Trade unions and labour market dualisation: A comparison of policies and attitudes towards agency and migrant workers in Germany and Belgium

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Abstract

Drawing on the comparison of Belgian and German multinational plants regarding the use of temporary agency work in the metalworking sector, and particularly by focusing on the case of German unions’ approaches to migrant workers and workers with migration background who are often over-represented among agency workers, the article addresses the question of the extent to which, and the reasons why, western European trade unions may have adopted an ‘insider protection’ role and neglected employment protection for ‘outsiders’. Findings illustrate that in an environment of weakened trade unions like Germany, this contributed to labour market dualisation with agency workers being less protected than the regular workforce. However, they also show that the weaker protection in Germany does not depend on an explicit union choice for insiders. The conclusion suggests that continental unions are increasingly trying to defend the outsiders, but meet institutional obstacles that vary by country.

Keywords: Comparative employment relations, dualisation, flexibility, labour market, migrant work, temporary agency work, trade unions
Introduction

Over the last twenty years, debates on labour market reforms in Europe have often referred to an ‘insider-outsider’ divide. According to this perspective, western European trade unions act as potential obstacles to the employment opportunities available to ‘outsiders’, particularly to protect their role in centralised collective bargaining, as well as maintaining and enforcing employment protection of their members. This results in the dualisation of the labour market between two segments of workers, with only the insiders enjoying representation and dismissal protection. However, Palier and Thelen (2000) have moved the debate forward by arguing that dualisation between the secure and the insecure workforce stems from the weakening of trade unions, rather than from their intentional protection of insiders. Trade unions consent to reduced protection to outsiders only as a second-best solution, when their preferred option—increased protection for all—is no longer achievable. Still, the elimination of safeguards for all workers can still be avoided or at least postponed.

Dualisation is not only linked to employment status: it overlaps with socio-demographic characteristics. According to Häusermann and Schwander (2012), the likelihood of being an outsider depends on a country’s welfare regime: in terms of gender women in low-skilled service occupations are overall the most likely to be outsiders, while the young are negatively affected only in some regimes. Moreover, immigrants are over-represented in unemployment and atypical work in most countries (Emmenegger and Careja, 2012; Raess and Burgoon, 2013).

This article attempts to move the understanding of union approaches towards dualisation forward by exploring one extreme form of vulnerable work, namely temporary agency work. It looks at the welfare regime most affected by dualisation, i.e. the continental one (Eichhorst and Marx, 2012). Within this regime type, it investigates two countries with a similar employment structure and a similar share of agency work, but uneven levels of union strength and different degrees of inclusion and protection of agency workers. The fact that the stronger Belgian unions protect agency workers better than their German counterparts seems to confirm Palier and Thelen’s argument. However, the German unions do not explicitly choose dualisation as a second best option; their behaviour should rather be understood as a response to the weakening institutional setting, especially with regard to the change in the practice and functioning of works councils. Also significant are the erosion and retreat of
collective bargaining coverage, trade unions and employer associations, especially with the latter being permitted to opt out of once dominant industrial relations practices without dismantling them (Baccaro and Howell, 2011). This is particularly examined in the article’s second empirical part, when looking at union approaches towards migrant workers and workers with a migration background as ‘prototypes’ of outsiders in the German context (Schmidt and Müller, 2013). To investigate the union approaches towards dualisation, matched case study comparisons in Belgium and Germany that keep contextual variables (sector and employer) constant are proposed in a first step. In a second step, the article proceeds to examine if and to what extent the weaker protection of agency workers in Germany depends on an implicit or explicit insiders’ choice by unions, or if this is rather due to the weakening of institutions. We do so by looking at German unions’ approaches to migrant workers and workers with migration background, who are over-represented among agency workers and may be considered the easiest outsider group to discriminate against: if any intentional disregard of outsiders was the main reason of dualisation, this should be most visible here.

**Trade unions’ approaches of inclusion and exclusion within German and Belgian workplaces**

It is often argued that employers primarily use agency workers in response to variation in the product demand. According to such accounts, flexible and temporary arrangements for workers serve as a buffer in the workplace, protecting the regular/permanent workers from fluctuations. As such, some scholars report that unionisation does not negatively affect the use of temporary agency workers (Olsen, 2005), as unions use them as a means to lessen the dependence on regular workers, and ultimately increase the employment protection for the core workers. However, for workers this division has raised concern of reduced job security, particularly for agency workers (Standing, 1997). If the use of temporary labour contributes to increase job protection for permanent workers, unions may find this tolerable and therefore adopt an approach which does not resist the use of temporary workers.

