependence is asymmetric were rarely criticized (Naurin, 2018).

However, other criticisms were often raised about LI. The theory assumed that preferences are ‘exogenous’, thus fixed in the bargaining process. It argued that state governments matter the most and decide instead of supranational actors. LI is also perceived to claim that only economic interests are relevant in preference formation. The most seriously challenged assumption of LI regarding Council negotiations was that they are relatively institution-free, as research found that legislative outcomes are instead explained simply by a “salience-weighted average of member states’ preferences” (Naurin, 2018, p. 1535).

Knowledge is limited about the negotiations in the Council. Most studies focus on voting behaviour, political dimensions, or attempt to predict outcomes of the negotiations with game-theoretic models (Bailer, 2010). The current research on power in Council negotiations include power resulting from the voting weight, economic size (the two of which is hard to distinguish in practice), bargaining skills (which does not have a vital role, only in combination with high salience of the issue) and expertise (Bailer, 2010). It has been shown that institutional agenda-setting power is another possible source as the right to preside Council sessions yield more power for that period, particularly in the last steps of decision-making (Thomson, 2008). Partisan preferences can be an interesting aspect, however, in the Council,

member states' domestic and structural interests can better explain negotiation power positions (Bailer, 2010). That is not to say, however, that government changes cannot affect a member state's Council position (Miklin, 2009). The frequency of the meetings and the level of negotiations can also have an impact, and notably, the proposals are usually already negotiated at the lowest level in the Council (Bailer, 2010).

Research found that cooperation can be facilitated by *reciprocity*. Keohane (1986, p. 8) argued that the term "refers to exchanges of roughly equivalent values in which the actions of each party are contingent on the prior actions of the others in such a way that good is returned for good, and bad for bad. These exchanges are often, but not necessarily, mutually beneficial; they may be based on self-interest as well as on shared concepts of rights and obligations; and the value of what is exchanged may or may not be comparable".

As Axelrod in his book - *The Evolution of Cooperation* - called *shadow of the future*, „mutual cooperation can be stable if the future is sufficiently important relative to the present" (Axelrod & Hamilton, 1984, p. 126). Importantly, that cooperation technique is only stable when the future is important enough relative to the present.

Based on the information presented follows, this thesis aims to test the following hypothesis:

*(H1) The main assumptions of liberal intergovernmentalism can explain the negotiations and the voting outcomes of the revision of the Posting of Workers Directive and the Mobility Package I.*

Chapter 4 examines whether the main assumptions of liberal intergovernmentalism (national preference formation, interstate bargaining, and institutional choice) can be fitted to the member states' positions, the negotiations, and the voting outcomes of the cases in question.

## 2.2. Voting behaviour in the European Parliament

Before moving on to the empirical evidence, the European Parliament's general voting trend must be established. It was argued that the Eastern Enlargement did not have a significant effect on the decision-making in the European Parliament (Hix & Noury, 2009), and still, mostly European party group affiliations decide the voting outcomes (although it was stressed by Hix (2009) that this does not necessarily apply in cases of highly salient questions based on the analysis of a large number of roll-call votes).

After the enlargements, besides the increase of the number of European Parliament Members (MEP(s)), the 'composition effect' has also altered the voting situation in the European Parliament. It was later found - quite contrary to previous research - that personal ideological preferences and nationality can be good predictors of voting attitudes, even better than EP political group belonging - although admittedly, individual ideology corresponds to party-group membership (Scully, Hix, & Farrell, 2012).

It was also confirmed by Cencig & Sabani (2017) that nationality and economic conditions/variables could explain voting behaviour in a large number of cases, which can indicate a territorial cleavage in the European Parliament. Although the area they reflected on was fiscal integration in the EU, social policy is also "close to the fortress of national sovereignty" (Cencig & Sabani, 2017, p. 2). The authors explained that if the stakes are high, the specific MEPs' nationality can play a more prominent role and can - at least - weaken intra-party cohesion.

Based on previous research, the present thesis assumes the following hypothesis:

*(H2) Nationality trumped EP political group affiliations in the voting outcomes of the revision of the Posting of Workers Directive and the Mobility Package I.*

During the legislative process of the revision of the Posting of Workers Directive, the European Parliament was in the 8<sup>th</sup> term (2014-2019) with 751 MEPs and eight parliamentary groups.

According to the size of the groups, these were: the Group of the European People's Party (Christian Democrats) (EPP) (217), Group of the Progressive Alliance of Socialists and Democrats in the European Parliament (S&D) (187), European Conservatives and Reformists Group (ECR) (76), Group of the Alliance of Liberals and Democrats for Europe (ALDE) (68), Group of the Greens/European Free Alliance (Greens/EFA) (52), Confederal Group of the European United Left – Nordic Green Left (GUE/NGL) (52), Europe of Freedom and Direct Democracy Group (EFDD) (41) and Europe of Nations and Freedom (ENF) (37). Besides these, some MEPs were present as Non-attached Members (Non-inscrits – NI) (21) (Sabbati, 2019a).

The Mobility Package I was proposed in the 8<sup>th</sup> term and adopted in the 9<sup>th</sup>. In 2019 the EP started its 9<sup>th</sup> term (lasting until 2024) with 748 MEPs and seven political groups which, based on the size, are EPP (182), S&D (154), Renew Europe Group (successor of ALDE; 108), Greens/EFA (74), Identity and Democracy Group (ID; the successor of ENF; 73), ECR (62), GUE/NGL (41). In this term, a much higher number of are present as NIs (54) (Sabbati, 2019b).

Importantly, the present thesis does not aim to explain in detail - with possible reasons other than party affiliation and nationality - the voting outcomes in the two cases in question but rather tests whether the core-periphery pattern is perceivable in a way that it splits party groups as additional empirical evidence.

Having established the theoretical background, the thesis continues by presenting the empirics.

## Chapter 3: Empirics

In this section, member states' original positions and the voting outcomes of the revision of the Posting of Workers Directive and the Mobility Package I are presented. In order to clarify the positions of the member states, the Commission proposals, reasoned opinions accessed from IPEX (including the yellow-card procedure), joint letters, and statements are included. To study the voting behaviours in the Council and the European Parliament, data accessed from the website of Votewatch is used, as well as the TRAN Committee documents on votes in case of the legislation included in the Mobility Package I. This thesis does not aim for an in-depth analysis of the voting outcomes but instead uses that data as a tool to present the possible strength of nationality as a determinant in these specific cases.

### 3.1. Member states' positions on the revision of the Posted of Workers Directive

#### 3.1.1. The Commission proposal

In March 2016, Marianne Thyssen (Commissioner for Eurostat and Employment, Social Affairs, Skills and Labour Mobility 2014-2019) presented the proposal for a revision of the Posting of Workers Directive, which was part of the 'Labour Mobility Package'. The revision was highly disputed. The main changes proposed were focused on the remuneration of posted workers, rules on temporary agency workers, and long-term posting. The mandatory application of the elements of remuneration - to not only local but also posted workers - meant that it includes the minimum rates of pay as in the original Posting of Workers Directive and elements such as bonuses and allowances. Rules based on national law or universally applicable collective agreements must be applicable for workers in all economic sectors (not only construction), including subcontractors. In the case of long-term postings (exceeding 24 months), the host member state's labour conditions must be applied. The proposal's main aim was to provide legal certainty, a higher level of social protection for workers, and ensure a level playing field

between companies (European Commission Proposal, 2016; European Commission website, 2016).

The proposal quickly became controversial. The reason being first that the Enforcement Directive had not entered fully into force yet when the review was announced, thus it was questioned whether it is of need at that point at all (although it was clear that the revision complements the Enforcement Directive and does not tackle the same problems).

During the consultation period, a joint letter was sent by Austria, Belgium, France, Germany, Luxembourg, the Netherlands, and Sweden (all core countries) and another from Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Latvia, Poland, Slovakia and Romania (all periphery countries) (European Commission Proposal, 2016). The core member states aimed for modernization and the strict establishment of 'equal pay for equal work in the same place'. They suggested that working and social conditions provisions should be widened and amended and pursued the setting-up of the maximum duration of posting, the clarification of conditions of the road transport sector, and the improvement of cross-border cooperation. These member states argued that Portable Documents A1 (indicating information on the number of registered posted workers) should be more reliable and that a detailed study should be made on the effects bogus self-employment.

The periphery countries, however, took a very different position. They believed the review to be 'premature' as the implementation of the Enforcement Directive had not been adequately assessed. They deemed the principle of 'equal pay' to be potentially incompatible with the internal market, eliminating the competitive advantage of service providers from the peripheral countries. They advocated for posted workers remaining under the legislation of the sending country (European Commission Proposal, 2016).

### 3.1.2. Reasoned opinions of National Parliaments and the yellow card procedure

The controversy caused by the proposal culminated in 11 member states (14 chambers/parliaments) submitting reasoned opinions - namely Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, and Slovakia – all

peripheral except for Denmark. Given that almost all of these member states' governments submitted a letter at the consultation period, it is likely that national parliaments cooperated to form a regional opposition (Fromage & Kreilinger, 2017).

