

Chapter 4

The Domestic Regulation of Transnational Labour Markets: EU Enlargement and the Politics of Labour Migration in Switzerland and Ireland

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4.1 Introduction

For a century the dynamics of modern society was governed by a double movement: the market expanded continuously but this movement was met by a countermovement checking its expansion in definite directions. [...] Accordingly, the countermove consisted in checking the action of the market in respect to the factors of production, labour, and land (Polanyi 1957: 130–1).

The entry of 10 new eastern countries in the European Union on 1 May 2004 raised several debates in Europe regarding the maintenance of national wage and labour standards in the EU 15. The significant wage differentials between ‘old’ and ‘new’ member states were believed to potentially give rise to important migration flows that individual member states would not be able to control if the rules of the Single Market, and especially freedom of movement, were directly extended to the EU 10. Among ‘old’ member states, many governments were especially afraid that Eastern European workers, once they would have gained access to the Single European Market and its four freedoms, would move massively to more affluent countries and exert great pressure on wages, labour standards and welfare states (Boeri and Brücker 2000; Kvist 2004). This was believed to be possible either through independent migration or through the use of posted workers from low-wage countries (Menz 2005). The fear of the ‘Polish plumber’ raised during the ratification of the European Constitution in France in 2005 mainly revolved around this latter issue.

The enlargement and increasing integration of labour markets in the EU can be considered as an important instance of economic transnationalization, defined as a process which ‘makes various transactions [...] easier or less expensive across national borders’ (European Science Foundation 2006). Along with other measures of ‘negative integration’ in the EU, that is, measures that foster an ever closer integration of markets for goods, labour, services and capital (Scharpf 1999), this process is believed to severely restrict the ability of states or organized interests to

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keep a grip on their national economies. This is especially true in countries where nonmarket arrangements (coordinated wage bargaining, collective labour agreements) played an important role in the governance of labour markets, since these arrangements conflict with the pro-market orientation of European integration. This chapter is concerned with how transnationalization in this domain interacts with such nonmarket arrangements.

This chapter tackles transnationalization both as a process to be explained and as an explanatory factor. First, it analyses the domestic politics of labour market opening, and then of labour market re-regulation after the 2004 enlargement of the EU in two small open economies, Switzerland and the Republic of Ireland. This process is understood as a form of economic transnationalization to be explained by domestic political factors (institutions and power relationships). Secondly, it investigates the impact of transnational influences on this political process with a comparative research design. After outlining the conception of transnationalization used, the aim of the analysis and some elements of methodology, this chapter sets out the main stakes of labour market transnationalization in the EU framework. Then, it provides evidence on the political process of transnationalization and re-regulation aimed at preventing wage dumping in Switzerland and Ireland with a focus on institutional and power determinants of policy outcomes. I conclude with some remarks on patterns of market re-regulation and transnational influences.

4.2 Research Question

At a general level, two main research questions are addressed in this chapter. On the one hand, what are the political determinants of labour market opening and re-regulation in small open economies? That is, which domestic actors, resources and institutions shape patterns of economic transnationalization in this context (transnationalization as a dependent variable)? On the other hand, how does transnationalization affect patterns of labour market opening and re-regulation (transnationalization as an independent variable)? Methodologically, this second question is tackled by comparing two countries displaying different levels of transnationalization of the economy and varying power relationships with regard to transnational and national actors.

As to the first aspect, transnationalization is essentially related to the process of opening of labour markets in the framework of the EU Single Market, which fosters the creation of an open space of circulation of labour and services and most importantly a space where both transnational and national modes of regulation coexist. Here transnationalization is used as the creation of markets across national boundaries. Indeed, the establishment of the rules of the Single Market in this domain has made obsolete a great deal of domestic regulations, thereby opening a *regulatory gap* in certain domains of national competence and causing an entanglement of regulatory regimes, for instance regarding the rules to which foreign companies employing their own workers can be submitted to in one member state (e.g. collectively agreed pay rates and social provisions that are not directly

set in the law). Hence, transnationalization in this domain can best be conceptualized as a transnational system of governance where EU rules interact with domestic regulations. On the one hand, the rules of the Single Market impose rules of nondiscrimination so that, for instance, companies based in a member state can provide services and employ their workers in another member state without the host country being able to restrict this access to their domestic market. On the other hand, states have the competence to re-regulate their labour market as long as they do not contravene to EU rules of competition.

As to the second aspect, this chapter also deals with transnational influences on the politics of labour market opening and on interactions between state and nonstate actors across national boundaries (Djelic and Sahlin-Andersson 2006; Orenstein and Schmitz 2006). In this respect, the conception of transnationalization used is similar to that employed by Langbein, Vliegenthart, Drahokoupil and others in this volume. More precisely, it compares a country where these transnational influences and actors (mainly multinational companies and foreign direct investment) are weak (Switzerland) with another where transnational influences are strong (Ireland), and it investigates the role of these differences on policy outputs. Here, empirical evidence will show, among others, the ways and means by which transnational actors, most importantly the FDI community in the Irish context, have influenced patterns of opening and re-regulation in a market-friendly way, whereas a more protectionist coalition in Switzerland has fostered a more stringent re-regulatory response.

4.3 Scientific and Social Significance of the Research

Among the processes of transnationalization that may impact on national economies, labour mobility is certainly that which may affect most closely people's lives. Fears related to immigration and its possible effect on wages and living conditions have been among the most sensitive issues of politics in many countries (Cornelius and Rosenblum 2005). European integration and EU enlargement in particular are important in this respect because they have marked a qualitative shift in the capacity of nation states to regulate labour migration flows in the EU. Indeed, whereas the capacity to determine who may or may not enter their national territory has been at the core of national sovereignty of nation states, the emergence of the EU Single Market and its four freedoms, which by essence transcend national boundaries, has severely challenged this capacity: member states are no longer allowed to restrict the entry of nationals of another member state nor companies based in another member state that may employ its workers in another country. As will be shown below, EU enlargement has enhanced concerns in this debate with regard to wage and employment standards in the EU 15.

4.4 Case Selection and Methods

The case selection used here is aimed at discerning general patterns regarding mechanisms of labour market transnationalization in small European states (similarities),

as well as checking for the impact of transnational factors in this process (differences). This section outlines the logic of case selection, provides some background information on the selected cases and outlines the data and methodology used.

