Posting, subcontracting and low-wage employment in the German meat industry

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Summary
During the last few decades, the German meat industry has experienced an incomparable economic expansion, becoming one of the largest European producers and exporters in the sector. At the same time, Germany, traditionally characterized as a coordinated market economy with strong social partners and labour market institutions, has been nationally as well as internationally criticized for establishing a system of institutional exploitation of mobile and migrant labour in the industry. The aim of this article is to analyse how it was possible to create and maintain such a system under the eyes of social partners and to identify the defining factors for this development.

Résumé
Au cours de ces dernières décennies, l’industrie allemande de la viande a connu une expansion économique sans précédent, en atteignant les premiers rangs en Europe en termes de production et d’exportation. Dans le même temps, l’Allemagne, traditionnellement caractérisée comme une économie de marché coordonnée, avec des partenaires sociaux et des institutions du marché du travail solides, a été critiquée au niveau national comme international, pour avoir établi un système d’exploitation institutionnelle de la main-d’œuvre mobile et immigrée dans ce secteur. Cet article a pour but d’analyser comment il a été possible de créer et de maintenir un tel système sous les yeux des partenaires sociaux, et d’identifier les facteurs déterminants d’une telle évolution.

Zusammenfassung
In den letzten Jahrzehnten hat die deutsche Fleischindustrie einen unvergleichlichen wirtschaftlichen Aufschwung erlebt und ist zu einem der größten europäischen Produzenten und Exporteure in Europa aufgestiegen. Gleichzeitig wird Deutschland, traditionell als koordinierte Marktwirtschaft mit starken Sozialpartnern und Arbeitsmarktinstitutionen assoziiert, national und international dafür kritisiert, ein System der institutionalisierten Ausbeutung mobiler Arbeitskräfte...

Keywords
Posting of workers, labour migration, low-wage sectors, meat industry, Germany

Introduction
In March 2013, the Belgian Ministers for Economic Affairs, Johan Vande Lanotte, and for Labour, Monica De Coninck, sent a letter to the European Commission complaining about German wage competition. The letter was sparked by complaints from Belgian abattoirs, who claimed that German low-wage competitors were threatening their survival. The core of the complaint was the German system of mini-jobs, which exempts low-paid, part-time employment from social security charges. It also raised the issue of very low pay which could go down to €3–€4 per hour and thereby draw investments into Germany from other European countries (Peter, 2013). Within Germany, poverty wages and the poor treatment of migrant labour have also been addressed by trade unions and non-governmental organizations and have received broad media coverage (Greven, 2014). The meat processing industry has been exposed by the national and international press, which has reported that German labour law allowed for a system of institutional exploitation of mobile labour (Zeit Online, 2014). Considered as the main destination country for labour migration within the European Union, Germany has experienced various forms of labour migration, temporarily and permanently affecting the labour market.

According to press coverage, wages as well as working conditions such as working time, protection at the workplace and safety were only respected for domestic workers (Kunze, 2014). Migrant workers, mostly from Central and Eastern EU Member States, were earning wages of between €4 and €8 per hour and working for more than 12 hours per day. It was claimed that, based on these labour conditions, Germany created a comparative advantage, leading to business relocations there from other countries. Danish, French and Belgian meat producers have all moved slaughterhouses to Germany (Hamburger Abendblatt, 2010). When Belgium filed a complaint against the German system because of ‘undignified practices’, i.e. lack of labour protection and below average wages, creating a system of unfair competition within the European Union, the European Commission responded by stating accurately that ‘the monitoring and enforcement in practice of an employee’s working and employment conditions and actual remuneration fall within the competence of the Member States.’ (European Parliament, 2013)

The purpose of this article is to analyse the question as to how, in a country characterized as a coordinated market economy with strong employers’ associations and trade unions, it was possible to create and maintain such a low-cost labour market segment in a growing industry. The German political economy is frequently presented and understood as a market economy in which forms of non-market coordination prevail. Strong collective representation rights for both labour and capital set prices on the labour market for entire industries and are based on a comprehensive vocational training system (Hall and Soskice, 2001). While trade union membership is not particularly high, collective bargaining is very organized and collective agreement coverage stood at 58 per cent in 2012 (WSI-Tarifarchiv, 2013). Social partners on the side of both capital and labour have been
intensively involved in reforming and stabilizing the labour market and ensuring collective bargaining rights. In this context, what are the facilitating conditions that have allowed the downward spiral in wages and working conditions for mobile and migrant workers that are perceived as social dumping in its neighbouring countries?