Importantly, the Lisbon Treaty reinforced the rules of proportionality and subsidiarity (which principles are also laid down in Article 5 (3) (4) TEU) by one of the new protocols attached to the Treaties, Protocol (No 2) on the application of the principles of subsidiarity and proportionality. The Protocol involves an early-warning system, the so-called yellow-card procedure (Article 7 Protocol (No 2)), which takes place the following way:

“Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council, and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers” (Article 6 Protocol (No 2))

“Each national Parliament shall have two votes, shared out on the basis of the national Parliamentary system. In the case of a bicameral Parliamentary system, each of the two chambers shall have one vote” and “Where reasoned opinions on a draft legislative act's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the draft must be reviewed” (Article 7 (1) (2) Protocol (No 2))

It is particularly useful to assess the reasoned opinions submitted by 11 countries to determine the main points of the member states who did not support the proposal of the Commission. Although the member states had similar reasons for their opposition, they expressed their views slightly differently and considered some issues more pressing than others. The submission of reasoned opinions is an official way to share subsidiarity concerns. However, it is often – as in the present case as well - used by member states as an instrument to report other concerns they have with the proposal (Fromage & Kreilinger, 2017, p. 148). The main points of each parliaments/chambers are summarized below. All data were retrieved from the website of IPEX (2016).

The National Assembly of the Republic of Bulgaria submitted a reasoned opinion, in which it clarified that it did not consider the Commission's proposal to be compliant with the principle of subsidiarity and proportionality, and noted the lack of a detailed statement for justification (which is laid down as a necessary step in Article 5 of Protocol (No 2)). According to that step, a draft legislative act "should contain some assessment of the proposal's financial impact," which was not included in this case. Thus the Assembly argued that national parliaments were not able to examine the proposal for legislation properly. It failed to see the necessity to extend the scope of collective labour agreements to include posted workers in all sectors, as this was already done by most member states willingly. It was also argued that the proposal is not proportionate as the added benefit of it had not been clarified. Although the Committee welcomed the idea of equal pay, it did not consider it to be attainable via administration and was concerned about the loss of competitive advantage (National Assembly of the Republic of Bulgaria, 2016).

The Croatian Parliament also considered an issue the lack of a detailed statement of why the proposal is proportionate and compliant with the subsidiarity principle, as this way it could not be assessed by the national parliaments properly. The Parliament also enhanced the issues of the possible loss of competitive advantage and the restriction of the freedom of services. It expressed the view that the proposal interferes with the autonomy (of trade unions/employers) in collective bargaining and that the review leads to legal uncertainty and overregulation because of its prematurity – as the Enforcement Directive's transposition deadline had not been expired then yet (Croatian Parliament, 2016).

The Czech Senate, in its reasoned opinion expressed that it does not deem the lower wage level of certain member states an unfair competitive advantage as it is because of different living conditions. The differences cannot be eliminated legally, but with gradual economic convergence. It found the submission of the proposal to be premature and that for abuses, the current framework was sufficient; thus, rather the compliance with that should have been continuously tested. It found that the proposal lacked added value and that the Commission gave no proper justification (concerning Article 5 of Protocol (No 2)) (The Senate of the Parliament of the Czech Republic, 2016).

The Czech Chamber of Deputies argued the duality of the equal pay principle explaining it by Wittgenstein's rabbit-duck picture (as done by Kukovec, 2014), enhancing that the phenomenon "can be seen in two ways, depending on the social perspective from which the observer views it". With that metaphor, it aimed to explain how different the social realities of old and new member states are, referring to that equal pay only considers the perspective of the core countries. It expressed that for a posted worker coming from a periphery country, "accepting even the minimum wage in another (higher wage) member state may represent an improvement in his social standard, as even the minimum wage [...] may be several times higher than his income in the state from which he is posted". The Chamber argued that the proposal did not comply with the formal requirements as it did not involve a justification on subsidiarity or proportionality and that the proposed measures can eliminate the aspect of collective bargaining, which will not result in higher remuneration for the workers but only loss of employment because of the loss of competitive advantage. It welcomed limiting social dumping, however it contemplated whether this could be better achieved by member states with gradual convergence and not on the Union level (reasoning that with the principle of subsidiarity). In the reasoned opinion the stance of the Czech Government was also included with which both the Senate and the Chamber of Deputies agreed. The Government did not support the proposal of the Commission with the main argument being the possible negative impact it may have on the Czech service providers' competitiveness and the disruption of the process of convergence. It found that the implementation of the Enforcement Directive should have been assessed first to decide whether a revision is needed at all or the Enforcement Directive can sufficiently address the issues of abuses (Chamber of Deputies of the Czech Republic, 2016).

The only non-supporter of the proposal from the core group was the Danish Parliament. The Parliament welcomed the aim of ensuring equal pay and fight social dumping; however, it argued that the text had two significant problems regarding subsidiarity. First, it criticised that the proposal did not include a passage which is part of the Posting of Workers Directive, namely that "pay is defined by the national law and/or practice of the Member State to whose territory the worker is posted" (Article 3 (1)). Secondly, it has also found problematic the cancelling of Article 3(9), which was to ensure that "Member States may provide that the undertakings [...] must guarantee workers [...] the terms and conditions which apply to

temporary workers in the Member State where the work is carried out” (which involves only the possibility of same terms and conditions) and replace it with a provision that guarantees the same terms and conditions as that raised doubts whether that complies with the principle of subsidiarity (as it might be a national competence). It found that although the Union has the competence to establish terms for posting, it cannot regulate pay (Parliament of Denmark, 2016).

The Estonian Parliament - similarly to other peripheral countries - argued the proposal’s non-conformity with the principle of subsidiarity. The Parliament expressed that the equal pay principle could harm the competitiveness of undertakings and limit the freedom to provide services. The Parliament noted that equal pay could harm workers posted and doubted if the aims of the text can be better achieved at the Union level. It considered the Posting of Workers Directive with the Enforcement Directive to be sufficient tools and failed to understand why a review is necessary when the transposition deadline of the Enforcement Directive has not even passed yet (Estonian Parliament, 2016).

The Hungarian National Assembly, in its reasoned opinion argued that the Commission’s proposal lacks justification regarding subsidiarity and that the impact assessment conducted earlier did not explain the added value of introducing remuneration to the directive. It considered the principle of equal pay to be harmful to the freedom of services and could “artificially distort” competition. The Assembly claimed that the notion of remuneration increases legal uncertainty, which also breaches the principle of subsidiarity. It noted that to “artificially equalize the diverging wage levels of Member States” (which are due to different development) does not comply with the respective articles of the TFEU (on the supportive/complimentary competence of the Union in the area of social policy), meaning that the Union is not authorized to act. A proper consultation should have preceded the issuance of the proposal, and the Commission did not take into account the possible regional and local effects of the act (Hungarian National Assembly, 2016).

The Saeima Parliament of Latvia found several issues in the proposal and considered it to be in breach with the principle of subsidiarity the compliance with which was not justified. It argued that the consultation was not adequate with member states and stakeholders as such a significant change in the regulation of posting would have required an in-depth dialogue to achieve a meaningful compromise. The Parliament claimed that the Commission prepared a

proposal that ignored member states who oppose the revision, thereby “undermining the unity of EU member states in further discussions”. It expressed that the proposal does not reflect the changed circumstances brought by the Eastern Enlargement. It considered the proper implementation of the Enforcement Directive to be sufficient to fight unfair practices. Furthermore, it emphasized that equal remuneration could be disadvantageous for low wage countries and could facilitate more illegal posting. The Saeima Parliament argued that the principle of equal pay would be welcomed in normal circumstances; however, in the case of posting, the workers are in a very different situation than locals. In this temporary form of employment wages also have to bear additional costs such as transport and administration. Thus it considered the proposal to lack justification as to why it makes the competition fairer. The convergence of wage levels that is sustainable cannot be achieved by an act and was deemed a lengthy process (Saeima Parliament of Latvia, 2016).

The Seimas of the Republic of Lithuania made two conclusions available. One from the Committee on European Affairs and one from the Committee on Social Affairs and Labour. The Committee on European Affairs argued that the proposal did not take into account the “objective differences” between member states, which are based on local factors and economic development. It found the revision to be unnecessary before the transposition of the Enforcement Directive. It mentioned the lack of proper consultation ensured by the Commission, and that the proposal is possibly non-compliant with the principle of subsidiarity and the principle of proportionality, claiming that non-compliance with subsidiarity is because of “unreasonably restricting the opportunities and incentives for businesses to provide cross-border services, thus possibly working against consumers’ interests”. The Conclusion of the Committee on Social Affairs and Labour argued with the case-law of the ECJ, specifically with the ruling in *ESA* (C-396/13), which implies that unequal pay is not necessarily unfair, adding that member states have exclusive competence in determining pay (Seimas of the Republic of Lithuania, 2016).

