November 16, 2007

THE POLITICAL ECONOMY OF LABOR MARKET REGULATION BY THE EUROPEAN UNION

*Roland Vaubel**

Abstract:

Since the introduction of qualified majority voting, at least 40 labor regulations have been imposed by the European Community/Union. Three types of explanations are considered: i) the asymmetry of the EC budgetary process, ii) regulatory collusion and iii) the strategy of raising rivals' costs. Collusion and the strategy of raising rivals' costs are graphically compared in a two-country game-theoretic model with international capital mobility. The empirical analysis shows that the transition to qualified majority voting was not preceded by a striking tendency of competitive national deregulation. Several EC labor regulations have been contested – most frequently by the UK. But the anti-regulation coalition also included Ireland, the Scandinavian countries and the Netherlands. Moreover, there are examples showing that if the coalition is too small to block the regulation, its members prefer not to record their dissent officially. In most investigated cases, the European labor regulation is more restrictive than most but not all prior national regulations. The empirical analysis demonstrates that the strategy of raising rivals' costs plays an important role in EU labor regulation.

* Professor of Economics, University of Mannheim, D-68131 Mannheim, Germany, e-mail: vaubel@rumms.uni-mannheim.de

The author thanks Friedrich Heinemann for his perceptive comments on an earlier version of this paper.

1. History

Social policy legislation by the European Community/Union has increased dramatically since the 1970s and 1980s. In the 1970s, the European Community adopted about five legislative acts per annum in the area of social provisions. In the 1990s the number climbed to 18, and in 2000-03 it reached 34, with an overall maximum of 50 in 2003 (Figure 1).

However, not all of these social policy acts have been labor market regulations. Table 1 lists the latter. It starts in 1989 because the number of European labor regulations exploded after the Single European Act (effective from July 1987) which introduced qualified majority voting on important aspects of labor regulation. Until 1987, labor regulations had required unanimity in the Council.

The list includes the original directives and the revisions. The large number of revisions indicates that regulations, once introduced, tend to be reinforced step by step. As can bee seen from Table 1, more than 40 directives regulating the EU labor market have been introduced since 1989.

Prior to the Single European Act, EU labor market directives had been rare and moderate. The far-reaching Social Action Plan which the Commission submitted in 1974 was of limited effect. It led to the directives on collective redundancies (1975), equal treatment of men and women (1975, 1976, 1979), the safeguarding of employees' rights in the event of transfers of business (1977) and eleven directives on health and safety (despite the absence of any treaty basis) by 1987.

The Single European Act introduced a new article (118A) concerning "improvements, especially in the working environment, as regards the health and safety of workers", setting as "their objectives the harmonization of conditions in this area, while maintaining the improvements made". "The Council, acting by a qualified majority on a proposal from the Commission, in cooperation with the European Parliament" was to "adopt, by means of directives, minimum requirements for gradual implementation".

At least 15 directives were adopted on this basis until 1993. The most famous was the Working Time Directive (1993) which the British government challenged in the European Court of Justice. With minor modifications, the Court upheld the measure, supporting the Commission's view that legal restrictions on working time primarily aim at health and safety.

The "Agreement on Social Policy" attached to the Treaty of Maastricht (adopted in 1991, effective from November 1993) extended qualified majority voting to four additional areas of labor regulation:

i) "working conditions,
ii) information and consultation of workers,
iii) equality between men and women with regard to labor market opportunities and treatment at work,
iv) the integration of persons excluded from the labor market…" (Art. 2, Sect. 1-2).

By far the most important of these areas was the regulation of "working conditions". Qualified majority voting on the information and consultation of workers led to the European Works Councils Directive (1994) and the Informing and Consulting Employees Directive (2002). Moreover, as for gender equality, six anti-discrimination directives followed.

In a "Protocol on Social Policy", the UK was granted an opt-out from the agreement. Initially, the Agreement on Social Policy had also been opposed by the Spanish government (Lange 1992: 250f.) but Spanish assent was bought by establishing a Cohesion Fund that would finance transfers to the "Poor Four". Thus, to a considerable extent, the cost of European labor regulation would ultimately be borne by the taxpayers of the main contributing countries.

The Social Agreement of Maastricht did not only extend the scope for qualified majority decisions, it also created new EC competencies in the area of social policy (Art. 2, Sect. 3) and laid the legal foundations for EC labor bargains (Art. 4 of the Agreement, now Art. 139 of the EC Treaty).

The new competencies to be exercised unanimously were to cover

i) "social security and social protection of workers,
ii) protection of workers where their employment contract is terminated,
iii) representation and collective defence of the interests of workers and employers, including co-determination…,
iv) conditions of employment for third-country nationals legally residing in Community territory,
v) financial contributions for promotion of employment and job-creation…"

Europe-wide labor bargains were to be "implemented" (i.e., rendered universally binding) by the Council at the joint request of management and labor and on a proposal from the Commission. Depending on the subject matter, the Council decides by qualified majority (Section 1 issues) or unanimously (Section 3 issues). Table 2 lists the ten Community-wide labor bargains implemented so far. Usually, the European employers' association (originally "Unice", now "Business Europe") agrees to these bargains in order to forestall a Council directive which would be even more costly to them.

In the Treaty of Amsterdam (adopted in 1997, effective from May 1999), the new British Labor government abandoned the opt-out negotiated by its predecessor so that the provisions of the Agreement could be included in the main text of the EC Treaty (Art. 137 to 140). It is not clear whether this facilitated the adoption of labor regulations. On the one hand, the inclusion of the UK raised the probability of a veto (if the decision has to be taken unanimously) or of a blocking minority (if unanimity is required). On the other hand, if the decision could be taken by qualified majority and if the UK could not assemble a blocking minority, the other countries would now be more eager to regulate because they would not have to be afraid of losing competitiveness to the UK. The UK would simply be outvoted.

The new "reform treaty" to be adopted this year, like the Constitutional Treaty which it revives, will further facilitate new labor regulation because it will lower the upper voting threshold in the Council from 73.9 percent to 65 percent from 2017 onward. At the same time, the country weights agreed in the Treaty of Nice are to be replaced by population weights. This means that the combined weight of the typical opponents of regulation (the UK, the three Scandinavian member states, Ireland and the Netherlands[1]) would drop from 21.2. to 20.5 percent. The lowering of the upper voting threshold and

[1] According to Mattila (2004, Table 1), the governments of these countries are most likely to vote „no" or abstain. Thomson et al. (2004) report that the disagreement between Northern and Southern member states is mainly about regulation versus market-based solutions.

the introduction of population weights in the Council will, of course, facilitate all forms of regulation, including financial and product regulation, not just labor regulation.[2]

Moreover, the "Charter of Fundamental Rights of the Union", adopted in 1999 as a declaration, will become legally binding (except for the UK). The Charter establishes not only personal liberties but also legal claims to governmental regulation, notably a right to "fair and just working conditions" (Art. 31, no. 1). These provisions will enable the European Court of Justice to insist on labor regulation at the European level. The European Court is known for its activist approach, especially in social policy matters.[3] Cichowsky (2007, Figure 2.4) reports that, in 1989-2003, the Court has issued about 14 preliminary rulings per annum in the area of social policy. In practice, the decisions of the Court cannot be reversed by the member states except by unanimously amending the treaties. Revision by secondary legislation would require a proposal from the Commission. However, the Commission does not make such proposals because it shares the Court's centralist ambitions. Hence, in practice, the Court can do what it wants as long as it is supported by the government of one member state (say, Belgium or Luxembourg). So far, the decisions of the European Court seem to have been reversed only once.[4]

2. Explanatory hypotheses

2.1. Regulation versus transfers

Allocative and redistributional targets may be attained by public transfers or regulation. Usually, transfers are considered more efficient than regulation because they do not interfere with the freedom of contract. In EU labor market policy, however, regulation is the dominant instrument. The European structural funds, it is true, pay some transfers to displaced workers but these amounts are very small. Why does the Union prefer regulation to transfers in its labor market policy while spending almost half its budget on subsidies to agriculture?

The first explanation is provided by the European budgetary process. The European Community/Union cannot raise taxes, it is financed by contributions from the member states. The overall size of the budget is determined by the Council acting unanimously, and each national contribution has to be approved by the national parliament as part of the national government budget. The multi-annual financial framework which the Council adopts unanimously also contains general guidelines for the pattern of expenditure. But the implementation is left to the European Parliament and/or a qualified majority of the Council[5] and to some extent the Commission. As a result, the main

[2] It is quite unusual to apply population weights in a federal chamber representing the member states. Usually, as in the U.S., Germany or Switzerland, the smaller states are given a larger weight than corresponds to their population. In this way, regionally concentrated minorities are protected against the federal majority. Population weights (or electoral weights) are appropriate in the first chamber of parliament. But the composition of the European Parliament is inconsistent with this principle, and the new treaty will not remove the disproportionality either.

[3] For example, the employers' obligations have been extended by the Court's decisions and preliminary rulings on working time, the remuneration of ready service personal in hospitals, collective redundancies, transfers of businesses and discrimination by sex and age.

[4] This was the so-called Barber decision (262/88, ECR I-1989) concerning gender-based differences in pensionable ages. It was overridden by the "Barber Protocol" attached to the Treaty of Maastricht.

[5] The so-called „compulsory expenditures" (notably on agricultural subsidies) are exclusively controlled by the

contributors have to fear that a majority will spend their money on purposes they do not approve of so that they hesitate to grant higher contributions.[6] Since financing and spending decisions are subject to different decision rules, the EC budget has remained at about 1 percent of GDP.[7]

Why has budgetary austerity not prevented the farm subsidies from exploding? Unlike labor market policy, the common agricultural policy has been part of the original deal. Its rules cannot be altered except by unanimous agreement of the Council. France as the main beneficiary does not accept major cutbacks. Yet labor market policy, which developed much later, was effectively constrained by the budgetary process.