Based on the case of the meat processing industry, this article analyses three sets of factors that have combined to contribute to the current situation. These are: first, the particular patterns of subcontracting in the industry, secondly, the opportunities arising from the posting of workers and labour mobility from Central and Eastern Europe and, thirdly, the segmented form of industrial relations which does not extend to mobile and migrant labour.

We claim that in Germany both labour and capital, within a continuously enlarging European Union, have focused on the protection of the interests and standards of employed workers and domestic employers. Alongside highly regulated labour markets, they have allowed for the steady evolution of a non-regulated, secondary labour market, primarily based on companies posting workers from Central and Eastern Europe. The posting of workers, within a framework of subcontracting for parts of the production process as well as the absence of any control mechanisms for compliance with national and European law, has fostered a second-tier labour market which generally does not have accepted minimum standards.1 German social partners, in particular employers, chose to take advantage of the situation because of the historical legacy in the industry and also because of the significant cost opportunities presented by subcontracting and companies that post workers. The political response to abusive practices has been slow for the same reasons. Moreover, as unions do not control subcontracting, and generally cannot recruit posted workers as members, they chose to protect the remaining labour market insiders in the industry at the expense of the outsiders. As a consequence, a particularly strong insider model has emerged, which leaves posted workers largely exposed and unprotected and reinforces the dualization between labour market insiders and outsiders. Given the cost effects of cheap labour and the reluctance to engage with the issue, cheap labour has now become part of the comparative advantage of the German political economy.

The politics of cheap labour

The role of migrant labour for the domestic labour market has been addressed in the dual labour market theory of Michael Piore (1979). He claims that labour markets can be divided into primary and secondary markets. The primary labour market is largely reserved for natives and characterized by stable employment relationships, employment protection and social security. Its boundaries are defined by organized pressures that seek to reduce uncertainty for skilled workers (Piore, 1979: 35–40). The secondary labour market contains jobs at the bottom of the hierarchy that are insecure. This market, therefore, not only serves to buffer the business cycle but also to motivate the natives into appreciating their relatively better working conditions. Migrant workers are hired and fired easily and can be adjusted to fluctuations in the production process.

1 The findings in this article are based on extensive secondary literature research of the political as well as media discourse on labour migration and the meat industry in Germany between 1990 and 2013. Based on these findings, expert interviews were conducted in autumn 2013 with representatives from employers’ organizations as well as employers, trade union representatives, government representatives and external experts. The goal of these interviews was to gain further information on the underlying processes as well as to gain a deeper understanding of the different perspectives on developments and on the different strategies of those involved.
The primary and secondary labour markets interact and their distinction is enshrined in the institutional set-up of the labour market. Highly protected labour markets, such as some in mainland Europe, transfer some of the inherent insecurity of markets to more malleable labour such as migrants. High levels of protection also depend on migration controls, as too many and too cheap migrants might threaten existing regulations by providing cheap alternatives to more expensive labour market insiders. Piore presents dualization as a result of the institutional features in the labour market.

The Varieties of Capitalism literature (Hall and Soskice, 2001) also analyses the institutional features of political economies, but has paid only marginal attention to the supply and demand of cheap labour and non-standard employment structures including labour migration. Only King and Rueda (2008) have addressed the issue and argue in a similar vein to Piore, by pointing out that all labour markets depend on cheap labour and that, therefore, governments in all countries have contributed to structures allowing for the existence of this segment for different economic activities.

Like Piore, King and Rueda claim that in all industrialized countries labour markets are divided into at least two segments: those with standard employment, i.e. regular, full-time jobs and those with non-standard employment, i.e. temporary, part-time or fixed-term contracts. The authors claim that ‘Europe’s social market economies’, like Germany, are characterized by comparatively encompassing protection and remuneration mechanisms for standard employment, while relying on cheap immigrant labour in non-standard employment, in order to satisfy their need for cheap labour (2008: 281).