Various studies have examined unions’ attitudes of inclusion and exclusion and the challenges agency work poses to them (Bacon and Storey, 1996; Heery, 2004). Beyond the notion of ‘rational choice’, the concepts of ‘trade union identity’ (Hyman, 1995, 1996; Heery and Abbot, 2000) and
‘union traditions’ (Palier and Thelen, 2010; 2012) were used to indicate how unions can choose between being more or less inclusive in defining their constituency, and more or less restrictive in the issues they pursue by adopting strategies of representation for atypical workers. It is often suggested that unions can contribute to reinforce segmentation in the labour market, and this seems to be the case when unions fail to adequately oppose the creation of ‘cheaper’ and more flexible jobs in the periphery through the relaxation of conditions for the use of flexible arrangements (Davidsson, 2009).

Co-ordinated market economies with continental welfare states, alongside Southern European countries, are supposed to feature the most dualised labour markets among deindustrializing societies. To examine the role of unions more precisely, the paper looks at the two extreme cases in terms of union strength within this group, Belgium and Germany. Both have similar rates of agency work: 2.2% of employment in Belgium and 1.6% in Germany in 2007 (Eichhorst and Marx, 2012). While agency work has long been present in the Belgian labour market, it has only expanded after the labour market reforms of the early 2000s in Germany. Despite belonging to the same general type of industrial relations system, there are profound differences in terms of union strength. Belgium has high union membership at around 50%, inclusive employment protection and strict collective bargaining regulations; by contrast, Germany has witnessed a deep union decline within the last twenty years (with unionisation around 20%) and labour market reforms multiplying the forms of atypical, less protected employment. Moreover and unlike Belgium, Germany does not have a national minimum wage or legally binding sector-level collective bargaining. A sectoral, hourly minimum wage for agency workers was only introduced in 2012, but at a relatively low level. In contrast, agency workers are legally covered by sector collective bargaining in Belgium, but not in Germany, where different agreements for agency workers can be signed, generally with significantly worse conditions (Eichhorst and Marx 2012; Pulignano and Doerflinger, 2013).

In the paper we illustrate that German trade unions, particularly IG Metall, have strongly resisted temporary agency work over the last thirty years, and only recently adopted a more inclusive strategy (Benassi and Dorigatti, 2013). At the plant level works councils do not oppose the use of atypical work, which is used to enhance flexibility for the firm while guaranteeing security and stability to regular workers. Conversely, in Belgium the three main trade union confederations have
been actively engaged in regulating atypical work since the very beginning, also incorporating the local branches to support their work. It is argued that the German unions’ resistance to a general flexibilisation of labour, especially with respect to the regulations governing hiring and firing of atypical labour, implied a weak defence against the development of more flexible and cheaper jobs in the periphery through the relaxation of conditions for the use of agency workers, particularly at the workplace level. The result is a stronger social segmentation in the labour market between the more protected and less protected workforce. This has important implications for welfare policy in terms of stimulating the creation of a vicious circle in which increasing numbers of inactive workers have to be supported by fewer active workers, particularly in the period of the recent economic crisis. As Ebbinghaus and Eichhorst (2007) claim atypical employment in Germany was fostered through gradual labour market reforms in order to enhance flexibility without threatening the stability of regular employment. Conversely, in Belgium the unions’ active engagement to regulate the use of flexible labour to a strong defence of all forms of contractual flexibility, with a consequent lessening of the segmentation effect. This is because people who start in temporary jobs in Belgium mostly end up in permanent employment. This is reported by a recent study on “The role of temporary agency work and labour market transitions in Europe” (2012) by Eurociett and Uni-Europa Global Union, stating that 48% use agency work to improve their chances of finding permanent employment.

To examine the reasons of the weaker protection of agency workers in Germany take a more detailed look at migrant workers and workers with migration background as prototypical ‘outsiders’. Their precarious status has been reinforced in the current economic crisis, when unemployment has affected them more than German nationals (AUTHOR B et al., 2013). If the reason was a lesser commitment to inclusiveness by German unions in comparison to the Belgian, this should be most visible in the case of policies towards migrant workers, given the strong ‘welfare chauvinism’ that prevails in European societies and especially in Germany (Emmenegger and Careja, 2012). However, major European trade unions proactively support the rights of migrant workers and are generally in favour of the free movement of labour. This commitment is not always translated in policies and collective bargaining practices that protect migrant workers and workers with migration background effectively, though.
Methodology

The article is based on two studies following different methods:

Firstly, the Belgium-Germany comparative analysis is based on matched case studies. Two US-based multinationals (manufacturing) were selected for investigation. The four subsidiaries located in Germany and Belgium were similar in terms of production characteristics, the nature of the production process, technology, unionisation (relatively high) and size. Comparisons across sites within the same firm are interesting because many forces can be held constant. Workplaces in which the corporate culture regarding agency work is similar can be compared. In all workplaces, the production process was driven by an automated assembly line, with workers performing manual assembly functions. This rigid, continuous production process provided few opportunities for management to cluster the agency workers apart from permanent employees. Therefore, agency and regular workers were involved in both core and non-core production functions and worked side-by-side in all plants. The company names are kept anonymous: Machine Belgium, Machine Germany and Metal Belgium and Metal Germany. For a summary of the subsidiary features see Table 1.