Labor regulation costs the European Community very little. Its cost has to be borne by others – the employers, the unemployed and the taxpayers but also all those who would prefer higher wages to mandates. Regulation enables the European institutions to exert power without straining their budget.

2.2. Regulatory collusion

The second explanation of European labor regulation is that the national governments collude because national regulation has become more costly and less effective due to market integration.

The hypothesis that market integration lowers the level of regulation when the states are competing goes back to Immanuel Kant's essay "Idea of a Universal History from a Cosmopolitan Point of View" (1784/1981):

> "The states are already in the present day involved in such close relations with each other that none of them can pause or slacken in its internal civilization without losing power and influence to the rest… Civil liberty cannot now be easily assailed without inflicting such damage as will be felt in all trades and industries, especially in commerce; and this would entail a diminution in the powers of the state in external relations… If the citizen is hindered in seeking his prosperity in any way suitable to himself that is consistent with the liberty of others, the activity of business is checked generally, and thereby… the powers of the whole state are again weakened" (p. 31).

If a single country introduces some labor regulation, it will lose competitiveness vis-à-vis all other countries. If a large group of countries agrees on some labor regulation, the loss of competitiveness will be smaller for each country. For this reason, international labor regulations have been adopted as early as 1904 and especially since 1919 through the International Labor Organization (ILO).[8]

The loss of competitiveness affects both trade and capital movements. It leads to a net outflow of capital which lowers the marginal product of labor and the equilibrium real wage. If the real wage is not adjusted in line with productivity, unemployment results. The negative effect on the volume of merchandise exports may to some extent be intended as part of a monopolistic sales strategy if exports

---

Council. As for the rest, the Parliament can impose its will on the Council by a 3/5 majority of the votes cast. If the Parliament lacks the requisite majority but still does not agree with the Council, the spending pattern of the previous year applies.

[6] For a more detailed analysis see Blankart, Kirchner (2004).

[7] The European Union does not have a budget but the European Community, its first pillar, does.

[8] The first international labor regulation was adopted by France and Italy in 1904. Two years later, two multilateral labor regulations were agreed in Berne by 15 and seven states, respectively. ILO was mainly a French project, and its first Secretary General was a French Socialist.

are imperfect substitutes for foreign goods but the regulations imposed for the purpose of domestic redistribution may easily exceed the country's monopolistic optimum (if there really is one). As the trade effect is ambiguous, the following analysis will focus on the fact that labor regulation reduces a country's share of the world capital stock.

Labor regulations may be demanded by powerful interest groups (labor unions) or even by a majority of voters (employed workers). Most likely, the workers turn to the government because their unions are too weak to obtain these restrictions from the employers (Posner 1974). For the workers, regulation is one possible way of raising the price of labor (the money wage plus the benefit from regulation) so as to maximize the rent going to labor. The equilibrium for the closed economy can be shown quite simply in the standard labor market diagram (Figure 2). The rent maximizing supply of labor ($\overline{L}_1$) is determined by the intersection of the labor supply curve (S) and the marginal revenue product curve (MRP_1). The rent-maximizing cartel or monopoly price of labor is $\overline{w}_1$. The benefit and cost of regulation is indicated by $\overline{w}_1$ - w*.

As the restrictions on capital movements are reduced and the international mobility of capital increases, the demand for labor and the marginal revenue product curve become more elastic, i.e., flatter. The intersection of the MRP curve and the labor supply curve moves to the right, and the monopolistic price of labor ($\overline{w}$) falls. In the end, with perfect capital mobility, both curves are perfectly elastic (horizontal) and identical with each other. The rent-maximizing regulation is now zero.[9]

The implications for the European Union are straightforward. Market integration prevents the workers from raising their rents by obtaining labor regulations from the government. This raises their interest in international labor regulation, and the politicians, wanting to be re-elected, may be willing to supply it. By colluding with the governments of other countries, they try to prevent the demand and MRP curves from becoming more elastic and, if possible, to render them more inelastic. The suppliers of labor regulations form a cartel against the owners of internationally mobile capital.

To derive the collusive equilibrium, we turn from the small-country model of Figure 2 to a game-theoretic two-country model (Figure 3). This graph is a joint product with Bernhard Boockmann (see Boockmann, Vaubel 2005).

The two axes measure the intensity of labor regulation in the two countries (r_1, r_2). The indifference curves are derived from the utility functions of the two governments (parliaments). Each government has two objectives: a small absolute or squared deviation of the actual level of regulation from the ideal level, and a large capital stock in its own country because capital has a positive effect on wages and/or employment and because capital earnings may be taxed. The governments' bliss points are not shown in the figure. The ideal levels are assumed to exceed the actual levels of labor regulation. Both regulation and a large capital stock raise the probability that the incumbent politicians will be re-elected.

[9] Figure 2 assumes for simplicity that the equilibrium cost of labor is identical at home and abroad. Thus, the liberalization of capital movements does not lead to net capital movements in equilibrium.

Since capital is mobile, each country's capital stock depends positively on the other country's level of regulation relative to its own level of regulation. This is why each government wants a high level of regulation in the other country.

The points of tangency of the two axes and the indifference curves $I_1°$ and $I_2°$, respectively, indicate the level of regulation which each government would chose if there were no regulation in the other country. Figure 3 is drawn in such a way that government 1 prefers more regulation than government 2 does. A possible reason is that labor unions are more influential in country 1 or that the economy of country 1 is larger and less open so that international capital flows have less weight.

Now if, say, government 2 raises its level of regulation, capital will flow from country 2 to country 1 so that government 1 can afford to increase its own regulation (r_1) as well. This is shown by the slope of the reaction curve R_1. Each point on reaction curve R_1 is at the same time the lowest point on the highest attainable indifference curve I_1. The case of r_2 and R_2 is strictly analogous.

The two reaction curves R_1 and R_2 intersect in N, the Nash point. This is the non-cooperative or competitive equilibrium. Even though each government can think of an even higher "ideal" level of regulation, they chose the Nash values because each is constrained by the regulatory policy of the other. Each is afraid of losing capital.

Figure 3 formalizes the interjurisdictional competition for capital which Max Weber had described in his "General Economic History" (1923). In Weber's view, competition among governments, by protecting economic freedom, paved the way for the industrial revolution:

> "The competitive struggle (among the European nation states) created the largest opportunities for modern western capitalism. The separate states had to compete for mobile capital, which dictated to them the conditions under which it would assist them to power" (p. 249).

The graph can now be used to show that both governments can raise their utility by cooperating. All Pareto-superior combinations of r_1 and r_2 are contained in the shaded lense, and the Pareto-optimal combinations are indicated by the contract curve C_1C_2. The precise point which the governments pick on the contract curve depends on their bargaining power and skills. Thus, cooperation does not only raise their levels of regulation but also regulatory risk.

Of course, the collusive solution is Pareto-optimal only from the point of view of the two governments and those workers whom they represent. The move from N to the contract curve does not indicate a welfare gain for all suppliers of labor nor for society at large. On the contrary, as regulation interferes with the freedom of contract, it is an obstacle to Pareto-improving market transactions and thereby to Pareto-optimality.

The problem could be avoided by rendering these claims negotiable. For example, if any employed worker could trade his claim, or part of his claim, to the legal employment protection in exchange for wage increases and if any unemployed worker could trade it for a job, the social cost of regulation would disappear.

Collusion enables the governments and the interest groups on which they depend to maintain a high level of regulation in the face of market integration. But why have they introduced uniform European

minimum standards? Why have they not jointly declared that none of them would lower their level of regulation in response to market integration? The European Community may have been needed as a commitment device. The official rhetoric permits European regulation only for the purpose of "harmonization", i.e., creating a level playing field.

If the two governments are to agree on a common minimum standard, the equality line OQ has to run through the Pareto-superior lense. This is not the case in Figure 3 but in Figure 4. If the 45° degree line OQ intersects the contract curve, as it does in Figure 4, the point of intersection (M) indicates the collusive common regulation. As any unilateral increase of regulation beyond the Nash level would lead to an outflow of capital and reduce the governments's utility, the common European minimum standard must be binding on both governments. Point M satisfies this condition.

2.3 The strategy of raising rivals' costs

Labor regulation by the European Union may, finally, be explained by the strategy of raising rivals' costs. In this case, a qualified majority of member states characterized by a high level of labor regulation impose their regulations on the minority of less regulated member states. Thus, while regulatory collusion presupposes unanimity, the strategy of raising rivals' costs (SRRC) merely requires a qualified majority. SRRC is well known from the theory of industrial organization (Salop, Scheffman 1983) and the interest group theory of regulation.[10] If interest groups are concentrated on a regional basis and if, in a federation, they influence policy-making in a majority of states, SRRC is also to be expected on state or provincial lines. For example, various American authors (Stigler 1970; Maloney, McCormick 1982; Pashigian 1984, 1985; Bartel, Thomas 1985, 1987; Addison 2007) have argued that a majority of northern states imposed the federal minimum wage, the Davis-Bacon Act (prevailing local wage protection), the Federal Occupational Safety and Health Act and controversial environmental regulations on the minority of Southern states.[11] In Germany after 1871, a majority coalition of states led by Prussia imposed their higher regulations on the more liberal states in the Northwest and Southwest (Vaubel 2007). Even the unification of Switzerland, after some time, led to SRRC in the field of federal regulation (Feld 2007).