While cheap labour is omnipresent, countries differ in their strategies as to how to integrate the cheap labour market segment into their labour market protection system. According to King and Rueda, cheap labour is characterized by low wages, few or no benefits and low job protection or rights. In addition, the prerequisite skill levels are generally low and training is done on the job, so that the probability of wage increases related to experience or length of employment is comparatively small. Women, young people and new immigrants or ethnic minorities are traditionally found more often in this segment in all advanced economies. In addition, King and Rueda claim that there is a trade-off between standard and non-standard cheap labour in most economies. When countries create paths allowing for the existence of cheap labour within the standard employment sector, they rely less on the non-standard employment sector for cheap labour. Conversely, when countries protect the standard sector from cheap labour, they will turn to the non-standard sector for the provision of cheap labour. In other words: in liberal market economies, where labour is weakly protected, cheap labour takes place within the framework of standard employment. In coordinated market economies, where (standard) labour is more protected, cheap labour takes place in the form of non-standard employment (King and Rueda, 2008: 280). The consequences for the working conditions of cheap labour will be exemplified in this article.

In addition to King and Rueda, Piore also includes the consequences if the secondary sector of the labour market becomes too cheap in comparison to the primary sector: ‘It will begin to expand into the stable portion of demand, acting to undermine job-security arrangements in the primary sector rather than to sustain them. This presumably explains why workers in the primary sector might act through such measures as the minimum wage and institutional restrictions on migration to limit the markets’ (Piore, 1979: 41–42). According to his perspective, the actors in the primary labour market will thus be interested in protecting minimum standards in the secondary market in order to protect their own market.

Germany has encountered a sharp increase in the low-wage sector since the early 2000s (Bosch and Weinkopf, 2008), caused by various factors that offered possibilities to escape the protected,
standard employment segment and rely more on the unprotected, non-standard employment segment. First, at the policy level, liberalization reforms fostered the supply of temporary workers and introduced so-called mini-jobs, while simultaneously opening the market for foreign labour in some sectors with binational agreements. The number of temporary workers increased from 282,400 in 2003 to 852,000 in 2013 (Bundesagentur für Arbeit, 2014).

Secondly, outsourcing and subcontracting structures have increased in all sectors of the economy. These allow companies in Germany to evade sectoral agreements or to renegotiate company agreements by establishing subsidiaries and outsourcing parts of their production to the latter under another name (Doellgast et al., 2009). Thirdly, at the level of collective bargaining, the general decline in trade union membership and power as well as collective bargaining coverage has weakened the position of trade unions (Bosch and Kalina, 2008). While Germany has a long-standing tradition of strong wage bargaining institutions, new evolving sectors or companies characteristically tend to have lower levels of trade union density or employers’ association membership. Institutional or political support is, therefore, necessary in order to control wage levels and working conditions, i.e. by declaring collective agreements to be nationally applicable. In the absence of this support, competition based on labour costs is likely to occur (Schulten et al., 2008). Fourthly, despite the increasing use of posted workers and mobile forms of labour with little or no regulation or protection, trade unions have been primarily nationally oriented towards the protection of their domestic members in standard employment relations. These factors have ensured that Germany has one of the largest low-pay sectors in Europe, with 22.2 per cent of employees earning wages below the low-pay threshold (Schulten, 2013).

However, as will be shown below, the social partners risk protecting a diminishing segment of the labour market, ‘those in standard employment’, while passively allowing for the establishment of a parallel non-standard employment segment within the same sector, based on foreign, cheap labour. During the last few decades, the cross-border supply of cheap labour, facilitated through EU enlargement, has put increasing pressure on domestic trade unions within Member States with above-average wages, like Germany, to take action.

The lack of protection for cheap and mobile labour is not a side effect of economic integration within the European Union but the outcome of domestic social dialogue and the labour market regime. The example of the meat industry shows that, in the absence of inclusionary systems for mobile workers into the protected labour market, the EU single market has created a new opportunity for an industry predominantly based on cheap mobile labour.

**Free movement of labour and national responses**

In the context of the biggest EU accession round in the history of the EU in 2004 and the immense wage differentials between ‘old’ and ‘new’ Member States, Germany decided to apply temporary restrictions to the labour market for citizens coming from these ‘new’ countries. The German Trade Union Confederation, DGB, supported this temporary restriction on the free movement of labour and posting of workers in some sectors, claiming that additional preparatory policies were necessary to prevent massive wage dumping (Spiegel Online, 2007). Posting refers to a scenario in which a company from one Member State successfully wins a project in another Member State and sends its own workers to perform a task. In 1996, the European Union had already adopted a

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2 DGB Abteilung Arbeitsmarktpolitik. Werkverträge – Missbrauch stoppen.
directive to regulate this process, the Posted Workers Directive (PWD). The PWD entails the minimum requirements for the conditions of employment and, most importantly, information on the social security system applicable for the duration of the posting. According to the PWD, workers employed by the company providing its services abroad continue to be employed in their home countries at local pay and conditions and also pay social contributions to this country unless differently regulated by national, unilateral standards or universally applicable collective contracts.

