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

Abstract

The article addresses the question of the extent to which, and the reasons why, western European trade unions may have privileged the protection of ‘insiders’ over that of ‘outsiders’. Temporary Agency Workers, among whom migrant workers are over-represented, are taken as test case of ‘outsiders’. The findings from a comparison of Belgian and German multinational plants show that collective agreements have allowed a protection gap between permanent and agency workers to emerge in Germany, but not in Belgium. However, the weaker protection in Germany depends less on an explicit union choice for insiders than on the weakening of the institutional environment for union representation and collective bargaining. The conclusion suggests that European 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. The insider-outsider literature generally proposes that trade unions act as obstacles to the employment opportunities available to ‘outsiders’. The result is labour market dualisation, with only the insiders enjoying representation and dismissal protection. However, Palier and Thelen (2010) have moved the debate forward by arguing that dualisation stems from the weakening of trade unions rather than from their intentional protection of insiders. Trade unions consent to reduced outsider protection only as a second-best solution, when their preferred option – increased protection for all – is no longer achievable because of the erosion in industrial relations, labour markets and welfare institutions.

Dualisation may be seen as a globally emerging divide between classes, as in Standing's distinction between the 'salariat' and the 'precariat' (Standing, 2011). A sociological analysis of the segmentation processes requires more attention to the variation of dualisation depending on social contexts. Firstly, dualisation is not only linked to employment status: it overlaps with socio-demographic as well as firm-level internal and external structural features. The over-representation of migrants and women in non-standard employment can explain the disadvantages of non-standard employees. Moreover, national-level variables affect the form of dualisation, as evident in the case of female work (Vosko 2010). According to Häusermann and Schwander (2012), the likelihood of being an outsider also depends on a country's welfare regime: in terms of gender and class, women in low-skilled service occupations are most likely to be outsiders, while the youth 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). At the firm level, flexible work arrangements such as temporary and agency labour are utilized to respond to sector-specific demand volatility and international market pressures.

This article has three interrelated analytical aims. Firstly, through selected case studies within the same multinational companies affected by the same external pressures, it questions the role of efficiency-driven or rational choice-based explanations for using one extreme form of vulnerable work, namely temporary agency work. The cases illustrate diversity in the organisation of the use of agency labour that cannot be explained by company variables alone and require the consideration of social and political factors. Secondly, the article explores some of these factors by comparing 'most similar' cases, i.e. two neighbouring 'co-ordinated market economies' with similar welfare state models, but where temporary agency workers are subject to very different degrees of protection. The comparison allows to identify the importance of union power and related collective bargaining, and representation systems, and thereby to assess Palier and Thelen's (2010) argument more in depth. Thirdly, we go beyond existing institutional accounts by addressing agency and institutional factors together to tackle the underlying question of the extent to which the unions' role in co-organising dualisation depends on their political choices rather than on the environment they are in.

The comparative perspective adds to the literature on labour market segmentation and on union responses (Benassi, 2013; Lillie, 2012; Doellgast and Greer, 2007; Hassel 2012), by looking in particular at the implications of power and the influencing factors. We propose to problematize the role of employers and trade unions beyond economic determinism and structural approaches that derive their roles merely from supposedly pre-existing interests. Instead, we pay deeper attention to the socio-political context in which the actors operate and which they concomitantly construct. Thereby, we aim to contribute to debates on social inclusion and dualisation by stressing the crucial role of institutionally situated micro-political games, where actors are strategic ‘agents’ within a context of power relations.

The article is organised as follows. Firstly, segmentation debates are addressed and the rationale of a Belgium-Germany comparison explained. Secondly, the German and Belgian regulations of temporary agency work are explained. Then, after a methodological note, the findings from matched case comparisons are presented and discussed in relation to agency and institutional factors. Finally, theoretical and policy implications are drawn

Segmentation processes and trade union responses towards agency work in Germany and Belgium

