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# Mending the Hole in Multilevel Implementation: Administrative Cooperation Related to Worker Mobility

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**Running title:**

Changes in Administrative Cooperation

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## **Abstract**

European economic integration creates unintended consequences for national public administrations. This paper offers a conceptual and empirical analysis of how these challenges are met. First, three challenges are identified: a reduced capacity to offer services to citizens who move freely; increasing administrative burdens; and negative externalities for all parts from a single states' administrative failure. Second, a conceptual framework is developed that links each challenge to a most likely response in form of modes of administrative cooperation. Third, the framework is illustrated by an empirical analysis of the coordination of Social Security Systems, Labor Inspectorates and Posted Workers. The case studies show that horizontal administrative cooperation is developed step-wise over time and in line with the theoretical framework. In sum, we can sustain that horizontal administrative cooperation is a relevant additional integration dynamic that buffers unintended effects of market integration on formally independent but increasingly interdependent member state executive bodies.

## **Keywords**

Administrative cooperation, enforcement, European Union, worker mobility

# 1 Introduction

The European Union's (EU) economic integration process has merged national economies into a single market. Yet, independent public administrations of the member states remain the main carriers of the implementation and enforcement of EU rules. Despite the formal independence of national public administrations, in order to realize the core goals of the single market, administrative actors depend increasingly on the smooth interaction between administrative units beyond their nationally defined territory. Against this background, this article asks which practices assure the functioning of the single market when it comes to hands-on implementation by national administrators. To answer this question, we draw the attention to executing authorities and their cooperation in trans-border administrative processes by examining a key policy of the single market: worker mobility. In contrast to recent attempts to conceptualize administrative cooperation across levels in the EU system (Benz A. *et al.*, 2016; Bauer M. W. & J. Trondal 2015), this article aims to grasp conceptually the emergence of specific forms of horizontal administrative cooperation as additional cooperation logic besides the mostly studied vertical linkages.

The relevance of the research question derives from the inevitable new administrative challenges an integrated single market creates for national executive bodies. Empirically, we can observe that both negative and positive integration – i.e. liberalization and EU-wide regulation – inescapably constrain state-defined public administrations. We can empirically identify three distinct, yet overlapping administrative challenges:

- with trans-border free movement, national agencies designed to operate on a confined territory can no longer fulfill their control and public service tasks vis-à-vis their constituency because, if citizens can claim services depending on their

place of work or residence *and* nationality, administrative processes span beyond the single state jurisdictions and can only be realized if different national offices cooperate. Short: *stand-alone national public administrations lose part of their capacity to **protect and offer services** to member state citizens.*

- with free movement, agencies are faced with new administrative demands; the full application of transnational regulations (including rules of other member states under the country of origin and mutual recognition principles) and the management of trans-border processes implies an increase of administrative tasks. Short: *public administrations are faced with **additional administrative burdens**.*
- with the dismantling of borders, the problem of interconnectedness and mutual dependencies between national administrations has increased. This implies also that inefficiencies of a single national public administration affect all other public administrations because it hampers the functioning of the common market. Short: *the failure to participate in trans-border administrative processes or faulty application of EU-law by one state creates **negative externalities** for the system as a whole.*

In face of these “real-life” administrative challenges which the integration of the single market creates for national public administrations, we argue that an unintended effect of building the single market is the hollowing out of the national capacity to administer the market (Heidbreder E. G. 2014b).<sup>1</sup> Even though the principle of independent national administrative authority still holds formally, *de facto* the internal market implies strong functional pressure for new administrative structures and practices in order to remedy the

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<sup>1</sup> Note that this line of argument echoes the argument that “the freedom of establishment is being used to hollow out the capacity of member states to shape the rules of corporate governance in their economies in accordance with national institutional traditions and political preferences” (Höpner, M. and Schäfer, A. 2007) .

above listed challenges. Concretely, our research interest thus deals with responses of bureaucratic actors developed in face of new pressures on public administrations, how these can be analytically structured and to which extent the different responses are applied. We hold that the observable responses depict relevant institutional answers to the constraining dissensus and that the emerging patterns hold wider implications for the course of European integration.

To overcome policy coordination problems between 28 national administrations, the most encompassing response is actually to create a single integrated administration on the supranational level that would coordinate by hierarchy. This implies the *vertical* conferral of powers at the expense of national administrative autonomy. However, although tendencies of administrative centralization can be traced (Trondal J. 2010), often hand in hand with supranational actors pushing for competence extension, there is clearly no political support in the member states to subordinate their national administrations to a superior EU administration. Given that the harmonization of administrative systems is basically ruled out, we consciously draw the attention to less sovereignty-constraining responses, led by the assumption that the member states generally prefer solutions that imply the least sovereignty conferral to the EU level. This article therefore concentrates on more autonomy preserving responses as offered by *horizontal* administrative cooperation between national bodies. To be clear, this does not mean that vertical coordination is no longer of relevance or does not happen in parallel and even interlinked with horizontal coordination. However, for the purpose of this article we focus attention on coordination problems in which political preferences rule out strong vertical coordination and, so the argument, horizontal coordination is opted for as a less constraining alternative. Accordingly, the core of the article deals with the mechanisms