[Table 1 about here]

All workplaces have coped with the crisis since 2008, with the German workplaces experiencing intensive restructuring due to competition and cost pressures. Moreover, the incidence of migrant workers (particularly of Turkish origin) within the German workplaces was higher than in the Belgian production sites (where many were of Moroccan origin). The similarity in terms of union presence across the workplaces, allows us to investigate whether similar local union attitudes towards temporary agency work are present. With this approach we also explore the social effects in terms of labour force segmentation produced at the workplace. The comparison between Germany and Belgium is particularly interesting since although both are commonly considered as coordinated market economies (Hall and Soskice, 2001), these countries are characterized by relevant differences regarding union traditions, strength and workers’ representation systems. Overall the data presented in
this paper are based on case studies developed in 2011/2012. The study incorporates 35 semi-structured interviews with EU- and local human resource managers, national and sectoral trade unions officers, local union representatives and works councillors. Interviews took between 90 and 120 minutes and were recorded and appositively transcribed. NVivo was used as the tool for qualitative data analysis. Company-based documentary materials and the collective agreements at both local and sector-level were analysed as secondary sources;

Secondly, and given that the case studies show a higher degree of dualisation in Germany, a further empirical step investigates whether this is due a lack of specific policies to protect outsiders. Five interviews with the main German trade unions (the DGB confederation, and the sectoral unions IG Metall, IG BAU and Ver.di) were carried out in 2010-12 as one part of a larger, six-country study. Complementary literature and documentary analyses were executed, too. These materials are used to investigate the German trade unions’ recent approaches towards the most visible ‘outsiders’, i.e. migrant workers and workers with migration background, who are over-represented among agency workers. The study of this extreme case sheds light on whether the detected difference between German and Belgian unions is due to agency factors such as different policies, a lower commitment in Germany, or rather due to different structural or institutional conditions.

**German and Belgian unions’ approaches towards agency work**

Both Belgian and German workplaces make use of a quota to limit the use of agency work. However, the extent of the threshold and the processes through which they have been negotiated locally between management and unions differ substantially between Belgium and Germany. Cross-national diversity reflects a rather weak approach of the German works councils to agreeing the introduction of relatively high levels of flexibility, in the form of easing restrictions on the use of agency work by the company, while the sector promotes representation and bargaining coverage for these workers.

In 2005 Metal Germany implemented a quota for blue collar agency workers of a maximum 15% relative to the total plant headcount, and 40% during the holiday periods. The works council’s initiative to locally negotiate a quota for agency labour was not to simply limit the use of agency work, but at reducing the bureaucratic efforts. In particular, legislation in Germany obliges management to
formally request permission from the works council to utilize flexible arrangements. This bureaucratic system causes not only a high workload for both parties involved, but also contributed to uncertainty for management, as they always faced the possibility of a works council disagreement, leading to costly and time-consuming arbitration. By establishing a commonly agreed threshold agency work became more locally accessible. By permitting the use of a relatively high quota the company could benefit from labour cost savings as the price of agency work in Germany is cheap compared to regularly employed workers. By allowing the use of 15% agency labour, Metal Germany could significantly decrease labour costs of the flexible workforce, which in turn contributed to the survival of the plant, its competitiveness and the security of the core workforce. This was particularly important during the economic crisis, as by letting agency workers leave, the company could easily reduce its headcount without facing dismissal costs. This is supported by a works councillor:

“Agency work was officially introduced to cope with large volume orders and to provide flexibility. But now we see that those workers are mainly hired in order to cut costs.”

(Works councillor, Metal Germany)

Likewise a quota of 20% of agency work was negotiated in Machine Germany in 2004. The works council initiated the negotiation to exchange the employers’ request for higher external flexibility with employment guarantees for the core workforce. Intensive restructuring affected the firm during 2002-2003, and the risk of bankruptcy was met by cutting almost 150 jobs. Therefore, and in the light of the past experiences, the works council pushed for an employment guarantee in 2003, which was negotiated together with management in exchange for a 20% agency work quota. As a works councillor states:

“If we give something to the company, we want to have something back, too. But the management agreed on securing the location for the future.”