Since the 1970, there have been two main positions regarding the nature of labour market segmentation. On the one hand, efficiency-driven explanations interpret segmentation as the result of managerial efficiency-seeking strategies. Accordingly, the ‘core-periphery’ divide is supposed to reflect the productivity of the workforce and therefore to correspond to production requirements (Doeringer and Piore, 1971). Following Piore and Berger (1980: 24) dualism on the labour market exists when parts of the workforce are insulated from uncertainty and variability in demand – those are so-called ‘labour market insiders’. By contrast, ‘labour market outsiders’ are supposed to provide the demanded flexibility via atypical or flexible employment or unemployment. In this view, firms’ exposure to international competition, volatility of demand, standardised production processes, and degree of uncertainty are relevant factors shaping the need for flexible work arrangements from an employer perspective. On the other hand, power-based approaches claim that segmentation results

from political processes rather than efficiency-seeking strategies. Accordingly, labour market segmentation needs to be considered as a bargaining outcome. This is in line with sociological literature on trade unions and social inclusion, arguing that unions play an important role in shaping workforce structures, skills demarcation, and skill ladders (Grimshaw and Rubery, 1998). Traditionally, unions strive for bargaining outcomes limiting competition among workers in internal labour markets and allowing them to maintain control over skill supply and worker knowledge. These arrangements result from bargaining processes between labour and management and reflect the balance of power between them (ibidem). But when, and how, do they lead to dualisation?

According to insider-outsider accounts (Rueda, 2014), flexible arrangements for workers serve as a buffer in the workplace, protecting the regular/permanent workers from fluctuations. Therefore, some scholars report that unionisation does not negatively affect the use of temporary agency workers (Davidsson and Emmenegger, 2013). By defending their members' interests (mostly insiders), unions protect them against employer demands while ignoring the interests of the non-members (mostly outsiders) (Lindbeck and Snower, 2001). Given the over-representation of insiders among the union rank-and-file, unions are expected to consent to increasing labour market flexibility for the outsiders while opposing changes that disadvantage insiders (Saint-Paul, 1996).

Various studies have examined unions' attitudes of inclusion and exclusion and the challenges agency work poses to them. Beyond the notion of 'rational choice', the concepts of 'trade union identity' (Hyman, 1995; 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 constituencies, 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, 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 and Naczyk, 2009). A country where these dualisation processes have been particularly pronounced is Germany. During the 2000s, it liberalised temporary and agency work, while maintaining or even reinforcing the protection of permanent workers¹ (Holst, 2013; Hassel and Schiller, 2010), causing a drastic increase in precarious work (Keller and Seifert, 2012).

Moreover, at company level ‘producer coalitions of export-oriented firms and core workers’ representatives’ have multiplied, contributing to dualism (Hassel, 2012).

Co-ordinated market economies with ‘continental’ welfare states, alongside Southern European countries, are supposed to feature the most dualised labour markets among deindustrializing societies (Rueda, 2014). To examine the role of unions more precisely, the article investigates two extreme cases in terms of union strength within this group, Belgium and Germany. Despite belonging to the same general type of industrial relations system, the two countries differ in terms of union strength. Belgium has high union membership at around 50%, strong union representation, inclusive employment protection and strict collective bargaining regulations; by contrast, Germany has witnessed a deep union decline within the last twenty years (with unionisation falling below 20%) and labour market reforms multiplying the forms of atypical, less protected employment (Visser, 2013). Belgian unions are involved in social security management by handling unemployment benefits as typical part of the ‘Ghent system’ (Vandaele, 2006): this contributes to the relatively high union density, particularly among agency workers, who are unionised at nearly 60% (Arrowsmith, 2006). Additionally, Belgian unions are strongly present in the workplaces, especially in large firms, via union-dominated works councils, whereas German trade unions do not have formal control over works councils.

Both countries 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. Regulations differ markedly. Unlike in Belgium, in Germany there is no national minimum wage (only in 2014 it was decided to introduce one in 2015) and sectoral collective agreements are very rarely extended to all companies. A sectoral, hourly minimum wage for agency workers was only introduced in 2012, but at the relatively low level of €7.01/7.89/hour (East/West Germany). As of January 2014, the hourly wages increased to €7.86/8.50 (East/West Germany). Compared to this, the Belgian national minimum wage negotiated by national agreement was €9.12/hour in 2013, and the sectoral minimum wages in metalworking above €12/hour. Agency workers are legally covered by sector collective bargaining in Belgium, but not in Germany, where separate agreements for agency

workers can be signed, often with significantly worse conditions (Eichhorst and Marx 2012; AUTHOR A and AUTHOR C, 2013). The initial lack of attention by the main German unions to protect agency workers' terms of employment opened up space for competing agreements, signed by fringe unions and in particular the Christian Unions (CGZP). By the end of the 2000s, one third of agency workers were covered by CGZP agreements, with wages around 30% lower compared to sectoral agreements for standard employees (Schröder, 2009; Meyer, 2013).