SRRC can be analyzed in the game-theoretic framework of Figures 3 and 4 as well. If government 1 prefers a higher level of regulation than government 2 and if it commands a majority in the union legislature, it can impose its level of regulation on country 2. Starting from the non-cooperative solution (N), this would imply a movement to D which is on the equality line OQ in Figure 3. By moving from N to D, government 1 can raise its utility from I_1^N to I_1^D. However, government 1 can attain an even higher utility level by raising regulation further – both abroad and at home. The

[10] For the notion and evidence that regulations are sought by interest groups which try to raise their rivals' costs see notably Marvel 1977, Landes 1980, Goldberg 1982, Oster 1982, Michaelis 1994, Teske 1995, Fishback 1995, 1997, Körber 2000, Ch. 4.

[11] The northern states also raised labor cost in the South by abolishing slavery but this does not seem to have been their primary motive for refusing secession and starting the civil war.

maximum utility (the highest indifference curve) which government 1 can attain is I_1^E in E, the point of tangency with the equality line OQ.[12]

Why does government 1 raise its own level of regulation as well under SRRC? Because, being able to dictate the common level of regulation, it is relieved of the competitive pressure from government 2 which kept it at N in the non-cooperative case.

SRRC raises regulation in both states but much more in state 2 than in state 1. Thus, state 1 improves its competitive position and increases its share of the world capital stock even though the overall increase in labor regulation has a negative effect on the world capital stock as a whole.

Does government 1 also choose point E if the common regulation is merely a minimum standard? Yes, because government 1 does not wish to exceed any common minimum standard constraining government 2. To do so would mean to pick a point below the equality line OQ. However, all points below the equality line are on a lower indifference curve than point E.

Figure 3 shows that SRRC is feasible even where unanimous agreement on a common minimum standard is impossible because the equality line does not run through the Pareto-superior lense. This is the case where the difference between the national regulations is large. In Figure 4, by contrast, agreement on a common minimum standard is possible (at M) but SRRC leads to a higher level of common regulation, namely E. Point E is more attractive to government 1 (the majority) than point M but for government 2 (the minority) the opposite is the case.

In the context of the European Community/Union, the majority and the minority should be viewed as groups of countries. Most likely, the majority is a minimum connected winning coalition (Axelrod 1970), containing the most regulation-prone member countries. However, the union level of regulation is determined by the least regulation-minded government in the majority coalition. It is the decisive voter in the Council. Members of the minority, it is true, may try to stave off or mitigate the increase in regulation by offering concessions in other policy areas (logrolling) but in a union of 25 member states the transaction cost of such vote trading is probably prohibitive.

If point E offers less utility to the minority than collusion on the contract curve (as seems likely), the question arises why the minority has agreed to majority decisions in the first place. Why has it not insisted on unanimity? In the European context, the introduction of qualified majority voting on minimum labor regulations in the Single European Act and the Social Agreement may be explained in one of two ways: either the minority did not foresee that it would be the minority, or it accepted majority voting in exchange for some benefit offered by the prospective majority. We shall return to this question in the empirical analysis.

3. Evidence

The theoretical analysis has demonstrated that market integration raises the degree of regulatory competition among jurisdictions, that it lowers the level of national regulation and that it encourages

[12] Note that this is not a "leadership solution". Government 2 does not choose to adjust in an optimal way, it is forced by government 1. Only government 1 is optimizing – under the constraint that the regulation must be the same for both countries.

the national governments to introduce common international regulations. Are these hypotheses supported by the European experience?

3.1. Market integration and qualified majority voting

It is striking that the introduction of qualified majority voting on labor regulations coincided with measures to strengthen market integration.

Qualified majority voting on health and safety at work was introduced together with the internal market project. It was part of the Single European Act (Art. 118A). At the same time, the Act permitted qualified majority decisions on the liberalization of capital movements (amendment of Art. 70 Sect. 1). This cleared the way for a directive in 1988 abolishing almost all restrictions on intra-Community movements of capital. However, a safeguard clause empowered the member states to introduce temporary restrictions (for six months) in case of emergency.

Capital liberalization was then incorporated into the Treaty of Maastricht (Art. 73A to H). In addition, the safeguard clause with regard to intra-Community capital movements was dropped.[13] At the same time, the Social Agreement attached to the Treaty of Maastricht dramatically extended the scope for qualified majority voting on labor regulation. Once more, international labor market regulation was considered a complement to market integration. In the literature there is broad agreement that many, if not most, labor market directives enacted since 1989 would not have been adopted if unanimity had still been required (e.g., Addison, Siebert 1994, O'Reilly et al. 1996).

In the 1950s, Jean Monnet had predicted that integration would be a self-propelling force because each step would cause "spillovers" from one market to the next and from markets to policies so that further integration would be required for economic reasons. He made the right forecast but for the wrong reasons. The dynamic of European political integration is better explained by public choice theory than in vague "functionalist" terms. Market integration would expose the governments of the member states to increasing competitive pressure so that they would be more willing to "harmonize" their regulatory policies at the Community/Union level. Since the European regulations are proposed, adopted and interpreted by the European Commission, Parliament and Court, respectively, these European institutions have a vested interest in harmonization. And since market integration drives the national governments into the arms of the European institutions, the latter also have a vested interest in European market integration. Has this been their strategy?

3.2. Competitive national deregulation?

Has the introduction of qualified majority decisions on European labor regulations actually been preceded by an erosion of national labor regulations? Had there been a race toward the bottom which the governments responded to? The existing econometric research does not answer these questions.[14]

[13] It still exists via-à-vis third countries (currently Art. 59).

[14] In a panel data analysis of government regulation in the OECD countries, Pitlik (2007, Table 4) does not find a significant effect of trade integration (openness). However, the index he uses (a subindex from Gwartney/Lawson) does not only reflect labor regulation, in fact not only government regulation at all.

Table 3 contains data on national employment protection in the EU (Nickell, Nunziata 2001). Since they are annual, they permit a precise delineation of the periods between the various Treaty amendments and enlargements.[15] They are confined to those states which were members of the European Community between 1986 (entry of Spain and Portugal) and 1994, the year before the next enlargement – except for Greece and Luxembourg for which no figures are available. In the overall index of Table 4, the national indices are weighted by the countries' (constant) votes in the Council.

Table 3 reveals that employment protection did not decrease prior to 1986. There is a minute decline in 1986-91 but even then regulation was still at a historically high level in all countries except Spain. Thus, the transitions to qualified majority voting in 1986 and 1991 were not preceded by a striking tendency of competitive deregulation at the national level. This link is missing. However, national employment protection declined after 1991 following the liberalization of capital movements, which may have been expected in 1991.

Did the decline continue after the enlargement of 1994? Table 4 presents data on governmental minimum wage regulation and the flexibility of hiring and firing up to 2004 (Gwartney, Lawson 2007). The increase of the unweighted average of these two indices from 4.48 in 1995 to 4.92 in 2004 signals more freedom, i.e., deregulation, but this change is entirely due to the liberalization of the minimum wage component.

3.3. Collusion against cabinet discipline and parliamentary control

The national Ministers of Labor and the national interest groups influencing them do not only collude against internationally mobile capital but also against the other members of their cabinet and parliament at home. In the Council of Ministers, they are not controlled by the national parliaments, and they are more likely to escape cabinet discipline than if they tried to regulate labor markets by national legislation. Neither the Single European Act (Art. 118A) nor the Social Agreement of Maastricht (Art. 2 Sect. 2) required that the adoption of EC labor regulations would have to be approved by the European Parliament. It was not before the Treaty of Amsterdam (1997) that this requirement was introduced. Clearly, it is easier to obtain the assent of the European Parliament than of each national parliament because the majority in the European Parliament does not have to be composed in any specific way and because the members of the European Parliament have a demonstrably stronger preference for the centralization of policies at the European level than the national parliamentarians do.[16]

Helbling et al. (2004) report a significantly positive effect of openness to trade on Nickell's and Nunziata's index of labor market "regulation" in the OECD countries which, however, includes not only employment protection but also the net replacement rate and the duration of benefits in the unemployment insurance. Heinemann (2007) replicates this panel data analysis with additional explanatory variables. He confirms the result for trade openness. Capital movements do not have a significant effect on the index. But political centralization raises the index significantly.

Unfortunately, these three studies are neither confined to the European Union nor to labor regulation proper.

[15] On a cross-sectional basis, the index of Nickell and Nunziata is highly correlated with the other indices of labor regulation shown in Figure 5. The correlation coefficients are .98 with the OECD index, .61 with Botero et al. (2004) and -.81 with Gwartney/Lawson.

[16] See the opinion poll among European and national parliamentarians (as well as the citizens) in the European Representation Study (Schmitt, Thomassen 1999, Table 3.1). This may be attributed to self-selection, a

3.4. Collusion or strategy of raising rivals' costs?

Was the wave of EC labor regulations starting in 1989 due to regulatory collusion or the strategy of raising rivals' costs? In many cases, it is very hard to answer this question. Of course, SRRC is not applicable if the legislation has to be adopted unanimously. But the fact that a piece of labor regulation has been adopted unanimously even though a qualified majority would have been sufficient does not necessarily exclude SRRC. Mattila (2004) in his well-known study of Council voting makes this point:

> "The observed number of contested decisions is really a downward biased estimate of the true amount of dissent (because) Council members do not necessarily want to record their dissent officially" (p.31).

Similarly, Hagemann and De Clerk-Sachsse (2007: 20) call open opposition "the tip of the iceberg in terms of how much disagreement over proposals is actually present in the Council negotiations". There are at least three reasons why this may be so.