(Works councillor, Machine Germany)
The threat of plant closure could therefore be minimized due to a high level of external flexibility. Moreover, the share of agency workers also contributed to a reduction of labour costs which proved to be beneficial for the difficult economic situation of the plant. In this context, the search for solutions to cope with high degrees of economic and social instability made Machine Germany and Metal Germany focus on protecting employment for regular workers. Therefore, employee representatives agreed on the introduction of flexibility at the margins, creating scope for widening dualisation in the labour force. Income-tested and in-work benefits were only increased for some (insiders) against a residual part of the workforce who faced restrictions, and therefore retrenchment, of employment security and job instability. While both works councils in Metal Germany and Machine Germany were formally negotiating maximum thresholds for the use of agency labour, they were at the same time engaged in concession bargaining with local management, highlighting their reduced power at the workplace. Both unions and works councils would have needed to incorporate the interests of the agency workers into their strategies in order to moderate the consequences of the use of temporary labour. In this perspective, negotiating a quota can be seen as a necessary but not sufficient condition to alleviating the leverage of a protected workforce. Concession bargaining by the works councils at the German workplaces contributed to secure employment of the regular workforce by saving labour costs, but at the expense of hiring a relatively large amount of ‘cheap’ agency workers. The result has been to elicit ‘dualisation’ effects between the core and the periphery by reducing opportunities for agency workers to gain access to regular employment as they are kept as a reservoir of potential labour for temporary work agencies. Whereas the use of agency workers increased security for the regular ‘core’ workforce, it also contributed to deteriorating job stability and general working conditions of the agency workers, as they were the ones made immediately redundant when the workload decreased during the crisis.

The advancement of ‘opening clauses’ in Germany has arguably increased the leeway of works councils, traditionally influential because of the co-determination system, to negotiate firm-level agreements, for example regarding agency work quotas. Such firm-level agreements apparently provided enough shared interests for both employers and works councils to result in positive-sum collective bargaining. Still, it can be argued that the advancement of ‘opening clauses’ reflects a shift
of bargaining power within the dual system from sectoral interest representation towards the works councils. The relationship between centralised (sectoral) collective bargaining and works council activities in Germany can be complicated because of the conflicting tendencies governing the dual system of representation (Whittal, 2005). As their primary concern is to safeguard the job stability of the core workforce, the plant-level agreements concluded by the works councils at Metal Germany and Machine Germany contain ‘productivity-oriented’ concessions. Accepting more external flexibility which offers a ‘security net’ for the core workforce may be a deliberate tactic from a works councils’ perspective. Put differently, the presence of workplace-level agreements can be interpreted as a strategic response of the German works councillors to save jobs while contributing to the competitiveness of the firm (AUTHOR A and AUTHOR C, 2013).

Conversely, in both Belgian workplaces the more limited prospects of derogating from sector-based agreements allowed local unions to better control equality between regular and non-regular workers across the workplaces, which arguably decreased the scope for segmentation effects to occur. As in Germany, union representatives agreed on a threshold on the use of agency work with management in both Belgian workplaces. However, the threshold was much lower and the social dynamics put in place prone to deliver greater equality between regular and agency workers. At Metal Belgium, the local unions agreed on a 15% flexibility quota, including 10% fixed-term and 5% agency work in 2004. The reason why local union representatives pushed for an agreement was to keep the use of flexible forms of work at the necessary minimum level and in so doing, avoiding the abuse of agency work. A local union representative explains:

“If the company uses more than 5% agency work they pay it back to the workers by offering more permanent contracts. Moreover, we have a formal system for entering the company regarding blue collars; firstly they get in with an agency work contract, then they become temporary workers and finally after two years, they get a permanent contract.”

(Local union representative and works councillor, Metal Belgium)
From the firm side, hiring via a work agency enables the company to use an extended probation period for workers. If the worker performs well in this probation period, the company normally offers a fixed-term contract; and after two years, permanent employment.

In *Machine Belgium* the local union representatives negotiated an agreement with management on the ban of agency work in 2007. In exchange, the unions agreed to a more extensive use of fixed-term contracts, which account for approximately 20% of the workforce. A unionist provides the following explanation:

“As trade union we made clear we did not want agency workers. The company does not have a choice because it already has a strong flexibility with the workers with fixed-term contracts and we decided that we could not agree to everything either. As we know the company’s mentality, we plainly refused to accept agency workers. If you don’t set any limits, they [the management] push even further.”