Switzerland and the Republic of Ireland display a set of similarities that make them cases in point to investigate issues of transnationalization. Switzerland and Ireland are among the wealthiest countries in Europe, which makes them privileged destinations for labour migration. Both are small, open economies deeply embedded in world markets. However, different forms of ‘transnationalization’ of the economy in both countries allow to check for the impact of transnational factors, here mainly FDI companies. Hence, in order to investigate the impact of transnational actors on processes of opening and re-regulation, I compare one country where these transnational actors are strong, the Republic of Ireland, with another where economic capacity has been built essentially on endogenous factors, Switzerland.

4.4.1 Similarities: Two Small Liberal Corporatist Economies

Switzerland, despite not being a member of the EU, has established a set of bilateral agreements with the EU in many policy areas, notably on the free movement of workers, which make it at least functionally a quasi-member in this set of areas. Switzerland and Ireland are both small, affluent – this being more recent when it comes to Ireland – open economies which have developed a specific form of labour market regulation drawing upon the involvement of social partners in policymaking while maintaining a low level of public regulation of the economy (Hardiman 2002; Bonoli and Mach 2000). They have a lean welfare state, thereby distancing themselves significantly from ‘Nordic’ corporatist countries. In this regard, and despite somewhat different institutional forms of policy concertation (social pacts vs. issue-specific concertation), both can be considered as ‘market-liberal’ variants of corporatism since corporatist policy concertation between social partners coexists with a strong market-oriented model of regulation of the economy (lean public regulation of the labour market, low level of coverage of collective agreements, lean welfare state).¹

These corporatist features are believed to date back from the early twentieth century in Switzerland (since the social peace agreements of the interwar period), while they have emerged much more recently in the Republic of Ireland with the rise of the ‘Celtic Tiger’ in the 1990s. In Switzerland, the emergence of concerted strategies of policymaking was explained by the strong dependence of the economy on world markets: external interdependence is believed to have fostered domestic compromises mainly elaborated in the preparliamentary arena (Katzenstein 1985).

¹ Ireland, along with the UK and the USA, is traditionally classified among liberal market economies. However, its patterns of economic governance diverge significantly from these countries in the sense that coordinated economic governance (centralized wage bargaining, institutionalized involvement of social partners in policymaking), such as that encountered in other small European states, prevails (Hardiman 2002, 2006).

Ireland, for its part, shared many features of the Anglo-Saxon model, but adopted a significantly different economic strategy from its bigger neighbour during the 1980s, opting for the involvement of employers and unions both in pay arrangements and in policymaking rather than a unilateral strategy by governments to achieve international competitiveness. In contrast to Switzerland, compromises have been elaborated in ‘social pacts’ struck between the government and social partners and including a wide variety of issues. In this respect, Ireland, along with the Netherlands, is often presented as the flagship of ‘competitive’ or ‘supply-side’ corporatism. The aim here will be to assess the interaction and resilience of these corporatist modes of coordination in the face of transnationalization in two liberal corporatist countries.

4.4.2 Differences: Different Levels of Transnational Influences

Despite these similarities with regard to patterns of coordination between labour and capital, Switzerland and the Republic of Ireland also display a set of differences that allow to check for the impact of transnationalization in a comparative research design. In this regard, transnationalization as an independent variable is essentially operationalized as the weight of FDI and multinational companies in the economic structure of each country, the aim being to see to what extent these actors have influenced patterns of labour market opening and re-regulation. Hence, both countries also display different patterns of transnationalization: Ireland has relied strongly on economic openness and attracting foreign investment, whereas Switzerland has relied on a policy of ‘selective protectionism’ trying to reconcile the interests of the protected domestic economy and those of the endogenous export industry. As will be shown below, these diverging characteristics will have a significant impact on patterns of opening and re-regulation.

Hence, whereas economic development in Switzerland from the nineteenth century onwards has relied on the development of competitive export industries specializing in high-value-added goods, economic success in Ireland is much more recent and has drawn upon a different pattern of industrialization. After abandoning unsuccessful attempts to protect local industries through protectionism in the 1950s, from the 1970s onwards the Irish government has deployed an explicit strategy of attracting FDI, which from the 1990s onwards has resulted in the settlement of a great number of foreign, mainly US-based, companies. Indeed, in terms of FDI, Ireland outweighed any other country in Europe, FDI accounting for 129% of GDP in 2002, with the foreign-owned sector accounting for about 90% of total exports in 1999 (Smith 2005: 67) (Figure 4.1).

The strong reliance of the Irish economy on foreign-based investment has given a significant political power to US companies, which are very influential among employer organizations in Ireland. By comparing this much more ‘transnationalized’ pattern of economic ownership (Ireland) with a more domestic one in Switzerland, the empirical section will aim at checking if and how these factors impact on patterns of opening and re-regulation. More precise hypotheses about this impact is outlined below.

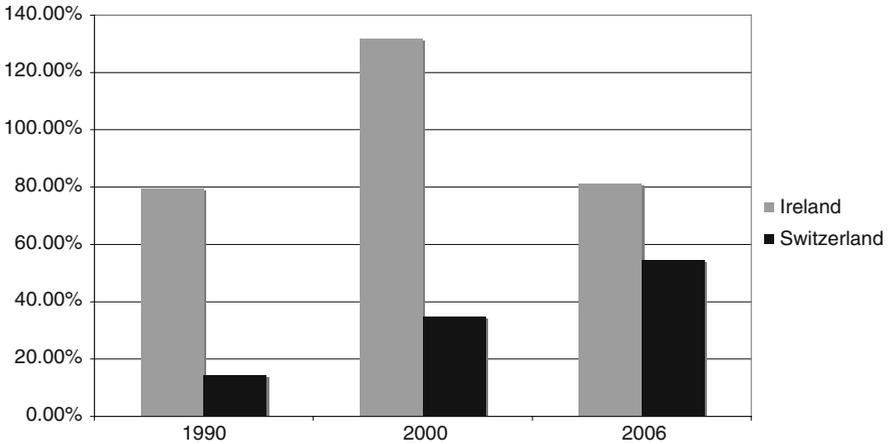


Figure 4.1 FDI stocks as a percentage of GDP
Source: UNCTAD, World investment report 2007

4.4.3 Methods

The analysis draws upon two qualitative case studies of processes of labour market opening and re-regulation. It essentially relies on the method of process-tracing, which aims to ‘identify the intervening causal process – the causal chain and causal mechanisms – between an independent variable (or variables) and the outcome of the dependent variable’ (George and Bennett 2005: 206). It draws upon the analysis of official documents, newspaper articles as well as 17 semi-structured interviews with unions, employers, government officials and MPs conducted by the author in Switzerland and Ireland between March 2007 and February 2008 (see Appendix 4.1).