First, if some governments are opposed to a regulation but lack a blocking minority, they may nevertheless vote for it because, otherwise, they would be excluded from the negotiations on the majority agreement (Hagemann, De Clerk-Sachsse 2007: 20).

Second, they may not want to annoy the majority because they would be punished in future legislation. The majority is especially likely to be annoyed if the voting record is published. The governments constituting the majority prefer unanimity or a large majority because none of them wants to be seen to be decisive, i.e., as responsible for shifting the balance in favor of regulation, especially if the regulation is sought by an interest group rather than the majority of voters at home.

Third, any government voting against a labor regulation adopted by the majority of the Council is highly vulnerable to criticism from opposition parties at home. It bears the burden of proving that a qualified majority of the Council was wrong.[17]

For these reasons, many European regulations which have been adopted unanimously would not have been adopted unanimously if they had to be adopted unanimously. The unanimity is due to qualified majority voting and is perfectly consistent with SRRC. What many interpret as a spirit of cooperation and Paretian bargaining may in truth be a regime of fear.

Rather than contesting the decision, governments have begun to voice their unease in a formal statement attached to the protocol. However, some of these formal statements merely indicate how the government wants the legislation to be interpreted. The voting record of the Council has been published since 1993, even online since 1999 (http://register.consilium.eu.int).

The SRRC hypothesis implies that member states which have a high level of domestic regulation are more likely to vote in favor of common regulations, especially if the latter raise labor cost in the other countries. By testing this implication econometrically, Boockmann and Vaubel (2005) show that

---

"déformation professionelle" in the parliaments or the fact that the parliamentarians try to maximize their own power. More specifically, with respect to "employment and the economy", 53 percent of the European parliamentarians but only 44 percent of the national parliamentarians (and 42 percent of the citizens) prefer European solutions (ibid., Table 3.3).

[17] Exactly the same problem arises for a government or parliament refusing to ratify an ILO convention.

voting in the International Labor Organization (ILO) is inspired by SRRC. In the case of European labor regulations, this research strategy is not feasible because the number of labor market directives which have been openly contested (since 1993) is much smaller. That is not surprising. In a union of 12 to 15 member states, retaliation for open opposition is much more likely than in a specialized international organization like ILO which has 180 members. Dissent is more likely to be noted and remembered, there are many policy areas in which retaliation may take place, and the cost of negotiating retaliatory measures is relatively small. Thus, the empirical analysis will have to be confined to three types of evidence:

1. case studies of voting on decisions which are known to have been contested,
2. the available analyses of voting on social policy and on regulation in general,
3. comparisons between European labor regulations and the national regulations which they have replaced.

3.4.1. Voting on contested labor regulations: Case studies

The first instance of SRRC in European labor regulation was the British decision in 1991 not to veto the Social Agreement but to obtain an opt-out from it. If the others would agree on new European labor regulations unanimously or by qualified majority, the UK would gain a competitive advantage in terms of labor cost. However, as was to be expected, this advantage was short-lived. In 1987, the new Labour government abandoned the opt-out. If the Conservatives had vetoed the Social Agreement in 1991, it might never have been adopted.

In 2007, the Labour government repeated the strategy of the Conservative government by demanding an opt-out from the European Charter of Fundamental Rights. When will this opt-out be abandoned?

Further examples are provided by some directives which are known to have been contested in the Council. They are confined to the period since 1993 because, before that time, the Council's voting record has not been published.

The first directive to be examined is the Working Time Directive. The British government abstained (even though it was opposed). Working time in the UK exceeds the EU average.[18] In particular, a significant part of the British workforce (in 1990 16 percent) works longer than 48 hours, the limit that is to be finally imposed. For the Community as a whole, this share is much lower (in 1990 6.8 percent).[19] The British government challenged the directive in the European Court of Justice on the grounds that the primary concern of these restrictions was not about health and safety at work and that, therefore, the directive had to be adopted unanimously. The Court sided with the legal services of the Commission and the majority of the Council.

The second regulation, adopted on the same day, was the Directive on Safety and Health Requirements for Work on Board Fishing Vessels. In this case, the British and the French government

[18] In 1992, average weekly hours of work were 43.4 in the UK but 40.3 in the European Community as a whole (O'Reilly et al. 1996, Table 29.6).
[19] Watson 1992: 540

abstained. Both countries have a large fishing fleet. For most of the other member states fishing is less important.[20] Notably British regulations of work on fishing vessels are relatively liberal. The European regulation raised labor cost on British fishing vessels and weakened their competitiveness.

The third example of SRRC is the European Works Council Directive (1994). It was inspired by prototype European Works Councils in French-based, state-owned multinationals (Gold, Hall 1994: 179). The Council of Ministers voted in the absence of the British government representative, and the Portugese government abstained. National law did not prescribe works councils in either country. Both countries were eager to attract foreign capital. The increase in the cost of travel would be largest in multinational enterprises operating in peripheral member states like Portugal and the UK.

Fourth, the Directive on Safety and Health Requirements for the Use of Work Equipment (1995) was contested by the British and the Italian government. Both abstained. They probably feared that the increase of labor cost would be larger in their own countries than in most of the other member states.

It is striking that in all four cases the British government was among the contestants. This is in line with the general impression that the British labor market is probably the least regulated in the EU. Table 5 confirms this impression. Two of the four indices (OECD and Nickell/ Nunziata) rank the UK as most liberal. The other two rank it second (Gwartney/ Lawson) or third (Botero et al.). If the ranks from all four indices are averaged, the UK comes first, followed by Denmark, Ireland, Austria, Finland, the Netherlands and Sweden (in this order). As was noted in section 1, these countries – with the exception of Austria – are also on record for generally contesting Council legislation most frequently (Mattila 2004, Table 1).

I now turn to a labor regulation which was adopted unanimously even though two member states voiced their opposition during the negotiations. This is the directive on Informing and Consulting Employees (2002). According to press reports, the British and the Irish government disliked the directive:

> "German officials said yesterday Berlin was likely to back the information and consultation law… Denmark is also wavering, leaving Britain and Ireland the only hardline opponents… Tony Blair, British prime minister, has pledged his personal opposition to the directive" (Financial Times, December 13, 2000).

However, when the British and the Irish government found out that they could not muster enough support for a blocking minority, they caved in and voted for the directive:

> "Yesterday's agreement on the consultation directive avoided the isolation of the newly-returned Labour government on the key European issue where it was certain to be outvoted by its partners. Britain was facing defeat after

[20] This is reminiscent of the German Sailors' Regulation (Seemannsordnung) of 1872 which Prussia and its majority coalition imposed on the seaport states Bremen, Hamburg, Lübeck and Oldenburg. According to the minutes of the Bundesrath, the federal chamber, the minority complained that the regulation "will require time and costs which can lead to heavy losses for the shipping lines" and that "no sea-faring nation knows a regulation of this kind" (my translation). "That Prussia as a state would use its military-political superiority to subordinate the interests of the more distant and more recent interests of North Sea shipping, which are alien to the Prussian bureaucracy, to those of Baltic Sea shipping in such a reckless way is something one would not believe until one has seen it with one's own eyes" remarked the Nationalzeitung. Even the delegates of the southwestern inland states felt uneasy. One of them wrote: "The inland states are in a strange position to tip the balance in a matter which does not concern them… They vote with Prussia even though they may do grave damage to the seaport states" (see Vaubel 2007: 198).

> Germany, Ireland and Denmark signalled their willingness to accept the compromise" (Financial Times, June 12, 2001).

A similar case was the so-called Droit de Suite Directive (officially the "Directive on the Resale Right for the Benefit of the Author of an Original Work of Art"). It was unanimously adopted on September 27, 2001 (Directive 2001/84/EC). It is not a labor market directive because it relates to the product of self-employed labor but it also confers "rights" on a group of working persons. The directive obliges art galleries and auction houses to pay a certain percentage of the resale price to the artists or their (often distant) heirs.[21] The droit de suite is a French invention. It became law in 1921 and, by 2001, had been copied by ten other EC member states. It does not exist in Switzerland, New York and most other parts of the world though UNESCO recommends it. The French government promoted the European droit de suite directive in the Council and, prior to that, by asking the Commission to make a proposal. The bill was immediately opposed by the four member countries which did not practice the droit de suite (United Kingdom, Ireland, the Netherlands and Austria) and which feared for their art markets (Sotheby's, Christies' etc. in London, the Maastricht Art Fair, the Dorotheum in Vienna etc.). London, at the time, hosted about 70 percent of the EU's art market.[22] The four countries were supported by Luxembourg and to some extent by the Nordic countries (Schneider et al. 2006: 337). However, they did not have enough votes to stop the majority. As they could not beat them, they sooner or later decided to join them – first of all Austria and the Netherlands, then Ireland and finally the UK. The duty has been levied since 2006 and will be raised considerably in 2011.

Finally, there is also an example of a labor regulation which was proposed by the Commission but successfully blocked by the minority. This is the Temporary Workers Directive proposed in 2002. Once more, the directive was primarily fought by the British government. The share of temporary workers is larger in the UK than in any other member country and, indeed, than in all member states together.[23] The UK was supported by Germany, Denmark and Ireland which was enough to stop the directive.[24] The Commission withdrew its proposal until further notice in August 2005 after the draft constitutional treaty had been rejected in referenda in France and the Netherlands. There was still a blocking minority after the Eastern enlargement (Financial Times, October 5, 2004) but Prime Minister Gordon Brown has vowed to support a watered down version of the proposed directive (Financial Times, September 11, 2007).