(Works councillor, *Machine Belgium*)

The local unions’ agreement on a higher level of external flexibility via fixed-term workers was a precondition for management abandoning the idea to use agency work in the first place. Moreover, the use of fixed-term contracts to screen workers for permanent positions explains management’s interest in such arrangements. Screening workers for permanent positions by trying them out in flexible arrangements arguably lowers the cost of dismissing workers who demonstrate low productivity. From the trade unions’ perspective there is little reason to believe that the fixed-term arrangements negotiated at *Machine Belgium* would result in less job stability. Two causes support this statement. Firstly, local unions negotiated, in 2004 in *Metal Belgium* and in 2007 in *Machine Belgium*, new procedures on company recruitment. This means new staff starting with flexible contracts which would then be upgraded to permanent ones over time, subject to performance indicators and periods of intensive on-the-job and general training. In Belgium, union representatives and management agreed locally on providing training for all employees regardless of their contractual status. Treating flexible and regular workers differently was out of question:
‘They start the training once they arrive at the company since you don’t know yet if they are going to receive a permanent contract later or not. So they all get the same training. Once their contract ends, those who receive a permanent contract have had the same training as everybody else. Some of those who don’t get a permanent contract here find work with our subcontractors because they already worked here.’

(Training specialist, Machine Belgium)

In Metal Belgium, investing in specific training is considered essential to retaining a skilled and experienced workforce by both management and unions. This has process-related advantages for the company in being more conducive to maintaining cooperative relations with the workforce, which contributes in turn to a high level of voluntary mobility and therefore flexibility:

‘Obviously, you want to retain your skills, whatever contractual status they have, you cannot constantly have your skills go out and then you maybe don’t get the right skills anymore.’

(HR Manager, Metal Belgium)

Whereas the need to guarantee internal job stability and avoid plant closure explains why in the two German workplaces no formalized procedures of career progression for agency workers from temporary to permanent contracts were negotiated, in Belgium, however, unions got involved in negotiating company-level agreements guaranteeing career paths for agency workers while enhancing their working conditions. The highly centralised framework and particularly the strong position of the Belgian unions as well as the legal restrictions from derogating from the equality principle may explain why Belgian unions were able to locally negotiate career paths with management. It can be also argued that management saw the benefits of using flexible arrangements to screen workers hired through temporary agencies. These agencies can have a comparative advantage in taking good initial matches, especially for a company’s short-term demand. This is different in the German workplaces where the relatively cheap price of agency work seems not to have encouraged management to advocate for upgrading agency workers into permanent contracts.
Hence, within the German workplaces, IG Metall had to contend with a new economic and political regime, one in which increasing deregulation in the German labour market allowed firms to become more competitive by applying a mix of atypical employment, opting out of collective agreements and making more use of diversified flexible arrangements. IG Metall has recently shifted from a strategy of exclusion to one of inclusion towards agency workers. However, within Germany’s dualistic social structure and under the high threat of restructuring due to international competition, and cost pressures aggravated by the economic crisis, works councils have been forced to agree to local concessions, which contravened sectoral collective agreements, while trying to pacify capital by following the logic of ‘productivity-coalitions’ (Heery and Abbot, 2000). The effect of the local concessions was to increase social inequality between a core of protected jobs and a periphery of flexible labour. Works councils were compromised by their weak conviction on protecting agency workers, typical of union attitudes of resistance towards flexible arrangements. This is particularly related to the socio-economic conditions of the firm. The acceptance of agency work occurred under the threat of plant closure and job losses. Therefore, agency work was instrumental to providing job protection for the regular workforce. Conversely, in Belgium trade unions followed the main national (sectoral) trade union policy of inclusion. Therefore, the local union representatives and management negotiated a low quota of agency labour. By retaining a low quota and use, local unions were able to gain control over the plant-level regulation of agency work. This implied that better working conditions could be locally negotiated and guaranteed to agency workers. They basically consisted of extra training arrangements which the firm was obliged to provide beyond the job-related training whose provision was legally required. This enhanced the scope for agency workers to make career progression towards better and stable employment.

A closer look at the German case: do unions contribute to dualisation?

