

**Labor Migration in the European Union:
De-institutionalization or Re-institutionalization of Social Protection?**

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Abstract

The literature on European Union (EU) integration sees increasing liberalization as a major challenge for models of national capitalism within Member States. EU liberalization, it is argued, erodes national welfare regimes and prevents the re-embedding of markets in social protection systems. However, other scholars highlight the ability of national institutions to reinvent themselves to offer social protection. This paper assesses these claims by exploring an extreme case of labor market pressure driven by EU liberalization. Employment conditions in the meat production sector in Germany and Denmark have been affected in very different ways by EU liberalization. We explore whether, and to what extent, low wage labor migration has weakened the position of social partners and the rules that shape the employment conditions in the industry. We see evidence of deinstitutionalization in both Germany and Denmark but we

also see evidence of distinct institutional reinvention that reflects national political traditions. We find that some degree of solidaristic labor market regulation can be maintained – at least in the short term – even in the face of relocation and job losses.

Introduction

The literature on European Union (EU) integration views increasing market liberalization as a major challenge for national models of capitalism within EU Member States. Scholars argue that EU liberalization erodes national welfare regimes and prevents the re-embedding of markets in social protection systems. However, other scholars highlight the ability of national institutions to reinvent themselves to offer social protection. This paper assesses these claims by exploring an extreme case of labor market pressure driven by EU liberalization. Employment conditions in the meat production sector in Germany and Denmark have been affected in very different ways by EU reform. While in 1996, slaughterhouse wages for union members in Denmark and Germany were roughly the same (Kristensen, Kristensen and Strandkov, 1996), wages have changed in opposite directions: they have continued to grow in Denmark to an average of about € 34 per hour, whereas in Germany they have fallen to about half the Danish wage level, while subcontracted East European workers in Germany can make as little as € 1.50 per hour. Danish meat producers have chosen to take advantage of the low German wages and have outsourced production to Germany resulting in a steep decline in meat production jobs in Denmark.

These discrepancies in labor costs pose a major challenge for employment regimes and the welfare states in Germany and Denmark. The 1993 establishment of the Single European Market and the free movement of workers has resulted in cheap labor migration from Eastern Europe into Germany. How does low cost labor impact the position of social partners as the

cheap conditions of migrant work disseminates into the core workforce? Are the social partners in Germany and Denmark able to negotiate new social protection schemes? We find that the different employment regimes fuel a process of institutional arbitrage that in turn leads to an increasing relocation of jobs to Member States where highly dualized labor practices allow for very low labor costs. However, it is possible to adopt some degree of solidaristic labor market regulation even in the face of relocation and job losses. In Germany this includes the adoption of a minimum wage. In Denmark the social partners have traditionally been able to negotiate high wages for all workers although recently the union has agreed to take a pay cut in return for saving production in Denmark and investment to ensure upgrading and expansion of production. However, the real advantage of the Danish model may be its ability to ensure the re-employability of meat production workers who have lost their jobs to outsourcing.

Labor market liberalization in the EU is established through the Freedom of Establishment and Freedom of Movement Principles that guarantee all EU citizens the right to set up a business and work in other countries on the basis of the hosting Member State's labor laws. In addition, the EU has institutionalized a circular migration regime through the Posted Workers Directive, which allows for the posting of employees, hired in one Member State to work in another Member State, with the social protection and wages of the sending country, unless specifically regulated by the destination country. These instruments have facilitated and encouraged a pattern of labor migration and introduced vastly different wages for migrant workers into the high wage countries of Western Europe. Posted workers, by definition, are located in the secondary labor market. They do not migrate to the host countries but remain economically, as well as legally, rooted in their home countries. Finally, labor migration in the EU takes place in an economic context, which is characterized by high earnings differentials.

According to Eurostat, the average gross annual earnings among EU Member States ranged in 2011 from € 60,000 in Denmark to € 4,600 in Bulgaria. The huge wage discrepancy gives companies a great incentive to recruit migrant workers for low wages.

We proceed as follows: We start by situating our paper in a theoretical debate about market integration and the role of labor standards in the EU that emphasizes either ‘deinstitutionalization’ or ‘institutional adjustment’. In Part II we present our methodology. Part III is a case study of the use of migrant workers in the German meat industry as well as a case study of the outsourcing of meat production from Denmark to Germany in order to take advantage of the cheaper German wages. Part IV concludes with a discussion of the implications of our findings for the future of the European labor market.

I Theoretical approaches: Deinstitutionalization or Institutional Adjustment in Organized capitalism in an integrated Europe

The theoretical debate on the interplay between supranational institutions fostering EU-integration and national Member States is characterized by two different and opposing perspectives: According to one perspective, given the variety of existing capitalisms within the EU, European integration increasingly results in a “clash of capitalisms”, as policies aimed at fostering integration create a scenario in which supranational actors and institutions, such as the European Court of Justice (ECJ), push for liberalization and expand their areas of action and responsibility thereby eroding national welfare state traditions (Höpner & Schäfer, 2007).

According to these authors, the process of European integration can be subdivided into three phases: first, the Customs Union, second, a phase characterized by the introduction of the principle of mutual recognition and the central role of European actors as the driving forces

behind integration. The authors call the third and latest phase ‘post-Ricardian’, being characterized by the Commission-conscious drive for ‘modernization’ and ‘liberalization’ towards the Anglo-Saxon model (2007:8). Höpner and Schäfer argue that the Commission is strategically promoting the removal of institutions intended to organize economies, as institutions are perceived as obstacles to the economic union. Regulatory institutions are hereby consecutively separated from the economic units no longer under the control of Member States. The rationale behind this strategy is to expand the influence and responsibility at the supranational level. In consequence, a clash between national and supranational institutions occurs, as the liberalization process lacks the necessary legitimacy (2007:12). In response to a paper by Caporaso and Tarrow (Caporaso & Tarrow, 2009), who see signs of a counter movement of social embedding by decisions made by the ECJ favoring cross-border social transfers, Höpner and Schäfer accentuate their argument: The nature of EU fiscal decentralization, moreover, prevents a countermovement towards social re-embedding that might be expected as a demand from increasing social insecurity. Stark social inequalities between Member States and little scope for redistribution leaves the EU in a trap of Hayekian polity design (Höpner & Schäfer, 2012).