The most problematic case is that of the German metalworking union IG Metall, which resisted temporary agency work for over twenty years, and only recently adopted a more inclusive strategy (Benassi and Dorigatti, 2014). In the workplaces, many works councils do not oppose atypical work, since it enhances flexibility for the firm and grants security to regular workers (Promberger, 2012). In contrast, the Belgian trade union confederations have been actively engaged in regulating atypical work, also incorporating local representatives to support their work. It appears that the German unions' blanket resistance to flexibilisation, especially with respect to the regulations governing hiring and firing of atypical labour, prepared them badly to protect the employment conditions of agency workers. The result is deeper segmentation between the more and less protected workforces. This has important implications for welfare policy since it promotes a vicious circle with an ever lower share of social-contribution paying active workers, particularly during economic crisis. As Ebbinghaus and Eichhorst (2007) claim, atypical employment in Germany was fostered through gradual labour market reforms to enhance flexibility without threatening the stability of regular employment. Conversely, the Belgian unions actively engaged in regulating the use of flexible labour to a strong defence of all forms of contractual flexibility, with a consequent lessening of the segmentation effect. People who start in temporary jobs in Belgium mostly end up in permanent employment (Eurociett, 2012).

To examine the reasons of the weaker protection of agency workers in Germany, we take a more detailed look at migrant workers and workers with migration background as prototypical 'outsiders' who are over-represented in agency work. Their precarious status has been reinforced in the current crisis, when unemployment has affected them more than German nationals (AUTHOR B et al., 2012). If the reason was a lesser commitment to inclusiveness by German unions in comparison to Belgium, 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.

Belgium and Germany: varieties of co-ordinated regulation of agency work

While industrial relations are characterised by multi-employer bargaining and works councils in both Belgium and Germany, some important differences have implications for the outsider protection. Belgian sector-level agreements are usually extended to all companies, and the process of decentralisation is constrained by the 1968 labour legislation that does not allow sector- and company-level deviations from higher-level collective agreements, except specific cases foreseen by the law. Deviations from sector agreements' minimum wages are never allowed. Equal treatment between agency and core employees is stipulated by law and may refer to the sector- or company-level agreements covering the user firms.

Because of their stable recognition by the government and the employers' associations, Belgian trade unions were in a position to intervene in the policy-making arena for the protection of agency workers some twenty years earlier than their German counterparts. Although unions recognized that temporary jobs are more precarious than regular jobs, they have worked, together with the government and the employers, on an appropriate regulative framework for agency workers since the 1980s. In 1987 they welcomed the law regulating equality in social rights and entitlements to agency workers. Belgian unions have also been actively involved in enhancing the working conditions of agency workers through the negotiation of sector- and firm-level agreements. Particularly, CSC/ACV and FGTB/ABVV have contributed to introduce action plans and training to inform agency workers about their rights, particularly in the metalworking sector.

Conversely, German sector agreements are rarely extended to all companies (never in metalworking), putting more cost pressures on companies that are covered. As a result, decentralisation has progressed faster and deeper, especially during the 1990s and 2000s, with 'opening clauses' allowing companies

to deviate from collectively-agreed wages and working conditions through agreements with the works councils. Moreover, agency workers are institutionally under-represented in the works councils: they are entitled to vote for the user company's works council only after three months of work, and cannot be elected (in Belgium, agency workers take part in union delegate elections alongside the user company's workforce, and in theory can also be elected if they work in the company for 100 days over a twelve-month period).

In Germany, the equal treatment principle applies but, unlike in Belgium, is subject to deviation by collective agreements. This opened the door for separate, worse collective agreements for agency workers, deviating from the equal treatment principle set by law.