The case studies reveal that within the metalworking sector and across comparable workplaces, in Germany the gap in employment conditions between core employees and agency workers is greater, and trade unions appear to struggle to control it. According to Hassel (2007, 2012), German unions’ sectoral organisations and reliance on institutional resources make them badly positioned, in
comparison to their European counterparts, to organise new or expanding categories of workers, especially women and the young, contributing to dualisation. It is therefore necessary to investigate to what extent, and why, German unions, and more specifically IG Metall as the main German union examined here, have a distinctive segmentation effect. Our case studies point at agency factors and different approaches; in order to investigate how far the differences relate to national-level factors, we investigate German union approaches towards agency workers, and especially the category of outsiders that is easiest to single out - migrant workers and workers with a migration background (in the sense of non-nationals or workers with foreign origin, but also nationals with migration background like second generation migrants). The selection is justified by the clear over-representation of this group among agency workers in Germany (they are twice as likely to be found among agency workers and even three times as likely if they are non-EU citizens; data: German Statistical Office). According to IG Metall (our interviews), among low-skilled agency workers in metalworking, 70% are migrants or have a migration background.

German trade unions started developing policies towards migrants during the Gastarbeiter schemes of 1955 to 1973, during which immigrants from Southern Europe found employment mostly in manufacturing and were typically unionised (Birsl, 2005). In this period trade unions defended equal treatment of foreign employees, and in particular IG Metall was very quick in organising, informing and servicing the large inflows of foreign workers, setting up specific departments for this purpose. At company level, exclusionary and discriminatory practices by works councils were initially frequent, but over time, foreign workers also started to make up an increasing share of union officers, representatives and works council members: by the mid-2000s, between 4.5% and 5% of works council members were migrants in the manufacturing sector’s unions IG Metall (metal), IG BCE (mining, chemical and energy), IG BAU (construction, agriculture and environment), and young workers with an immigration background were twice as likely to be unionised than Germans of the same age (DGB, 2008). In terms of unionisation, according to European Social Survey data, the gap between nationals and migrants is in Germany one of the smallest in the EU (20% vs. 18%), and much smaller than in Belgium (51% vs. 33%) (Gorodzeisky and Richards 2013). German unions, and most of all IG Metall, have specific structures for immigration issues as well as migrant committees
(Migrationsausschüsse), and a relatively high number of migrants and workers with immigration backgrounds in shop steward and works council representation roles; in the case of IG Metall, about 400 works council chairpersons. It is therefore difficult to explain the weaker protection of immigrants in Germany as an effect of under-representation among industrial relations actors. This is confirmed by our case studies: one of the works councilors in Metal Germany is originally Turkish and particularly dedicated to representing the numerous Turkish employees, especially as a number of them do not speak German. In the Belgian case studies, language is less of an issue because French is used as a lingua franca between the mostly French-speaking Flemish representatives and migrants, who are mostly of Moroccan origin and have sufficient French language skills.

However, German unions were less committed and less effective at guaranteeing equal treatment in social security and housing: due to the contributions-based Bismarkian welfare state, this translated into more difficult access to social assistance and in housing segregation (Sainsbury, 2006). In the last decade, despite smaller immigration inflows than in the rest of western Europe, migrants have started filling new low-wage service sector jobs, which have been expanded by Germany’s labour market reforms in 2004.

German trade unions repeatedly stress that they are not opposed to migrant workers, workers with immigration background and permanent immigration, but strongly oppose the employment forms of many of these workers. They resist the idea of temporary immigration, especially if through posting, agencies and movement of services, as disruptive to the labour market, and prefer instead integration initiatives (especially training) for those who are already in Germany, as well as stronger regulation of the labour market. Before the EU enlargement of 2004, they tacitly supported the government’s decision to introduce temporary limitations to the employment of citizens from the new member states, and their extension to the latest possible date, namely 2011 (Belgium lifted the restrictions in 2009). The transitional arrangements appear to have had some negative consequences in terms of channelling foreign workers to even more vulnerable forms of work (such as fictitious self-employment and service contracts, which have increased after the introduction of the minimum wage for agency workers in 2012), confirming the limitations of exclusionary policies that have been detected in our case studies. Following the end of the transitional arrangements in 2011, the main
union response has been the demand for minimum wages, that have been introduced in a number of sectors, such as construction, cleaning, care, postal service and eventually in temporary agencies.

German unions have also shown, in recent years, an increasingly active curiosity in the ‘organising model’ from the US and the UK to target under-unionised groups. However, campaigning efforts in difficult sectors such as retail (Turner, 2009) have had limited success, and in sectors with large immigrant workforces, such as agriculture, food industry, tourism and catering, unions’ collective bargaining power has been undermined by low density and a lack of extension mechanisms. Organising has more tradition in the construction union IG BAU, which in the early 2000s even attempted to create a Migrant Workers Trade Union (Greer et al. 2013), but it met some scepticism in other unions, especially with regard to recent immigrants.