This argument is an extreme version of a general trend in the literature that perceives EU integration as a process of 'decoupling' the social dimension from economic integration goals, while enhancing economic integration and liberalization (F. W. Scharpf, 2002). From its beginning in the aftermath of WWII, economic integration through market creation and undistorted competition was at the heart of European integration, while the development of redistributive social policies remained a national affair. Member States are restricted in their abilities to take individual economic decisions, as these might interfere with the already existing

economic union. Increasing economic integration impacts the social dimension, as it restricts the available policies to achieve social aims. In light of the theoretical debate on European integration, the legal endeavors strengthening the Common European Market have been predominantly envisaged from what Scharpf calls the asymmetrical interplay between negative and positive integration (F. Scharpf, 1996). Negative integration refers to mechanisms that push for market liberalization and a transition of control to supranational institutions, whereas positive integration refers to mechanisms subject to intergovernmental policy making processes (F. Scharpf, 1996).

However, this claim is in contrast to studies of rule implementation in the EU. According to Moravcsik (Moravcsik, 1998), and later Schimmelfennig (Schimmelfennig, 2013), the economic or institutional preferences of a state depend strongly on the existing institutional strength of their welfare state (Moravcsik, 1998; Schimmelfennig, 2013). If the welfare state institutions in a Member State are stable and strong, domestic economic and institutional interest will also influence the state institutional preferences in the implementation process.

Correspondingly, in the absence of strong opposition from institutions, like social partners, Member States will choose the liberalization path using EU law to strengthen the economy. Europeanization theorists have argued that the higher the degree of misfit between the existing institutional regulatory traditions and the newly imposing European rules, the more problematic the adjustment procedures are likely to be (Börzel, 2000; Duina, 1997). Member States are likely to be reluctant to implement and delay the process if the EU legal framework does not correspond with the national preferences or the national policy framework.

This paper aims to contribute to a more nuanced understanding of the effects of liberalization through European policy-making and the effects on national institutions.

According to Caporaso and Tarrow, markets are embedded in social institutions (Caporaso & Tarrow, 2009). According to this line of reasoning, in order to understand the dynamics of market liberalization and social embedding as a ‘double movement’, it is necessary to look at the adjustment processes of national institutions to the challenge of liberalization. Market liberalization in a context of wide social and economic inequality, as in the enlarged European Union, poses major challenges to mature welfare states with highly regulated labor markets. Studies have shown, for example, that migration poses fiscal pressures and threats to solidarity that can dampen enthusiasm for welfare compensation and spark calls for welfare retrenchment (Burgoon, 2012). However, these studies have focused on migrants that benefit from welfare services. In this paper we focus on migrants that relocate because they have found work.

In contrast to views that see Member States as receivers of liberalization policies which they cannot shape, theories of institutional adjustment assume that Member States have some leeway to decide on the extent to which they embrace the market dynamic of liberalization. Member States have control over their own adjustment strategies beyond decision procedures at the European level. They are not victims of supranational liberalization but active agents, who can either reinforce liberalizing mechanisms or counteract them. A closer look at the ECJ-rulings in the Viking, Laval and Rückert cases confirms this perspective. In all these cases the ECJ did not restrict the general rights of collective action, but clarified that collective action, or specifically collectively bargained contracts, have to be determined in such a way that they are universally applicable for a whole sector within a country. In cases of regional differences or federal deviations, the system is not considered as transparent and, therefore, impedes the fundamental freedoms guaranteed by the Treaty; the Laval ruling asked for an institutional

adjustment that might have posed a “major normative difficulty”(F. W. Scharpf, 2010), but not an insurmountable obstacle for defending Swedish welfare institutions.

In the *Rush Portuguesa* ruling, the ECJ clearly stated that, “(EU) law does not preclude Member States from extending their legislation, or collective labor agreements entered into 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 (EU) law prohibit Member States from enforcing those rules by appropriate means.”¹ These rulings clarify the pressure for Member States to protect and support industrial relations regimes in line with regulations created in the course of EU integration. In the absence of these regulations, legal gaps occur which will enforce the process of liberalization.

Counteracting liberalization includes strategies of labor market re-regulation, legal adjustment and redesigning welfare entitlements. Member States also decide about the role and influence of the social partners within the implementation process. Social partners are challenged by European integration, not because supranational interactions undermine their influence, but because supranational decisions unveil the extent to which trade unions have an influential legacy within the welfare state or are actively involved in policy making. Polanyi famously argued that society has a long tradition of regulating business if market forces get out of hand (Polanyi, 1944). Once the free market attempts to separate itself from the fabric of society, social protectionism is society's natural response (Ruggie, 1982).

In order to explore these two theoretical claims we consider the broad expectations that follow from each approach. Summing up, according to the theoretical perspective that EU integration develops as a process of deinstitutionalization, social protection schemes in EU

¹ Case C-113/89 *Rush Portuguesa v Office national d’immigration* (1990).

member states are bound to be eroded as European market integration enables cost competition based on institutional arbitrage. In contrast, a theoretical perspective that views EU integration as allowing room for institutional adjustment at the Member State level would expect domestic actors to be able to shape social protection in order to embed EU market integration.

II Methodology

Case study approach. We adopt a case study approach (Eisenhardt, 1989; Yin, 1994) in order to evaluate our two sets of expectations about either deinstitutionalization or institutional readjustment. We conducted interviews with key social partners and decision makers in the meat industry in both countries, including meat producers, trade unions, politicians and civil servants. We also collected information about actor positions from an extensive web search and several published sources including German and Danish newspapers, union documents as well as studies and documents published by employer organizations. Rather than engage in hypothesis testing (Yin, 1994), we investigate some expectations from the existing literature on the ability of governments to shape social protection schemes.

Country selection. We focus on Germany and Denmark, which are both highly regulated economies². However, Germany and Denmark have very different labor market institutions. Germany's industrial relations' system focuses on the manufacturing sector and has strong insider protection (Hassel, 2007). Denmark, on the other hand, has stronger trade union involvement but a highly flexible labor market (Campbell & Pedersen, 2007; Thelen & Martin,

² Coordinated market economies (CMEs) in the language of the Varieties of Capitalism literature (Hall & Soskice, 2001).

2007). Germany and Denmark have adopted different approaches to managing the influx of cheap labor.