The Polish Senate found the proposal to be incompatible with the principle of subsidiarity as well. It questioned subcontractors’ submission from other member states to regulated requirements, which restricts the member states’ discretion in that regard. The Senate argued that the proposal limits member states’ discretion in deciding if those posted workers employed by temporary work agencies must meet respective requirements as that was

optional beforehand (Senate of the Republic of Poland, 2016). The Polish Sejm also argued that the proposal is not compliant with the subsidiarity principle and that the text lacks justification thereof. It added that instead of equal pay, the host member state's minimum wage ensures adequate protection for posted workers, which also respects the differences in economic development between member states. It believed that higher wages should be achieved with gradual further development instead of legislation at the EU level (Sejm of the Republic of Poland, 2016).

The Senate of Romania welcomed the efforts of the Commission to provide a higher level of social protection and combat abuses, and even the promotion of the equal pay principle. However, it considered the proposed text to be in breach with Article 2 of Protocol (No 2) on subsidiarity and proportionality, the explanation and justification of which was missing. It regretted the lack of proper consultation before issuing the proposal and the lack of the social impact assessment and data on the number of posted workers posted longer than 24 months. It raised the question of whether the legal basis was the right choice at all, as the proposal is rather about the protection of workers than freedom of providing services. It expressed that the Enforcement Directive “already provides more drastic new tools” to combat unfair practices, thus failed to understand the need for a review until the Enforcement Directive’s effect is assessed (Senate of Romania, 2016).

The Chamber of Deputies of Romania found that any modification regarding the provision of services must be done by taking into account Article 56 TFEU, which prohibits restrictions that could possibly make less attractive the activities of the cross-border service providers. It also considered the legal basis questionable. The Chamber added that although the ECJ deemed the protection of workers an “imperative objective” which can be restricted in justified cases, that is only if it is proportionate to the aim. It included that the Court established that discrimination occurs when persons in the same position are treated differently. However, it added that posted workers and local workers are not in the same position; thus, providing different payment cannot be considered a discriminative practice. It did not welcome the replacement of minimum salary by remuneration as the notion can create legal uncertainty. It deemed the current framework sufficient and also enhanced that the Commission organized no proper consultation despite repeated requests by social partners (Chamber of Deputies of Romania, 2016).

The National Council of Slovakia welcomed the long-term efforts of the Commission to achieve a stronger social dimension and was aware of the severity of the abuses in posting. However, it found the revision to be premature as the transposition deadline of the Enforcement Directive had not expired yet, thus an assessment of its effectiveness could not be made. It expressed that the legal basis chosen (which is the same as for the original Posting of Workers Directive) is not necessarily adequate as that proposal has different objectives than the Directive of 1996. While the original Directive's main aim was to eliminate obstacles to market freedoms, the new proposal aimed for higher social protection. It detailed the reasons why determining remuneration is not a Union competence by referring to first Article 352(1) TFEU (which authorizes the Union to act beyond its competences if the Treaty does not exclude harmonization in that field) and then to Article 153 (1), (5) TFEU (which explicitly says regarding social policy that it "shall not apply to pay"). It argued that the Commission failed to justify compliance with subsidiarity and the necessity of the review. It expressed that the Commission has violated its obligation under the Treaties as there was no meaningful consultation before issuing the Proposal. It emphasized that it would have instead welcomed a "more balanced-approach" that considers the differences in development between member states and added that economic development is needed for the convergence of wage levels rather than legal action. Though recognized the importance of fair conditions in competition, it considered the artificial alignment of wages a one-sided solution that ignores the diversity of collective labour relations (National Council of the Slovak Republic, 2016).

Arguments used by the national parliaments clearly went way beyond the scope of the subsidiarity mechanism. Member states are expected to assess whether the proposal's elements align with the principle of subsidiarity (thus whether the aim could have been achieved at a lower level instead of the Union level). However, reasoned opinions have rather focused on the content and the aim of the proposal. It can be argued that the parliaments rightfully argued that a breach of subsidiarity occurred, however only on the basis of procedural grounds. If the Commission had proceeded keeping all the rules laid down in the subsidiarity test, the member states could not have used the early warning mechanism to express their opposition (Fromage & Kreilinger, 2017).

However, as the number of written observations reached the indicated threshold, it has resulted in triggering the yellow card procedure. The Commission had the possibility to maintain, change, or withdraw its proposal, by justifying its decision. Despite the deep division, the European Commission rejected the subsidiarity concerns, and the revision process has continued. The mechanism was applied only three times since its introduction in 2009. In the case in question, the yellow card procedure was different from the other two times, as it did not involve new legislation, only an amendment.

The division between the two groups of member states was present during said periods between national parliaments and also between representatives of the Council and Members of the European Parliament (Fromage & Kreilinger, 2017). After two years of difficult negotiations, however, positions grew a lot closer, which resulted in the adoption of the text in the Plenary on 29 May 2018 and by the Council on 21 June 2018. The final version of the act was signed on 28 June 2018 and then published in the Official Journal.

The adopted Directive is mostly in line with the original proposal, however, some changes took place. One particular amendment was that initially the Commission proposed that the time after the host country's labour law becomes applicable for the posting company should be 24 months, however during the negotiations that was reduced to 12 months (with a possible extension of 6 months). It was indicated that the new rules included in the Revised Directive would also become applicable in the road transport sector as soon as specific legislation is adopted.

### 3.1.3. Voting outcomes in the Council and the European Parliament

The revision process was lengthy and highly political, with a clearly defined division between member states. Despite the challenging years of finding a compromise, it was successfully approved both in the European Parliament and in the Council without the rules being watered down. The success and the lack of real division in the voting results questions the strength of the cooperation formed in the beginning. Although in the statements attached to the votes,

the cleavage was still perceivable to an extent, many member states have altered their original positions.

(i) European Parliament

In the European Parliament on 29 May 2018, out of 751 MEPs 652 voted, and 48 were absent. 456 voted for the revision, 147 against, and 49 abstained. The expectations based on the core-periphery cleavage would have been a much higher percentage of negative votes. Thus the question arises whether instead of national attitudes, rather something else has influenced the outcomes. Fitting Callaghan and Höpner's findings (2005) (in case of the takeover directive), the importance of nationality and party group affiliation varies depending on the party groups. In the present case, a strong intra-group cohesion can be identified within S&D (100%), Greens/EFA (100%), small right-wing ECR (85.48%), left-wing GUE/NGL (73.33%), and quite substantial defections within the EPP (65.69%), ENF (48.28%), ALDE/ADLE (44.35%), and EFDD (17.11%). *Table 1* shows that while the S&D could successfully coordinate the votes and achieved maximum cohesion, there was no proper agreement in the EPP, which resulted in quite a low 66 cohesion percentage (Seikel, 2020).

*Table 1:*

*EP votes by political groups on Posting of workers in the framework of the provision of services*

Group	For	Against	Abstentions	Total present	Total absent	Total non voters	Total members	Cohesion
ALDE/ADLE	39	22	1	62	3	3	68	44.35
ECR	3	56	3	62	7	2	71	85.48
EFDD	16	17	5	38	3	4	45	17.11
ENF	4	6	19	29	2	4	35	48.28
EPP	145	31	12	188	21	10	219	65.69
Greens/EFA	47	0	0	47	1	4	52	100
GUE-NGL	37	3	5	45	3	3	51	73.33
NI	2	12	4	18	2	1	21	50
S&D	163	0	0	163	11	15	189	100

Note: Cohesion calculated by Votewatch with Hix-Noury-Roland formula:  $A_i = (\max(Y, N, A) - 0.5((Y+N+A) - \max(Y, N, A))) / (Y+N+A)$ , where Y = number of votes “FOR”, N = number of votes “AGAINST”, and A = number of “ABSTENTIONS”. And arithmetical average for getting the cohesion rate

Source: Votewatch (2018)

The table indicating MEPs by party groups presented that cohesion varied, however the data did not help with the assessment of the possible effect of MEPs’ nationality. For that, MEPs votes based on their member states/nationality are presented below (*Table 2*). Core member states are indicated written in bold to distinguish them from the periphery ones.