As these examples show, the British Labor government shared its Conservative predecessor's aversion to EU labor regulations. But, unlike the Conservatives, it voted for the regulations if it could not stop them, and it never went to Court.

---

[21] For an excellent economic critique of droit de suite see Schmidtchen (2000).
Note that droit de suite is not a tax. The EC Treaty (Art. 93) requires unanimity for the "harmonization" of indirect taxes.

[22] British sources estimate that the directive will wipe out about 5.000 jobs in the London art market.

[23] In 2002, for example, two thirds of all temporary workers in the EU of 15 worked in the UK.

[24] The directive would have been adopted if the threshold for a qualified majority had been lowered to 65 percent as envisaged by the ill-fated constitutional treaty of 2004.

However, this conclusion cannot be generalized for all policy areas. The Financal Services Directive (2003), for example, was rejected in the final vote by the UK, Ireland, Luxembourg, Sweden and Finland (Financial Times, October 8, 2003) even though they could not block it. Its cost has mainly to be borne by the City of London, which accounts for three quarters of the market, and Luxembourg. The main beneficiaries, once more, are Switzerland and New York.

It is striking that, since the Eastern enlargement in May 2004, no major EU labor regulation has been introduced.[25] Apparently, the new member states are not interested in such restrictions. However, the share of contested decisions in all policy areas together has declined since May 2004 (Hagemann, De Clerk-Sachsse 2007, Table 1).

3.4.2 Contested Council legislation on social policy and on regulation in general: A survey of empirical studies

The strategy of raising rivals' costs by European labor regulation ought to be viewed in the context of Council voting on social policy and on regulation in general. Since SRRC and regulatory collusion cannot empirically be distinguished except in the case of contested qualified majority decisions, the available empirical analyses of Council voting will be surveyed only with respect to contested legislation.

In 1994-98, 21 percent of the 1,381 legislative acts were openly contested in the Council (Mattila, Lane 2001, Table 1). From December 2001 to October 2006, the share was at least 15.2 percent (Hagemann, De Clerk-Sachsse 2007: 10).[26] As Mattila and Lane (ibid., Table 2) show, the share of dissenting votes was largest in the area of agriculture (33 percent), the internal market (30 percent), transport (27 percent), public health (23 percent) and social policy (17 percent). "No"-votes and abstentions came mainly from Germany, Sweden, the UK, Italy, the Netherlands and Denmark (Table 4).[27] In 2001-04, Portugal and Spain joined the group of main contestants (Hagemann, De Clerk-Sachsse 2007: 15). The British government has voted "no" or abstained in 3.7 percent of all cases in 1994-98 (Mattila, Lane 2001, Table 4) or in 3.9 percent of all votes in 1995-2000 (Mattila 2004, Table 1). As has been noted already, the countries most likely to join British dissent were Sweden, Denmark, Finland, Ireland and the Netherlands – in that order (Mattila, Lane 2001, Figure 3).[28] Since the Eastern enlargement, in addition, Slovakia, Estonia, Latvia, Lithuania, Hungary and the Czech Republic but also Spain and Portugal have tended to be close to the British position (Hagemann, De Clerk-Sachsse 2007, Figure 8). In the Council of Ministers on Employment, Social Policy and Consumer Affairs,

[25] The revision of the Machinery Directive in 2006 does not only concern the labor market. It relates also to machinery not used by workers. There has been another anti-discrimination directive ("Equal Treatment between Men and Women in the Access to and Supply of Goods and Services", 04/113/EC) but it is not relevant to the labor market. Only the German government abstained (Judicial Affairs Council, October 4, 2004).

[26] The share is 36.5 percent if the submission of formal statements is counted as opposition (ibid.). As this share exceeds the threshold for a blocking minority (27.7 percent during this period), formal statements do not necessarily indicate opposition, however.

[27] This is in line with Hosli's finding that large net payments to the EU budget significantly raise the probability that the government may oppose the Council majority.

[28] The cooperation between the UK and the Scandinavian countries is also emphasized by Elgström et al. (2001: 122).

oppositions came mainly from the governments of Germany, the UK, Luxembourg, the Czech Republic, Poland, Latvia and Greece (ibid., Figure 12).

At least four studies of the pre-2004 Councils identify the North-South division as the main cleavage (Beyers, Dierickx 1998: 312, Mattila, Lane 2001: 45, Elgström et al. 2000: 121, Zimmer et al. 2005).[29] A survey of 125 EU experts by Thomson et al. (2004) reveals the sources of this cleavage:

> "A clear majority (44 issues or 73 percent) of the 60 issues where there are significant divisions between Northern and Southern delegations concern choices between free-market and regulatory alternatives… In general, the Northern delegations tend to support more market-based solutions than the Southern delegations" (pp. 255f.).

Zimmer et al. (2005), in their analysis of Council voting, reach a similar conclusion:

> "As a rule, the results confirm the observation that the poorer southern member states demand more market regulation, protectionism and redistribution than the northern member states, who seek increased free trade, market liberalization and the restriction of EU expenses" (p. 412).

Thus, more or less the same countries which contested the Temporary Workers Directive, the Droit de Suite Directive and the Financial Services Directive oppose regulation in general – with the UK and Ireland representing the hard core.

Why did the UK and Ireland accept qualified majority voting on labor regulations in the Single European Act (1986) and the Amsterdam Treaty (1997)? Did they not foresee these difficulties, or did they get something in exchange? The Conservative government in 1986 made several concessions (also in the monetary field) in order to secure agreement on the completion of the internal market which was mainly a British project and promoted by a British commissioner (Lord Cockfield). The Labor government's decision to join the Social Agreement is harder to explain. Did they fail to foresee the difficulties over, say, the Information and Consultation Directive in 2002? What did they receive in exchange in the Amsterdam Treaty?

3.4.3 Comparisons between European and prior national labor regulations

Regulatory collusion and the strategy of raising rivals' costs may be identified not only by examining the Council's voting record but also by studying the contents of the European regulations in comparison with the prior national regulations. Do the European regulations correspond to the previous national regulations of the decisive Council member? Of the average Council member? Of the most restrictive Council member? Or do they go beyond all prior national regulations?

Five European labor regulations have been analyzed in this respect. The results differ:

1. The Part Time Directive (1997) was "non-exacting" and had "a rather limited practical impact" in all major member states (Davies, Freedland 2004: 81). It was essentially "reflexive" of the national regulations.

[29] The division has been less clear since 2001 (Hagemann, De Clerk-Sachsse 2007, Figures 3, 6 and 8).

2. The Working Time Directive (1993) "fails to go beyond existing working time practices in a majority of the member states" (O'Reilly et al. 1996: 879). It may be close to the prior national regulation of the decisive Council member.
3. The Framework Directive on Safety and Health Requirements for the Workplace (1989) sets a level which is "higher than the existing protection levels in most member states" (O'Reilly et al. 1996: 885).
4. The same is true for the Directive on Display Screen Equipment of 1990 (Eichener, Voelzkow 1994: 393).
5. The Machinery Directive (1989), however, is more restrictive than any national regulation had been (Eichener, Voelzkow 1994: 391).

Hence, Eichener und Voelzkow (1994) summarize the findings of the last three comparative studies as follows:

> "In its requirements and regarding the extent of its areas of application, the European workplace protection exceeds even the level which it had been possible to require in the most progressive member countries" (p. 386, my translation).

As none of these five directives required unanimity, all of them qualify for the strategy of raising rivals' costs.

The Part Time Directive (1.) was adopted without opposition in 1997 but implementation by the UK was so minimalist that Kilpatrick and Freedland (2004: 356) evoke the notion of "vertical dissonance" between EU and British regulation of part time work. Before 1997 various proposals for EC regulation of part-time work had been vetoed by Conservative British governments from 1982 onward (Kilpatrick, Freedland 2004: 302).

The Working Time Directive (2.) is known to have been contested by the UK. It is a clear case of SRRC.

Directives 3 to 5 have been adopted prior to 1993, i.e., before the Council's new Rules of Procedure prescribed the publication of the legislative voting record. Thus, we do not know whether these directives have been adopted unanimously or by majority.

As the theoretical analysis (Figures 3 and 4) has shown, the fact that these common minimum standards went beyond the prior national regulations in most or all member states is compatible with both SRRC and collusion. However, SRRC is more likely than collusion to the extent to which there were large differences among the prior national regulations.

4. Conclusion

As the analysis has shown, it is of utmost importance whether the decisions about European labor market regulations have to be taken unanimously or by qualified majority and whether, in the case of majority decisions, the voting threshold is high or low. The lowering of the majority requirement which the current Intergovernmental Conference is set to propose is likely to lead to another spate of labor regulations raising labor cost and damaging employment in the European Union.

Further research is required on how the various European labor regulations differ from the pre-existing national regulations as this would help to distinguish between the strategy of raising rivals' costs and regulatory collusion. What is also missing is econometric evidence as to whether national labor regulations in the European Union have been lowered in response to the liberalisation of trade and capital movements or – as proxies – the amount of intra-union trade and capital flows in relation to the size of the domestic markets. It is surprising that the explanation of EU labor regulation has received so little attention in the theoretical and empirical literature.

References:

Addison, John T. (2007), Politico-Economic Causes of Labor Regulation in the United States: Rent Seeking, Alliances, Raising Rivals' Costs (Even Lowering One's Own?), and Interjurisdictional Competition, in Peter Bernholz und Roland Vaubel (eds.), Political Competition and Economic Regulation, Routledge, London: 19-42.