that foster administrative coordination as alternative to vertical integration. While vertical cooperation in the EU systems typically results from a political decision to allocate powers at the supranational level, horizontal cooperation is essentially the response of technocratic actors to coordination problems. Assuming national political preferences not to create a genuine EU administrative system, we argue that horizontal cooperation is the preferred second best solution, thus functionalism is the starting point of our theoretical argument. Being interested primarily in how particular horizontal cooperation forms are matched with varying coordination problems, we focus on the question how functional pressures are adequately dealt with by horizontal cooperation. Feeding into the dominant functionalist literature in public policy and public administration studies on cooperation (for a recent overview see Peters G. 2015) the article speaks to a well-established theoretical field. To avoid tautological explanations, responses to coordination problems are not understood to occur automatically. Instead, we consider bureaucratic actors to react strategically to functional pressure. Ultimately our argument claims, that administrative actors take decisions that shape EU integration by weighting costs and benefits of joint problem solution versus sustaining national sovereignty. This cost benefit analysis can – but does not need to – be influenced by strategic action of supranational actors. In line with this, starting from the above observation that interactions in the internal market create new administrative constraints, we put the spotlight on other coordination forms that stay below the threshold of formal authority conferral to the EU. Empirically, we analyze worker mobility, a field where the described administrative constraints have been a long-standing obstacle because of comprehensive legal and low level of administrative integration. In this field, we offer insights on how member state administrations adapt to and practically handle the effects entailed by the creation of the

single market. Crucially, this affects core state powers, namely the independent authority over public administrations, even though the harmonization of national bureaucracies is generally ruled out (Heidbreder E. G. 2015, Vifell Å. C. & Sjögren E. 2014). We draw on three case studies: the coordination of Social Security Systems, Labor Inspectorates and Posted Workers (Hartlapp M. *et al.* 2014, Hartlapp M. 2014). Applying a conceptual framework to the three cases, the theoretical contribution of the article is to identify systematic links between varying functional pressures and strategic actor responses. To this end, the next section presents a typology of administrative cooperation modes derived from the literature. The types of cooperation are then confronted with the specific administrative challenges identified above to construct systematic functional linkages resulting in expected responses. These theoretical linkages offer the analytical framework that is applied to the three case studies in order to, on the one hand, illustrate the application of the different but empirically strongly interrelated response modes and, on the other hand, to examine to which extent more functional pressure indeed leads to more sovereignty-constraining forms of cooperation. The article closes with a discussion of the empirical results and conclusions on the conceptual and empirical implications the study conveys.

## **2 Forms and Dynamics of Administrative Cooperation**

This section develops the analytical framework in two steps. First, we offer a typology to respond to the question: What does “administrative cooperation”<sup>2</sup> stand for? In other

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<sup>2</sup> Whereas administrative cooperation is a legally codified form of legal assistance between competent bodies, we apply the term administrative coordination in a wider sense to grasp also all other coordination forms referred to (see esp. table 1).



words: how can we systematically classify the possible forms of administrative cooperation triggered by the integration of the single market? Second, we sketch out a framework that systematically links the functional pressures to which public administrations are exposed to the different modes of administrative cooperation.

Before introducing the typology, it is necessary to briefly outline the status of administrative cooperation in the EU integration process. The Treaty of Lisbon (2009) introduced new articles on administrative cooperation, which “represents a genuine novelty in the European ‘constitutional’ architecture. In the previous setting, administrative cooperation was not envisaged among matters conferred to the European Union, indeed it seemed even excluded by certain specific Treaty provisions” (Chiti E. 2012: 54). The new provisions of Article 197 for the first time acknowledge in primary law the essential relevance of “cooperation taking place both among the national administrations and the European bodies with a view to improving the capacity of national administrations to implement EU law effectively” (Chiti E. 2012: 54). This official recognition of administrative cooperation should, however, not belie the fact that the Union continues to lack hard powers to foster harmonization of the functioning and organization of public administrations. Article 197 offers primarily a formal recognition of practices that have developed informally or in secondary law before. As such, administrative cooperation is to differing degrees and in different forms an integral part of particular policies that include specific provisions for their respective administrative execution. The method selected here is therefore to identify regularities in the cooperation to derive distinct modes of cooperation from the scattered responses applied by administrative actors in the EU.

To this aim, we build on work by administrative EU law scholars. We refer to this literature rather than more recent attempts to theoretically map the EU's multilevel administrative system in its whole (Benz A. *et al.* 2016; Benz A. 2015; Bauer M. W. & J. Trondal 2015) because it offers a more specific conceptual delineation of horizontal cooperation, which should add a so far understudied angle. While political scientists have developed frameworks to explain political decision-making by conceptualizing policy coordination across territorial levels of government, going by features of family resemblance, administrative lawyers distinguish different modes of cooperation in implementation practices. Whilst the categorizations referred to vary slightly between different authors, we will refer to the most frequently reoccurring ones that can be conceptualized as three modes of vertical and horizontal cooperation (also Schmidt-Aßmann E. 1999: 20, Schmidt-Aßmann E. & Schöndorf-Haubold B. 2005, Sydow G. 2004):

- *Information cooperation* is based on data exchange between competent authorities of at least two member states; information collected or held by one national agency is made available to another.
- *Procedural cooperation* includes administrative practices and acts that span across borders. A single administrative procedure or decision involves at least two or more administrative agents from different member states (horizontal coordination) and the Commission or an EU agency (vertical coordination).
- *Organizational cooperation* suggests the establishment of networks or bodies, which exist as stable cooperation structures to handle a variety of tasks in contrast to ad hoc exchanges or single specific procedures.