*Table 2:*

*EP votes by member states on Posting of workers in the framework of the provision of services*

Member State	For	Against	Abstentions	Total present	Total absent	Total non voters	Total members	Cohesion
<b>Austria</b>	15	1	1	17	0	1	18	82.35
<b>Belgium</b>	14	2	3	19	1	1	21	60.53
Bulgaria	13	2	0	15	0	2	17	80.00
Croatia	9	2	0	11	0	0	11	72.73
Cyprus	5	0	0	5	1	0	6	100.00
Czech Republic	7	9	1	17	1	3	21	29.41
<b>Denmark</b>	5	2	0	7	6	0	13	57.14
Estonia	5	1	0	6	0	0	6	75.00
<b>Finland</b>	8	1	1	10	2	1	13	70.00
<b>France</b>	47	2	19	68	3	3	74	53.68
<b>Germany</b>	71	13	3	87	6	3	96	72.41
Greece	7	7	1	15	5	1	21	20.00
Hungary	5	8	2	15	2	4	21	30.00
<b>Ireland</b>	8	0	0	8	1	2	11	100.00
<b>Italy</b>	54	2	7	63	6	4	73	78.57
Latvia	6	2	0	8	0	0	8	62.50
Lithuania	6	4	0	10	1	0	11	40.00
<b>Luxembourg</b>	4	1	0	5	0	1	6	70.00
Malta	6	0	0	6	0	0	6	100.00

<b>Netherlands</b>	17	4	2	23	1	2	26	60.87
Poland	15	31	0	46	4	1	51	51.09
Portugal	17	1	1	19	1	1	21	84.21
Romania	22	6	1	29	3	0	32	63.79
Slovakia	7	2	3	12	1	0	13	37.50
Slovenia	5	0	0	5	2	1	8	100.00
<b>Spain</b>	42	2	2	46	2	6	54	86.96
<b>Sweden</b>	11	8	0	19	0	1	20	36.84
<b>United Kingdom</b>	25	34	2	61	4	8	73	33.61

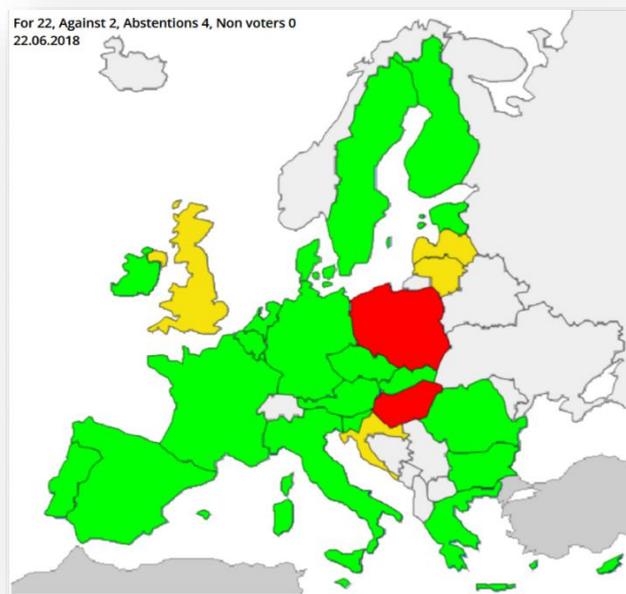
Source: Votewatch (2018)

Based on the data - using the thesis's core-periphery grid - from the 652 people present, 433 (66.41%) were core countries. Out of that, 321 (74.13%) core MEPs voted for 72 (16.62%) against, and 40 (9.23%) abstained. From those present 219 (33.58%) MEPs were from periphery countries, and 135 (61.64%) MEPs voted for, 75 (34.24%) against, and 9 abstained (4.1%). The results show that contrary to what was expected initially, there was no significant divergence between core and periphery member states, and the Revised Directive was easily approved in the end in the Plenary.

## (ii) Council

In the Council on 22 June, 2018 22 Member States voted for the revision, 2 (Hungary and Poland) against and 4 (Latvia, Lithuania, Croatia, UK) abstained. The map presenting the votes below (*Figure 1*) shows that there was no significant opposition by periphery member states. Although abstentions can indicate resistance, that category involved still a relatively small number.

Figure 1:



Note : Directive of the European Parliament and of the Council amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services - first reading, Adoption of the legislative act. Member states voting in favour (green), member states voting against (red), member states abstaining (yellow)  
Source: Votewatch

Although a high majority voted for the amendment, 8 member states included statements to express their opinions. From those who voted for the revision the Czech Republic, Slovakia and Portugal also shared a joint statement. These member states argued that the given time for adaptation is too short for companies, thus asked the European Commission to take circumstances into account when monitoring the correct implementation of the new rules on posting after it comes to force.

Croatia, Latvia, and Lithuania expressed that the text did not reach the right balance between market freedoms and workers' protection. The member states considered that the newly included concept of remuneration can have adverse effects on competition and that certain provisions exceed the scope of the Directive, which reduces legal certainty and thus hinders the free movement of services. As the Czech Republic, Slovakia and Portugal, these member

states have also stated that the lack of a real transitional period makes the adaptation to new rules for SMEs highly difficult.

Hungary and Poland jointly explained in their statement that they are committed to fight unfair practices and aim for the protection of workers; however, they found that the original directive had already created a “delicate balance” and regretted that the review preceded the proper application of the Enforcement Directive. The member states claimed that the new rules can cause an unjustified restriction to the provision of services and will not protect workers more but serve as a protectionist tool. They found that the legal institution of posting *per se* could become meaningless, and feared that the revision would cause tremendous administrative burden and legal uncertainty for SMEs. As the other two groups of member states sharing a statement, they also considered the transition period very short for enterprises to adapt (Votewatch, 2018).

Thus based on the statements, the core-periphery division partially remained, nevertheless to a way smaller extent compared to the beginning. The voting outcomes in the European Parliament and the Council both indicate that other factors have contributed during the negotiations. The results here suggest that the second hypothesis (H2) was not confirmed in this case. Nationality did not trump party group affiliation in the EP.

## 3.2. Member states’ positions on the Mobility Package I

### 3.2.1. The Commission proposals

The social legislation and its enforcement in the road transport sector were evaluated from 2015-2017. The detailed report found that the current rules could not effectively address the issues regarding the deterioration of working conditions and the distortion of competition, which is due to deficiencies of the legal framework (European Commission ex-post evaluation, 2016). To clarify and update the rules - within the ongoing review of the legislation of the road haulage market for a clean, competitive, and connected mobility - on 31 May 2017, three

legislative proposals were tabled by the Commission on the access of the international road transport market, the posting of drivers and with regards to driving and rest periods (the latter two relating to social conditions). The new set of proposals must consider market developments and the changes in the employment structure.

These three pieces of legislation were called the Mobility Package I. That first bundle aimed to address the problems of poor working conditions and wage differences between drivers and increase productivity (Keuchel, Beckschwarte, & Ernst, 2020).

Concerning the Proposal for a Regulation of the European Parliament and the Council amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the sector (European Commission, 2017a), the Commission aimed for better enforcement of cabotage rules. The original regulations' aim was to support the good functioning of the road transport market, providing suitable conditions. Evaluations showed the limitations of the rules and their enforcement, thus the proposal intended to fix these shortcomings.

With respect to the Proposal for a Regulation of the European Parliament and the Council amending Regulation (EC) No 561/2006 as regards on minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) 165/2014 as regards positioning by means of tachographs (European Commission, 2017b), the Commission proposed to change the amount of time of weekly rest periods. Most of the periphery member states supported reduced rest periods spent in the vehicles and regular/extended periods spent in dedicated areas. Member states of the core advocated for spending all reduced/regular/extended rest periods in a hotel and dedicated areas (Keuchel *et al.*, 2020). The proposed rules aimed to ensure better rest conditions for workers and more time spent at home. The point of vehicle tachographs was to register border-crossings in order to fight illegal practices.

With regards to Proposal for a Directive of the European Parliament and the Council amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector (European Commission, 2017c), the most critical question was the application of the Revised Posting of Workers Directive. As the impact assessment supporting the

proposal found, the existing posting provisions and administrative requirements were not suitable for this highly atypical sector. Social legislation and its enforcement did not effectively address the issues of distortion of competition and poor working conditions. Distinct differences were found in the interpretation of the Directives of 96/71/EC and 2014/67/EU. The proposal aimed to balance the social protection of drivers and the freedom of services for cross-border operators. The new rules meant to ensure a fair remuneration of drivers, applying the Revised Posting of Workers Directive to international transport operations. This part of the package was particularly problematic.

### 3.2.2. Reactions of member states

Core member states advocated mainly for the necessity to better protect drivers' social rights with regard to pay and working conditions. On 31 January 2017 in Paris, transport ministers of eight member states (Austria, Belgium, Denmark, Germany, France, Italy, Luxembourg, and Sweden +Norway) formed the 'Road Alliance' aiming to harmonise upward social rules and improve their enforcement. The plan was to achieve an integrated Europe where competition in the road haulage market is fair and where workers' rights and safety are taken into account with great importance (Memorandum on Road Alliance, 2017)

Periphery countries were on an entirely different opinion. Representatives of international road hauliers from Bulgaria, Croatia, Hungary, Lithuania, Poland, Romania, and Slovenia submitted a joint declaration in January 2019 protesting against the proposals considering them discriminatory, causing the fragmentation of the market and unnecessary administrative /financial burden (FREE transport, 2019).

Bulgaria and Romania called the proposed legislation the 'Macron Package' referring to the French Prime Minister's prominent role in the process. Truck drivers protested in the streets of Brussels as they feared that the Package would have a damaging effect, while those supporting the initiatives – as Henna Virkkunen (EPP - Finnish) - argued that "undermining employment conditions cannot be used as a competitive asset" (Morgan, 2020).