As posting is part of the fundamental EU freedom to provide services, the contract structures for posting in the receiving country need to be based on a system of subcontracting. A company situated in the host country signs a contract for the provision of certain services with the foreign company, which automatically becomes the subcontractor for a predefined period. Typically, these services have to form a certain self-contained action which cannot be included into a regular production process, mixing the posted workers with regularly employed home country nationals within the same unit of production.

Being a directive, PWD entailed minimum standards, and it was up to the different Member States to establish how far minimum requirements regarding working conditions would stay at the level of the sending country or would have to be adjusted to the receiving country. Theoretically, in the absence of a regulation like this or a statutory minimum wage, a worker posted from another Member State will be paid according to the wage levels of the home country. In 2015, the national minimum wage in Germany is €8.50 per hour whereas in Bulgaria it is €1.04 per hour (Jobelius, 2015: 7).

In the process of transposing the Directive into German law, leading to the German Posted Workers Act (PWA) in 1996, different working and remuneration conditions were established for different sectors. Sectors with strong and influential trade unions and high levels of posted workers, such as construction and cleaning, were included into the Act, establishing the *lex loci laboris*, i.e. the same working conditions and wages as for all workers in this sector in the receiving country. The construction sector was one of the main receivers of posted workers and the social partners were intensively involved in transposing the Directive (Kahmann, 2006). This sector was included into the PWA and established an inclusive model for labour market outsiders: any company in the construction sector, which posts its workers to Germany, is bound by the same working conditions and remuneration level as national workers. However, this selective inclusion of sectors into the PWA led to a situation where insider and outsider-oriented models for posting were pursued simultaneously. Sectors like meat processing or transport, with less powerful social partners or a history of mobile labour, maintained that the conditions of the sending country should also apply in Germany and thus opted for an insider-oriented model.

**Labour migration within the European Union. Data on posting and regular migration**

Temporary employment of foreign workers and the opportunity to dispatch workers into another country existed long before the implementation of the Directive. Since the late 1980s, the German government had signed bilateral agreements with Romania, Hungary and Turkey, in cooperation with the social partners, allowing for the temporary employment of their workers in Germany. Data on labour mobility to Germany by way of posting reveals that Germany has been the primary destination country for postings, with a constantly increasing percentage irrespective of the sectoral restrictions that existed until 2011 and 2014.

However, long before posting was coordinated at the European level, Germany used different legal frameworks to receive workers from other European countries. Before 1996, ‘contingency
agreements’ for each sector established the exact number of workers needed and were communicated to the sending countries, including information on the necessary qualification levels (Deutscher Bundestag, 1994). The incoming workers received residence and working permits for a maximum period of three years. In 1992, contingency agreements existed with 11 countries, and 637,000 foreign workers were working in different sectors of the German labour market (Deutscher Bundestag, 1992). This number decreased with the implementation of the Posted Workers Directive to 32,000 in 1997/1998 (Worthmann and Czommer, 2005). Concerns about the regulations and control of employment conditions, illicit employment as well as labour exploitation were already expressed in the early 1990s (Deutscher Bundestag, 1992). Based on these concerns, the number of work permits per year was restricted and the level of necessary qualifications was raised for foreign workers (Deutscher Bundestag, 1994). Nevertheless, the following case will show how the influx of mobile labour became a stable characteristic of certain sectors.

The meat processing industry in Germany

Meat processing in Germany has a long tradition but has undergone radical structural changes during the last 30 years, developing from a small sector with highly qualified personnel, to a large sector with a few market leaders, relying predominantly on cheap labour from Central and Eastern Europe. Economic turnover in the meat industry has increased from €21.6bn in 2001, to €36.7bn in 2012. At present, Germany is the number one processor of pork, with 58 million animals slaughtered and processed per year.4 In addition, 627 million chickens, 37 million

4 These data are visible in the so-called ‘Meat-atlas 2014’ (Fleischatlas), a critical fact book on the yearly evolution within the meat industry, financed by the Heinrich-Böll Stiftung in cooperation with BUND (Friends of the Earth Germany).
turkeys and 3.2 million cows are slaughtered and processed by German companies (Meat Atlas, 2014: 13).