Industry selection. We examine the treatment of migrant labor in the meat industry to explore the dynamics of EU labor market liberalization. The sector is economically important for Germany and Denmark. Germany is the number one meat processor in the EU for pork, with 58 million animals slaughtered and processed per year, and in second place, behind France, for processing cattle³. The meat industry is an extreme case of EU liberalization resulting in severe challenges to the German and Danish labor markets. Is it possible to protect workers in this industry against market pressure or not? The industry illustrates the interactions between economic restructuring, cheap labor, EU law and national policy making. The sector is known for having bad labor practices, rampant exploitation of migrant workers and fierce cost competition. In this industry we find migrant workers from the poorest Member States working in Member States with the highest average wages in the EU. Danish wage agreements cover the entire industry, while in Germany collectively agreed wages only cover about a third of the non-subcontracted staff, amounting to less than 10 percent of all workers in the German meat industry. The other 90 percent of workers have precarious employment contracts. If we find evidence of national institutional protection within such an industry with such a high degree of market pressure due to EU liberalization, we can assume that other industries will also be able to protect national standards.

³ However, statistics on the evolution of slaughter and dismantling indicate that only pork processing has increased during the last decade, whereas poultry and cattle have remained comparatively constant.

III Evidence: Case studies of social protection schemes in the German and Danish meat industry

To what extent has EU market liberalization led to de-institutionalization of social protection schemes in the German and Danish meat industry and to what extent have social partners been able to undertake institutional adjustment to protect workers?

German migrant workers in the meat industry⁴

In Germany EU liberalization has reinforced de-institutionalization processes underway in the German employment system in general and in the meat production industry in particular.

However, the increasingly dire working conditions in the meat industry encouraged by the ability to post workers – along with a deterioration of working conditions in the construction sector, the care sector and the cleaning sector (REFS) – recently led to the adoption of a minimum wage as a way to stem further decline in working conditions.

De-institutionalization

Prior to the EU Single Market program, structural changes in German meat production were beginning to take place that since have underpinned EU liberalization. Before the 1980s, meat processing and slaughtering used to be handled by slaughter troops in Germany. Groups of

⁴ This section is based on empirical evidence collected in in-depth qualitative interviews with representatives from labor, employers and government representatives that were carried out during the period October - December 2013.

self-employed butchers went from region to region to slaughter the animals. According to employers and their organisations, one of the major problems of these slaughter troops was that, irrespective of their actual employment relations with the slaughterhouse, they were paid a net amount of money as if they were self-employed. Subcontracting was then introduced as an initiative to transfer the responsibility from the contractor to the contracting company. The former self-employed butchers formed companies and worked as subcontractors. The new wages were, however, significantly lower and reduced interest in learning this profession (interview III, interview V). As indicated by Piore (Piore, 1979), meat processing underwent a shift from the first to the second labor market, decreasing its attractiveness for native workers. Foreign workers' contracts, based on bilateral agreements, started to become the solution for the supply gap. Figure 1 provides an overview of postings by destination countries (from the old EU 15 member states as well as from the new EU 12 member states in 2011). As can be seen in Figure 1, in 2011, Germany had received a total of 311,361 posted workers from other EU countries.

----- Figure 1 about here -----

Data from the German national agency of employment indicates that 143,392 employees were registered as working in the slaughter and meat processing industry in 2013, out of which 21,249 were foreign nationals (see figure 2 for an overview of regular employees in the meat processing industry in Germany 2002-2013).

----- Figure 2 about here -----

Overall, the number of native workers constantly decreased during the past 15 years, whereas the number of regular employees with foreign nationality has increased. However, these data do not include posted workers employed via subcontractors. Data on the number of A1 forms issued for the posting to Germany indicate, moreover, that after construction, meat processing is the second biggest sector receiving posted workers in Germany (Wagner & Hassel, 2014). Table 1 offer an overview of foreigners as a share of total population across the EU member states.

----- Table 1 about here -----

In 1996 the Posted Workers Directive, in combination with the EU accession rounds of 2004 and 2007, facilitated the provision of workers from Central and Eastern Europe. Recent media and political interest in labor exploitation and cheap labor in the meat processing industry in Germany primarily focuses on posted workers working via subcontracting companies in Germany. In response to this public debate, trade unions, employers' organisations as well as national and regional government have started negotiations to discuss initiatives in order to stabilize the industry and restore its reputation. A main reason for the increased use of migrant workers in the meat processing industry was the shortage of domestic labor willing to work there. The foreign workers' contracts, supported by the government, were a solution for this lack of labor supply (interview III, IV, V). According to the employers' organisations, the high level of skills required made workers from post-communist countries particularly attractive for

domestic meat processing companies. At the same time, domestic workers, directed via employment agency initiatives, showed little or no interest in the labor intensive work processes. In comparison with foreign workers' contracts, posting has been considered a cheaper and more lucrative option, as wage and tax differentials between posting country and receiving country ensure a comparatively high wage from a home country perspective and a cheap wage option for the receiving country (interview V).

Companies and employers' organisations link the rise of subcontracting to the existing service contract law, according to which certain processes have to be outsourced entirely to subcontractors in order to prevent violations of the temporary employment act when employing foreign workers (interview VI). A company cannot mix posted workers, or temporary workers, with fixed employees without violating the law. In consequence, slaughter and dismantling has been subdivided into various parts and outsourced to different companies (interview III, IV).

German companies outsource some of the "dismantling" processes to mainly German subcontractors. The contract signed with the latter is a service contract, passing the liability for the work and the workers employed to the subcontractor. The domestic subcontractor then signs a group of subcontracts for the different processes to different, mostly foreign, but also domestic companies. Media coverage on the average wages of posted workers as well as regular employees of subcontracting firms have claimed that wages vary between € 1.50 and € 8 per hour. Apart from wage level pressures, trade unions claim that the predominant system of subcontracting and the posting of workers have negative long-term effects on the German industry as a whole (interview II). One of the consequences of the labor market structure in the industry has been the rapid drop in apprenticeships within the sector and the intra-company

generation of new recruits. Trade unions and employers' organizations confirm that little investment is made into the training and recruitment of apprentices within the German labor market, thereby increasing the dependency on subcontracting companies, where little is known about intra-company qualifications (interview II, III, VI).