These modes – information, procedural and organizational – can occur informally or as formalized cooperation. To exemplify the distinction: *information cooperation* has for a long time operated on a mere voluntary informal basis and depended in many instances on personal contacts between individual actors inside the public administrations. The formal introduction of benchmarking and policy learning instruments rendered information exchanges more continuous and systematic (Radaelli C. 2003), while especially innovations in the IT-sector have given it a more reliable infrastructure. Yet, neither informal nor formal information cooperation entail a substantive conferral of administrative authority. *Procedural cooperation* differs in this respect. Although it does not imply the shift of explicit policy competences to the EU-level, it means that national authorities also bind themselves to specific joint procedures either on a voluntary or compulsory basis. National authorities may do so among each other or in cooperation with the Commission. In addition procedural obligations may be formalized by legislation that obliges member states to cooperate with their peers in other member states, without however creating own EU resources or competences regarding the actual procedure or the content of the cooperation. *Organizational cooperation* adds yet another layer because it suggests the creation of informal or formal organizations. Many secondary EU acts legally foresee the creation of formal bodies or other permanent structures such as standing expert groups. These informal networks and more formal structures may support information exchange and the handling of certain joint procedures, they go however beyond these mere functions in establishing an organizational infrastructure that exists in its own right. Table 1 summarizes the typology based on the three coordination modes.

TABLE 1 – ABOUT HERE

The three empirical constraints identified in the introduction can now be linked to cooperation modes. There is, however, no exclusive relationship between a specific constraint and a specific cooperation mode and, empirically, both the different administrative challenges and the cooperation responses often overlap, which obstructs systematic testing. Still, it is possible to formulate some expectations based on functional dynamics recalling the two guiding assumptions that (a) liberalization and re-regulation in the single market hollow out administrative capacity, and (b) decision-makers in the member states try to avoid a conferral of administrative powers to the supranational level. Moving from the upper left quadrant in table 1 (informal information cooperation) to the lower right quadrant (formalized institutionalized cooperation), cooperation becomes more constraining on national administrative autonomy. Closely related, the latter more constraining cooperation is no longer of exclusively *horizontal* nature but implies elements of administrative center formation and can thus be classified as *vertical* cooperation. Accordingly, we expect:

A strategic choice by an administration for a specific cooperation mode should be the least sovereignty constraining option available.

Furthermore, the different challenges suggest different strategic choices to be more or less suited. Accordingly, we expect the following likelihoods (see table 2):

- The re-establishment of **national capacities to protect and offer services to citizens** may be remedied by information exchange that allows for an updating of the information pool that can then be used by administrations. All more constraining forms may also be opted for in case information exchange proves not sufficient.

- The **reduction of administrative burdens** cannot be solved by additional information exchange alone but necessitates the creation of procedural rules that offer standardized processes to reduce transaction costs. All more constraining forms may be opted for in case information and joint procedures prove not sufficient.
- **Negative externalities** caused by dysfunctional single national administrations cannot be remedied by information exchange or procedural rules. Negative externalities therefore suggest the creation of organizational structures that operate through soft mechanism of mutual adaptation and change. If formalized new structures may sometimes even comprise the delegation of enforcement powers to third parties in order to assure that changes will take place at the level of member states creating externalities for the system.

Table 2 summarizes these expectations. For each field holds that informal solutions are less constraining than formalized ones. Accordingly, even informal organizations that foster mutual adaptation and change are less constraining than formalized information networks, while formalized information networks are less constraining than formalized (harmonized) procedures or institutions.

#### TABLE 2 – ABOUT HERE

The following section will scrutinize three cases of administrative cooperation in the wider field of worker mobility in order to identify how far the expected systematic of functional linkages between administrative challenges and modes of cooperation can be supported.

### **3 Administrative Cooperation in the Field of Worker Mobility**

When the EU was founded, the right to move freely was enshrined in the original Art. 48 of the Rome Treaty. In principle, any citizen (initially only workers, today also job seekers, retirees, self-employed) can look for a job in another EU country, work and reside there without a specific work permit. Exerting this right involves the administrations of at least two member states in a number of policy areas. Thus, worker mobility is a significant field in which the three types of administrative challenges can be expected to come to bear.

We pick three policies that cover different aspects of worker mobility and trace changes of administrative cooperation over larger time stretches starting with the slowly increasing mobility of workers in the 1970s up to the 2010s. First, we look at social security systems. In case of worker mobility coverage and contributions have to be administered across borders. The second case regards labor inspectorates and other delegated bodies controlling labor conditions. The third case, posting of workers, is the most encompassing as it created multiple administrative challenges. All three cases expose functional pressures emanating from liberalization and re-regulation. At the same time politicians in member states are reluctant to confer administrative powers to the supranational level as the politicized and lengthy discussion about instruments and ECJ case law on the enforcement provisions applicable to the posting of workers (2014/67/EU) exemplify (EurActive 2014).