Even before the pandemic, many periphery member states expressed their opposition to the reform rules in road transport, arguing that it could put their firms in a disadvantageous position, causing excessive costs and unnecessary increase in carbon emission (Abnett, 2020). However, on 29 June 2020, nine ministers of Foreign Affairs and European Affairs and ministers of Transport of periphery member states (Bulgaria, Hungary, Estonia, Lithuania, Poland, Cyprus, Latvia, Malta, and Romania) took action and submitted a letter to the EU institutions asking for support in the transport sector by warning: “We are on track of adopting the first Mobility Package whose provisions, combined with the aftermath of the coronavirus outbreak, will [...] bring many European road transport businesses to an end” (Abnett, 2020).

In the letter, the ministers argued that the original aim of the Mobility Package I was to enhance social conditions for drivers, maintain an efficient and sustainable road transport and the proper functioning of the internal market. However, the original plans “deviated” during the negotiations, and the measures introduced became “restrictive and disproportionate”. The ministers welcomed parts of the Package to ensure more social protection. However wrote that “a new heavy curtain of protectionism will descend upon the EU internal market, thereby reducing the competitiveness of EU producers and resulting in increased carbon dioxide emissions” and suggested the European Parliament to reconsider the measures which will restrict the market significantly, enhancing the obligation of drivers to return every eight weeks. Arguing that the Package created “extraordinary division” between member states, that no proper impact assessment was done beforehand, and that the amendments will exclude member states from the single market - emphasizing the fact that the Package was created in a different reality (which was changed by the pandemic) – the ministers asked the European Parliament to “fix” the approved version of the Mobility Package I (Letter of the ministers from 9 Member Countries on Mobility Package, 2020).

The Mobility Package I was adopted after three years of intense negotiations by the Council on 7 April, then on July 9, 2020, in the European Parliament without any amendments. The acts apply from different dates. The rules on posting will apply 18 months after entering into force, and the rules on return of trucks and market access as well. The rules on rest times have become applicable 20 days after being published in the Official Journal. The adopted legal acts clarified which type of transport operations fall under the Revised Posting of Workers Directive. According to the legislation, while cabotage operations and cross-trade operations

do fall under the Directive, transit operations, bilateral operations, and some correlated cross-trade operations do not (Kruger, 2020; Directive (EU) 2020/1057). Rules for the posting of drivers aim to provide better working conditions for drivers, a fairer competition with a strong emphasis on fighting fraud and abuse, more legal clarity, and equal pay in cabotage and international transport operations (European Parliament Website, 2020).

The adopted legislation includes the obligation for truck drivers to return the vehicles to the member state of origin every eight weeks and certain restrictions on combined transport operations, which was not part of the original proposal of the Commission in 2017. These were not subject to an impact-assessment either, and there is a possibility that it is not in line with the European Green Deal goals. Commissioner Vălean indicated that an assessment will be done by the end of 2020, and if there is a need, the Commission “will exercise its right to come forward with a targeted legislative proposal” (European Commission Website, 2020). Thus although the legislative process has been completed, there is always a possibility to amend the legislation. The legislation's essence probably will not be changed, but slight modifications could be anticipated if the assessment shows contradiction climate aims-wise.

Several periphery member states have already expressed their plan to bring the issue before the court, and Lithuania already submitted a complaint in September 2020 (Trans.info, 2020). Polish MEP Kosma Złotowski (ECR) argued that “the most important change introduced by the Mobility Package is to halt, or perhaps even reverse, the process of economic integration in the European Union. For the first time, instead of removing barriers to free competition in the area of transport services, such a drastic attempt is being made to reduce it and damage the dynamically developing economies of the CEECs” (Warsaw Institute, 2020).

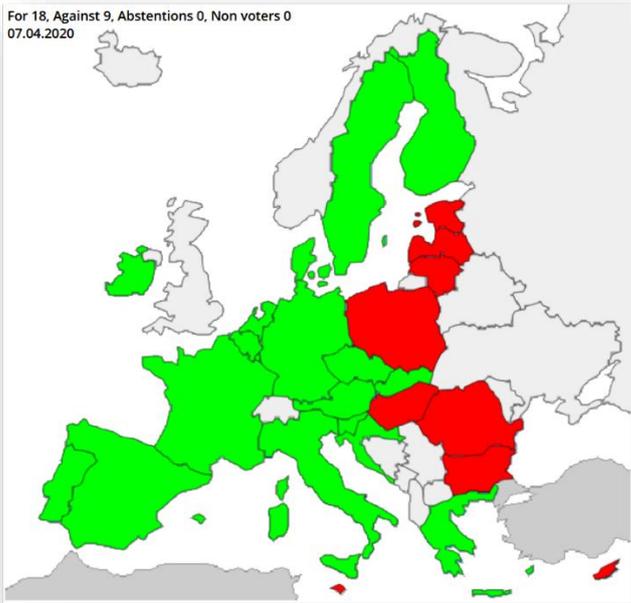
### 3.2.3. Voting outcomes in the Council and the European Parliament

#### (i) Council

On 7 April 2020, the Council adopted its position with 18 member states voting for the three

legislation included in the Mobility Package I, 9 states (Bulgaria, Cyprus, Estonia, Hungary, Lithuania, Latvia, Malta, Poland, Romania) against and zero abstentions (with the slight difference that with regards to ‘Regulation of the European Parliament and the Council amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 and (EU) No 1024/2012’ Belgium abstained). A record 9 member states opposed the legislation in the Council and lost the fight. The conflict between the core and periphery member states was clearly defined, as presented in the map below (one map illustrates the whole Package). Those periphery countries that voted for the new legislation can be explained by smaller economic impact (Votewatch, 2020).

Figure 2:



Note: Regulation of the European Parliament and of the Council amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs - first reading, Adoption of the Council's position. Member states voting in favour (green), member states voting against (red)

Source: Votewatch (2020)

Those who voted negatively were all periphery member states. These member states (and Belgium) also attached their written statements, which are available on the Council's website (2020) annexed to the votes. A joint statement was submitted by Bulgaria, Cyprus, Hungary, Latvia, Lithuania, Malta, Poland, and Romania with which they expressed their deep concerns about the Package contradicting the freedom of services, the freedom of workers, and key aims on climate. These countries were especially against the requirement to return heavy vehicles to the member state of origin every eight weeks as it results in empty trucks on EU roads, which is a useless detriment for the climate and also puts some member states with a farther geographic location in a disadvantaged position. They criticized the extensive cooling off period with regards to cabotage, considering it a protectionist measure. The countries expressed their objection to the automatic inclusion of a subsidiarity and a proportionality clause in the political agreements of the Mobility Package I's legal acts, considering the dossier's political sensitivity. They argued that the pandemic's spread already profoundly affected the transport sector (especially SMEs), thus called for the suspension of the work on the Package and reshaping it, keeping in mind the new economic reality.

Although supported the Mobility Package I's original objectives, Estonia argued that the single market must be open to competition and be climate-friendly. The country emphasized that the negotiations resulted in an agreement that puts Estonian drivers in a competitive disadvantage by requiring them to return within eight weeks to the country of origin. It also considered that it is contradicting the EU's goals on climate. It argued that such rules will encourage periphery member states to relocate the transport companies, which will decrease jobs and will potentially cause more unfair practices (mainly letterbox companies).

Hungary reiterated in a separate statement its concern regarding the Mobility Package's market-distorting effect, regretting the lack of proper impact assessment, as components "run counter to the initial objectives" of the First Mobility Package. The member state argued that while tackling fraud and unfair practices, fragmentation of the market and protectionism should be avoided. According to Hungary, with the Package, it should have been ensured that "the future EU legal framework allows competitive advantages to be exploited at their full potential while safeguarding fair competition and an adequate level of working conditions for drivers" however, the "specific rules for posting drivers in the road transport sector ("lex

specialis”) constitutes an unjustified restriction on the fundamental freedoms and as a result, is distorting the level-playing field within the EU”.

Belgium - the only not periphery member state to submit a written statement - welcomed the improvement of drivers' working conditions, including the eight-week return obligation. However, it considered the cooling-off period required to be a “trade barrier contrary to the spirit of the internal market” (Council of the European Union, 2020).

(ii) European Parliament

Members of the European Parliament approved the new rules on 9 July 2020 without accepting any of the amendments that periphery countries pushed for during the negotiations. As explained in Chapter 2, previous research showed that nationality traditionally does not have a significant role in influencing EP votes, and instead, party group affiliations decide. However, the votes here brought a different picture as the Mobility Package I led to breaking down of usual cohesion in the big groups. Member states were divided on the three separate legislation. Although data regarding the exact share of votes were not available at the writing of the thesis, an additional set of votes helped to see the magnitude of the division in the EP. Party groups were divided based on the roll call votes in the Committee on Transport and Tourism (TRAN) on the legislations on 8 June 2020, right before adopting the Package in the European Parliament (European Parliament, 2020). The tables below (*Tables 3, 4, 5*) present useful additional evidence. Information was retrieved from the EP's document on TRAN Committee votes (European Parliament, 2020). Core member states are indicated written in bold.