“Some unions [...] don’t really want this kind of members. They don’t only want members that just join in order to solve their legal problem, which is expensive. [...] In order to receive this legal advice [...] they have to pay their fee for the last three or six months [...] There are trade unions who say you know what, he’s going to pay his 50, 60 Euros and we have to invest our work which is at least 700, 800 Euros worth, so it’s not a deal for us. And we know this person is going to move back to their country so [...] we won’t have anything from it than the cost and the problems.”

(DGB advisor)

The economic crisis of 2009 brought temporary employment to the top of the union agenda. Temporary workers suffered most of the job losses of 2009, and when in 2010 employment recovered, temporary and agency work expanded even more. According to some analyses, the distinction between core and periphery workers is becoming more blurred and core employees’ conditions are increasingly affected by the competition of atypical employees (Dorigatti, 2013). From 2010, therefore, IG Metall has stepped up its initiatives in this field. In 2010, IG Metall organised a national conference on this topic and started a policy committing works councils to monitor and negotiate agency workers’ conditions. In the steel sector, where unions are much stronger, in the same year a new collective agreement was negotiated including limits to the employment of agency workers and the principle of
equal pay between them and core employees. In metalworking, IG Metall campaigned for the same in the bargaining round of 2012, but with less success. While the union achieved with the 2012 metalworking agreement the highest wage increase of the last twenty years for the core workforce, it failed in its demand of equal pay and of placing agency workers’ employment under co-determination powers of works councils, after strong employer resistance. It managed nonetheless to sign a collective agreement for temporary agency workers in the metalworking sector, to introduce some guarantees on their conditions, wage increases for the lowest earners especially when tenure increases, and, crucially, a works council entitlement to negotiate workplace agreements on their use. As a result of the collective bargaining campaign, the issue of agency work attained a high profile in the political agenda and public debate.

The main reason for the partial results of this action is, according to the union, political and legislative, and notably the possibility, unlike in Belgium, for different, and worse, collective agreements for agency work as a separate sector. In the words of a unionist from the IG Metall migration policy department:

‘So far, to the extent that we have addressed the issue [of agency work], we have also received a lot of support from the core workforce. They too want, that agency workers are treated in the same way. The problem is, if we want to include agency workers, we must also change the legislation. The pressure we have exerted on the government has not led to this.’

(IG Metall officer)

Separate collective agreements with worse conditions for agency workers had been signed with the smaller Christian Trade Union Federation CGB shortly after the German labour market reforms in 2003/2004. During the run-up to the labour market opening to the new member states in 2011, the main union confederation DGB feared that such agreements could even be signed with foreign trade unions.
‘We already have ‘home trade unions’ [yellow unions] that sign collective agreements with individual agencies, and then it is that home agreement that applies. This leads to a situation, where agency workers from Poland, and we already have information about it from our union network, they tell that Polish work agencies already have in their drawers collective agreements signed by unions that are no real unions, with wages of 3-4 Euros per hour.’

(DGB officer)

On the 14th December 2010, the federal Labour Court ruled that the CGB had no collective bargaining capacity and its separate agreements for agency workers were declared invalid, strengthening the possibilities of DGB-federated unions to limit the ‘race to the bottom’ in the agency sector.

The increasing commitment of IG Metall against dualisation is confirmed by a parallel campaign on a particularly important segmentation factor of the German labour market, i.e. apprenticeships. The share of foreigners who access apprenticeships, the traditional channel to skilled jobs in Germany, is, at around 25%, half that of young Germans (data: Federal Statistical Office). In 2008, for the first time IG Metall reached a regional collective agreement in the region of Nordrhein-Westfalen, to open access to apprenticeship to the young without the required school qualifications, which mostly affects young workers with a migration background.

Conclusion
The comparison of Belgian and German plants of multinationals revealed important differences between the two countries with regard to the treatment and protection of agency workers. In-depth case studies pointed at agency-level differences, indicating that the German union attitude to ‘exclude’ agency work was short-sighted: the international pressure for flexibilisation makes it impossible to prevent the recruitment of agency workers, which has in fact increased greatly in the last decade. Belgian unions have, instead, long accepted agency workers but prepared arrangements that protect their employment conditions and opportunities to move to permanent contracts.
At the company level, the unions of the two companies seem to have comparable strength in the two countries. However, additional consideration of the German case points at important differences between the two countries: German unions have much lower levels of membership, and do not enjoy the same legal support in terms of minimum wages and of legally binding collective agreements. The pressures for fragmentation of industrial relations in Germany are therefore much stronger (Doellgast and Greer 2007).