Addison, John T., W. Stanley Siebert (1994), Social Engineering in the European Community: The Social Charter, Maastricht and Beyond, Institute of Economic Affairs, London, Current Controversies 6.

Axelrod, Robert (1970), Conflict of Interest, Markham, Chicago.

Bartel, Ann P., Lacy Glenn Thomas (1985), Direct and Indirect Effects of Regulation: A New Look at OSHA's Impact, Journal of Law and Economics 28: 1-25.

Bartel, Ann P., Lacy Glenn Thomas (1987), Predation through Regulation, Journal of Law and Economics 30: 239-264.

Beyers, Jan C. M., Guido Dierickx (1998), The Working Groups of the Council of the European Union: Supranational of Intergovernmental Negotiations? Journal of Common Market Studies 36: 289-317.

Blankart, Charles B., Christian Kirchner (2004), The Deadlock over the EC Budget, in Charles B. Blankart, Dennis Mueller (eds.), A Constitution for the European Union, MIT Press, Cambridge, Mass.: 109-137.

Boockmann, Bernhard, Roland Vaubel (2005), The Theory of Raising Rivals' Costs and Evidence from the International Labor Organization, unpubl. manuscript, University of Mannheim.

Botero, Juan C., Simeon Djankov, Rafael de la Porta, Florencio Lopez-de-Silanes, Andrei Shliefer (2004), The Regulation of Labor, Quarterly Journal of Economics 118: 1339-1382.

Cichowsky, Rachel A. (2007), The European Court and Civil Society, Cambridge University Press, Cambridge.

Davies, Paul, Mark Freedland (2004), The Role of EU Employment Law and Policy in the De-marginalisation of Part-time Work: A Study in the Interaction between EU Regulation and Member State Regulation, in Silvana Sciarra, Paul Davies, Mark Freedland (eds.), Employment Policy and the Regulation of Part-Time Work in the European Union: A Comparative Analysis, Cambridge University Press, Cambridge: 63-82.

Eichener, Volker, Helmut Voelzkow (1994), Europäische Regulierung im Arbeitsschutz, in Volker Eichener und Helmut Voelzkow (eds.), Europäische Integration und verbandliche Interessenvermittlung, Marburg: 385-417.

Elgström, Ole, Bo Bjurulf, Jonas Johansson, Anders Scannerstedt (2001), Coalitions in European Union Negotiations, Scandinavian Political Studies 24: 111-128.

Feld, Lars (2007), Regulatory Competition and Federalism in Switzerland: Diffusion by Horizontal and Vertical Interaction, in Peter Bernholz, Roland Vaubel (eds.), Political Competition and Economic Regulation, Routledge, London: 200-240.

Fishback, Price V. (1997), Operations of 'Unfettered' Labor Markets: Exit and Voice in American Labor Markets at the Turn of the Century, National Bureau of Economic Research, Cambridge, Mass., NBER Historical Paper 105.

Fishback, Price V. (2005), The Irony of Reform: Did Large Employers Subvert Safety Reform? 1869-1930, National Bureau of Economic Research, Cambridge, Mass., Working Paper 11058.

Gold, M., M. Hall (1994), Statutory European Works Councils: The Final Countdown? Industrial Relations Journal 25: 177-186.

Goldberg, Victor P. (1982), Peltzman on Regulation and Politics, Public Choice 39: 291-297.

Gwartney, James, Robert Lawson (2007), Economic Freedom in the World, 2007, Annual Report, Fraser Institute, Vancouver.

Hagemann, Sara, Julia De Clerk-Sachsse (2007), Old Rules, New Games: Decision-making in the Council of Ministers after the 2004 Enlargement, Centre for Economic Policy Studies, Brussels, Special Report.

Heinemann, Friedrich (2007), The Drivers of Deregulation in the Era of Globalization, in Peter Bernholz, Roland Vaubel (eds.), Political Competition and Economic Regulation, Routledge, London: 245-266.

Helbling, Thomas, Dalia Hakura, Xavier Debrun (2004), Fostering Structural Reforms in Industrial Countries, World Economic Outlook, International Monetary Fund, Washington, D.C., Ch. III: 103-146.

Hosli, Madeleine O. (2007), Explaining Voting Behavior in the Council of the European Union, unpubl. manuscript, University of Leiden.

Kant, Immanuel (1784/1981), Idea of a Universal History from a Cosmopolitan Point of View, in Patrick Gardiner (ed.), Theories of History, Free Press, New York: 22-34.

Kilpatrick, Claire, Mark Freedland (2004), The United Kingdom: How is EU governance transformative? In Silvana Sciarra, Paul Davies, Mark Freedland (eds.), Employment Policy and the Regulation of Part-Time Work in the European Union: A Comparative Analysis, Cambridge University Press: 299-357.

Körber, Achim (2000), The Political Economy of Environmental Protectionism, Elgar, Cheltenham.

Landes, Elisabeth M. (1980), The Effect of State Maximum-Hours Laws on the Employment of Women in 1920, Journal of Political Economy 88: 476-494.

Lange, Peter (1992), The Politics of the Social Dimension, in Alberta M. Sbragia (ed.), Euro-Politics, Washington, D.C.: 225-256.

Maloney, Michael T., Robert E. McCormick (1982), A Positive Theory of Environmental Quality Regulation, Journal of Law and Economics 25: 99-123.

Marvel, Howard P. (1977), Factory Regulation: A Reinterpretation of Early English Experience, Journal of Law and Economics 20: 379-401.

Mattila, Miko (2004), Contested Decisions: Empirical Analysis of Voting in the European Union Council of Ministers, European Journal of Political Research 43: 29-50.

Mattila, Miko, Jan-Erik Lane (2001), Why Unanimity in the Council? A Roll Call Analysis of Council Voting, European Union Politics 2: 31-52.

Michaelis, Peter (1994), Regulate Us, Please! On Strategic Lobbying in Cournot-Nash Monopoly, in: Journal of Institutional and Theoretical Economics 150: 693-709.

Nickell, Stephen, Luca Nunziata (2001), Labour Institutions Data Base, London School of Economics.

O'Reilly, Jacqueline, Bernd Reissert, Volker Eichener (1996), European Regulation of Social Standards: Social Security, Working Time, Workplace Participation, Occupational Health and Safety, in Günther Schmid, Jacqueline O'Reilly und Klaus Schönemann (eds.), International Handbook of Labour Market Policy Evaluation, Elgar, Cheltenham: 868-898.

Organization for Economic Cooperation and Development (2004), OECD Employment Outlook, Paris.

Oster, Sharon (1982), The Strategie Use of Regulatory Investment by Industry Subgroups, Economic Inquiry 20: 604-618.

Pashigian, Peter (1984), The Effects of Environmental Regulation on Optimal Plant Size and Factor Shares, Journal of Law and Economics 27: 1-28.

Pashigian, Peter (1985), Environmental Protection: Whose Self-interests are Being Protected?, Economic Inquiry 23: 551-584.

Pitlik, Hans (2007), A Race to Liberalization? Diffusion of Economic Policy Reform among OECD Economies, Public Choice 132: 159-178.

Posner, Richard A. (1974), Theories of Economic Regulation, Bell Journal of Economics and Management Science 5: 335-358.

Salop, Steven C., David T. Sheffman (1983), Raising Rivals' Costs, American Economic Review 73: 267-271.

Schmidtchen, Dieter (2000), Resale Rights for the Benefit of Authors of an Original Work of Art? An Economic Analysis of the Proposal for an EU Directive, in: Helmut Rüssmann (ed.), Keio-Tage 1998: Beiträge zum deutschen, japanischen und europäischen Wirtschafts- und Verfahrensrecht, Nomos, Baden-Baden.

Schmitt, Hermann, Jacques Thomassen, eds. (1999), Political Representation and Legitimacy in the European Union, Oxford.

Schneider, Gerald, Bernhard Steunenberg, Mika Widgren (2006), Evidence with Insight: What models contribute to EU research, in: Robert Thomson, Frans N. Stokman, Christopher H. Achen, Thomas König (eds.), The European Union decides, Cambridge University Press, Cambridge: 299-317.

Stigler, George J. (1970), Director's Law of Public Income Redistribution, Journal of Law and Economics 13: 1-10.

Teske, Paul Eric, Samuel Best, Michael Mintrom (1995), Deregulating Freight Transportation, American Enterprise Institute, Washington, D.C.

Thomson, Robert, Jovanka Bourefijn, Frans Stokman (2004), Actor Alignments in European Decision Making, European Journal of Political Research 43: 237-261.

Vaubel, Roland (2007), The Strategy of Raising Rivals' Costs by Federal Regulation under Bismarck, in Peter Bernholz und Roland Vaubel (eds.), Political Competition and Economic Regulation, Routledge, London: 148-151.

Watson, G. (1992), Hours of Work in Great Britain and Europe: Evidence from the UK and European Labour Force Surveys, Employment Gazette 100 (11): 539-557.

Weber, Max (1923), General Economic History, Collier, New York.

Zimmer, Christina, Gerald Schneider, Michael Dobbins (2005), The Contested Council: The Conflict Dimensions of an Intergovernmental Institution, Political Studies 53, 403-422.