We attempt to understand why German union practices are so different from the Belgian ones. After their long opposition to agency work, German unions were forced to change their attitudes because of the high unemployment and the unsustainable approach of labour shedding in the 1990s (Holst et al., 2010). In particular, the main union confederation DGB deleted its request for a legal prohibition of agency work from its policy program in 1996, and in 1998 started to discuss how to put agency work on the bargaining agenda. In 2002 the German law on agency work was amended (Hassel and Schiller, 2010). Representatives of IG Metall and the service sector union Ver.di (responsible for temporary work agencies) were involved in the commission (known as 'Hartz Commission') that prepared the reform. They contested the possibility to deviate from equal treatment, but failed to mobilise against it. Separate collective agreements with worse conditions for agency workers started then to be signed with the fringe union CGZP, while the number of agency workers in Germany climbed from 300,000 in 2004 to more than 900,000 in 2012 (*Bundesagentur für Arbeit*, 2013). During the run-up to the labour market opening to the new EU member states in 2011, the DGB feared that such agreements could even be signed with foreign trade unions at East-European wage levels, and therefore started demanding a national minimum wage and easier extension of collective agreements.

In December 2010, the Federal Labour Court ruled that the Christian Trade Union Confederation CGZP had no collective bargaining capacity and its separate agreements for agency workers were declared invalid, reducing, but not eliminating the space for a 'race to the bottom' in the agency sector. In between, in the metal sector, which registered the highest concentration of agency workers, IG

Metall started to campaign alongside Ver.di to organise agency workers, who had been hit very disproportionately by the 2008-9 crisis. The organising effort represents a strategic shift by German unions, but the priority of collective bargaining action remains. In the metal and electrical industry, the 2012 sector agreement introduced some improvements: pay premiums for agency workers depending on the duration of work in the same establishment, the obligation to offer fixed-term employment after two years of working for the same user firm, and a work council entitlement to negotiate (but not veto) the use of agency workers. The new IG Metall secretary, elected in 2013, had admitted that ‘IG Metall as a whole was conceptually unprepared to develop instruments to protect agency workers from the sudden economic crisis’ (Wetzel, 2012: 202) but also claimed that with the subsequent organising campaigns ‘we [IG Metall] have become the union of agency workers’ (ibidem, 190).

Hence, although both Belgian and German trade unions currently proclaim an inclusive approach towards agency workers, they differ in their practice. When agency work emerged, Belgian unions became actively involved and immediately pushed for regulation, whereas German unions tried to restrict it for a long time. Differences in the unions’ institutional embeddedness (Penninx and Roosblad, 2000) are possible explanatory variables. As the following sections will underline, these differences are reflected in the local union practices toward agency work and the effects on the job conditions of these workers.

Methodology

The article brings together two studies following different methods. Firstly, the Belgium-Germany comparative analysis, whose rationale was explained above, draws from 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. In all plants, 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. The company

names are kept anonymous: *MachineBelgium*, *MachineGermany* and *MetalBelgium* and *MetalGermany*.

[Table 1 here]

All workplaces have coped with the crisis, with the German workplaces experiencing intensive restructuring due to competition and cost pressures. As illustrated in table 1, according to expert estimations from the interviews, migrant workers are over-represented among agency workers in all plants, as in the metalworking industry generally but especially in Germany, mainly because of the low-skill nature of the work involved: around 48% and 44% of migrants coming to Belgium and Germany respectively is lowly-skilled (Platonova and Urso, 2012: 11). The segregated nature of physically-demanding production work is reflected in predominantly male workforces in all plants, especially among agency workers, who are generally used for manual jobs, while women are to be found mainly in administrative positions. This implies that the share of female agency workers is insignificant in all plants. The similarity in terms of union presence across the workplaces allowed us to compare local union attitudes towards temporary agency work, alongside the segmentation and other social effects produced at the workplaces. Data are based on case studies conducted 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 90-120 minutes and were recorded and transcribed. NVivo was used for qualitative data analysis. Company-based documentary materials and collective agreements were analysed as secondary sources.

Secondly, and given that the case studies show a higher degree of dualisation in Germany than in Belgium despite the similar external (market) and internal (firm) characteristics, a further empirical step attempted to investigate the reasons of this diversity. It explored how the German unions dealt internally with the representation of ‘outsiders’ such as temporary and migrant workers. Therefore 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, and complementary literature and documentary analyses were conducted in both Belgium and Germany.

Not all workers are the same: Trade unions and agency work in Belgium and Germany

All investigated workplaces used a quota to limit the number of agency workers. However, the processes through which the diverse thresholds were locally negotiated differ between Belgium and Germany.