Institutional re-adjustment

Trade unions have demanded co-determination rights for subcontracting strategies in general, as well as the content of the work outsourced to subcontractors (interview II). However, due to the weakness of works councils, there is little influence over subcontracting. Only two of the four major meat processing companies have works councils and collective agreements. However, works councils don't have the right to co-decide whether subcontractors are employed or not (interview II). According to the trade union responsible for the meat processing sector, these contracts hold only for direct employees, ensuring that their wages are approximately 80 percent higher than those of employees working for subcontractors. At the same time, employers' organisations claim that the meat processing industry in Germany during the past few decades has been characterised by a fragmented structure with little or no communication between the four major companies. Based on media and government pressure in 2012 and 2013, first initiatives for a dialogue between the main companies were successful. However, subcontracting companies are not represented and have not shown interest in representation by the existing organisation (interview III, VI).

In August 2013, at the first meeting of the new employers' organisation in the meat processing industry, trade union representatives and government representatives started negotiations about the introduction of a minimum wage for the meat processing industry. The

negotiations were then interrupted by the national elections, as the introduction of a national minimum wage was part of the election programs of the two major parties winning the election. In January 2014, an agreement was reached, introducing a sectoral minimum wage as of July 2014, starting at € 7.75, slightly below the national minimum wage of € 8.50, which will come into effect in January 2015. According to our analysis and interviews with unions and policy makers, the minimum wage will predominantly ensure wage increases for employees of subcontracting companies. Meat processing has also been included into the National Posted Workers Act, establishing host country conditions for posted workers in this sector (JSK – I do not follow – what is this?).

One of the challenges for countries with comparatively small trade union density and collective bargaining coverage is the growing dualization, based on the fact that mobile workers are neither covered by insider-oriented collective contracts, nor in contact with home country trade unions or works' councils. One reason for the lack of organisation and coverage of foreign workers is suspicion and hostility between domestic and foreign workers (interview II). However, according to trade union representatives, the tendency has changed, due to the recognition that the inclusion of foreign and mobile workers is a necessary precondition in order to improve working conditions within the sector. Employer' representatives have welcomed the minimum wage negotiations, as the minimum wage is considered to be a mechanism to stop the prevalent race to the bottom within the industry. Moreover, the four major companies in Germany are planning to use the implementation of the minimum wage as a legal basis for the introduction of auditing mechanisms for their subcontractors. If meat processing is included into the German posted workers law, auditing mechanisms will be necessary for the general contractors to ensure the compliance of their subcontractors, for which they will be legally liable

(interview V). This auditing initiative is part of a code of conduct which is planned in cooperation with trade unions and the federal ministry of labor, on behavioral and control obligations for subcontractors on posted workers' pay, housing and living conditions. Employers derive their initiatives from the perspective that the established system of subcontracting and posting is lucrative, and has to be kept lucrative, in order to ensure German dominance in meat processing (interview V, VI).

Preliminary conclusions from the German case

The relatively small number of direct permanent employees who are potentially covered by collective agreements indicates a weak trade union influence. We see a dualization process being reinforced between high wage, permanent insiders on the one hand and low wage, mobile working (mostly posted) outsiders on the other. At the same time, the employers' representation is also weak, because subcontracting companies are not represented. The alleged necessity for subcontracting within the industry, combined with international competition, leads us to the conclusion that German companies do not have an interest in addressing this ongoing process of dualization. However, the adoption of the minimum wage is a signal that there are limits to how far liberalization is allowed to drive the dualization of the German labor market.

The Danish case – social protection at the cost of the viability of employment?

Denmark offers social protection to all employees in the meat industry but this increasingly comes at the cost of the viability of employment as outsourcing to Germany and Poland continues.

De-institutionalization

Between 2008-2012 private salaried jobs in Denmark declined by 10.7 percent (Elmer, 2013). The meat industry in particular has experienced a particularly steep drop in employment. In 2014 overall employment in the meat production industry in Denmark was estimated to be about 40,000. During a 9 month period in 2009 alone, Danish Crown laid off more than 2,500 workers (Ansvar, 2009). In 2012 only two pig slaughterhouses were left in Denmark: Danish Crown accounted for about 80 percent of all slaughterhouse jobs in Denmark (worldwide turnover was about DKK 52 billion – about € 7 billion), while Tican managed the remaining 20 percent of all pigs slaughtered in Denmark (Refslund, 2013). Recently in January 2014, the largest meat producer in Denmark, Danish Crown made a decision to move 472 jobs to Poland and Germany in order to take advantage of the lower wages in these two countries (Andersen, 2014).

The decline in meat production employment in Denmark is a fairly recent development. At the beginning of the new millennium, the slaughterhouses were scrambling to attract workers. Denmark had almost full employment and slaughterhouses were not seen as particularly attractive places to work and employers found it hard to attract workers. The sector had the most workplace accidents of any sector in Denmark (Refslund, 2013), for example, and the work is very physically demanding, with a high degree of stress. Danish Crown won substantial fame in Denmark for a couple of years for instituting new programs to attract workers with other problems than unemployment. Danish Crown hired workers who had previously been on welfare for as long as 15-20 years, workers with substance abuse problems, mental illness or workers who were recent immigrants to Denmark (Kirkelund & Kolbech, 2005; Knudsen & Brown, 2014). The Danish government subsidized their salary for the first 26 weeks and the local employment office provided a social worker to help recent employees make the transition

into the working world. Many employees of Danish Crown became involved in supporting the new workers, and teams would dedicate themselves to picking up new employees in the morning and drive them to work in order to help them make the transition from social welfare to regular work. The programs were successful, and most new recruits stayed with Danish Crown on regular contractual terms after the initial 26 week state subsidy ended (Kirkelund & Kolbech, 2005).

However, in the last decade or so employers have outsourced production to Germany and Poland where wages are much lower. Table 2 provides an overview of the hourly wages in Danish slaughterhouses and the number of workers employed there from 1997 – 2012.

----- Table 2 about here -----

In contrast to Germany, labor migration and subcontracting have not played a role in Danish slaughterhouses because of the structure of industrial relations in Denmark. The slaughterhouse workers' union has traditionally organized nearly 100 percent of all slaughterhouse workers and this is still the case today. This meant that slaughterhouse workers have had favorable position vis-à-vis employers if they threatened to strike, since there were no non-union factory alternatives to slaughtering animals in Denmark.