The analysis confirms therefore the argument of Palier and Thelen (2010) that segmentation is a second-best option for unions that no longer have the strength (as the Belgian ones appear to do) to protect all workers with encompassing regulations. It however adds more precision to the argument by assessing the role of institutions in mediating different union approaches. The delaying and excluding option has been common for German unions on both agency work and immigration, and this has often resulted in the outsiders being channelled in less regulated jobs outside union control. German unions do have particularly segmented membership (Hassel 2007). However, this is due to institutional factors (in particular industry-level bargaining) rather than choice, and does not systematically correspond to dualisation lines: the unionisation gap between nationals and migrants, who are hugely over-represented among agency workers and can be considered as prototypical ‘outsiders’, is in Germany one of the lowest in the EU and much lower than in Belgium.

More importantly, in the last few years, following the economic crisis of 2009 and the opening of the German labour market to citizens from the new EU member states in 2011, German unions have actually changed their policies and stepped up their commitment to outsiders significantly. Their campaigns for agency workers have however only had satisfactory results in the few situations where they are strongest, such as in the steel industry and in the province of Nordrhein-Westfalen. The results of the 2012 collective bargaining round in metalworking sector were mixed in terms of agency work. The analysis suggests that the failure to prevent dualisation in Germany is less the result of a ‘second-best intention’ by the unions, of specific unfavourable legal and political contexts: this is where the differences between Belgium and Germany, despite their common variety of capitalism, are deeper. Without changes in that context, it is very difficult for unions to negotiate any advancement at sector or company level. In fact, a positive development for equal rights for agency workers in
Germany came from the legal level, with the December 2010 court ruling that declared the separate agency work agreements signed by the small Christian union federation invalid: since then, IG Metall has had more scope for representing both core and peripheral workers, and the 2012 agreement provided a first, if partial, step towards narrowing the gap.

This conclusion on the importance of the macro political context confirms the argument by Clegg (2012), who discussed a similar difference in protecting outsiders between Belgium and France. The stronger effectiveness of Belgian unions to provide unemployment insurance for atypical workers, he argued, was not the result of any more commitment to the outsiders: if anything, French unions were politically more committed. But institutional factors, and notably the Ghent system, provided Belgian unions with more resources and with more organisational interest in defending unemployment insurance as a key channel for maintaining high unionisation. Similarly, high membership levels including for atypical workers and stronger collective bargaining rights may explain the higher effectiveness of Belgian unions in protecting agency workers compared to their German counterparts.

The findings have the usual representativeness limitations of case studies and of accounts of rapidly changing developments. Nonetheless, the robustness of the comparison and the consideration of the context allows us to make a contribution on the role of macro political factors in affecting union approaches to atypical work, and to draw two policy implications. First, the delaying and exclusionary attitudes of unions, even when they may appear rational, are short-sighted and leave the organisations badly positioned in the longer run. Secondly, while grassroots organising and negotiating strategies may be important, effective union protection of atypical workers requires favourable legal and political frameworks; as such protection is not only in the interest of the unions, but also of policy makers who want to avoid the social stability dangers of deep dualisation, policies that promote collective bargaining coverage and the unionisation of outsiders should receive strong consideration.

References


Table 1: Overview of the workplaces

<table>
<thead>
<tr>
<th></th>
<th>Machine Belgium</th>
<th>Machine Germany</th>
<th>Metal Belgium</th>
<th>Metal Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Country of origin</strong></td>
<td>USA</td>
<td>USA</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Employees</strong></td>
<td>About 130,000</td>
<td>About 24,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Employees site</strong></td>
<td>2,500</td>
<td>1,700</td>
<td>1,600</td>
<td>1,500</td>
</tr>
<tr>
<td><strong>Blue collar</strong></td>
<td>1,400</td>
<td>850</td>
<td>1,000</td>
<td>900</td>
</tr>
<tr>
<td><strong>White collar</strong></td>
<td>1,100</td>
<td>850</td>
<td>600</td>
<td>600</td>
</tr>
<tr>
<td><strong>Trade union confederations</strong></td>
<td>ACV-CSC ACLVB-CGSLB ABVV-FGTB</td>
<td>IG Metall</td>
<td>ACV-CSC ACLVB-CGSLB ABVV-FGTB</td>
<td>IG Metall, CGM</td>
</tr>
<tr>
<td><strong>Unionization rate</strong></td>
<td>95%</td>
<td>80%</td>
<td>95%</td>
<td>75%</td>
</tr>
<tr>
<td><strong>Threshold agency workers</strong></td>
<td>No agency work, but 20% fixed-term workers</td>
<td>20%</td>
<td>5%</td>
<td>15% (40% during holiday seasons)</td>
</tr>
</tbody>
</table>