Table 3:

*Enforcement requirements and specific rules for posting drivers in the road transport sector 2017/0121(COD)*

<b>30</b>	<b>+</b>
ECR (1)	<b>Peter Lundgren (SE)</b>
GUE/NGL (3)	<b>Leila Chaibi (FR), Kateřina Konečná (CZ), Elena Kountoura (EL)</b>
ID (5)	<b>Marco Campomenosi (IT), Roman Haider (AT), Julie Lechanteux (FR), Philippe Olivier (FR), Lucia Vuolo (IT)</b>
NI (1)	<b>Mario Furore (IT)</b>
EPP (8)	<b>Henna Virkkunen (FI), Benoît Lutgen (BE), Giuseppe Milazzo (IT), Massimiliano Salini (IT), Sven Schulze (DE), Barbara Thaler (AT), Elissavet Vozemberg-Vrionidi (EL)</b>
Renew (7)	<b>José Ramón Bauzá Díaz (ES), Izaskun Bilbao Barandica (ES), Søren Gade (DK), Elsi Katainen (FI), Caroline Nagtegaal (NL), Jan-Christoph Oetjen (DE), Dominique Riquet (FR)</b>
S&D (5)	<b>Johan Danielsson (SE), Ismail Ertug (DE), Giuseppe Ferrandino (IT), Isabel García Muñoz (ES), Vera Tax (NL)</b>
Greens/EFA (1)	<b>Jakop G. Dalunde (SE)</b>
<b>19</b>	<b>-</b>
ECR (3)	<b>Tomasz Piotr Poręba (PL), Roberts Zīle (LV), Kosma Złotowski (PL)</b>
NI (1)	<b>Dorien Rookmaker (NL)</b>
EPP (6)	<b>Magdalena Adamowicz (PL), Andor Deli (HU), Gheorghe Falcă (RO), Marian-Jean Marinescu (RO), Cláudia Monteiro de Aguiar (PT), Elżbieta Katarzyna Łukacijewska (PL)</b>
S&D (5)	<b>Andris Ameriks (LV), Bogusław Liberadzki (PL), Rovana Plumb (RO), István Ujhelyi (HU), Petar Vitanov (BG)</b>
Greens/EFA (4)	<b>Ciarán Cuffe (IE), Karima Delli (FR), Anna Deparnay-Grunenberg (DE), Tilly Metz (LU)</b>

Out of the 49 Committee members present, 30 voted for the adoption, 19 against, and there were no abstentions. Out of the 49 members, 31 were from core and 18 from periphery member states. From the core member states, 27 voted for, while 4 against. In the case of the periphery members, 3 voted for, and 15 against.

Table 4:

Amending Regulation (EC) No 561/2006 as regards on minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) 165/2014 as regards positioning by means of tachographs - 2017/0122(COD)

33	+
ECR (1)	<b>Peter Lundgren (SE)</b>
GUE/NGL (3)	<b>Leila Chaibi (FR)</b> , Kateřina Konečná (CZ), Elena Kountoura (EL)
ID (5)	<b>Marco Campomenosi (IT)</b> , <b>Roman Haider (AT)</b> , <b>Julie Lechanteux (FR)</b> , <b>Philippe Olivier (FR)</b> , <b>Lucia Vuolo (IT)</b>
NI (1)	<b>Mario Furore (IT)</b>
EPP (6)	<b>Benoît Lutgen (BE)</b> , <b>Giuseppe Milazzo (IT)</b> , <b>Massimiliano Salini (IT)</b> , <b>Sven Schulze (DE)</b> , <b>Henna Virkkunen (FI)</b> , <b>Elissavet Vozemberg-Vrionidi (EL)</b>
Renew (7)	<b>José Ramón Bauzá Díaz (ES)</b> , <b>Izaskun Bilbao Barandica (ES)</b> , <b>Søren Gade (DK)</b> , <b>Elsi Katainen (FI)</b> , <b>Caroline Nagtegaal (NL)</b> , <b>Jan-Christoph Oetjen (DE)</b> , <b>Dominique Riquet (FR)</b>
S&D (5)	<b>Johan Danielsson (SE)</b> , <b>Ismail Ertug (DE)</b> , <b>Giuseppe Ferrandino (IT)</b> , <b>Isabel García Muñoz (ES)</b> , <b>Vera Tax (NL)</b>
Greens/EFA (5)	<b>Ciarán Cuffe (IE)</b> , <b>Jakop G. Dalunde (SE)</b> , <b>Karima Delli (FR)</b> , <b>Anna Deparnay-Grunenberg (DE)</b> , <b>Tilly Metz (LU)</b>
15	-
ECR (3)	<b>Tomasz Piotr Poręba (PL)</b> , <b>Roberts Zīle (LV)</b> , <b>Kosma Złotowski (PL)</b>
NI (1)	<b>Dorian Rookmaker (NL)</b>
EPP (6)	<b>Magdalena Adamowicz (PL)</b> , <b>Andor Deli (HU)</b> , <b>Gheorghe Falcă (RO)</b> , <b>Marian-Jean Marinescu (RO)</b> , <b>Barbara Thaler (AT)</b> , <b>Elżbieta Katarzyna Łukacijewska (PL)</b>
S&D (5)	<b>Andris Ameriks (LV)</b> , <b>Bogusław Liberadzki (PL)</b> , <b>Rovana Plumb (RO)</b> , <b>István Ujhelyi (HU)</b> , <b>Petar Vitanov (BG)</b>
1	0
EPP (1)	<b>Cláudia Monteiro de Aguiar (PT)</b>

In case of the second legislation, while 30 core members voted for and 2 against, 3 periphery members voted for, 13 against, and 1 abstained.

Table 5:

Amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to developments in the sector –2017/0123(COD)

33	+
ECR (1)	<b>Peter Lundgren (SE)</b>
GUE/NGL (3)	<b>Leila Chaibi (FR)</b> , Kateřina Konečná (CZ), Elena Kountoura (EL)
ID (5)	<b>Marco Campomenosi (IT)</b> , <b>Roman Haider (AT)</b> , <b>Julie Lechanteux (FR)</b> , <b>Philippe Olivier (FR)</b> , <b>Lucia Vuolo (IT)</b>
NI (1)	<b>Mario Furore (IT)</b>
EPP (6)	<b>Benoît Lutgen (BE)</b> , <b>Giuseppe Milazzo (IT)</b> , <b>Massimiliano Salini (IT)</b> , <b>Sven Schulze (DE)</b> , <b>Henna Virkkunen (FI)</b> , <b>Elissavet Vozemberg-Vrionidi (EL)</b>
Renew (7)	<b>José Ramón Bauzá Díaz (ES)</b> , <b>Izaskun Bilbao Barandica (ES)</b> , <b>Søren Gade (DK)</b> , <b>Elsi Katainen (FI)</b> , <b>Caroline Nagtegaal (NL)</b> , <b>Jan-Christoph Oetjen (DE)</b> , <b>Dominique Riquet (FR)</b>
S&D (5)	<b>Johan Danielsson (SE)</b> , <b>Ismail Ertug (DE)</b> , <b>Giuseppe Ferrandino (IT)</b> , <b>Isabel García Muñoz (ES)</b> , <b>Vera Tax (NL)</b>
Greens/EFA (5)	<b>Ciarán Cuffe (IE)</b> , <b>Jakop G. Dalunde (SE)</b> , <b>Karima Delli (FR)</b> , <b>Anna Deparnay-Grunenberg (DE)</b> , <b>Tilly Metz (LU)</b>
16	-
ECR (3)	<b>Tomasz Piotr Poręba (PL)</b> , <b>Roberts Zīle (LV)</b> , <b>Kosma Złotowski (PL)</b>
NI (1)	<b>Dorian Rookmaker (NL)</b>
EPP (7)	<b>Magdalena Adamowicz (PL)</b> , <b>Andor Deli (HU)</b> , <b>Gheorghe Falcă (RO)</b> , <b>Marian-Jean Marinescu (RO)</b> , <b>Cláudia Monteiro de Aguiar (PT)</b> , <b>Barbara Thaler (AT)</b> , <b>Elżbieta Katarzyna Łukacijewska (PL)</b>
S&D (5)	<b>Andris Ameriks (LV)</b> , <b>Bogusław Liberadzki (PL)</b> , <b>Rovana Plumb (RO)</b> , <b>István Ujhelyi (HU)</b> , <b>Petar Vitanov (BG)</b>

In case of the third legislation, 30 core voted for and 2 against, 3 periphery members voted for, and 14 against.

The outcomes of the votes on three legislation clearly present a cleavage between the two groups of member states. The Mobility Package led to a meltdown of cohesion in political groups (Votewatch Latest Council data, 2020).

Thus the second hypothesis (H2) - in contrast with the case of the revision of the Posting of Workers Directive - was confirmed in this case and nationality trumped political affiliations. Following the Mobility Package I's adoption in the Transport Committee on 8 June, on 9 July 2020, the MEPs have adopted it in the Plenary as well.

Having presented the empirical results, the thesis moves on to the analysis part, where the evidence elaborated in this chapter is attempted to be explained with the help of the theory of liberal intergovernmentalism.