In 2005 *MetalGermany* implemented a quota for blue collar agency workers of 15% of the total plant headcount, and 40% during the holiday periods. By negotiating a quota, the work council intended not only to simply limit the use of agency work, but also to reduce the bureaucratic efforts agency work caused for the work council itself. National legislation (§ 14(3) AÜG) in Germany obliges management to inform the works council about the utilization of agency workers. The 15%-quota, by removing the information requirement up to the agreed threshold, made agency work become more accessible. The relatively high quota allowed the company to benefit from labour cost savings, as the price of agency work in Germany is lower than that of regularly employed workers. The savings contributed to the survival of the plant, its competitiveness and the security of the core workforce, if at the cost of visible inequity:

“Employees from agencies only receive 7-8 Euros. In contrast to our ordinary employees, agency workers do not get any extra payments. It is difficult to motivate someone to do a good job when the rest gets far more money for the same work.”

(Works councillor, *MetalGermany*)

In 2004, a 20% agency work threshold was negotiated in *MachineGermany*. Thereby, the works council attempted to exchange the employers' request for higher external flexibility with employment guarantees for the core workforce. The plant had faced intensive restructuring, and the risk of closure was mitigated by cutting almost 150 jobs. The works council had pushed for an employment guarantee in 2003, which was eventually implemented in exchange for the 20% agency work quota. Therefore,

the risk of plant closure was reduced not only by the high level of external flexibility, but also by lower labour costs.

In substance, both *MachineGermany* and *MetalGermany* coped with economic uncertainty by protecting regular workers while increasing flexibility at the margins. Thus, the works councils in *MetalGermany* and *MachineGermany* were formally negotiating agency work quotas, but were at the same time engaged in concession bargaining highlighting their reduced power at the workplace. Works councils would have needed to incorporate the interests of the agency workers into their strategies 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 in the German workplaces secured the regular workforce's employment at the expense of hiring a relatively large amount of 'cheap' agency workers. Consequently, 'dualisation' effects could be observed, reducing opportunities for agency workers to gain access to regular employment. Overall, the plant-level agreements concluded at *MetalGermany* and *MachineGermany* contain 'productivity-oriented' concessions. Accepting more external flexibility which offers a 'security net' for the core workforce may be 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).

As in Germany, union representatives in both Belgian workplaces agreed on an agency work threshold with management. However, the thresholds were much lower and the social dynamics put in place prone to deliver greater equality between regular and agency workers. At *MetalBelgium*, the local unions agreed on a 15% flexibility quota, including 10% fixed-term and 5% agency work in 2004. They pushed for an agreement to keep the use of flexible forms of work at a low level and in so doing, avoiding the abuse of agency work:

“We need to have 85% permanent contracts, 10 % temporary and 5% agency workers. If management uses a higher number of agency or fixed-term workers they have to compensate by offering permanent or fixed-term contracts to a certain share of workers in return.”

(Work councillor, *MetalBelgium*)

From the firm perspective, hiring staff via a work agency corresponds to an extended probation period for workers. If the worker performs well in this period, the company would normally offer a fixed-term contract; and after two years, permanent employment.

In *MachineBelgium* the local union representatives negotiated an agreement on the ban of agency work in 2007. In exchange, the unions accepted a more extensive use of fixed-term contracts (up to 20% of the workforce). The unions' approval of the 20% fixed-term contract quota was a precondition for management to refrain from using agency work in the first place. Likewise temporary contracts are a means of screening workers for permanent positions, and lower the cost of dismissing those who are unproductive. At the same time, the unions ensured that the flexible arrangements did not result in job instability by negotiating new procedures on company recruitment and on training provision. Specifically, people employed on temporary contracts would be upgraded to permanent ones over time, subject to performance indicators and periods of intensive on-the-job and general training. In both Belgian workplaces, union representatives and management agreed on providing training for all employees regardless of their contractual status:

“When a worker enters the company, he has two to three weeks initial training, and then there is regular training on-the-job. Additionally, during the first six months, the worker is followed by a trainer, by the supervisor and by what we call the *team lead* which would be the tutor. So at this stage, we offer training and coaching for everyone.”

(HR Manager, *MachineBelgiumMachineBelgium*)

MetalBelgium considered investing in specific training as pivotal to retaining a skilled workforce. This had process-related advantages for the company and it contributed to maintaining cooperative relations with the workforce, in turn leading to a high level of internal mobility:

“We have the task to invest in our people and train them no matter which contract they have. What is important is the potential of our people.”