To analyze form and development of cooperation in these three areas we draw on primary documents such as EU legislation and position papers, secondary sources such as reports as well as 28 semi-structured expert interviews. They have been carried out between 2000

and 2013 at the national (EU 15 member states) and supranational (EU Commission and International Labor Organization) level with public officials from ministries and labour inspections as well as with trade unions and employer organizations in the area of labor mobility and thus present views at different points of the time in the processes studied. All interviews have been fully transcribed and coded with *Atlas.ti*.<sup>3</sup> Each case study starts by sketching more specifically the administrative challenges emerging in the area before it turns to discussing the set-up and evolution of administrative cooperation installed in response.

### **3.1 Coordination of social security systems (CSSS)**

Social security protects citizens against the risks of health, maternity, accidents at work, occupational invalidity, unemployment, (pre-)retirement and death. Typically coverage is territorially bound. In case of worker mobility, administrations are thus constrained in offering protection to their citizens. However, from its outset, EU integration promoted worker mobility based on two guiding principles: equal treatment regardless of nationality, and portability of entitlements across countries (Council Regulation No. 3/1958, Regulation No. 1408/71, revised No. 883/2004). Regulating the exchange of coverage information and the flow of financial contributions, the rules also increased burdens on national administrations.

Initially, this exchange was organized through standardized paper forms. An example given by an interviewee who described the situation in the 1990s and early 2000s is a person that has worked in different member states and wants to retire. She would have to

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<sup>3</sup> To preserve anonymity we refer to interviews by abbreviation (COM for EU Commission, ILO for International Labor Organization, TU for trade unions, A for Austria etc), number and date. A list of the interviews directly cited is provided in the Annex. We thank the interviewees for having shared time and expertise with us.

fill in a form and send it in a paper envelop to the other countries she has worked in. In the conventional paper-based exchange, “when there is still open questions, you have to reply back, so very old fashioned, like the middle ages really [and ...] some member states never reply [laughs], and they [administrations, MH] are very frustrated” (COM23, 10.6.2009, also COM107, 8.10.2009).

To deal with these problems administrations developed particular response formats. In 1971 the Administrative Commission was set up to help national administrations to deal with the challenge imposed by worker mobility. It is a permanent body where government representatives from each member state meet, sometimes complemented by experts and supported by a secretariat based in the European Commission. The Administrative Commission reviews the annual amounts of reimbursement issued by the home countries, serves as a forum to exchange information and acts as last instance to solve complicated problems. Examples are conflicts that emerge on how to use the information in the context of national social security systems, what definitions and practices to apply. The Administrative Commission has a formal legal base but national authorities remain autonomous in their administrative decisions. In addition, since 2005 the EU Commission finances an expert network on Training and Reporting on European Social Security (TrESS).

Over time more detailed and more binding rules on the format and method of exchanging information developed and were formally enshrined in the accompanying Implementing Regulations (No. 3/1958, revised No. 574/72 and 987/2009). The Implementing Regulation defines a six months deadline for the settlement of claims and interest for late payments (Art. 66-67) and specifies rules how to identify the applicable legislation. If no decision can be reached, the case will be transferred to the Administrative Commission



(Art. 6). Where two or more national social security bodies operate in parallel, a number of shared definitions is to guarantee interoperability. This implies some degree of harmonization of standards, e.g. how to determine residence (Art. 11), how to aggregate periods of insurance, employment, self-employment or residence (Art. 12) as well as on the rules for conversion of periods of insurances (Art. 13). The last revision introduces a general right and duty of administrations to inform each other “without delay” (Art. 2). Finally, the Administrative Commission is allowed to lay down more detailed rules on content and structure of documents and transfer (Art. 4), e.g. concerning notification, forms and formats or compilation of statistics (Art. 83-87). Most recently, information exchange is institutionalized via an Electronic Exchange of Social Security Information platform (EESSI), operational since May 2012 with a transitional period until April 2014. The platform is operated by the European Commission and receives and sends requests that now have to take an electronically predefined form via national access points (ILO 2010: 36-38).

Another element newly introduced in 2009 is the right to calculate provisional benefits or contributions if information has not been transferred by the corresponding national administration (Art. 7). Summarizing these changes that took place in the cooperation of national administrations from the 1990s to the 2000s an interviewee reports:

what is actually the main principle, the philosophy of the implementing regulation, is to increase, and to improve substantially, the cooperation between the institutions of member states. When the rules are complicated, then at least the implementation of it should function in a very smooth way. [...] It has been done in several ways, the cooperation, like the principle of good administration when there is a case of interpretation, of different views between institutions, then they should not send the person concerned, or the employer, saying you should go to the other, and the other says, no you should go to the one, so ping-pong. No, they have the legal obligation to contact each other, to resolve the problem within a reasonable period of time. There are now very strict deadlines [...] if there is no transfer payment fee [...] Now there are provisions for provisional application,

provisional granting of benefits, and so on. So that has been improved [...] by the electronic exchange of data (COM23, 10.6.2009).

Overall, in the area of coordination of social security systems, administrative cooperation has evolved in response to transnational rules of free movement that challenged the capacity to protect citizens. Secondary legislation seeking to support worker mobility at the same time further increased burden on administrations. Responses taken by national executives from the outset focused on information exchange, which became more formalized over time and is today supported by modern IT tools. Yet, information sharing on social security remains contested and vertical coordination out of reach because national actors fear the loss of control over the rights attribution, which has substantive budgetary implications. The area remains therefore subject of cumbersome bilateral coordination. In parallel, organizational cooperation can be identified as instance of joint procedures via forms and definitions to reduce daily burdens in a development which was led by the Administrative Commission.