## Chapter 4: Analysis

In the last chapter of the thesis, the theory of liberal intergovernmentalism is used to explain the member states' positions taken regarding the revision of the Posting of Workers Directive and the Mobility Package I. The theory's primary assumptions - national preference formation, interstate bargaining, and institutional design - are projected to the two cases in question to test the theory's capacity to explain the events. The analysis includes the limitations of LI and emphasizes the power of supranational EU institutions (Commission, ECJ).

### 4.1. National preference formation

During the negotiations on the revision of the Posting of Workers Directive and the Mobility Package I, most peripheral countries agreed in opposing the proposals. In the theory of LI, domestic groups pressure governments, by transmitting social interests, who then decide on a position to communicate in negotiations, which influences EU policy-making (Zaun, 2017). Thus, the policy aims of the two groups of member states are a result of national preference formation process. Therefore in order to analyse inter-state interaction, domestic politics must be understood first. Nevertheless, it is important to emphasize that member states do not have a uniform stance, as they are not homogenous units (Seikel, 2020).

In the two debates conflicts could be perceived between employers and trade unions. While in core member states, stakeholders aimed for more regulation and a higher level of social protection for their employers/employees' interest and supported the revision of the Posting of Workers Directive and the adoption of the Mobility Package I, the picture was more complicated in the case of periphery countries. Employers' organisations opposed the revision, although in general, trade unions in these countries showed support (Surdykowska & Owczarek, 2018). Overall, periphery member states had an interest in more liberalization in order to keep their competitive advantage (Seikel, 2020). The preferences that member states formed were defined and caused splits along political lines in the institutions as the empirical results showed. In the case of the Mobility Package I., employers' organisations from

periphery countries (e.g. Lithuania) expressed that the Package is particularly disadvantageous for countries of the periphery as new rules are much more suited for member states in the centre of the EU (referring to time limits on cabotage and the application of minimum wages). A Romanian employers' organisation critiqued the established time-frame for returning home and the cabotage restrictions, emphasizing that the new rules can negatively affect the industry (Surdykowska & Owczarek, 2018).

Liberal intergovernmentalism can thus explain the preference formation, which was formulated mainly based on economic interests by the core and periphery member states as well. However, it must be added that since posting covers a rather small segment of cross-border employment, political interests most likely had an even larger role in the process. Social contributions could possibly be a much more important factor in reality when it comes to competitive advantage.

#### 4.2. Bargaining power and intensity of interests

As explained in Chapter 2, bargaining outcomes can be influenced by mainly three factors: unilateral policy alternatives (threats of non-agreement), alternative coalitions (threats of exclusion), and potential for compromise and linkage (Moravcsik, 1993, p. 499).

Some core member states, including France, had a substantial interest in the revision. Already in 2016, then Prime Minister Manuel Valls threatened to restrict postings unless a preferable agreement is achieved at the EU level (Comte, 2019, p. 11), as a bargaining strategy. Valls declared that "if it is not possible to convince ... France will not apply this directive" (Gotev, 2016). Valls refused to follow a directive that allowed pay differences between locals and posted workers. According to LI's basic assumptions, such high interest would put France in a bad bargaining position (Moravcsik & Schimmelfennig, 2009, p. 78). However, posting was equally crucial for member states, and core countries could strive for a good compromise with issue-linkage.

With issue-linkage (offering concessions in different issues), French Prime Minister Emmanuel Macron possibly had a significant role in changing some peripheral member states' stances, reflecting in the voting outcomes. In 2017 he met with leaders of several Central-Eastern European countries in order to push for the reform. He argued that the visits/meetings also had a "symbolic dimension" and that he "wants to show France's intent to rekindle links with the former Eastern Europe after years of neglect" (Briançon, 2017). However, the main goal was clearly to convince the opponents of the directive to change their positions. He travelled to Austria (to visit then Austrian Chancellor Christian Kern), Bulgaria (to meet President Rumen Radev and Prime Minister Boyko Borisov), and Romania (to meet Romanian President Klaus Iohannis and then Prime Minister Mihai Tudose). In Vienna, he also had a discussion with then Czech Prime Minister Bohuslav Sobotka and then Slovakian prime minister Robert Fico (Briançon, 2017).

In Romania, Macron told Iohannis he was open for Romania' joining the Schengen group and argued that it is also the interest of Eastern countries to be in a more deeply integrated European Union (Ilie, 2017), encouraging the country to support the reform in question. Bulgaria was an essential visit as then the Council presidency was led by the member state. As it was clarified in Chapter 2, it can be particularly important to convince those who preside the Council. The Council presidency can be a good mediator, as research shows (Elgström, 2003), thus, it was important to informally ask Bulgaria and Estonia to vote for the revision despite avidly opposing it at the beginning (Seikel, 2020). Bulgaria aimed to join the Schengen group and become a part of the Eurozone for which strong political support is required from other member states. Slovakia's then Prime Minister Robert Fico clarified that he wants Slovakia's future to lie "close to the (EU) core, close to France, close to Germany" (Gotev, 2017). As for Slovakia, getting closer to the EU and get the support of France was a more important goal in the long-run than opposing a reform now, it was convinced to cast its vote for the legislation.

The promises can be well fit into issue-linkage in LI and Axelrod's (1984) 'shadow of the future' technique, a cooperation based on reciprocity. The peripheral member states had even more significant aims for the future, which gave them a reason to support the revision at the time. Macron declared his willingness to support the countries in future plans (e.g., joining the Schengen zone) (Surdykowska & Owczarek, 2018). However, since the future cannot be

predicted with certainty, promises only remain a shadow, the size (possibility) of which was hard to determine.

Hungary and Poland were not on the list of countries to visit, as these two member states were amongst the most avid opposers of the revision and had no willingness to cooperate. Macron thus, by not making visitations to these member states, divided the Visegrád bloc. Then Polish Prime Minister Beata Szydło expressed during the negotiations that “we will defend our position to the very end because it is a position that is in the interests of Polish workers” (Gotev, 2017), clarifying that their position is not going to change. Although at first, all the Visegrád countries took the same position, in the end, only Poland and Hungary voted against the revision. Ryszard Czarnecki (Polish deputy speaker in the European Parliament) attempted to downplay the change of positions of the countries by saying: “Let’s not fall into hysterics. The Visegrád group works together on the most important cases” (Ilie, 2017). Although one could argue that revision was considered a highly salient issue, and could be said that it was amongst the ‘most important cases’ for Central and Eastern European member states. That suggests that in the end the Visegrád countries are not a cohesive group regarding social policy.

The voting outcomes in the Council and the European Parliament showed quite high support for the change. As the real negotiations take place in secrecy, only assumptions can be made about the altered positions, however, one possible explanation could be based on the bargaining power of member states. As mentioned in the theoretical part, the outcome of negotiations depends on the actors' relative power (Moravcsik & Schimmelfennig., 2009, p. 71).

The power of certain actors was evident in the case of the Mobility Package I as well. Despite a clear division within the institutions, the acts were successfully adopted. National belonging was neatly defined in the TRAN Committee and the two groups of member states created generally cohesive groups (except those member states which expected smaller economic impact from the new measures, e.g., the Czech Republic and Slovenia (Votewatch Latest Council Data, 2020)). Interests were clear and no substantive bargain happened. Small member states were far from attaining a blocking majority, which indicates the weakness of the region.

Member states' negotiations and the bigger bargaining power of the core by issue-linkage confirmed the theory's ability to explain the interstate bargaining events.

#### 4.3. Institutional design

According to LI, states delegate authority to institutions in order to secure commitments. Thus institutions are deliberately used as tools, while states are in complete control. Liberal intergovernmentalism is rarely contested for preference formation of states or bargaining aspects, but rather on the assumption that states have a far more prominent role than supranational institutions. Although LI agrees that supranational actors are strategic, it questions the ECJ's and the European Commission's power to further integration (Höpner & Schäfer, 2012). As the divide was so deep, delegating power to institutions was not an equally conscious choice. Member states' preferences did have a role in forming the negotiations, however, the institutions' agenda could be considered even more significant with regards to the events.

#### 4.4. The success of the reforms – limits of liberal intergovernmentalism

Although LI can explain the preference constellation and how member states bargained their way closer to an agreement, the theory reaches its limitations there. It cannot account for the fact that the adoption process was highly complex, and institutions had a considerable role in forming the direction. As elaborated by Scharpf (2006), "given an institutional setting with high consensus requirements, positive integration is likely to succeed in policy areas where national interests converge and it will fail in policy areas where divergent national interests and preferences are politically salient".

Based on that reasoning, the revision of the Posting of Workers Directive and the Mobility Package I were far from being easy integration cases. A *joint-decision trap* could have occurred (Seikel, 2020) as the member states had highly different interests, and achieving the right

balance could have become impossible for institutions as well. Still, difficulties could be overcome, with the help of supranational power. The success of the adoption of the Revised Posting of Workers Directive can especially be linked to the ECJ's power, which has been researched for long in political science (e.g., Garrett, 1995).