Industrial readjustment through industrial relations

Most Danish workers belong to unions and are covered by collective bargaining agreements reached through corporatist institutions. However, there is no minimum wage set by law and

collective agreements are not generally applicable. For a worker, the only way to be covered by a collective agreement, and thereby be entitled to a minimum wage, is to join a company that has signed a collective agreement. The union for meat production workers (Nærings- og Nydelsesmiddelforbundet, NNF) demands that all workers in Denmark receive the union-agreed wage (interview VII). If an employer in Denmark were to pay less than the agreed union wage, the union would organize a strike, which would likely force the employer in line, given that practically all slaughterhouse workers in Denmark are members of the union. The high organization rate for workers has traditionally been a core union strength but the option to move production to cheaper locations within the EU is fast eroding the union's traditional power. The NNF also works proactively to prevent social dumping (interview VII). In recent years, for example, the NNF has sought to organize Polish colleagues working in Denmark. NNF has hired a "bro-bygger" ("go-between"), Jurek Okipny, from Poland who has worked to make sure that Polish employees in Denmark join local NNF union chapters. This attempt has been a major success. Polish members of the NNF have stayed organized, and more workers have joined up. In addition, one of the new union representatives (tillidsrepræsentant) of the NNF is Polish.⁵

The employers' association (Slagteriernes Arbejdsgiverforening a member of DI) has long since asked that wages in Denmark be reduced. The employers' association argues that if workers will not agree to a wage reduction then employers will have no choice but to outsource production (Stilling, 2010).⁶ The employers' association believes that high wages are causing the deterioration of Danish competitiveness and that lowering wages *and* adjusting taxes is the way

⁵ "Fødevarerarbejdere til kongres Pres på Danish Crown", *Arbejderen*, 27.09.2012: 2.

⁶ See Irene Stilling, "Slagteriforhandlinger brudt sammen", *avisen.dk*, 17 March 2010. Slagteriernes arbejdsgiverforening.

forward.⁷ Both the leading Liberal Party (Venstre) and the Social Democratic Party have supported the creation of a foundation, financed through a wage reduction and employer funding. In 2013, the Minister for Industry, Henrik Sass Larsen (a Social Democrat), supported the proposal for a wage cut to finance an increased production of pigs (the union rep had endorsed the proposal). This position was also shared by former Minister for Employment, Claus Hjort Frederiksen, (Politiken, 2013). Furthermore, Danish politicians also support the creation of a minimum wage in Germany as a way to level the competitive playing field. Thus, when the member of the Liberal Party (Venstre), Mr Claus Hjort Frederiksen, was Minister for Employment in 2005, he argued that slaughterhouses in Germany should pay a minimum wage. “It is not right to just put some Polish workers in a bus and transport them to Germany for work. It is not fair competition to use Polish “kolonnearbejdere” (“slaughter troops”) in Germany.”⁸

Facing a high degree of job loss, the NNF has openly supported lowering taxes for the food industry as a way of reducing production costs. The NNF maintains that it is important to focus on fighting social dumping rather than focus on adjusting (= lowering) the Danish wages for slaughterhouse workers⁹. NNF suggests that adjusting the taxes imposed on the food industry would be a better solution than lowering Danish wages. The Danish Department of Food and Resource Economics (Fødevareøkonomisk Institut) has published a couple of reports that conclude that taxes – not wages – constitute a major problem for the struggling Danish agriculture and food production.¹⁰ The Danish workers’ main umbrella association (LO) also

⁷ See e.g. <http://publikationer.di.dk/di/926376461/>.

⁸ Tysk politi: Danish Crown bruger ulovlige polakker *Vejle Amts Folkeblad* | 22.06.2005.

⁹ NNF <http://www.nnf.dk/nyheder/2013/februar/hold-fokus-paa-social-dumping-ikke-loen/>

¹⁰ http://www.nnf.dk/nyheder/2012/januar/overdrevet-fokus-paa-de-danske-loenninger! and <http://www.nnf.dk/nyheder/2013/januar/erstat-loennedgang-med-afgiftsstop/>.

supports the solution of reducing taxes.¹¹ NNF's vice president, Jens Peter Bostrup, explains how the NNF sees social dumping in the slaughterhouse industry (own translation): "social dumping leads to a downward spiral in which jobs move to where employers pay the least possible. And then they disregard the effect on the employees. It is a race to the bottom, which only the EU can stop".

However, in the fall of 2013, the union, together with the employers' association, began to consider new approaches for improving productivity levels in Danish slaughterhouses (interview VII). The union proposed a wage cut of 6.4 percent (about DKK 25,000 before tax/year). The money saved on wages would be set aside in order to help establish a foundation that would finance the slaughtering of three million more pigs for the next four years. The intention was that those additional pigs would be slaughtered at the Danish Crown plant in Horsens in Denmark. Farmers would also invest in the foundation and thus both the union and the employers would finance productivity gains (Danish Crown is a cooperative owned by farmers). The NNF and union representatives supported the initiative.¹² However, the union members voted no to the proposal. 60 percent of the workers refused to accept a wage cut, and the proposal was subsequently dismissed. Danish Crown announced in the spring 2014 that the site on Bornholm would be closed unless production costs were reduced. Bornholm is a small island and therefore offers very limited alternative employment. The case quickly received major media attention. Management proposed that workers should accept to transfer 8 percent of their wages to an investment fund that would be used to introduce new technology and save jobs at the site. According to the proposal, there would be no return on investment. The local

¹¹ <http://www.nnf.dk/nyheder/2012/september/kongres-lo-stoette-til-kamp-mod-afgifter-og-social-dumping/>

¹² Front page "I Tyskland slagtes danske svin for den halve timeløn", *Politiken* | 18.09.2013.

government was committed to reducing production costs on utilities like water and electricity to sweeten the deal and save employment on the island. However, employees turned down the proposal because it contained no job guarantees and there was no return on investment. Disappointed with the outcome the Minister of Growth and Trade, Henrik Sass Larsen engaged in negotiations with NNF and DI (the Confederation of Danish Industry) to reach a solution. An agreement between NNF and DI was finally presented on June 3, 2014 consisting of the following key elements: 1) The agreement to save the site required a cut in production costs of 25 million DKK per year; 2) Management would commit to investing in new technology; 3) The agreement included the establishment of an Employee Investment Company (EIC) to provide funding for investments. The EIC is a new legal construction that receives tax exemptions for investments and makes it possible for workers to get a return on their investment. Investments can be between 5-10 percent of workers' income, with a cap of 35, 000 DKK/year. The investment should run at least three years and was intended to provide social partners with an alternative to pure wage reductions. Worker contributions are equivalent to 3.5 per cent of gross earnings and can come from the so called Free-Choice account (fritvalgskontoen) in the collective agreement which can be used for extra paid vacation, pension or wages. As such, workers are free to choose where they want the contributions to come from. Workers will get some money back once the goal of 25 million DKK in cost reductions per year has been reached – but no earlier than in 2017; 4). In addition to this agreement, the central government set aside 1.3 million DKK to be invested in the site. The agreement was subsequently supported by a 90 percent employee majority..