4.5 Labour Market Transnationalization and EU Enlargement

As argued by Scharpf (1999) and others, although European integration has probably constituted the most ambitious project of international *political* integration ever, the most powerful dynamic leading to its development has been essentially *economic*. Due to a specific institutional configuration (supranational vs. intergovernmental decision-making), measures aimed at creating and extending markets have prevailed over measures or re-regulation or re-distribution through state action, the latter having remained essentially in the domestic realm. Hence, EU policies in the domains of welfare, labour standards, health or migration have been ‘accompanying and enhancing, but never obstructing or derailing the process of market-building’ (Menz 2002: 723). Since the Treaty of Rome and throughout the development of the *Acquis Communautaire*, the main purpose of the process of European integration has been to achieve the creation of a unified market for goods, capital and, most notably here, for services and labour. In these last two domains, the

evolution of European integration can be best described by a concomitant process of 'top-down liberalisation and bottom-up national re-regulation' (Menz 2002, 2005). Hence, the main stakes in this domain have lain in the tensions between extending the freedom to work and reside anywhere in the EU and the protection by member states of their own labour markets and social standards (National Economic and Social Council 2006: 71).

Free movement of workers in the EU framework comprises two intertwined elements which represent different challenges for domestic economic governance and different sets of incentives for domestic employers. While opening labour markets, both these aspects enter into account for actors' preferences in terms of opening and re-regulation. First, *individual migration* is facilitated since states can no longer restrict entry into their national territory to citizens of another member state. At the level of economic governance, this affects only the supply of labour but in principle does not challenge domestic regulatory frameworks of labour markets: if immigrants are residents in a state, they are submitted, be it as employees or as independent workers, to the usual rules of the country. However, whereas existing immigration policies generally allowed public authorities to check for conditions of employment before granting a work permit, free movement no longer allows this possibility, and prior control is no longer possible. For domestic business, this allows to increase the supply of labour and moderate wage growth and is therefore perceived as only beneficial.

Secondly, *temporary migration for the purpose of service provision*, which for instance happens if a company based in one member state is contracted to provide a service in another member state, is more ambiguous both for labour market regulation and for incentives for employers. On the one hand, it is problematic because of the uncertainty regarding rules applying to wages and social provisions for workers that this company may post in another country. Should rules of the home or the host country of the company apply? This was the main object of the first draft proposal of the services directive (so-called Bolkestein Directive), which could have had important effects in countries with a high level of regulation: if foreign companies can enter and provide services without complying with local norms and standards, local companies would have no incentives to comply with them either, thereby leading to a 'race to the bottom' in this domain² (Menz 2005). On the other hand, it is also more ambiguous with regard to the interests of domestic business: the posting of workers by foreign companies can be perceived as an unwelcome form of competition by

² A high-profile example of this issue was the case of Laval, a Latvian company contracted to renovate a school in Sweden. Laval posted its Latvian workers to Sweden and reportedly paid them 40% less than the terms set by the collective agreement for the construction sector in Sweden. Concerned with issues of social dumping, Swedish trade unions prompted Laval to comply with the local terms and conditions of employment laid down in the collective agreement, which was refused by Laval. Following industrial action led by trade unions, the case ended up in the European court of Justice which ruled that Swedish unions had conducted illegal action that distorted competition in the EU, thereby causing concerns with regard to social dumping (EIRO 2008).

domestic companies that are active in sectors where posting is possible (construction or other sectors in services). By contrast, for businesses in sectors where posting is less likely (manufacturing), hiring cheaper foreign companies which post their workers to provide secondary services (for instance, construction work or computer maintenance) can be a way to bring costs down.

Whereas internal migration flows had been fairly limited among the EU 15 due to fairly converging living standards, the 2004 enlargement has significantly modified the socioeconomic landscape of the EU in terms of wage differentials, incentives for migration and the posting of workers. Indeed, the number of potential immigrants living in low-wage countries has increased dramatically as a result of enlargement. Besides, countries that were hitherto labour exporters (countries of Southern Europe plus Ireland) have now become potential labour importers, given that wage levels in the EU 10 were much lower than in most other Western European countries. Indeed, at the time of accession, GDP per capita in purchasing power standards (pps) in the EU 25 varied by one to five.³ In the wake of the 2004 EU enlargement, several member states raised concerns about potential migration flows stemming from accession states. To respond to these concerns, the accession treaty provided for transitional arrangements for the free movement of labour, which would allow countries that wished to do so to postpone the full opening of their labour markets for a maximum period of 7 years post-accession (Doyle et al. 2006: 17–18; Gajewska 2006). This 7-year transitional period was divided into three stages after which community rules regarding free movement had to be applied.

During the pre-accession debates, projections commissioned by the EU foresaw a relatively limited increase in immigration from ‘new’ to ‘old’ member states. Migration flows were estimated at around 300,000 people per year in the first 5 years post-accession, then declining steadily (Boeri and Brücker 2000). At the level of individual member states, the increase in immigration would therefore be fairly weak, ranging for instance from 3,400 to 12,600 for 2005 in Ireland and the UK, respectively (Doyle et al. 2006: 17). However, these projections were based on the assumption that all EU members would apply community rules, that is, full free movement from the outset, which did not prove to be the case. Indeed, most states chose to take advantage of transitional periods and apply different restriction measures, giving rise to four types of transitional arrangements: no restrictions (chosen by Sweden, Ireland and the UK), quotas (Portugal and Italy), a 2-year transitional period (Belgium, Denmark, Finland, Greece, Luxembourg, the Netherlands and Spain), a transitional period of about 5 years (France) and the longest possible period of 7 or more years (Austria and Germany) (Gajewska 2006: 380). Switzerland, which is not a member of the EU but has concluded a bilateral agreement on the free movement of workers with it, aligned with Germany and Austria on a transitional period of 7 years.

³ Whereas GDP pps accounted for 139% and 130% of the EU 25 average in Ireland and Switzerland, respectively, it accounted for 47% and 43% in Poland and Latvia (Eurostat 2005).