### **3.2 Labor inspectorates (LI)**

In all member states labor inspectors visit firms, enterprises and companies to control working conditions, minimum wages and social security coverage.<sup>4</sup> The liberalization and re-regulation of the Common Market poses complex challenges for these administrative actors since their competences are territorially bound. Facing mobile workers, they are constrained in enforcing that workers' safety as well as the quality of services is provided, particularly in regions with high mobility, such as border regions.

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<sup>4</sup> In some countries labor inspection is limited to health and safety aspects, though. Depending on the substance of the rules enforced, other authorities might come in, too, e.g. tax authorities (Hartlapp 2014: table 1).

Where Portuguese inspectors cannot check for coverage of social security contributions or maximum working hours of their construction employees because these are employed in Berlin, basic administrative functions are challenged (TU1, 2.2.2004, EPSU 2012: 26). Actors strongly feel “a need to – even if it is on an informal basis – exchange that type of information and establish mechanisms to have this information on cross-border issues” (COM15, 22.2.2006).

What is more, uneven monitoring and enforcement of standards across Europe may create unfair competition. This was clearly feared by (some) national administrations when developing cooperation across countries. The following quote nicely explains how inefficiencies in one country were perceived as a source of social dumping in the EU:

For the last years we have spent a lot of resources on trying to some extent to... not to harmonize the way the EU enforces the legislation in Europe, but we have tried to develop a kind of a close cooperation between the different relevant enforcement authorities in Europe, so we have some ideas how they have organized the work and also the different methods they are using. And that is very important for us, that you have the feeling that the other member states are more or less doing... maybe not the same, but make in some way the same efficient enforcement of the legislation to avoid what we call social dumping or unfair competition or whatever you like. But that's the idea that you have the common play rules, or common regulations on health and safety at work, but you also need to have a more or less the same way of enforcing the legislation (DK5, 28.11.2000).

Interestingly, first responses to coordination pressures emerged as informal cooperation between national labor inspectorates in a bottom-up fashion. Since 1982, high-ranking national officials met in a voluntary network, the Senior Labor Inspectors Committee (SLIC). In the 1990s the SLIC was transformed into an advisory committee for the Commission (95/319/EG). Top officials from national labor inspectorates meet twice a year under the auspice of the respective presidency. Organizational sub-groups look at different problems and seek cooperation activities to cope with them, e.g. monitoring the movement of dangerous machinery (MACHEX) via e-tools. Common principles of

inspections were adopted in 1997 (revised in 2004) and constitute an agreed benchmark to evaluate national enforcement systems through audits.<sup>5</sup> Activities are complemented by inspector exchange programs, financed by the Commission (COM15, 22.2.2006) that support the creation of national capacity to interact in administrative networks, not least by increasing mutual trust and understanding (Hartlapp M. 2014).

In all its activities the SLIC works via horizontal cooperation. But there are also attempts to centralize cooperation at the European level. Importantly, recently the Commission has offered financial support for a network of inspectorates to build an European Level Enforcement System (CIBELES).<sup>6</sup> These activities are still informal, yet they are highly interesting because they triggered a debate about organizational cooperation at the center (Dekker H. et al. 2010, Velázquez Fernández M. 2011). In addition, CIBELES has produced strategically important information that the Commission can now use, to push for vertical cooperation by showing potential benefits of the provision of information at the supranational level. More specifically this concerns numbers of work related accidents, professional diseases or identification of posted workers as well as solutions on cross-border enforcement of administrative fines and penalties (Velázquez Fernández M. 2011).

In addition, in regions or between countries with particular strong cross-border movements, joint inspections have been carried out since the early 1990s (COM15, 22.2.2006, Velázquez Fernández M. 2011). Such bilateral or multilateral cooperation between labor inspectorates remains largely informal and *ad hoc*. A good example is the

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<sup>5</sup> These audits were also systematically used to ex-ante screen enforcement systems in all 10 accession countries, with auditing teams from the old member states visiting the CEEC (ILO13, 27.9.2004, TU2, 2.2.2004, COM15, 22.2.2006).

<sup>6</sup> CIBELES is financed under PROGRESS. Together with the European Network on Undeclared Work (ENUW) it was more recently reformed into the Implementing Coordination Network of Undeclared Work (ICENUW).

Baltic Sea Network on Occupational Health and Safety (Lithuanian, Estonian and Latvian). Portugal and Spain (Dekker H. *et al.* 2010: 25-28) as well as Germany and Luxembourg carry out joint inspections “particularly on building sites and in areas with a high concentration of posted workers” (ILO 2011: 91). However, formalization in form of binding regulation has been explicitly objected to by the political level. The recently adopted enforcement directive of the Posting of Workers (2014/67/EU) explicitly abstains from procedural cooperation as a formal cross-territorial inspection duty (Art. 7). Instead, cross-border enforcement is to work through mutual assistance and recognition of fines and penalties (Art. 13).