During the last few decades, three overlapping periods in the German meat processing industry can be identified. During the first period, which lasted until the early 1970s, meat processing was performed at a local level, and slaughter was carried out by so-called slaughter troops. These were groups of self-employed workers who offered their services in different regions and slaughtered the animals to order, based on service contracts with local slaughterhouses that hired them occasionally. During the second period of the 1970s, local authorities were merged into bigger regions. This meant that slaughterhouses expanded and were partly run as cooperatives and owned by agricultural associations. Subsequently, some of them started to employ full-time slaughterers. Some slaughterhouses kept the traditional service contracts with slaughter troops, creating faked employment relations or ‘bogus’ self-employment: the slaughterers still received money as if self-employed without employment contracts or social security protection, but were actually permanently working in a slaughterhouse. In order to prevent fines for bogus self-employment and financial fraud, subcontracting was introduced as an alternative for both employers and their factual employees (interview II). The legal responsibility for the performance of the contract was transferred from the contractor (in this case the slaughterhouse or the owning company) to the subcontracting company. The former slaughter troops set up their own companies, became subcontractors and employed slaughterers. However, due to the changed relationship from self-employment to formal employment, wages, which were now liable for social security contributions, were significantly lower than before.

As a consequence, the slaughter profession declined, as fewer workers were willing to work in the industry anymore (interview II, interview V). In addition, work in meat processing is comparatively hard and the social reputation of the profession declined. The expanding slaughterhouses encountered problems in recruiting skilled workers for relatively low wages (interview I, interview V).

During the third period, starting in the late 1980s until the implementation of the PWD, ‘contingency contracts’, based on bilateral agreements with other European countries, were proposed as a solution to the growing labour supply problem and supported by the national government. According to both trade unions and employers’ organizations, temporary work and the employment of posted workers did not start with the EU enlargement rounds in 2004 and 2007. Right after the fall of the iron curtain, Germany established bilateral agreements with prospective Member States and increased the number of work permits for this sector (Menz, 2001). Later, these agreements were transformed into subcontracts using posted workers (Brümmer, 2014).

In the meat processing industry, the comparative advantage of German producers on a global scale is the high level of quality as well as the animal protection standards (interview V). The former can only be realized through the employment of highly qualified labour and the compliance with high standards of hygiene. Given the fact that the industry and its machinery is comparatively immobile, companies in Germany have undertaken high investments in order to create and maintain a competitive advantage (interviews II and IV). A side effect of these investments has been the merger of former small companies into a few big players in order to be competitive at a national as well as an international level (interview VI). However, employers’ organizations in particular claim that a major problem of the industry is the oversupply of meat and cattle, resulting in a race to the bottom with regard to prices at an international level (interview V). The discussion on livestock breeding has been well documented in the last decade, whereas the focus on work standards has been perceived as new (interviews II and III).

Exact data on employment levels in the meat processing industry in Germany are not available due to the varying forms of employment. Data from the German Food, Beverages and Catering
Union (Gewerkschaft Nahrung Genuss Gaststätten, NGG) show that in 2001, 175,007 persons were in standard employment in the meat processing industry and only 6000 were registered as posted workers (Brümmer, 2014). By 2012, the number of workers in standard employment dropped to 142,313, whereas the number of posted workers had increased to 40,000. However, it is not clear whether the number of regular employees refers only to workers directly employed or also to persons employed by subcontractors, as there are no numbers available regarding the number of subcontractors active in the sector. The National Employment Agency confirmed that in 2013, 143,680 workers were registered as being employed in slaughter and meat processing (Arbeitsagentur, 2014).

According to the national employers’ organization, employment in meat processing is subdivided into four entities: slaughterhouses, with approximately 15,000 fixed employees, meat processing as such, with approximately 60,000 regular employees and the remaining number working in either poultry or as butchers (interviews I and V). However, these data also include small companies with fewer than 25 employees, such as small family businesses and butchers. The trade union NGG has recently claimed that the four biggest companies present in this sector in Germany employ approximately 16,452 workers, out of which only 5110 are standard employees and the remaining 11,342 are posted workers employed by subcontractors (Brümmer, 2014). One of the main meat processing companies confirmed that administrative staff and management are regularly employed, while the vast majority of manual work is performed by subcontractors (interview IV). In 2012, 47,159 workers were reportedly posted to Germany in slaughterhouses and 42,449 in meat processing. According to these data, approximately 38 per cent of the workers known to be working in meat processing in Germany are posted workers. As no minimum wage existed in meat processing at the time, it can be assumed that these workers were forming the cheap labour segment in the industry. Unfortunately no information is available on the average pay level of the regularly employed workers in meat processing.