In line with the mechanisms described above, member states remained free to regulate their labour market to prevent wage dumping or the deterioration of work and wage conditions that could be caused by quick mass immigration, as long as these did not contravene to EU rules. Some countries also introduced measures related to the issue of ‘social tourism’ in order to prevent possible increases in social expenses that could result from enlargement. This holds not only for countries which decided to open their labour market right from the outset, but also for those who opted for transitional measures. At the domestic level, many of them had to decide whether they would set up new rules to cope with enlargement and prevent risks of social and wage dumping, and if so, what they would consist of. In this context, it is argued that domestic coalitions and institutions are the determining factors in explaining national response strategies.

4.5.1 Domestic Response Strategies: Preferences, Power and Institutional Determinants

The empirical section of this chapter is concerned with domestic response strategies, understood as policy measures aimed at *opening* the labour market for workers of new EU countries (pace of opening, transitional measures), on the one hand, and re-regulating it (through labour law, collective labour agreements or compliance mechanisms with local employment standards) in order to prevent risks of social or wage dumping that may result from quick mass immigration, on the other. I do not argue that immigration necessarily causes wage dumping, but one can consider that incentives for the employment of workers below local standards have increased with enlargement. What matters here is the political construction of preferences in this domain, and concerns about this have been raised, most notably by trade unions, in many countries. For instance, response strategies can be *closed* or *open* with regard to pace of opening and *protectionist* or *liberal* with regard to patterns of re-regulation. Re-regulation measures can be put in place in the *regulatory framework itself* (establishment of minimal wages where they do not exist, regulatory measures to make wages below collectively agreed rates not possible and measures to make foreign companies comply with collectively agreed pay rates) or increased resources devoted to *compliance* with this regulatory framework (e.g. labour inspectors or agencies devoted to labour market control).

I argue that the main explanatory factors for domestic response strategies are domestic preferences, power configurations within business and between business and labour as well as institutional settings. On the one hand, strong transnational actors and export-oriented business can be believed to have an interest in open and liberal response strategies, whereas domestic businesses, especially those in highly regulated sectors, may have an interest in protectionist response strategies. As argued above, transnational and export-oriented business is already exposed to foreign competition on international markets and has in principle little to fear from foreign competition that may be caused by the posting of workers. On the

Table 4.1 Preferences with regard to free movement

	Individual migration	Worker posting
Protected business	Beneficial	Threat, increased competition
Export/transnational business	Beneficial	Beneficial: costs brought down
Trade unions	Favourable, but risks of exploitation	Threat on wages and labour standards if no compliance with regulatory framework

contrary, increased competition with regard to certain outsourced services (like computer maintenance) may allow to bring down costs. For domestic business oriented towards internal markets, whereas individual migration may be perceived as beneficial, the posting of workers by foreign companies is essentially a threat, in the sense that it represents increased competition on the domestic front (Table 4.1).

Power relationships between domestic protected business and export-oriented or transnational business are central in this respect. Whereas domestic business can rely on close ties with government and parliament to advance their agenda, export-oriented business can rely on their exit power to exert pressure on governments. Hence, the political power of transnational business mainly lies in its mobility. More easily than domestic business, transnational capital can threaten governments to leave for more favourable economic environments if favourable economic policies and regulatory frameworks are not put in place (Milner and Keohane 1996). For their part, trade unions may be more interested in re-regulatory measures and strengthening compliance mechanisms than in closing labour markets: ideological commitments prevent trade union elites from opposing migration. Hence, I argue that countries where transnational actors are strong will produce more liberal and open response strategies, whereas countries where trade unions or small businesses are stronger will produce more protectionist response strategies.

However, structural power relationships alone are not the only determinant of policy outcomes. One can argue that political, but also economic, interactions do not unfold in a vacuum and that *institutions* play an important role in re-regulation outcomes. Generally speaking, institutions can be understood as legal or administrative structures (laws, state structures, etc.) and rules (formal or informal) which stabilize a distribution of rights, power, costs and benefits (Hall and Taylor 1996; Immergut 1997). Institutionalized arenas where actors can oppose or propose policy options can be believed to be factors of utmost importance in determining policy outcomes. In the framework of this chapter, two main types of institutions are considered in the two countries under scrutiny. First, *policy veto points*: referendum power in the case of Switzerland and social concertation arenas for wage coordination in Ireland. In both countries, the mobilization of these veto points by trade unions was used to put labour market control on the agenda, taking advantage of interdependency factors vis-à-vis employers. Second, *labour market institutions*, which essentially refer to the rules governing collective bargaining and employment regulation in both countries. Most importantly, of primary interest here are the rules whereby collective

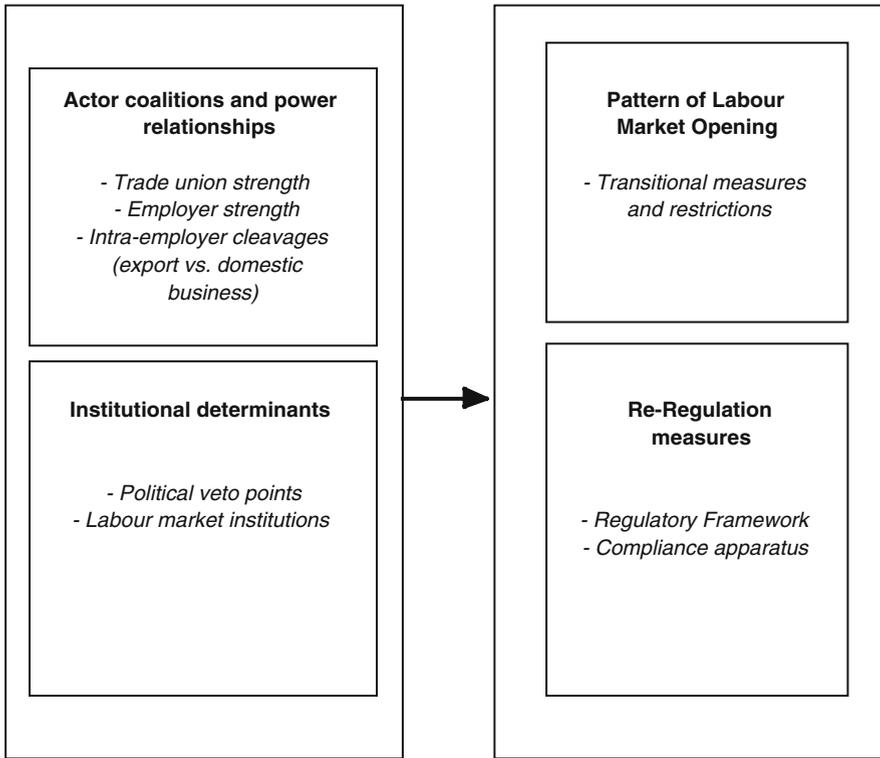


Figure 4.2 Causal model

bargaining outcomes can be extended outside bargaining parties and made legally binding (Figure 4.2).