In sum, the area of labor inspectorates is strongly characterized by a loss of administrative capacity to protect individual national citizens and administrative constraints emerging from other labor inspection systems’ inefficiencies (Hartlapp, 2014). In addition, in some respect, administrations face additional burdens, e.g. when it comes to cross-border inspections and the execution of fines across border. Organizational cooperation emerged bottom-up in the SLIC and was pushed by national actors seeking a level playing field, a dynamic the EU Commission willingly supported and formalized against autonomy preserving interests. Specific about this case is that organizational cooperation served as hub to develop (electronic) means to exchange information (e.g. MACHEX) and joint procedures for capacity assessments (e.g. inspection guidelines). Most recently, following incentives by the European Commission, organizational cooperation is taken to the supranational level by building an European Level Enforcement System (CIBELES). Yet, it is still too early to judge whether this will see the light against member states reluctant to formally constraint themselves.

### 3.3 Posted workers (PW)

Workers that have a contract with an employer in their home country and are sent abroad to carry out a work project for up to 24 months are called posted workers.<sup>7</sup> Directive 96/71/EC seeks to clarify which rules apply in this situation of transnational work execution. To avoid unfair competition and secure worker rights, posted workers have to be employed under the minimum working conditions that are applicable in the host country, such as work and rest periods, wages and paid leave, equal treatment and health and safety conditions. Social security contributions are paid in the host country. For companies the partial split between home and host country creates the possibility to boost margins through reduced labor costs. For administrations, however, this split translates into constraints. Where the Posted Workers Directive is thoroughly applied, member states have to set up one or more liaison bodies and designate a competent authority (Art. 4). Responsibilities for cooperation remain exclusively under the authority of national administrations. And although the directive formulates binding provisions, rules on the exchange of information remain vague. In practice employers demand a standardized paper form from the home country social security authority for the workers they want to post (PDA1, previously E101, cf. CSSS above). The form contains information on contributions and coverage of social security at home. Administrations in the host country have to rely on this information to adequately protect the workers and to monitor and enforce their rights. Yet, often procedures are delayed and workers are posted with no or an incomplete form (cf. Cremers J. 2013: 207). Thus, if secondary legislation is not

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<sup>7</sup> Frontier workers, by distinction, live in one country and have an employment contract and workplace in another country, commuting on a daily or weekly basis. Migrant workers have left their country to live and seek employment in a host country. Often posting is closely connected to debates about temporary agency work or undeclared work.

applied correctly, externalities will grow with increasing number of posted workers from low wage and social security contribution countries, as happened after the eastern enlargement and the liberalization of services directive.

In response, the Commission published a recommendation on enhanced administrative cooperation (2008/C 85/01) and the so-called Enforcement Directive of the provisions applicable to the posting of workers (2014/67/EU). The directive foresees the quick supply of information via electronic forms, meaning that requested information has to be provided within two weeks (Art. 6). Aiming at the improved application of existing rules the act at the same time specifies new tasks for administrations.

It is too early to assess the responses to this latest directive since transposition is due in 2016 only. Yet, administrative responses developed already prior to the act. The Internal Market Information System (IMI), applicable for administrative cooperation in this field since 2012 (Regulation 1024/2012), is an electronic tool. Financed as an EU pilot project since 2006<sup>8</sup> it organizes workflows processing information requests. To enforce EU rules on the posting of workers such information exchange via the IMI allows e.g. to check the employment conditions for workers posted in a country and it offers repositories to share data among administrations (Directive 2014/67/EU). A French administration seeking to check the Social Security Status of a Finish planning engineer can find the responsible Finish administration via the IMI, select a pre-formulated question from the website and send this via IMI to the Finish authority. The Finish authority is displayed the question and possible answers in Finish. Once the answer is selected, it will be displayed in French to the French authority. The number of exchanges on posted workers has substantially

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<sup>8</sup> The IMI has been funded mainly by the Programs Interoperable Delivery of European eGovernment Services to public Administrations, Businesses and Citizens (IDABC) and Interoperability Solutions for European Public Administrations (ISA).

increased. While for 2011 “a total of 181 information exchanges had taken place” (European Commission 2012: 18), the figures for first half of the year 2015 alone indicate 783 exchanges.<sup>9</sup> A different form of response is the creation of a High Level Group, the Committee of Experts on Posting of Workers (2009/17/EC). It puts competent public authorities and social partners around a table to exchange of information and foster learning processes (Dekker H. *et al.* 2010: 23).

Overall the main administrative challenges identified in this area are the increased need for information to uphold protection of citizens sent abroad. Secondary legislation on posted workers and the enforcement of these rules has produced specific administrative burdens. To the degree that these rules are not applied, negative externalities for administrations increase. The response developed so far can be classified as information cooperation via IMI, but also increasingly joint procedures to reduce transaction costs. Over time and despite political contestation on the topic running prominently between Eastern European countries and ‘old’ member states, the IMI has become formalized and is developing an organizational dimension via a central administration and repositories at the EU level. Organizational cooperation is also institutionalized with a High Level Group on Posted Workers.