Preliminary conclusions from the Danish case

Even a strong and all-encompassing union, such as the NNF, cannot prevent the outsourcing of production. For the (few) remaining meat production workers in Denmark, wages and working conditions have remained attractive, in contrast to the situation for workers in Germany. However, the preservation of the Danish industrial relations system has come at a high cost as more than half the workers in the Danish slaughterhouses have lost their jobs. NNF has accepted real wage decline through the collective bargaining system. Moreover, the EIC agreement, which includes employee financial participation, constitutes a new approach for trade unions trying to save jobs. The fact that a Social Democratic government has endorsed the EIC could mean that more companies in other industries might also ask employees to finance investments.

IV Discussion and conclusion

Denmark's response to EU liberalization is to provide continued high levels of equality for all workers in the industry. However, Danish wages are more than three times as high as the German minimum wage. Equality in Denmark therefore comes at a high cost, as the meat production industry has lost most of its jobs, and despite attempts to make the industry more competitive the difference between the new German minimum wage and the high wages in Denmark is so significant that Danish producers are not likely to be able to compete if they maintain production in Denmark. In Germany, collective wage agreements in the meat production industry cover only 10 percent of the workers. Hence the collective agreements only apply to a small subset of the meat production workers. As Thelen (Thelen, 2014) has argued, in Germany industrial relations are characterized by dualization, which involves a zero-sum choice between defending the interests of labor market insiders or taking up the cause of labor market

outsiders. The German unions have chosen the first strategy. German labor market institutions are very conducive for job creation but at the cost of social protection. In the EU social protection is the responsibility of the host country. The German case illustrates that host country protection is contingent on domestic labor market institutions. If labor market institutions are weak, then social protection is also weak.

The meat production industry is an extreme example of intense cost competition and difficult working conditions. The Danish industry model was based on high wages and standards for all employees in the meat industry. A labor shortage was met by social initiatives to improve the supply of workers from within Denmark through social inclusion initiatives. The German industry model rested on a very different tradition. Groups of independent slaughterers moved from one small slaughterhouse to the next, which were usually run by local communities. When the industry was restructured, and private businesses moved in to replace the community-owned cooperatives, employers soon faced a labor shortage. Rather than upgrading work and pay, employers brought in contract workers from Eastern Europe, who as early as the 1980s were allowed to enter Germany following the signing of bilateral government agreements (JSK – does this info come about too abruptly?). When the Berlin Wall fell in 1989, these contracts continued for some time until the EU accession of Eastern Europe, combined with the adoption of the Posted Workers Directive, enabled a new pattern of labor migration. It is based on subcontractors in the new EU Member States who facilitate the posting of workers to German slaughterhouses. Subcontractors compete for contracts in slaughtering and are not bound by collective agreements in the meat industry or by the going industry rate. They also do not have to pay social security contributions, which in Germany amount to 40 percent of the gross wage. Therefore subcontractors have considerably lower labor costs compared to German employees.

The stark differences in wages and labor costs between Germany and Denmark put pressure on the Danish meat industry, which has triggered two responses. Firstly, big Danish meat producers, such as Danish Crown, relocated slaughtering to Germany. Secondly, a discussion emerged in Denmark about wage cuts. While the Danish union has generally been able to protect wages from major cuts, half the jobs in the meat industry were lost. In 2014, the union agreed to cut wages in return for Danish Crown agreeing to continuing production in its slaughterhouse facilities on the island of Bornholm.

Through relocation and concentration, Germany has now established itself as a major meat producer in the EU. Ironically, the opening of the Eastern European market, where meat production was primarily located in Hungary and Poland, did not lead to the outsourcing of German meat production to Eastern Europe. Instead, German business was able to combine its high technological standards and experience of the industry with a business model that relies on cheap labor from Eastern Europe. The Posted Workers Directive has facilitated an employment regime, which allows for different wage and employment tiers within the same production facility in a high-wage country. Posted workers who work for Eastern European subcontractors have minimal contact with German employment conditions: they pay no taxes or social insurance in Germany, nor are they part of the German co-determination systems. Even though they can be posted for several years to the same slaughterhouse, they are not part of the German employment regime.

The strength of Danish trade unions prevented Danish firms from establishing a similar regime, although social protection came at the expense of major job losses, and these jobs are not likely to return to Denmark again. Can we say that the Danish model of social protection is a success if most jobs in meat production are ultimately lost? Certainly the insiders benefit. We

can also see that unemployment is low in Denmark at around 5 percent (www.dst.dk). The re-employment rate of fired meat production workers in other industries is high. For example, Danish Crown laid off 632 workers in 2012 and two years later 95 percent of the workers had found a new job, retraining for a new profession or had entered into retirement.¹³ We were able to obtain data about reemployment from NNF. NNF graciously provided data from five Danish Crown plant closings including Danish Crown Esbjerg (closed in August 2012); Danish Crown Fårvang (closed in January 2014), Danish Crown Holstebro – Cows (closed in March 2012); Danish Crown Holstebro – Pigs (closed in 2009) and Danish Crown Skjern (closed in June 2014). The closing of a Danish Crown production facility takes place in a step-wise fashion and hence workers have some time to adjust and to look for other work, enter an education program, plan for retirement, etc. NNF provided data for the number of 1,675 workers who were employed in these five plants on January 2009 (Fårvang), January 2012 (Holstebro – Cows) and January 2014 (Esbjerg, Holstebro – Pigs and Skjern) and then offered information of their subsequent career choice as of 18 December, 2014. The majority (36%) had found new employment outside the broader food industry while 35% had found employment elsewhere in the food industry working for example for Danish Crown in its new facility in Holsted or in dairy giant Arla. 14% were pursuing a career path including entering an education program and 9 % had entered retirement (including early retirement). Only 6% of the dismissed workers remained unemployed. Table 3 illustrates the career paths of the 1,675 dismissed Danish Crown workers.