(HR Manager, *MetalBelgium*)

The need to guarantee internal job stability and avoid plant closure explains the absence of formalized career progression procedures for agency workers in both German workplaces. In Belgium, however, the unions engaged in company-level negotiations on career paths for agency workers and on their working conditions. The highly centralised framework, the strong Belgian unions’ bargaining and representation position together with the legal restriction of derogating from the equality principle may explain why agreements on career paths could be negotiated. Furthermore, management saw the benefits of using flexible arrangements to screen workers hired through temporary agencies. This is different in Germany, since the relatively cheap price of agency work hardly encouraged management to offer fixed-term or permanent contracts to agency workers.

In the German workplaces, the acceptance of agency work occurred under the threat of plant closure and job losses so that agency work became instrumental to providing job protection for the regular workforce. In Belgium, however, the local unions gained control over the plant-level regulation of agency work by retaining a relatively small agency workforce. This implied that better working conditions, including career progression, could be locally negotiated. The findings suggest that unions’ different degree of intervention as a political actor in the regulation of the employment relationship at the Belgian and German workplaces concurred to shape different working conditions while influencing segmentation at the workplace.

Not all agency workers are the same: a closer look at migrant agency workers

Case studies reveal that across comparable workplaces in the metalworking sector, the gap in employment conditions between core and agency workers is greater in Germany than in Belgium, 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. However, Belgian unions also rely largely on institutional resources, but their action is different. 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. To do so, we look more in depth at the group of outsiders that is easiest to single out, namely migrant workers and workers with a migration background. This group is over-represented 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. The percentage is slightly lower in Belgium, although the mining and metal sectors are traditionally the ones with the highest concentration of low-skilled migrant workers (Platonova and Urso, 2012).

Being challenged by agency work, trade unions face a similar dilemma regarding migrant workers: shall they resist or co-operate, and should they treat them equally or in a special way (Penninx and Roosblad, 2000). In the period of the *Gastarbeiter* schemes (1955-1973), during which immigrants from Southern Europe found employment mostly in manufacturing, German 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 (Kühne, 2000). 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, 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 ESS 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). The German unions, and most of all IG Metall, have specific structures as well as migrant committees (*Migrationsausschüsse*). Moreover, a relatively high number of migrants and workers with migration background have shop steward and

works council representation roles; in the case of IG Metall, there are about 400 works council chairpersons. The Belgian unions have followed a similar development. Soon after the Second World War, the Belgian unions' discourse focused on the promotion of equal treatment and opportunities for workers, anti-racism, the promotion of citizenship and social clauses against discrimination at work (Martens and Author A, 2008). Over time, the Belgian unions stepped up their engagement against racism and discrimination, and for the regularisation of migrant work. From 1947 onwards, they established separate migrant structures as a reflection of their inclusive policy (Schandevyl, 2010).

In the light of this picture, it is therefore difficult to explain the weaker protection of migrants (especially agency workers) in Germany as an effect of their under-representation among union members, particularly if confronted with Belgium where different priorities, traditions and identities of the migrant community did seem to have merged less well together within the nation's trade union model (Schandevyl, 2010: 359). This is confirmed by our case studies: one of the works councillors in *MetalGermany* 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.

Both Belgian and German unions repeatedly stress that they are not opposed to migrant workers as such, but rather resist the idea of temporary immigration, especially if through posting, agencies and movement of services; they instead prefer integration initiatives (especially training) for those who are already in the host country, as well as stronger regulation of the labour market. Before the 2004 EU enlargement, German unions 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, although the unions declared to strongly oppose the policy of importing workers from EU and non-EU countries on a large scale. The transitional arrangements appear to have had some negative consequences in terms of channelling foreign workers to even more vulnerable forms of work in both countries, 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 in Germany was 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, and finally at national level from 2015 onwards.