4.6 Domestic Response Strategies to Labour Market Transnationalization in Switzerland and Ireland

This section outlines the determining power and institutional determinants of policy outputs in both countries, as well as the process of labour market opening and re-regulation. With regard to re-regulation patterns, it must be acknowledged that Switzerland proceeded to ex-ante re-regulation prior to opening its labour market, whereas Ireland proceeded to ex-post re-regulation after opening.

4.6.1 Switzerland: Re-regulation and Cross-class Coalitions

Traditionally, economic governance in Switzerland has been structured by a liberal/conservative coalition uniting internationally competitive industries (chemicals,

metal manufacturing, etc.) and domestic small businesses (construction and crafts). The trade union movement, which has suffered from chronic organizational weakness in comparison with employers, has been involved in policymaking as a ‘junior partner’. As a result, patterns of economic policymaking can be characterized by a ‘selective protectionist’ model combining free market policies necessary to the expansion of export industries in world markets, on the one hand, and forms of informal protection (cartels, private arrangements between firms) aimed at protecting domestic markets, on the other (Bonoli and Mach 2000). Labour market regulation is characterized by little public regulation (no legal minimum wage, light-touch labour law) and strongly relies on the institution of sectoral collective labour agreements which regulate wages, working time and many other aspects of employment contracts (Fluder and Hotz-Hart 1998). Collective bargaining is most strongly institutionalized at the sectoral level, with mechanisms of extension allowing sectoral agreements to be extended to whole economic sectors and made legally binding if they gather more than 50% of employees in 50% of companies in one sector. This is the case in a few sectors, most notably construction.

The involvement of trade unions – at the cost of minority participation with regard to employers and strong moderation regarding their claims – is especially notable since it did not directly correspond to their organizational strength (Crouch 1993). In this context, the existence of direct democratic institutions appears as an important factor of empowerment of unions that has compensated to some extent their organizational weakness. Indeed, the Swiss political system subjects any decision made in parliament to optional referendum if political groups dissatisfied with it are able to gather 50,000 signatures (Papadopoulos 2001). If those are gathered, the decision is subjected to a vote by citizens. This specific institutional setting is believed to have fostered the involvement of potential veto players, and here especially unions, in policymaking *before* bills were handled by the parliament, in a wide variety of so-called preparliamentary ‘expert committees’ where social partners were represented. In policies where they constituted a potential veto player, it was more rational for governments to integrate their claims in advance in order to avoid referendum battles, which always include a great deal of uncertainty for the government. This factor will play an important role in the politics of labour market opening in Switzerland.

The opening of the Swiss labour market for workers of the EU 10 is set in the continuity of a progressive ‘Europeanization’ of Swiss immigration policy despite nonmembership in the EU (Fischer et al. 2002; Afonso 2007). In 2000, the Swiss government concluded a bilateral agreement on the free movement of workers with the first 15 EU countries as part of a first package of seven bilateral agreements.⁴ On the EU’s request, Switzerland had to open its labour market for EU workers and abolish its immigration system based on yearly immigration quotas and work permits. Most importantly, this system allowed the bureaucracy to carry through prior

⁴ Besides free movement of workers, the other bilaterals agreements concerned road transport, technical barriers to trade, public procurement markets, agriculture, civil aviation and research. See Dupont and Sciarini (2006).

control of work and employment conditions of workers for whom a work permit was requested (Afonso 2007).

Since the entry into force of these bilateral agreements between Switzerland and the EU 15 was also subjected to optional referendum, trade unions asked for 'flanking' measures that were supposed to prevent wage dumping in order to gain their support (Interviews 1, 2, 6). They were particularly worried about the suppression of prior control of work and wage conditions to deliver work permits, which, in the system of quotas, was an important means to prevent the hiring of foreign workers at wages below usual standards. This was the case especially given the low level of regulation of the Swiss labour market (no minimum wages, low level of coverage of collective labour agreements, wide disparities regarding regulation between economic sectors) (Fluder and Hotz-Hart 1998). In this context, trade unions played a pivotal role since it was clear that the Swiss People's Party, a powerful Eurosceptic populist party, would oppose the opening of the labour market for EU nationals in a popular vote, claiming that it would lead to an uncontrolled flow of immigrants. Since the government and employers could not afford the risks of an objective alliance between unions and the populist right against the free movement of workers, unions obtained significant measures of re-regulation providing for the establishment of cantonal tripartite commissions to observe the labour market and sanction cases of wage dumping, the facilitation of the extension of collective labour agreements to whole economic sectors if repeated abuse was observed as well as the establishment of minimum wages if dumping could be observed in sectors where no collective agreement existed. Free movement of workers between Switzerland and the EU 15 entered into force in 2002, and transitory quotas were lifted in June 2004.

From 2003 onwards, EU enlargement imposed a renegotiation of the issue of free movement between the EU and Switzerland, which was negotiated simultaneously to a second package of bilateral agreements between Switzerland and the EU, the so-called *Bilaterals 2*.⁵ On the one hand, the EU could not accept Switzerland handling differently the 10 new EU countries by submitting their nationals to restrictive immigration rules while free movement prevailed for nationals of the 'old' EU countries. On the other hand, Switzerland asked for a long transitory period, so that nationals of eastern countries could not access the Swiss labour market before that of other member states that had maintained limitations like Germany and Austria. On the domestic front, once again, unions asked for side payments to guarantee their support to this extension. They considered that little had been provided for the implementation of the flanking measures in the framework of the first bilateral agreements and that the risks of wage dumping had become greater with the entry of the new member states (Interview 2).

The Swiss Employers' Union, the biggest employer association, and especially representatives of export industries such as the machine industry, were strongly

⁵ These included the taxation of savings, cooperation on fight against fraud, adhesion to Schengen/Dublin, processed agricultural products, media, education, pensions, environment and statistics. See Afonso and Maggetti (2006).

opposed to any reinforcement of labour market control in the framework of extension, claiming that it would lead to enormous administrative costs for companies and contribute to an over-regulation of the labour market that would be damageable for Switzerland's competitiveness (Interview 7). The government and bureaucracy were not favourable either to a further regulation of the labour market and were ready to extend free movement to eastern countries without amending the existing regulatory apparatus. At this point, unions actively used the media to put the issue of wage and social dumping on the agenda, notably by bringing cases of underpaid workers on building sites under attention (Interview 2).