In 2013, confronted with increasingly critical reports from national and international media, the German Ministry of Labour and Social Affairs called on the social partners to act in order to jointly address the problem and identify the action necessary within the sector. Apart from the discrepancies in pay and working conditions, it became apparent that the existing level of social dialogue between unions and employers was very poor. Communication between trade union members and migrant workers as well as between domestic employers and subcontractors was practically non-existent. At the same time, direct employment in meat processing companies has constantly decreased and companies are increasingly using foreign subcontracting companies for labour-intensive work processes.

The process of subcontracting

Subcontracting, as a form of non-standard employment, has characterized the meat processing industry in Germany from the beginning. As service contracts and subcontracting were already institutionalized when the former slaughter troops became employees of the slaughterhouses, subcontracting was retained with contingency contracts and subsequently under the system of posting. The German meat processing company (the main contractor) signed a contract for a specific processing entity or a group of dismantling processes with a foreign company (the

5 Own data provided by the German Pension Insurance, the institution responsible for posting issues in Germany.
subcontractor) and the latter would send their workers from abroad to conduct the work. This system was institutionalized, with small alterations, within the entire industry.

According to media reports on working conditions, foreign workers from Romania and Bulgaria in meat processing generally worked as posted workers for subcontractors, receiving piece-rate wages of 1.31 cents per dismembered pig (Leubecher, 2013). The reports claimed that these subcontractors had different slaughter groups from various countries and were dividing the shifts according to nationalities: the day shifts went to German workers and the night shifts to Romanian and Bulgarian workers (Grossarth, 2013). People who had work-related accidents were sent home and replaced within a day (Leubecher, 2013).

The preference for subcontracting instead of direct employment within the meat processing industry has been presented as an institutional legacy by employers. They argue that, given the fact that the present demand for labour within the industry cannot be covered by domestic workers, the employment of foreign labour is a necessary precondition in order to preserve the industry in Germany as such (interviews IV and V). In addition, the introduction of contingency contracts, and later posting, has increased the necessity of subcontracting from their perspective in order to reduce the company’s economic risk, given the temporary employment of foreign labour.

The liberalization and regulation of temporary work agencies has additionally increased the importance of subcontracting in Germany (interview V). Mixing regular employees with posted workers from subcontractors violates employment laws for temporary work agencies as it involves a case of temporary work for which other employment laws apply. In order to avoid legal complications, the different processes of slaughter and dismembering have been subdivided into different entities of work and outsourced to subcontractors (interview II). Within the service contracts signed with the subcontractors, the unit price per processed entity is established, and the timeframe for the realization of services is set. The contracts also define the question of liability for equipment and labour employed in order to perform the service. Liability for the workforce is passed on entirely to the subcontractor without allowing the main contracting company (slaughtering firm) any control over areas such as working conditions. The subcontractor is only obliged to provide information about the names of the workers used as well as about their health and social insurance registration. Information about working time, pay or working conditions stays with the subcontractor. The main slaughtering firm would risk being accused of factually employing workers, issuing bogus service contracts or violating the temporary employment act, if it were to include these aspects in its service contract with the subcontractor (interviews IV and V). In this way, controls to prevent, or actually uncover, infringements of labour exploitation are contractually ruled out.

The evolution of this sector in Germany shows that non-standard employment relations have evolved as an integral part of the sector’s growth. Supported by government institutions and social partners, it seems that the interest in economic expansion and growth in the sector has been promoted willingly, accepting that the sector becomes embedded in the cheap labour market. Subcontracting and the employment of mobile labour has hence opened up the possibility of creating a second-tier labour market within the meat industry, with foreign cheap labour working in comparatively bad conditions, while an increasingly small group of domestic labour has received trade union support.

Social partners’ interventions

On the business side, the meat processing industry in Germany has been characterized by the dominant position and competition of four main companies and, according to the national
employers’ organization, by a simultaneous lack of communication and exchange between these firms (interview V). Only under increasing pressure from the government to create a round-table on the topic of meat processing in Germany was the national employers’ organization able to initiate first talks among the four big firms and finally include them as members (interview V). The national employers’ organization has also invited the big subcontractors that are based in Germany to these round-tables but so far they have not been present at the talks. However Vion, one of the big companies, has made an effort to include their subcontractors and has succeeded. It remains to be seen whether this case will serve as a role model within the industry (interview IV).