Given o the similarity of subjective engagement for outsiders between German and Belgian unions, understanding the differences in company negotiations requires a deeper consideration of the institutional contexts. Unlike in Belgium, German unionists pointed to the possibility of concluding different, and worse, collective agreements for agency work as a separate sector, as the reason for their weakness:

“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 that 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)

The prominence of the political action on the part of the Belgian unions and their ability to reach formal agreements with the government and the employer associations to regulate employment was facilitated by their institutional embeddedness. On the one hand, the tradition of consensual policy-making allowed these unions to obtain gains for all represented target groups at national level as well as in the workplace through union-dominated works councils. On the other hand, the Ghent system provides Belgian unions with more resources and organisational interest in defending unemployment insurance as a key channel for maintaining high unionisation, especially among precarious workers for whom unemployment insurance is more important. The strong presence of Belgian unions in workplaces makes it comparably easy to contact migrant agency workers, to recruit them and to become acquainted with their real interests. Different membership and collective bargaining power resources, then, affect the negotiation processes at workplace level in the two countries.

Conclusion

The comparison of Belgian and German plants of multinationals revealed important country differences with regard to the treatment and protection of agency workers. Notably, Belgian unions negotiate more equal treatment of agency worker, and stricter limits to their use. By considering the actors' perspectives and the institutional contexts, we draw three important theoretical implications to sociological debates on dualisation by adding a contextualised micro-political perspective to them. First, dualisation follows a political rather than an economic logic: the differences between plants follow country lines (Germany or Belgium) rather than sector (machinery or metalworking) ones, after having kept company organisational factors constant (the same two multinationals). This points to the importance of political games and social settings. This is confirmed when we compare the two companies across the two countries. The Belgian cases, in particular, show that dualisation is not an unavoidable outcome for co-ordinated market economies (Rueda, 2014), as in certain conditions the unions can effectively reduce inequality between insiders and outsiders. Secondly, and relatedly, it confirms the argument of Palier and Thelen (2010) that segmentation is not a first choice but, at most, 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. The crucial variable here is the sphere of power relations between employers and employees, which explain workforce segmentation more than organisational efficiency imperatives do. Thirdly, it adds more precision to the argument by jointly assessing the role of institutions and agency in mediating different union approaches. The delaying and excluding option has been common for German unions on both agency and migrant work, 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 itself linked 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, is in Germany one of the lowest in the EU, and lower than in Belgium. Our overall argument can therefore be summarised as 'agency within power relations'.

The overall argument is reflected in the policy implications: unions do have space for strategic choice, yet they should pay particular attention to the institutional setting. 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 state of North Rhine-Westphalia. Our analysis suggests that the failure to prevent dualisation in Germany is linked to specific unfavourable legal and political contexts, and notably the less binding and encompassing nature of minimum wages, sectoral agreements and welfare, in comparison to Belgium. A German union strategy against dualisation should focus on exploiting the current labour market power (low unemployment) to modify those contexts. Some first steps and results in this direction are visible in the presence of union-friendly points in the programme of the government elected in 2013, including a national minimum wage, an easier extension of collective bargaining, and limits to fringe unions' collective bargaining prerogatives.

This conclusion on the importance of the macro-political context confirms the argument by Clegg (2012), who discussed a similar difference in protecting outsiders in 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 organisational capacity.

Our 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 allow us to make a contribution on the role of macro political factors in affecting union approaches to atypical work, and to draw two general lessons. 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 is arduous without 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 dualisation. Thereby, policies that promote collective bargaining coverage and the unionisation of outsiders should receive strong consideration.

Notes

1) During the 2000s, the OECD EPL Indicator (which measures the legal protection from dismissals) collapsed for temporary contracts (from 3.125 to 1), but increased slightly for regular contracts (from 2.679 to 2.869).

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Table 1: Overview of the workplaces

	MachineBelgium MachineBelgium	MachineGermany	MetalBelgium	MetalGermany
Country of origin	USA		USA	
Employees	About 130,000		About 24,000	
Employees per site	2,500	1,700	1,600	1,500
Blue collar	1,400	850	1,000	900
White collar	1,100	850	600	600
Share of women - in the plant's workforce - among agency workers	13% <5%	9% <5%	30% <5%	15% <5%
Share of migrants or staff with migration background among agency workers (estimate)	35%	35%	40%	45%
Trade union confederations	ACV-CSC ACLVB-CGSLB ABVV-FGTB	IG Metall	ACV-CSC ACLVB-CGSLB ABVV-FGTB	IG Metall, CGM
Unionization rate	95%	80%	95%	75%
Threshold agency workers	No agency work - 20% fixed-term workers	20%	5%	15% (40% during holiday seasons)