From the outset, it was clear that the eurosceptic Swiss People's Party would launch a referendum against the extension of free movement to new countries. It was therefore too risky to have unions opposing it as well, especially given the fears within the population generated by immigration issues. At this point, the government decided to set up a tripartite (employers, unions, state) workgroup to envisage the possibility of reinforcing the already-existing flanking measures, following the procedure that had worked for the first set of re-regulatory measures (Interview 3). The constitution of this workgroup was a victory in itself for unions, since it would be difficult to come up with no deal in the end of the process (Interview 2).

Partly prompted by the government, employers soon understood that a referendum could not be won without the unions, especially given the fears on immigration issues exacerbated by the Swiss People's Party (Interviews 1, 4). The acceptance of the set of bilateral agreements between Switzerland and the EU was of vital importance to them; many of them feared to be discriminated in their access to the EU internal market in case it would be voted down. It was thus necessary to give guarantees to trade unions as to labour market protection, but employers were determined to make as few concessions as possible (Interview 1). In the end, even though employers had declared themselves absolutely opposed from the outset to the greater regulation of the labour market and refused the introduction of new flanking measures, they nevertheless agreed on two measures to improve the implementation of labour market control: the quorum of employers required to make collective agreements compulsory was abolished, thereby further facilitating the extension of collective labour agreements to whole economic sectors, and the hiring of 'a necessary number' of work inspectors by the cantons, partly subsidized by the federal state, was decided in order to provide the means for the tripartite commissions to control the labour market more effectively (Interview 7). As had been set up when Switzerland opened its labour market to the EU 15, parity commissions can set up minimal wages in sectors not covered by collective bargaining in cases of 'repeated abuse'. Hence, when it comes to policy outputs, significant re-regulation measures were imposed both at the level of the regulatory framework and in the compliance system.

With regard to power configurations, trade unions took advantage of internal divisions within the employer side on labour market protection and formed an informal alliance with representatives of small and medium enterprises (SMEs), especially in the construction sector. Whereas the export economy (above all the powerful machine industry) had a strong interest in the acceptance of bilateral agreements but

was strongly opposed to further re-regulation measures, the domestic economy (construction) had a strong interest in protecting the internal market from cheaper foreign competitors (Interviews 2, 4, 7, 8). Indeed, export industries (machines, chemicals), which did not have to fear the entry of foreign competitors, wanted to open the Swiss internal service market to more competition, because they would be able to contract with cheaper foreign companies for secondary work (most importantly, construction jobs, but also machine or computer maintenance) (Interview 7). On the other hand, domestic companies in the construction sector, dominated by SMEs, had no interest in allowing foreign companies to come and not comply with local collectively agreed wages, especially given that the construction sector is widely covered by collective labour agreements. Hence, they had an interest in setting strict rules for labour market control and compliance with local wages, thereby converging with the interests of trade unions.

Hence, despite opposition by employers in the powerful export sectors and a traditionally market-liberal orientation of the economy, trade unions succeeded in imposing re-regulation of the labour market coupled with labour market opening by using the referendum threat and a specific coalition configuration (opposition by Swiss People's Party, cross-class alliance between domestic economy and trade unions) which fostered a particularly strong corporatist decision-making pattern.⁶ Interestingly, trade unions and employers, despite the opposition of the latter, were able to find a compromise on this issue while corporatist policymaking seems to fade out on other issues, such as social policy (Mach, Haeusermann, and Papadopoulos 2004).

4.6.2 Ireland: Re-regulation as Part of Social Pacting

From an uncoordinated approach to economic governance partly inherited from British rule, the Republic of Ireland has shifted over the last 20 years to a more coordinated approach linking pay determination with broader issues of economic governance and public policy in the framework of so-called social pacts (Hardiman 2002). It has been believed that the approach of social partnership and 'social pacting' has strongly contributed to the emergence of the so-called Celtic Tiger and its high growth rates unknown elsewhere in Western Europe in the 1990s (Baccaro and Simoni 2004). Since 1987, a series of seven social partnership agreements negotiated between unions, employers, the government and also associations of civil society has set negotiated terms regarding pay raises, taxes and other issues of economic and social policy. The main aim of such agreements was to ensure a coordinated steering of the economy (most importantly, low inflation and low taxes) that

⁶ It is also particularly interesting to note that the number of extended collective labour agreement has increased as a result of labour market opening: even in economic sectors in which no extended collective labour agreement existed and in which companies were weakly organized in employer associations, companies have organized in order to make local rules enforceable vis-à-vis foreign companies and protect local standards (Oesch 2007).

would make Ireland an attractive place for foreign investment (Hardiman 2002). Interestingly, these terms left a minority role for trade unions, making the Irish model of social partnership comparable with the Swiss: no initiatives that would compromise objectives of competitiveness would be accepted by employers or the government (Hardiman 2002).

Labour market governance in Ireland is characterized by 'light touch' regulation with a strong focus on flexibility, the latter factor being put forward as an element of utmost importance to attract foreign companies (Interview 10). Indeed, the flexibility of the labour market is presented as one of the main comparative advantages of the Irish economy to attract foreign investment. Industrial relations have a voluntary dimension, collective bargaining endorsing a private and not legally binding form. Although social partnership at the national level, as argued above, has played a very important role in recent years, collective bargaining at lower levels is weakly institutionalized. There exists no mechanism of public extension of collective labour agreement, and the only sector with a voluntary registered collective agreement, that is, which has a statutory status and is therefore legally binding, is the construction sector.

Interestingly, characteristics of collective bargaining and labour market regulation are also influenced by transnational factors. Hence, the important role of US-based companies in the economy has fostered a diffusion of US human resource practices focusing on individual-level relationships and individualized pay structures rather than collective bargaining. Trade union recognition is an important issue here. Multinational companies are markedly reluctant to recognize trade unions, thereby reducing bargaining coverage significantly in the private sector (Wallace et al. 2004: 249; EIRO 2005).