At the same time, media reports on working conditions of migrant workers in the sector also revealed that domestic workers who were employed in the sector’s primary labour market had failed to maintain decent labour conditions in the subcontracting firms. In the comprehensive media coverage on the meat processing industry, the responsible trade union, NGG, has been criticized of ignoring the problem due to their already low levels of membership (Grossarth, 2013). The trade union confirmed the problem and claimed that, given the constant decrease in regularly employed workers, their organizational strength and influence was poor. According to their information, only two of the four main companies in meat processing have works councils and collective agreements for their regular staff (interview I). As shown in Table 1, the proportion of regular employees as compared to posted workers is particularly low, and collective bargaining coverage in these companies has not been extended to posted workers. Workers covered by these agreements earn on average 80 per cent more than those employed via subcontractors. In addition, the trade union or works councils do not have the right of co-determination on the issue of subcontracting. In addition, the trade union, NGG, claims that the number of directly employed workers is purposely kept below 2000 in the main meat producing firms in order to avoid co-determination at the board level (interviews I and VI). As a consequence, the trade union has little power to interact with these institutionalized systems of labour segmentation.

From the trade union perspective, only a statutory minimum wage and equal pay for all employees, irrespective of employment in the main company or by a subcontractor, will improve the situation. In addition, the inclusion of the meat processing sector in the provisions of the Posted Workers Act (PWA) is key. The latter will enforce the joint liability for the main company, helping further to ensure an actual compliance with the minimum wage. Nevertheless, according to the NGG, ‘the introduction of the minimum wage will not change the institutionalized subcontracting

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| Regular employment and posting in the four major meat processing companies in Germany |
|                                   | 2012   |
| Regular employees                 | 5110*  |
| Posted workers                    | 11,342* |

Sources: * Data based on documentation from the NGG, ** data based on the National Employment Agency, *** data based on information by the National Pension Insurance.
structures, it will only improve the legal terms and conditions to legally sue for the wages’ (interview I).

However, as already presented by Kahmann (2006), the general challenge for trade unions will be to find a strategy for action in their relationship with the government, employers’ organizations and their own members that will not only ensure their survival but increase their influence within the sector. With regard to their relationship with the government, the media attention on the working conditions and pay within the meat processing industry has been advantageous as it has created pressure on the government to act. The minimum wage can be considered a first success. During the interview conducted with the NGG in autumn 2013, the representative explained that the trade union was demanding a unitary minimum wage of €8.50 for Germany (interview I). The minimum wage, as agreed in sectoral negotiations, will start at €7.75 and will then gradually be aligned to the national minimum wage of €8.50 by 2016 (Bundesagentur für Arbeit, 2014). Still, the minimum wage is nationally binding and, hence, also valid for posted workers (NGG press release, 2014). This is a major change, as the minimum wage not only includes the 25–30 per cent of regular employees but all those working in the entire industry (interview II). As meat processing was included into the PWA in 2014, the collective agreement is universally binding for all workers in the sector. However, given their representation of the regularly employed, the trade union will only have limited capabilities to report back to the labour inspectorate and other authorities as to whether the minimum wage is actually paid by subcontractors to migrant workers. Trade unions have only recently started to recruit posted workers from other countries working in Germany (interview I).

However, as trade unions and works councils are absent from subcontracting companies, unions are not in a position to control or report unlawful employment practices. With regard to the trade unions’ relationship with employers’ organizations, the coverage of the four main companies in one employers’ organization can be considered a positive development, supporting a trade union incentive to improve working conditions within the sector, as all major companies can now be addressed simultaneously. The problem still remains centred on the subcontractors. As these have not so far been successfully recruited into the employers’ association, negotiations and exchange will only cover regular employees. The improvement of labour conditions for regular workers might, however, be carried out at the expense of workers employed by subcontractors, as it is not possible to control subcontractors. In the end, the union’s relationship with its own members as well as potential members could be the most successful strategy to ensure compliance with the newly established wage and working conditions.