----- Table 3 about here -----

¹³ <http://arbejderen.dk/fagligt/fyrede-slagteriarbejdere-har-faet-job>.

In contrast German trade unions were not in a position to stop slaughterhouses from outsourcing their jobs to subcontractors. Access to skilled workers from Eastern Europe gave slaughterhouses a cheaper alternative to making jobs more attractive. Table 4 provides an overview of elements of deinstitutionalization as well as of institutional readjustment in the German and Danish labor market models.

----- Table 4 about here -----

The restructuring of the European meat industry can be seen as a prime example of how a European market, combined with the opportunity to post workers, enables cost competition, based on institutional arbitrage. Subcontractors from Eastern Europe have major cost advantages due to a) lower wages, because Eastern European workers compare their wages to those in their home countries, b) lower indirect labor costs, as social insurance in Germany is very high and c) labor flexibility, as Eastern European workers have no opportunity for collective action or representation. Abusive practices of posted workers are common and have triggered the adoption of an enforcement directive by the EU's Council of Ministers (EU Commission 2014 2014/67/EU). Most importantly, the enforcement directive makes key standards of host countries mandatory for posted workers and a provision on general liability for subcontractors. However, the proposed changes may fall short from changing abusive practices, as these practices entail many advantages for businesses and countries alike. Cost competition through posted workers and large welfare disparities between European Member States put welfare states under substantial pressure: It is important to remember that it is not just Danish jobs that have been

relocated to Germany. French and Belgian jobs are also moving to Germany.¹⁴ The Danish case provides a role model for firms regarding how to exploit the pool of migrant labor from Eastern Europe. Often the relocation to Germany from Denmark, France and Belgium takes place in the form of subcontracting. Migrant workers who are engaged in subcontracting can be employed in almost all industries, and this approach is also being used in the care industry (in particular in care for the elderly), hotel and restaurants (cleaning) and the construction industry.

Institutional arbitrage is facilitated by the use of subcontracting and the lack of enforcement of national labor standards within Member States. The example of Denmark shows that these mechanisms are institutionally defined and that the increasing use of subcontracting can be avoided. It is, however, increasingly difficult to avoid as long as the cost incentive for companies for using subcontracting remains high.

As the comparison of Denmark and Germany shows, the regulation of the scope of institutional arbitrage within the EU, and the conditions under which it takes place, is under the control of the Member States. While liberalizing EU initiatives, such as the Posted Workers Directive, have introduced tools for cost competition, Member States can choose whether they exploit them or not. Denmark has an institutional context of high levels of solidarity and has only liberalized its welfare system at the fringes, while Germany has moved much more towards dualization (Hassel, 2014; Thelen, 2014). Our analysis implies that these different institutional configurations attract different kinds of production models: low cost slaughtering has found an institutional niche in the German institutions that allow for large pools of labor market outsiders and migrant workers, whereas Denmark is likely to lose this economic activity.

14 BBC News: Belgium protests over German low pay in EU complaint. By Laurence Peter BBC News. 9 April 2013 <http://www.bbc.com/news/world-europe-22080862>.

More importantly however, the analysis of the regulation of migrant workers in the meat industry in Germany and Denmark shows that, even in the context of EU liberalization, national regulations and institutions trump supranational liberalization. Danish and German social partners and governments must decide jointly how to employ migrant workers in their industries. The German government, if it decided to do so, could improve the oversight of subcontracting, limit its use and facilitate the level of corporate restructuring supervision through works councils and trade unions. That the German government decided to turn a blind eye to the conditions of posted workers is not the fault of supranational liberalization but a strategic decision to position itself as a major meat producer within the EU. Rather than a clash of capitalism, this describes a process of economic and institutional specialization in a wider economic space. European economic integration fosters competition between national institutional systems. The result is specialization, not convergence, towards a liberal model. Member States use their national institutions to improve comparative advantages. In that sense, the political economy of the EU shows rich national variation on how to embrace liberalization policies from the EU.

- **Interview List**

Interview I – Management Danish Crown

Interview II – Trade union representative Lower Saxony

Interview III – Employers’ organization representative Lower Saxony

Interview IV – Ministry of Labour Lower Saxony

Interview V – Vion AG Management

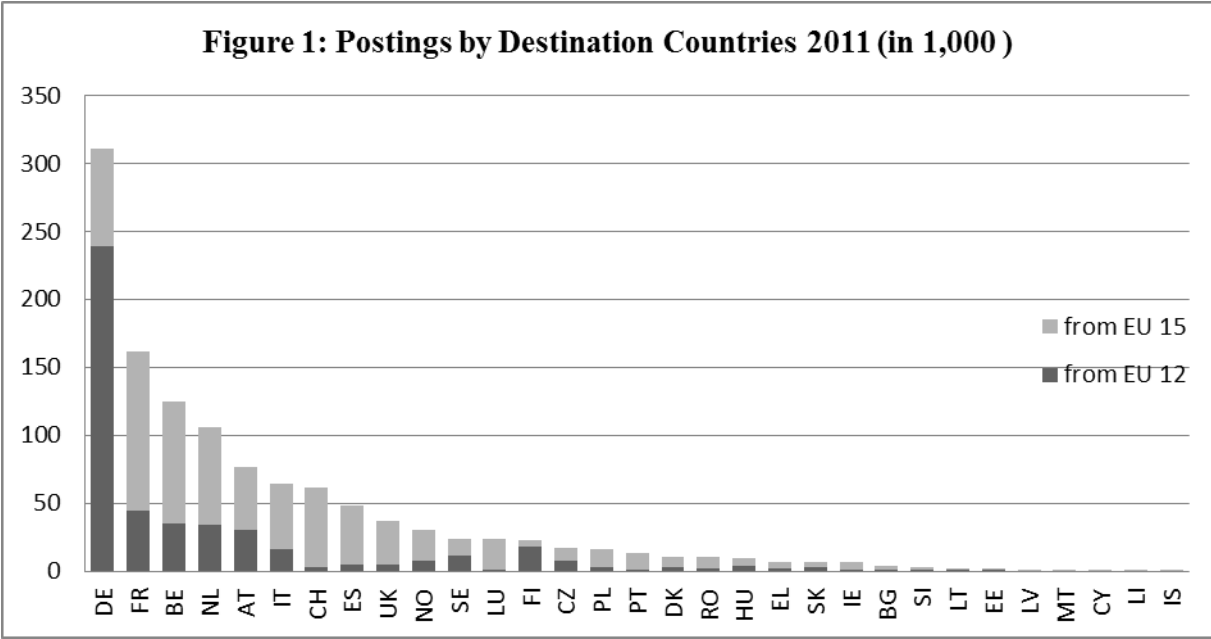
Interview VI – National Employers’ organization Germany