## **4 Patterns of Administrative Cooperation**

Comparing the results of the three case studies, they support by and large our expectations about the strategic selection of coordination modes under the postulate that a sovereignty

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<sup>9</sup> See data provided by the Commission on the website on the Single Market, available at [http://ec.europa.eu/internal\\_market/scoreboard/performance\\_by\\_governance\\_tool/internal\\_market\\_information\\_system/index\\_en.htm#maincontentSec3](http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/internal_market_information_system/index_en.htm#maincontentSec3) (last accessed 21 August 2015).



transfer of administrative competences to the EU level is generally ruled out. To recall: the cases and the research interest focus on policies in which vertical coordination is preempted by political choice. This allows to observe in which guises politically less constraining horizontal administrative coordination occurs as alternative. As discussed in the first parts of the article, the three empirically observed challenges may overlap and occur in parallel. This is well reflected in the three cases: while in the coordination of social security systems the loss of the capacity to offer services to citizens and the growth of administrative burdens dominates, in the case of labor inspections the dominant problem combination is that of capacity loss and the threat of negative externalities. In the case of posted workers, all three pressures prove relevant.

In order to gain more theoretical leverage, it is worthwhile to reflect on the coordination dynamics from the angle of the responses. Table 3 summarizes the (minimal) strategic choice expected and the actual response observed in each of the three cases. The first observation is that indeed all the minimal responses occurred. Accordingly, *information exchange* as least constraining coordination mode is used in all three cases to respond to pressures triggered by a capacity loss to offer services to national citizens. Remarkably, in all cases the way information is exchanged has been at least partially formalized over time. Also in all cases, the development of electronic communication platforms has played a role to improve information exchange efficiency. The use of electronic tools hints to the strong pressure to improve information exchange in the CSSS and PW cases in particular. Also *procedural rules* play a role in all case, yet to different degrees and at different points in the development of responses, which will be elaborated on below. What is more, in some cases secondary legislation also defines limits to procedural cooperation to preempt a formalization that implies sovereignty transfers. Thus, in a

recent enforcement directive Member States explicitly formulated that cross-border enforcement should work through mutual assistance and recognition of fines and penalties. Most notably, informal or more formalized forms of *organizational cooperation* set in at different stages and to different degrees but are also observable in all cases. In essence, we see over time a tendency towards formalized forms of coordination, often supported by strategic supranational agency, that constrain administrative sovereignty more than informal ones. In line with our expectations the less constraining forms of coordination dominate especially the CSSS case in which externalities played a lesser role.

#### TABLE 3 – ABOUT HERE

To delve deeper into the differences between the cases, it is worthwhile considering the sequence of responses given to the particular mix of administrative challenges. Across all cases, once organizational structures have been set up (mostly informal in a first step) these are then referred to in order to develop further procedural rules and to improve information exchange mechanisms. In other words, there appears to be a feedback on less constraining coordination modes even if the organized bodies are informal and have thus no legal authority over the other coordination practices. The LI case is most remarkable in this respect. Due to uneven monitoring and enforcement standards of LI across the states, externalities appear inevitable. Given that formal organizations are ruled out for a lack of member state agreement, organizational coordination is established informally and bottom-up as of the 1980s. Once in place, this organizational coordination via the SLIC is structuring administrative coordination, which may also explain why in this case

less procedural rules have been developed and why these remain informal unlike the other two cases. Unlike the other two cases, the sequencing in the LI case starts with organizational cooperation, which then structures the procedural and information cooperation. It has the additional effect that both information exchange on best practices of inspection and procedural rules in form of joint inspections are less developed whilst the SLIC as an institutional cooperation structure was formalized in 1995. In contrast, in the CSSS case we see an incremental strengthening of responses in terms of formalization of deadlines and implementing rules via respective regulations since the 1970s as well as the step-by-step establishment of more constraining responses that, eventually, allow for provisional decisions in case an authority does not comply with its information duties. The PW case, finally, is the only case in which all three pressures – capacity loss, administrative burdens, externality threat – were obvious from the start in the 1990s. It is the case with the most formalized responses for all types. Notably, in this case information exchange via electronic tools and procedural rules in standardized form sheets precede the establishment of the High Level Group, which may explain the strong formalization of the earlier responses.

We may hence tentatively conclude that the kind of pressure public administrations are faced with does indeed impact on the response chosen and the dynamic instruments developed. In essence, *information exchange*, as least constraining form of coordination, appears in different guises: triggered independently among competent authorities, guided by organized joint bodies, and incrementally formalized by participating authorities, organized bodies or more top-down by the Commission. *Procedural rules* occur either as planned input from organizational coordination or to optimize information exchange. *Organizational coordination*, finally, can follow as logical “last step” in strengthening

coordination or be put in place as first step if externalities are the clearly dominant challenge public administrations are faced with.

Our framework did not hypothesize explicitly on the origin of the cooperation. Yet, in light of the clear red lines the Treaties draw against top-down harmonization, and respective limitations of supranational agency, the bottom-up initiatives are an interesting dynamic. Aware of their capacity deficits and related implementation problems, national administrations initiate intergovernmental networks and structures, which stresses the force of functional pressures. Member states opt for administrative cooperation even in an area of core national sovereignty to cope with their own capacity deficits and to avoid policy failure. Lacking regulatory policy developments that could piggyback formalization of rules, administrative cooperation in the area of labor inspectorates remains mostly informal. In contrast, administrative cooperation interwoven with policies on the coordination of social security systems and on posted workers is today more formalized. The conclusions will offer some tentative interpretation of these results.

## **5 Conclusion**

The study set out to offer conceptual and empirical insights as to how member state public administrations respond to pressures they are inevitably confronted with in the single market. Three such challenges were empirically identified: a loss of capacity to offer services to the citizens whose rights to services are no longer bound to a single state's territory, increasing administrative burdens and possible externalities from administrative failure due to dysfunctionalities of other member states' public administrations. We

selected the significant field of worker mobility as policy area to examine how these challenges play out empirically in three case studies.