In terms of trade unions’ power resources, the NGG explained that it faces challenges in organizing posted workers and that they are increasingly aware of the necessity of including them in trade union structures (interview I). In the past, there has been suspicion and hostility between domestic and foreign workers, due to increasing competition at the workplace. However trade unions have become aware of the need to mobilize their communication resources and have recently recruited Romanian speaking personnel to overcome the language barrier. At the regional level, the NGG representation in Lower Saxony has even established, at its own expense, an information office for posted workers, with personnel speaking both Bulgarian and Romanian (Brümmer, 2014). In addition, they have started cooperation with other state-funded offices for migrant labour, offering information days in regions with a high level of posted workers and supporting workers in exercising their rights (Empen, 2012). Cross-border cooperation with trade unions in the sending countries has also been enhanced. However, experts claim that, given the fact that the majority of workers have not been working regularly within the sector before their posting and the general decreasing level of organization, it is unlikely that posted workers were trade union members prior to their posting or would inform their trade union about their posting (interview VI).
The employers’ organization perspective in the meat industry is that the changes in labour standards are basically only enforceable and controllable with regard to direct employees of the companies, as no control is possible in subcontracting companies. However, the inclusion of the meat processing industry into the PWA entails an important change regarding the liability of the general contractor. In case of non-compliance with the lex loci laboris within subcontractors, the main companies are equally liable for unlawful conditions. Domestic main companies are, hence, responsible for the conditions in both the primary and secondary labour markets.

At the European level, in April 2014, the European Parliament and Council adopted a directive on the enforcement of the former Posted Workers Directive. The aim of the Enforcement Directive is to resolve the problems experienced after the implementation of the PWD regarding illicit employment, misuse, the question of liability and information for posted workers. The strongly diverging practices of implementation among the current 28 Member States had been criticized both at the European as well as at the national level. The new Directive entails proposed changes on joint liability, as well as a list of verification criteria to prevent so-called letter-box companies, illicit postings and the forging of documents necessary for the posting of workers (in particular the forging of registration forms for posted workers, so-called A1 forms). Legal prosecution and the consequences for violating the law will remain a matter for national authorities. Member States are required to implement the Directive by June 2016. Still, the existence of the Enforcement Directive shows that the over-utilization of posted workers as a source of cheap labour and exploitative economic measures has become a European problem.

Conclusion

The case of migrant workers in the German meat industry exemplifies how, in the absence of government and social partner intervention, the sector evolved and expanded using cheap labour, creating an entire industry based on non-standard employment relationships. The economic interest to expand the sector has been supported by the government with bilateral treaties and contingency agreements for recruiting foreign labour. As social partners were not present before the economic expansion in the sector, outsourcing and posting was used to fill the increased demand for labour without workplace representation or collective agreements. The secondary labour market, as described by Rueda and King as well as by Piore, in the German meat industry consists of foreign workers employed by subcontractors, while the primary labour market consists of a diminishing number of directly employed, domestic employees, working in small businesses and, to a limited extent, in the four large companies. So far, social partners on both sides have not established a way of including foreign workers or companies into their structures; both social partners and foreign cheap labour have co-existed seemingly without communication for decades, until increasing media coverage about labour exploitation in 2012 started to draw attention to the issue. Where company collective agreements existed, they only covered the shrinking number of standard employees, while non-standard forms of employment, such as subcontracting and posting, were increasingly used to cover the increasing demand for labour. In the absence of government intervention during the last three decades, the German meat industry was able to use European as well as national legal frameworks to create an economic advantage based on cheap labour.

6 The implementation in other Member States did not entail a paragraph similar to the §14 in the German PWA. Here, assimilation to the German law will soon be binding in the implementation of the Enforcement Directive (Directive 2014/67/EU) by Member States due by June 2016.
Referring back to the argument made by Piore on the balance between the primary and secondary labour markets, it seems that the German meat industry is an example in which the actors in the primary labour market have allowed a steady growth of differing standards between their primary market position and the second-tier labour market, up to a point where it has started to damage the situation in the primary market. The introduction of the minimum wage is an attempt to restabilize the relationship between these markets. However, the interesting question, which has so far remained unanswered, is whether ex post regulations, such as the introduction of the minimum wage or the new Posted Workers Enforcement Directive, will be able to undo the existing arrangements and shift all employment to standard employment. Trade unions and employer associations have expressed their doubts, as regulatory loopholes, such as the lack of a control mechanism on implementation for subcontractors, remain.

In the wider picture of the institutions and structures of the German labour market, dualism has become widespread, and largely accepted, as a pattern of achieving high levels of employment in the service economy. As in parts of the export-oriented manufacturing industries, protected standard employment co-exists quite happily with non-standard forms of employment (Schmid, 2010).

**Funding**

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

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**Interview List**

Interview I – Trade union representative, Lower Saxony

Interview II – Employers’ organization representative, Lower Saxony

Interview III – Ministry of Labour, Lower Saxony

Interview IV – Vion AG Management

Interview V – National Employers’ organization, Germany

Interview VI – Expert working with mobile workers in Lower Saxony