In the wake of effective EU enlargement, the Irish labour market was in a strong expansion phase: low unemployment and strong employment growth generated a strong demand for labour. Irish employers were already sourcing an important part of their workforce from abroad (Doyle et al. 2006: 9). In the face of tight labour market conditions, the government saw enlargement as an opportunity to expand the labour force that would help meet employment needs and sustain economic growth (Interview 10). The decision taken by other governments to set up restriction did not alter the Irish stance regarding the immediate establishment of free movement. In a context of strong economic expansion, this decision was backed by both employer and trade unions, although no formal consultation was conducted by the government (Interviews 10, 13, 14). Concerns on the government and employer side were rather focused on potential costs on the welfare system protection (social benefits tourism) than on the protection of local wages. Similar to Britain, Ireland chose to set up restrictions regarding access to social benefits, but not regarding access to the labour market neither regarding the protection of wages. It must be acknowledged that the existence of the Common Travel Area between the UK and Ireland determined to some extent the Irish decision (Interviews 9, 10). Different policy choices would have been difficult to implement because of this, as it was already a form of 'transnational' influence.

After EU enlargement on 1 May 2004 and the full opening of its labour market, immigration from the EU 10 to Ireland increased to a very important extent,

partly due to strong labour demand but probably also due to redirection mechanisms, given that most other countries had set up immigration restrictions. The number of nationals of the EU 10 in employment in Ireland more than trebled between the first quarter of 2004 and the end of 2005, increasing from less than 20,000 to more than 60,000 (Doyle et al. 2006). The quantity of Personal Public Service Numbers, which allow workers to take jobs or access benefits even for a short stay in Ireland issued to EU 10 nationals, doubled between 2004 and 2005, increasing from 59,000 to 112,000 (Doyle et al. 2006: 13).

Even though most political parties and organized interests had endorsed the view that EU enlargement would not lead to a 'flood' of immigrants setting pressure on wages, some cases of job displacement related at least to some extent to enlargement caused significant concern on the side of trade unions (Interviews 14, 15). In particular, the case of *Gama* in 2005, a company based in the Netherlands which was accused of employing Turkish workers below agreed standards in Ireland, and the case of *Irish Ferries*, a company operating transport services between Ireland, France and the UK which announced its intention to offer redundancy terms to 543 seafarers and replace them with agency workers from Latvia, attracted great media attention. The issue of job displacement was placed at the core of debates on the negotiation of the next social partnership agreement. These issues were considered by trade unions as sufficiently serious breaches in the social partnership agreement to put forward the reinforcement of protection of labour standards as a condition of their participation in the next agreement on pay terms (Interview 15).

At the end of 2005, the terms of the social partnership agreement 'Sustaining Progress' were coming to an end. When the government issued an invitation to the social partners to participate in a new partnership agreement that would set new employment and pay terms for the future, the Irish Congress of Trade Unions deferred its participation, pending clarification that issues relating to employment protection, job displacement and enforcement of agreed wages and employment conditions would be discussed before the negotiation on rates of pay under a new national agreement. The initiative to make this issue on the agenda of social partnership came primarily from SIPTU, the biggest trade union in Ireland (Interview 15). The *Gama* and *Irish Ferries* cases were used as examples of flagrant failures of the existent regulatory regime to ensure compliance with the terms of pay and standards agreed in the framework of social partnership. According to trade unions, if compliance was not ensured, this could undermine all the process of social partnership.

This issue protracted significantly the negotiation of this social partnership agreement 'Towards 2016', whose negotiations were the longest since the emergence of the social partnership approach in 1987. At the outset, employers, and particularly FDI companies, were opposed to changes in existing legislation, which they saw as an intolerable move away from the existing lowly regulated Irish labour market. If they were ready to support better enforcement, they advocated doing it in the existing legal framework, whereas trade unions proposed a new legislative act devoted exclusively to these issues. An important issue with regard to the regulatory framework in which trade unions did not succeed in imposing their claims was the legal

enforceability of 'going rates' of pay, that is, pay rates which may be considered 'standard' for one specific function (Interviews 14, 16). Hence, the only wage that remains legally enforceable is the national minimum wage. Considering issues of trade union recognition and weakly institutionalized sectoral level bargaining, this solution would have strongly departed from the essentially voluntarist framework of Irish industrial relations, to the extent that public authorities, or other entities, would have been allowed to decide which wage levels could be considered standard for a specific position (Interview 16). In this regard, multinationals were strongly opposed to such a solution which would have imposed wage and social standards to companies that they would not have freely agreed upon. Even if those multinationals often practice high wages, the loss of flexibility that this would have introduced was judged unbearable for them. This was a very important issue for governmental departments responsible for these issues, which entertain close ties with FDI companies (Interview 10).

Eventually, an agreement was reached on an amendment of existing legislation providing for a package of measures aimed at ensuring enforcement of employment rights. This issue is contained in a section of its own in 'Towards 2016': the establishment of a new, statutory office dedicated to employment rights compliance (now called the National Employment Rights Authority); a trebling in the number of labour inspectors; greater coordination among organizations concerned with compliance; new requirements in respect of record keeping; enhanced employment rights awareness activity; the introduction of a new and more user-friendly system of employment rights compliance; increased resourcing of the system; and higher penalties for noncompliance with employment law (Department of the Taoiseach 2006: 92–107). An enforceable system of control of agency workers and the establishment of the NERA were important issues in this respect. When compared to Switzerland, where social partners themselves were charged with monitoring compliance, the strong opposition to trade union recognition at enterprise level, particularly among foreign-owned companies, would have made this tool difficult to implement (Interview 17). Similarly, the focus on the compliance apparatus and weak changes in the regulatory framework were also partly due to opposition by transnational actors. The flexibility and light regulation of the labour market in Ireland, more than the level of wages, was considered by authorities as a central element to attract and keep FDI in Ireland (Interview 10). Attempts to introduce further regulation which would make the Irish labour market less attractive stood little chances to be enforced.

The embeddedness of labour market re-regulation in the framework of social pacting in Ireland, which comprises pay terms so important for government and employers alike to ensure a level of coordination in economic governance, has played an important role in empowering trade union claims in the domain of labour market regulation, although these claims were clearly tempered by flexibility concerns in line with strong employer preferences, and more particularly the FDI community. Contrary to Switzerland, the political power and preferences of small businesses in Ireland did not constitute a counterpoint to the liberal preferences of big and transnational business. A far more free trade-led path in Ireland, in

opposition to a more selective protectionist path in Switzerland, has structured more liberal policy preferences on the side of Irish small business as well.