Conceptually, this article developed a framework for bureaucratic actors' strategic instrument choice in response to new pressures on public administrations. Building on a typology that defines different modes of administrative cooperation, expectations about most likely responses were formulated. The conceptual value added lies thus in offering a specific additional angle that complements recent literature on multilevel administration, which conceptualizes primarily interaction effects between the supranational and national levels of governance. The focus of our analysis serves to systematically scrutinize how coordination lacking strategic power by supranational actors may nonetheless evolve when functional pressure is high. The theoretical expectations are well reflected in the three case studies. The framework thus shows fruitful to analyze patterns of administrative cooperation. In addition, the theoretical take allows distinguishing more precisely different types of actor responses to unintended and non-regulated effects and thereby complements conceptualizations of EU multilevel administration (Benz A. *et al.* 2016, Bauer M. W. & Trondal 2015). Even if the three case studies do not offer a systematic testing of the framework, they show the plausibility and applicability of the framework which hence promises to be of further theoretical use in future research on how to mend the holes of multilevel policymaking.

The case studies show that horizontal administrative cooperation is step-wise developed and takes, over time, more institutionalized shape. Thus, the first relevant finding is that considering a general reluctance of member states to confer powers regarding their genuine administrative authority, horizontal cooperation is used and expanded to respond to functional pressures. Second, the case studies indicate that different kinds of functional

pressure influence the instrument choice. Most notably, if administrative failure in other member states threatens to harm the own administrative capacity, more constraining administrative cooperation is applied. Third, a remarkable result is that if no formal action is taken by national governments, we observe bottom-up informal cooperation by administrative actors – even in the rather constraining form of organizational cooperation. What is more, where the issue of worker mobility was politicized - essentially for the threatening administrative failures that were expected - we do indeed see an acceleration of the creation of administrative cooperation. This indicates, that where stakes are high integration proceeds even informally (cf. also Héritier A. 1997, Heidbreder E. G. 2014a). However, in the case of Labor Inspectorates, we also see recent regulation that abstains from formalizing procedural cooperation to push for less regulated mutual recognition. This essentially limits the process of administrative capacity building through horizontal cooperation, which plays in the hands of political preferences for a liberalizing rather than a re-regulating agenda.

In sum, we can sustain that horizontal administrative cooperation is a relevant additional integration dynamic that buffers unintended effects of market integration on formally independent but increasingly interdependent member state executive bodies. Based on these results, we may expect that horizontal administrative cooperation will gain further relevance in the completion of the single market as a pragmatic alternative to more encompassing harmonization or vertical cooperation where non-politicized matters are at stake. Also, technocratic, subterfuge coordination of this kind should remain a politically preferable path for many. This implies also room for future research on horizontal cooperation as means to increase administrative independence vis-à-vis national political

actors. For politicized matters, in contrast, the route administrative coordination and integration will take still poses multiple puzzles.

## Tables

**Table 1:** Administrative Cooperation Modes

<b>Mode</b>	<b>Definition</b>	<b>Informal</b>	<b>Formal</b>
<b>Information cooperation</b>	<i>Information necessary to implement EU law is being exchanged across borders</i>	Voluntary provision of data, ad hoc information exchange country/country, country/agency, country/Commission	Obligation to provide / share information either in cross-country exchange (data stays property of state) or in intergovernmental data base (repository)
<b>Procedural cooperation</b>	<i>Joint procedures for a single administrative act exist that involve entities from more than one member state</i>	Non-formalized shared administrative procedures that involve horizontally more than one member states' authorities	Legal obligations to jointly execute a single administrative act that includes various horizontally or vertically linked authorities
<b>Organizational cooperation</b>	<i>Cooperation structures are organizationally molded in a specific, institutional structure</i>	Administrative, advisory, civil society or other (self-organized) networks or groups with no legally formalized role in policy implementation	(Semi)autonomous agencies, committees or groups with a legally formalized role in decision-making and policy execution



**Table 2:** Systematic of functional responses (minimal → more advanced)

Type of cooperation / Administrative challenge	Information cooperation	Procedural cooperation	Organizational cooperation
Capacities to protect / offer services to citizens	Increased information cooperation → formalized information networks	Optional	Optional
Reduce administrative burdens		Creation of informal joint procedures to reduce transaction costs → formalize (harmonized) procedures	Optional
Prevent externalities by administrative failure in other member state			organizations that foster mutual adaptation and change → formalized integrated and binding EU-institutions

**Table 3:** Expected and observed coordination responses

	Mix of administrative challenges	Expected response	Observed response (chronological)
<b>CSSS</b>	Capacity loss + administrative burden	Information exchange + procedural rules	Step-wise formalized information exchange + informal organizational coordination + procedural rules
<b>LI</b>	Capacity loss + externality threat (administrative burden limited to specific areas)	Information exchange + organizational coordination	Informal (bottom-up) organization coordination + step-wise formalized information exchange + procedural rules
<b>PW</b>	Capacity loss + administrative burden + externality threat	Information exchange + procedural rules + organizational coordination	Step-wise formalized information exchange + procedural rules + organizational coordination

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