Appendix: Tables 1-5

Table 1: Labor market directives of the European (Economic) Community since 1989

Subject matter	Date of Council Decision	Reference Nr. in Official Journal
Safety and health of workers at work	12.06.1989	OJ L 183, 29.6.1989 - (89/391/EEC)
The Machinery directive	14.06.1989	OJ L 183, 29.6.1989 - (89/392/EEC)
Safety and health requirements for the workplace	30.11.1989	OJ L 393, 30.12.1989 - (89/654/EEC)
Personal Protective Equipment	21.12.1989	OJ L 399, 30.12.1989 - (89/686/EEC)
Display screen equipment	29.05.1990	OJ L 156, 21.06.1990 - (90/270/EEC)
Protection of workers from risks related to exposure to biological agents	26.11.1990	OJ L 374, 31.12.1990 - (90/679/EEC)
Safety and health at work of workers with a fixed- duration employment relationship or a temporary employment relationship	25.06.1991	OJ L 206, 29.07.1991- (91/383/EEC)
Employer's obligation to inform employees of the conditions applicable to the contract or employment relationship	14.10.1991	OJ L 288, 18.10.1991 - (91/533/EEC)
Approximation of the laws of the Member States relating to collective redundancies (rev.)	24.06.1992	OJ L 245, 26.08.1992 - (92/56/EEC)
Safety and health requirements at temporary or mobile construction sites	24.06.1992	OJ L 245, 26.08.1992 - (92/57/EEC)
Safety signs and signals	24.06.1992	OJ L 245, 26.08.1992 - (92/58/EEC)
Safety and protection of health of pregnant employees	19.10.1992	OJ L 348, 28.11.1992 - (92/85/EEC)
Risks related to exposure to biological agents at work (1990)	12.10.1993	OJ L 268, 29.10.1993 - (93/88/EC)
Organization of working time	23.11.1993	OJ L 307, 13.12.1993 - (93/104/EC)
Safety and health requirements for work on board fishing vessels	23.11.1993	OJ L 307, 13.12.1993 - (93/103/EC)
Protection of young people at work	22.06.1994	OJ L 216, 20.08.1994 - (94/33/EC)
European Works Council	22.09.1994	OJ L 254, 30.09.1994 - (94/45/EC)
Protection of workers from risks related to exposure to biological agents (revisions)	30.06.1995 07.10.1995 26.11.1995	OJ L 155, 06.07.1995 - (95/30/EC) OJ L 282, 15.10.1997 - (97/59/EC) OJ L 335, 06.12.1997 - (97/65/EC)
Safety and health requirements for the use of work equipment (rev.)	05.12.1995	OJ L 355, 30.12.1995 - (95/63/EC)
Parental leave	03.06.1996	OJ L 154, 19.06.1996 - (96/34/EC)

Posting of workers	24.09.1996	OJ L 18, 21.01.1997 - (96/71/EC)
Equal treatment for men and women (rev.)	20.12.1996	OJ L 46, 17.02.1997 - (96/97/EC)
Burden of proof in cases of discrimination based on sex	15.12.1997	OJ L 14, 20.01.1998 - (97/80/EC)
Part-time work	15.12.1997	OJ L 14, 20.01.1998 - (97/81/EC)
Approximation of the machinery directive (rev.)	22.06.1998	OJ L 207/1, 23.07.1998 - (98/37/EC)
Approximation relating to the safeguarding of employees' rights in the event of transfers of businesses (rev.)	29.06.1998	OJ L 201, 17.07.1998 - (98/50/EC)
Approximation of the laws relating to collective redundancies (rev.)	20.07.1998	OJ L 225, 12.08.1998 - (98/59/EC)
Organization of working time (rev.)	22.06.2000	OJ L 195, 01.08.2000 - (00/34/EC)
Equal treatment between persons irrespective of racial or ethnic origin	29.06.2000	OJ L 180, 19.07.2000 - (00/43/EC)
Biological agents at work	18.09.2000	OJ L 262, 17.10.2000 - (00/54/EC)
Equal treatment in employment and occupation	27.11.2000	OJ L 303, 02.12.2000 - (00/78/EC)
Approximation relating to the safeguarding of employees' rights in the event of transfers of businesses (rev.)	12.03.2001	OJ L 82, 22.03.2001 - (01/23/EC)
Requirements for the use of work equipment by workers at work	11.06.2001	OJ L 195, 19.07.2001 - (01/45/EC)
Informing and consulting employees	11.03.2002	OJ L 80, 23.03.2002 - (02/14/EC)
Equal treatment of men and women (rev.)	23.09.2002	OJ L 269, 05.10.2002 - (02/73/EC)
Protection of employees in the event of the insolvency of their employer (rev.)	23.09.2002	OJ L 270, 08.10.2002 - (02/74/EC)
Aspects of the organization of working time	04.11.2003	OJ L 299, 18.11.2003 - (03/88/EC)
Machinery directive (rev.)	17.05.2006	OJ L 157, 09.06.2006 - (06/42/EC)
Social legislation relating to road transport activities	15.03.2006	OJL 102/35, 11.04.2006 - (06/22/EC)
Exposure to optical radiation	05.04.2006	OJL 114/3, 27.04.2006 - (06/25/EC)
Equal treatment of men and women (rev.)	05.07.2006	OJL 204/23, 26.07.2006 - (06/54/EC)
Temporary employment: proposal of Commission (Com 2002/701) withdrawn until further notice in August 2005		

Table 2:

Framework Agreements between Management and Labor at the Community/Union level

A) implemented by the European Community:

1. Agreement on Parental Leave (1996)
2. Agreement on Part Time Work (1997)
3. Agreement on the Working Time of seafarers (1998)
4. Agreement on Fixed Term Contracts (1999)
5. Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation (2000)
6. Agreement on Certain Aspects of Working Conditions of Mobile Workers engaged in Interoperable Cross Border Services in the Railway Sector (2005)

B) implemented by the member states:

1. Agreement on Telework (2002)
2. Agreement on Work-Related Stress (2004)
3. Agreement on the European Licence for Drivers carrying out a Cross-border Interoperability Service (2004)
4. Agreement on Harassment and Violence at Work (2007)

Table 3:

Employment protection in the European Community, 1960-94[a)]

	1960-65	1966-72	1973-79	1980-85	1986-90	1991-94	Council votes
Italy	1.93	2.00	2.00	2.00	1.98	1.88	10
Germany	0.47	1.11	1.65	1.65.	1.61	1.49	10
France	0.40	0.75	1.21	1.30	1.33	1.44	10
Belgium	0.71	1.28	1.55	1.55	1.49	1.31	5
Netherlands	1.35	1.35	1.35	1.35	1.33	1.27	5
five countries weighted average	0.96	1.29	1.58	1.60	1.58	1.53	sum: 40
Denmark	0.99	1.10	1.10	1.10	1.05	0.85	3
Ireland	0.03	0.20	0.45	0.50	0.50	0.53	3
UK	0.16	0.22	0.33	0.35	0.35	0.35	10
eight countries weighted average	–	1.04	1.27	1.30	1.28	1.23	sum: 56
Spain	2.00	2.00	1.99	1.91	1.86	1.71	8
Portugal	n.a.	n.a.	1.70[b)]	1.93	1.94	1.92	5
ten countries weighted average	–	–	1.35	1.37	1.36	1.30	sum: 69

[a)] From 0 (no employment protection) to 2 (maximum), for Greece and Luxemburg not available, weighted by the countries' votes in the EC Council.
[b)] 1975-79

Source: Nickell, Nunziata (2001)

Table 4:

Regulation of labor markets: (i) impact of minimum wage and (ii) flexibility in hiring and firing (Gwartney, Lawson 2007, 5B (i) and (ii))

		1990	1995	2000	2004
Austria	(i)		4.6	4.6	6.6
	(ii)	4.8	4.8	3.1	4.7
	av.		4.70	3.85	5.65
Belgium	(i)		3.9	5.1	6.2
	(ii)	3.8	3.8	3.1	2.6
	av.		3.85	4.10	4.40
Denmark	(i)		3.7	4.8	6.1
	(ii)	8.1	8.1	6.5	7.3
	av.		5.90	5.65	6.70
Finland	(i)		4.1	4.7	6.3
	(ii)	3.9	3.9	3.2	4.4
	av.		4.00	3.95	5.35
France	(i)		2.6	4.5	6.8
	(ii)	4.2	4.2	1.7	2.4
	av.		3.40	3.10	4.60
Germany	(i)		3.4	4.6	6.1
	(ii)	3.9	3.9	1.8	2.2
	av.		3.65	3.20	4.15
Greece	(i)		5.2	4.1	6.2
	(ii)	4.8	4.8	2.3	3.2
	av.		5.00	3.20	4.70
Ireland	(i)		7.0	4.7	5.9
	(ii)	5.5	5.5	3.8	4.0
	av.		6.25	4.25	4.95
Italy	(i)		3.4	4.0	4.0
	(ii)	2.6	2.6	2.1	2.7
	av.		3.00	3.05	3.35
Netherlands	(i)		4.5	4.5	6.5
	(ii)	3.4	3.4	2.6	3.1
	av.		3.95	3.55	4.80
Portugal	(i)		6.4	4.0	6.9
	(ii)	3.4	3.4	2.8	3.1
	av.		4.90	3.40	5.00
Spain	(i)		5.8	3.1	7.2
	(ii)	2.6	2.6	3.7	3.2
	av.		4.20	3.40	5.20
Sweden	(i)		1.8	4.4	5.5
	(ii)	3.9	3.9	2.2	2.3
	av.		2.85	3.30	3.90
UK	(i)		6.7	4.6	6.5
	(ii)	7.4	7.4	4.9	5.7
	av.		7.05	4.75	6.10
EC	(i)		4.51	4.41	6.20
	(ii)	4.45	4.45	3.13	3.64
	av.		4.48	3.77	4.92

Indices rage from 0 (maximum restrictiveness) to 10 (no restrictions)

Table 5:

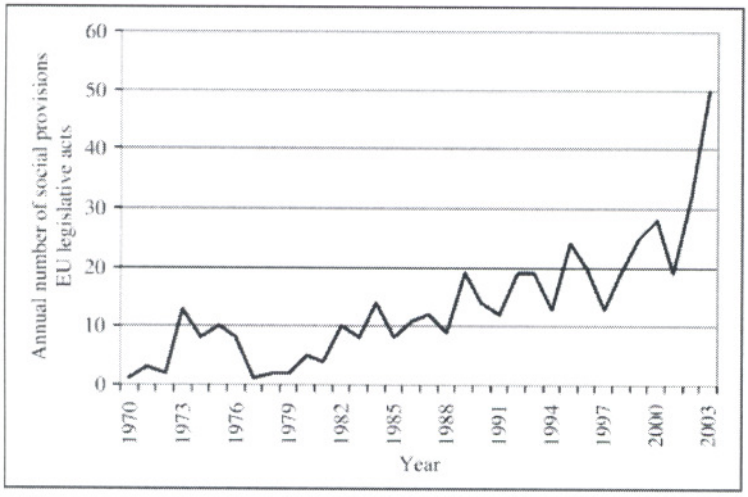
Indices of labor market regulation,
EU-15 without Luxemburg, 1990s

	OECD[a)]	Botero et al.[b)]	Gwartney/ Lawson[c)]	Nickell/ Nunziata[d)]	Average of ranks
UK	0.9 (1)	1.02 (3)	6.6 (2)	0.35 (1)	1.75
Denmark	1.5 (3)	0.95 (2)	7.6 (1)	0.94 (3)	2.25
Ireland	1.1 (2)	1.04 (4)	4.9 (3)	0.52 (2)	2.75
Austria	2.3 (6)	0.80 (1)	4.2 (4)	1.30 (5.5)	4.13
Finland	2.1 (4)	1.73 (10)	3.4 (6.5)	1.15 (4)	6.13
Netherlands	2.2 (5)	1.68 (9)	3.1 (11)	1.30 (5.5)	7.63
France	2.8 (10)	1.59 (8)	3.4 (6.5)	1.39 (7.5)	8.00
Sweden	2.6 (8.5)	1.05 (5)	3.3 (9)	1.58 (10)	8.13
Belgium	2.5 (7)	1.77 (11)	3.6 (8)	1.39 (7.5)	8.38
Germany	2.6 (8.5)	1.57 (7)	3.2 (10)	1.54 (9)	8.63
Greece	3.5 (13)	1.89 (12)	4.0 (5)	n.a.	[10.00]
Italy	3.4 (12)	1.51 (6)	2.4 (13)	1.92 (12)	10.75
Spain	3.1 (11)	2.18 (13)	3.0 (12)	1.62 (11)	11.75
Portugal	3.7 (14)	2.36 (14)	2.1 (14)	1.93 (13)	13.75

Explanatory note:
ranks in parentheses

[a)] weighted index for 1990s, from 1 (minimal regulation) to 4 (maximal).
[b)] employment laws index for 1997, from 0 (minimal regulation) to 3 (maximum).
[c)] flexibility in hiring and firing (= subindex 5Bii), average of 1990, 1995 and 2000, from 0 (minimal flexibility) to 10 (maximum).
[d)] employment protection 1986-95, from 0 (no protection) to 2 (maximum).

Figure 1
EU legislative acts per annum in the area of social provisions



Source: Cichowsky (2007)

Figure 2
The effect of international capital market integration on national labor regulation

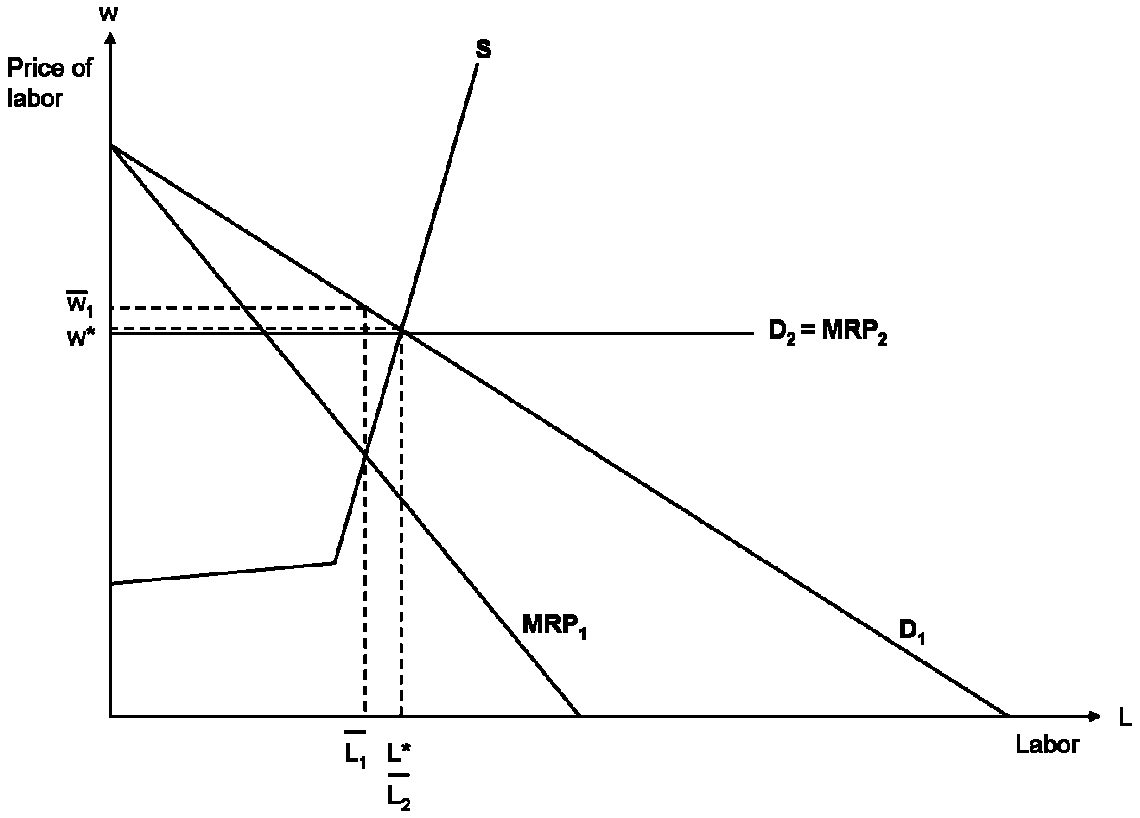


Figure 3: Regulatory collusion and raising rivals' costs

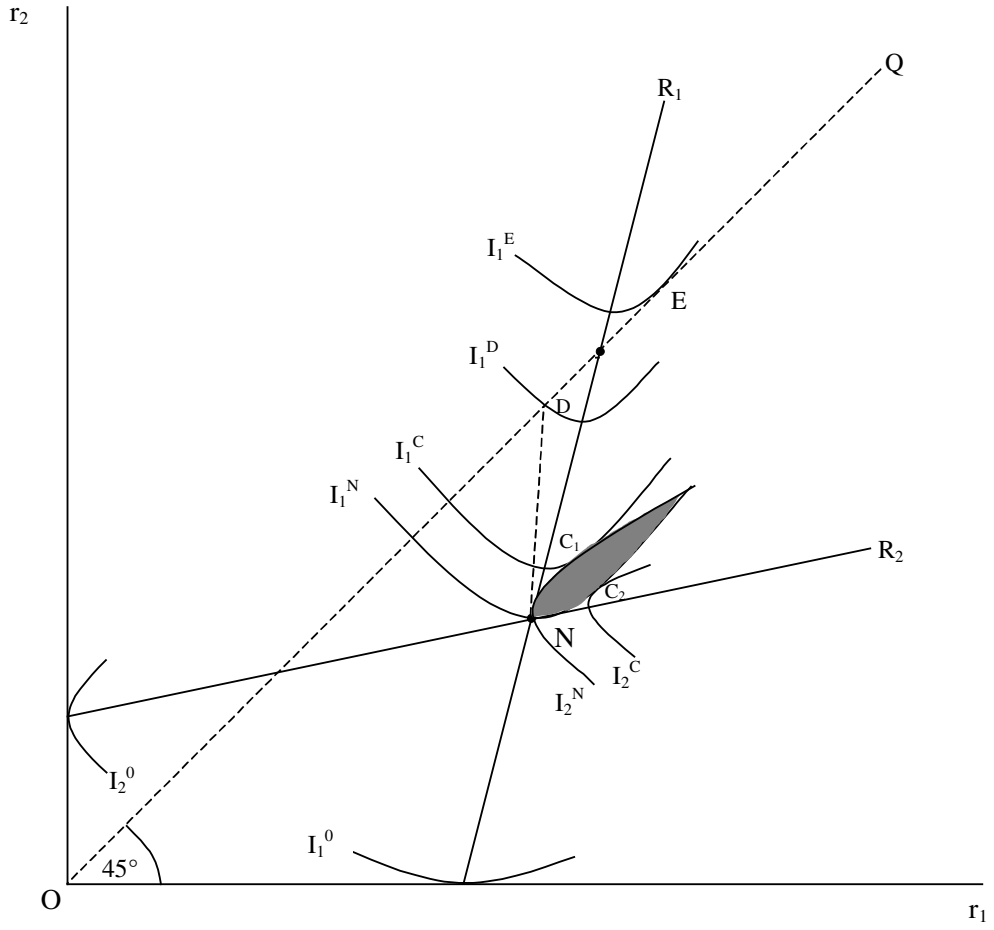


Figure 4: Regulatory collusion and raising rival‘s cost