4.7 Conclusion

Several conclusions can be drawn from the comparison of Switzerland and Ireland with regard to the role of power relationships and institutional determinants in the process of economic transnationalization (labour market opening and re-regulation). First, the power relationship between export-oriented and domestically oriented business strongly determines re-regulation outputs in both countries. In Switzerland, the relative strength of domestic business with protectionist preferences, which converged with trade union preferences with regard to labour market protection, yielded a more protectionist re-regulation pattern. By contrast, in Ireland, no such protectionist political force coalesced with trade unions on an agenda of labour market protection. The Irish internal market was already very much open to foreign competition, and needs for protection were not expressed by business at the political level. Trade unions alone, although they could impose the issue of labour market protection on the agenda in the framework of social pacting, only achieved limited measures in this respect and could not constitute a counterpoint against the preferences of strong transnational business on which the Irish economy is very much dependent and whose interests are very much taken into account by governmental departments.

Second, in both countries, the existence of institutionalized arenas of policy concertation (social pacting in Ireland and preparliamentary arenas in Switzerland) allowed trade unions to impose the issue of labour market protection on the political agenda. This was much more marked in Switzerland, where the institution of referendum endowed trade unions with a strong veto power; they played a pivotal role especially given the ideological divisions of the right over the issue of European integration. Although Irish social pacting arenas provided a space to discuss this issue, they did not provide such a powerful leeway over policymaking for trade unions as the tool of referendum in Switzerland.

Third, pre-existing regulatory arrangements proved to play an important role in re-regulation processes related to labour market opening, and some form of path dependence pattern can be observed as regards responses to economic transnationalization. Indeed, although both Ireland and Switzerland can be characterized as lightly regulated economies, collective bargaining in Switzerland is more institutionalized at the sectoral level, and existing tools aimed at extending outcomes of collective bargaining (extension procedures of CLAs) were available, whereas they were not in Ireland. Hence, in the Swiss context, existing regulatory tools could be drawn upon in designing re-regulation, whereas new tools had to be designed in the Irish context, which is more based on market solutions. Besides this, it must be taken into account that there is no national minimum wage in Switzerland, whereas there is one in Ireland. Hence, it can be argued that there were more important 'regulatory gaps' in the Swiss regulatory framework – that potential outsiders could

Table 4.2 Synthesis of results

Country	Transnationalization pattern	Institutional framework of concertation	Policy coalitions	Pace of opening	Re-regulation measures
Switzerland	Limited: selective protectionism and endogenous development	Referendum	Trade unions and small business impose regulation against will of big business Populist right opposed to labour market opening	Ex-ante regulation Long transitional measures	Facilitation of collective labour agreement extension, minimal wages Hiring of labour inspectors
Ireland	Strong: free trade and attraction of FDI	Social pacting arenas	Big business and transnational actors (FDI) oppose further regulation of labour market proposed by weak trade unions	No transitional measures Ex-post regulation	Establishment of National Employment Rights Authority supported by labour inspectors

take advantage of – than in Ireland, where a ‘secure floor’ regarding wages existed. However, the Swiss re-regulation process remains more important in its extent with regard to pre-existing conditions.

4.7.1 Economic Transnationalization and Political Re-regulation

Free movement of workers and the liberalization of service provision in the framework of EU *negative integration* imply the transnationalization of labour markets, that is, the facilitation of the circulation of labour across national boundaries. Drawing upon work on processes in similar areas, many scholars argue that national boundaries are no longer pertinent units of analysis to grasp the functioning of markets: supply and demand for labour are no longer confined within nation states but rather operate at the transnational level, since the capacity of governments to restrict access of foreign workers and foreign companies has become significantly weaker. However, even if it is largely true that the economy has gone largely transnational, its regulation is still to a large extent in the hands of nation states and determined by domestic political power relationships and institutions. A central issue of the research on transnationalization should therefore be the complex set of entanglements between transnationalized economies and domestic means of re-regulation.

In the cases analysed here, empirical analysis has allowed to assess political processes at work in the process of economic transnationalization. In the cases analysed here, economic transnationalization has been accompanied by a concomitant process of re-regulation aiming at limiting the possibly damaging impact of this expansion. This can be considered an interesting instance of the process of ‘double movement’ already outlined long ago by Karl Polanyi, cited in the opening quotation of this chapter. Here, I have argued that institutional determinants (social pacting in Ireland and direct democracy in Switzerland) have played an important role in empowering social forces willing to achieve a re-regulation of labour markets to cope with risks of social dumping resulting from EU enlargement. Hence, the countermovement is strongly determined by domestic institutional frameworks that actors may use to achieve their ends. In the context of economic transnationalization, these factors play a central role in the establishment of rules governing ever-expanding markets.

List of Interviews

Switzerland

1. Member of Direction Council, Swiss Employers Union, Bern, 11.05.2007;
2. Central Secretary, Swiss Federation of Trade Unions, Bern, 03.04.07;
3. Former Federal Councillor and Head of Federal Department for Economy, Fribourg, 02.04.07;
4. Vice Director of the Swiss Union of Crafts and SMES, Bern, 26.03.07;

5. President of Special Commission “Flanking Measures” of National Council, Social Democratic Party, Bern, 20.03.07;
6. President, Swiss Trade Union Federation, Bern, 20.03.07;
7. Former Head of Sector Labour Relations, State Secretariat for Economics, Neuchatel, 09.03.07;
8. MP Council of States, Member of special commission “flanking measures”, Social Democratic Party, Geneva, 01.03.07;

Ireland

9. Social Policy Analyst, National Economic and Social Council, Dublin, 17.01.08;
10. Secretary General, Department of Enterprise, Trade and Employment, Dublin, 29.01.08;
11. Social Affairs Officer, Irish Congress of Trade Unions, Dublin, 25.01.08;
12. Director of Industrial Relations and Research Officer (joint interview), Construction Industry Federation, Dublin, 08.02.2008;
13. Senior Social Policy Executive, Irish Business and Employers Confederation, Dublin, 28.01.2008;
14. Legislation Policy Officer, Irish Congress of Trade Unions, Dublin, 21.01.2008;
15. Regional Secretary – Dublin Region, Services, Industrial, Professional & Technical Union (SIPTU), Dublin, 07.02.2008;
16. Director of Industrial Relations, Irish Business and Employers Confederation, Dublin, 05.02.2008;
17. Director, National Economic and Social Council, Dublin, 18.01.2008.

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