Interview VII – Danish slaughterhouse workers union (Nærings- og Nydelsesforbundet)

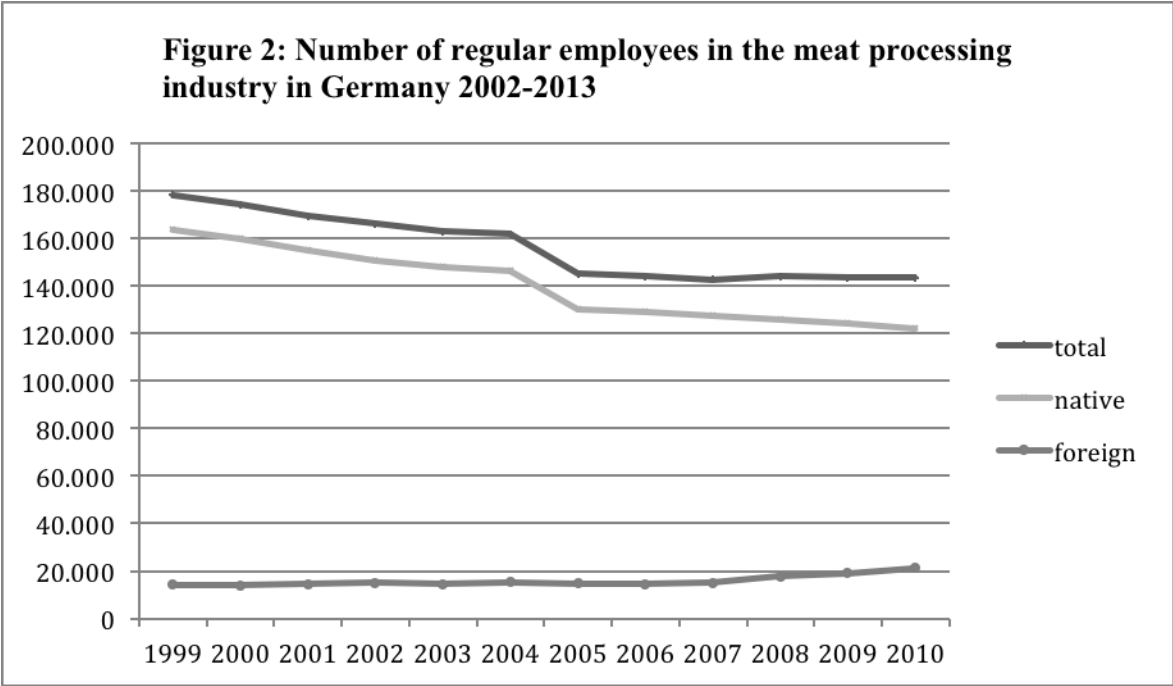
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Source: EU Commission (2012). Posting of workers in the European Union and EFTA countries: Report on A1 portable documents issued in 2010 and 2011, p. 12. Based on administrative data from EU Member States.



Source: Bundesagentur für Arbeit: Beschäftigungsstatistik: Sozialversicherungspflichtig Beschäftigte nach Wirtschaftszweigen.

Table 1: Foreigners as share of total population

	total	EU	Third State nationals
EU	6,6	2,5	4,1
Belgium	10,6	6,8	3,8
Bulgaria	0,5	0,1	0,4
Czech Republic	4	1,3	2,7
Denmark	6,2	2,3	3,9
Germany	8,8	3,2	5,6
Estonia	15,7	1	14,7
Ireland	8,1	6,5	1,6
Greece	8,5	1,4	7,1
Spain	12,3	5	7,3
France	5,9	2,1	3,8
Italy	7,5	2,2	5,3
Cyprus	20	12,5	7,5
Latvia	17	0,4	16,6
Lithuania	1	0,1	0,9
Luxembourg	43,1	37,2	5,9
Hungary	2,1	1,3	0,8
Malta	4,9	2,5	2,4
Netherlands	4	2	2
Austria	10,8	4,2	6,6
Poland	0,1	0	0,1
Portugal	4,2	1	3,2
Slovenia	4	0,3	3,7
Slovakia	1,3	0,8	0,5
Finland	3,1	1,1	2
Sweden	6,6	2,9	3,7
UK	7,2	3,3	3,9

Source: http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Total_population_and_resident_population_by_group_of_citizenship,_2011-de.png&filetimestamp=20130722102003.

Table 2. Overview of hourly wages and employment in Danish slaughterhouses 1997-2012

Year	Hourly wage DKK	Employment
1997	168	14,300
1998	177	14,200
1999	182	14,400
2000	188	13,700
2001	197	13,900
2002	205	14,300
2003	213	13,900
2004	217	13,000
2005	223	12,000
2006	227	10,900
2007	240	10,700
2008	251	10,000
2009	255	8,600
2010	256	7,800
2011	258	7,510
2012	259	7,053

Source: Landbrug & Fødevarer

https://www.lf.dk/Tal_og_Analyser/Aarstatistikker/Statistik_svin/Tidligere_statistikker.aspx.

Table 3 Dismissed Danish Crown workers (1,675) and their subsequent career paths

Category of activity	Total number of workers	Percentage
New employment in food sector (remain in NNF union)	583	35
New employment (not in the meat industry)	603	36
Other (including education)	232	14
Retirement (including early retirement)	158	9
Unemployed	93	6
Other	6	0
Total	1675	100

Table 4. Elements of deinstitutionalization and readjustment in Germany and Denmark

	Elements of de-institutionalization	Elements of institutional readjustment
Germany	Labor supply shortage solved through posted workers	Protection of labor market insiders only Adoption of minimum wage
Denmark	Outsourcing to Germany to take advantage of posted workers and their low wages Bornholm model (wage reduction)	Labor supply shortage solved through social inclusion Social partnerships ensured 100% coverage Flexicurity facilitates reemployment Bornholm model (institutional adjustment)