Although it has been shown empirically that member states' preferences do affect the Court, this does not mean that the Court bears a small impact on EU policy-making (Blauberger & Schmidt, 2017). It directly affects the domestic as well as the EU level. Although individual cases usually do not significantly diverge from member state preferences, the caseload of the Court can gradually change the direction. Thus, the expansive effect of a long-line of jurisprudence is more important to assess to reveal the Court's power in influencing EU policy-making (Blauberger & Schmidt, 2017).

The case-line mentioned in Chapter 1 reflects that instead of market freedom (as in the *Laval*-quartet), social rights and better labour standards have gradually become more important goals to support for the ECJ. In *Regio-post* (C-115/149); *ESA*(C-396/13); *Altun* (C-359/16); *Alpendrind* (C-527/16) (examples provided by Lubow & Schmidt, 2020), the Court deviated the traditional stance it would take in earlier cases. The case-law thus prepared the way for re-regulation by ruling in favour of smaller differences between wages and working conditions of local and posted workers (Rocca, 2019). Legislation can “provide a vehicle for consolidation and codification of CJEU jurisprudence” (Kilpatrick, 2011, p. 208), which was at least partly the case in regulating posting. It must be said, however, that cases do not happen in a vacuum as they are a result of national decisions/strategies (Rocca, 2019).

The Court had a crucial role in the negotiations as well. During the negotiations, the legal basis of the original reform proposal – which was the same as in the original Posting of Workers Directive - was attempted to be changed during the negotiations in the European Parliament. Instead of only the freedom to provide services, the review could have had a double legal basis and also included Articles 151 and 153(1) TFEU as a way to include social rights as part of the aims of the directive. This effort can be interpreted “as an attempt to shield the reform against the uncertain effect of future case law” (Lubow & Schmidt, 2020, p. 10) and add more „legal leeway” to balance social standards and market freedoms. As opposing this direction, member states of the periphery of the EPP group tried to include the *Laval* case into the Recitals. This legislative trick was also an attempt to restrict the direction of the Court's case-law in the

future - only in that case for the opposite reasons - which confirms the Court's agenda-setting power. Importantly it also indicated the Court's gate-keeper feature, as those initiatives which do not reflect the case law are less legitimate, thereby determining the available policy options (Lubow & Schmidt, 2020).

Notably, although the adoption was successful, Poland (C-626/18) and Hungary (C-620/18) started annulment procedures soon after that as they considered the review to be in breach of the freedom of services. It could be argued that this could technically render the institutions' political-legislative success symbolic as the adopted rules can still be challenged before the Court (Lubow & Schmidt, 2020). The cases have not been decided on yet. However, on 28 May 2020, Advocate General Sánchez Bordona proposed in the AG opinion that the Court should dismiss the actions for annulment submitted by Poland and Hungary. AG Bordona argued that the Directive was adopted based on an appropriate legal basis and emphasized that the aim of the Directive „pursues a two-fold objective” by guaranteeing the provision of services as well as the protection of social rights and the avoidance of unfair competition. AG Bordona also acknowledged that it was necessary to amend the Posting of Workers Directive to provide higher level of protection of social rights due to the developments of the enlargements and the financial crisis. He also argued that the differences between posted workers and local workers' remuneration will still remain in certain aspects; thus, sender countries' competitive advantage will not be eliminated. Based on these reasons, the Advocate General proposed that the Court dismiss said actions (AG Bordona opinion, 2020).

The thesis argues that the ECJ had a significant role in these integration cases, but the Commission's tactical role also has to be emphasized. As an example, by not including posting in the road transport sector in the proposal for a revision of the Posting of Workers Directive, it made the revision less controversial (Seikel, 2020). By delaying that part of the issue, the decision on the revision has become less problematic. Thus, the Commission influenced the outcomes. The institution's agenda-setting power is generally recognized, as it has the right to propose new legislation. However, its other powers have received less attention (Schmidt, 2000). According to research, the Commission can manipulate member state preferences. Schmidt (2000) argued that it can influence the Council in two main ways. By dividing the opposition ('divide-and-conquer' strategy) or threatening with a worse scenario, which makes

the adoption of a legislation the 'lesser evil' option. Furthermore, the Commission can use the Court's rulings to facilitate the adoption of a proposal.

Nevertheless, methodological problems arise when testing the Commission's real influence in a specific legislation. Thus, it is not a surprise that intergovernmentalism as a theoretical approach remained to be relevant after all these years (Schmidt, 2000).

Overall, it can be concluded that the assumption of Thomson (2011) stands true in this case, LI is not well suited to give relevant theoretical guidance in how controversies are resolved in the system of the European Union. LI cannot adequately explain daily decision-making, but rather milestones. Although most of the main assumptions of the theory were confirmed in the cases of the revision of the Posting of Workers Directive and the Mobility Package I, liberal intergovernmentalism cannot adequately explain the success of the reforms, as EU institutions had a more profound role than the theory would argue.

## Conclusion

The main aim of this thesis was to analyse the relevance of the core-periphery cleavage in EU decision-making with respect to the social dimension, attempting to answer the research question: How dominant was the core-periphery division in the cases of the revision of the Posting of Workers Directive and the Mobility Package I? Besides answering the question, the thesis attempted to shed light on the relevance of the division in daily legal decision-making as it was suggested by Kukovec (2014).

The thesis tested two hypotheses. The first (H1) was formulated with the expectation that *the main assumptions of liberal intergovernmentalism can explain the negotiations and the voting outcomes of the revision of Posting of Workers Directive and the Mobility Package I*. The second one (H2) presupposed *that Nationality trumped EP political group affiliations in the voting outcomes of the revision of the Posting of Workers Directive and the Mobility Package I*.

This thesis was divided into 4 chapters.

Chapter 1 clarified the core-periphery grid used throughout the research, the context, and the legal background (including Directive 96/71/EC, Directive 2014/67/EU) of the two cases. That section has explained how controversial the posting issue was since the beginning, but especially since the Eastern Enlargement. Social dumping has become a buzz word, continuously juxtaposed to the topic of posted workers. The social legislation on the road transport sector was also in need of modernizing, as the section emphasized. Core and periphery member states had opposing interests regarding social legislation, which became apparent via the case-law of the ECJ as well. A need for updating the rules had appeared concerning posting and the road transport sector supported by mainly the core member states.

Chapter 2 has introduced the theoretical framework used in the analysis later in the thesis. In that section, the main assumptions of the theory of liberal intergovernmentalism were explained, including its main shortcomings and its relevance in the decision-making in the

Council. The general voting behaviour characterizing the Members of the European Parliament is also presented to emphasize that the main predicting factor of voting outcomes is still party group affiliation despite specific cases. However, as highly salient cases suggested, the thesis assumed that in the cases of the revision of the Posting of Workers Directive and the Mobility Package I, nationality should prevail as well.

Chapter 3 has demonstrated the empirical results. Member states' positions were clarified in case of the revision of the Posting of Workers Directive as well as the Mobility Package I. The reasoned opinions, joint letters, statements, and stakeholders' comments revealed that although a deep-set core-periphery division characterized the negotiations, the voting outcomes reflect that other factors contributed as well. Nationality was an important aspect, but it did not and could not influence the legislative outcomes profoundly. In that section, the second hypothesis (H2) was found not to be confirmed in the case of the revision. However, based on the voting outcomes, it can be said that nationality mattered more than party group affiliation in the case of the adoption of the Mobility Package I.

The last chapter of the thesis (Chapter 4) has analysed the empirical evidence presented in Chapter 3 with the theory of liberal intergovernmentalism. The main assumptions (national preference formation, interstate bargaining and institutional design) were tested in the revision of Posting of Workers Directive and the Mobility Package I. In that section, the first hypothesis (H1) was proved to be only partially confirmed, as liberal intergovernmentalism although can explain some aspects of the cases (mainly preference formation and bargaining strategies), the theory fails to account for the successful adoption of both legislation. The success can rather be attributed to an active agenda-setter Court and a strategic Commission than state preferences.

The thesis thus gives the following answer to the research question: The core-periphery division had a significant role in the debates in the specific cases examined. The two groups of member states had clearly defined opposing interests. However, the periphery does not form a coherent group. The results suggest that their interests in specific cases depend on how important is the question economically and politically. Thus the division was not dominant enough to influence the outcomes. The thesis has also revealed that states are not the most important factors in creating new legislation. Evidence suggest that the agenda-setter Court and the strategic Commission called the shots in reality.

Although the case studies showed that the division did not have a prominent role in EU decision-making - as it could not shape voting outcomes - further research must be done on the cleavage to determine its real magnitude and relevance concerning social policies.

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I hereby declare that I have written this thesis independently. All direct or indirect sources used are acknowledged under References. Any use of sources in any form are indicated accordingly. I am aware that the thesis will subject to a plagiarism check. I agree that the thesis shall be entered in a database and remain after the examination.

A handwritten signature in blue ink, appearing to read 'Rozmayer By', with a long horizontal flourish extending to the right.

Brigitta Rozmayer, Olomouc, 7 October 2020