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The German temporary staffing industry: growth, development, scandal and resistance

Abstract

In Germany the size of the temporary agency workforce has almost doubled in between 2002 and 2012 prompted by deregulation and expansion of temporary staffing agency networks. This article examines the growth of the temporary staffing industry in Germany revealing important milestones in the regulatory framework transformation. The article then explores the role of key actors in the development of temporary staffing industry in the Germany labour market, in particular the shifting positions of trade unions in relation to temporary agency work, as well as intervention from the state with re-regulation in order to mitigate for exploitative affecting temporary agency workers. The findings highlight that while the growth of the German temporary staffing industry has been substantial, and that the state has been an active agent, it has not been without its controversies and challenges, and that features of the industry remain potential barriers for its future development.

Key words: temporary agency work, Germany, trade unions, employment

Introduction

In 2012 a minimum wage for temporary agency workers was introduced in Germany, a year before the country's national minimum wage was approved for all sectors (BBC, 2014; Stettes, 2012), indicating a recognition of the importance placed on regulating for 'decent work' (ILO, 1999) in the Germany temporary staffing industry (TSI). The development of this legislation revealed the key relationships and tensions that surround the issue of temporary agency work in Germany. After a series of deregulatory measures since 1972 when temporary agency work was legalised, the industry has grown significantly, almost doubling between 2002-2012 (BA, 2015). Despite significant growth in

the number of workers, the proportion of temporary agency work in overall employment did not reach higher than 2.1% (slightly higher than the EU average of 1.7%) suggesting there were potential barriers to growth (BA, 2015).

Since the late 1980s the temporary staffing industry (TSI) has experienced a substantial increase in size and presence in labour markets across the globe (Coe, Johns and Ward, 2007). By 2010, Europe represented the largest regional entity for the TSI, constituting 38% of the industry's €247 billion global revenue, and a 25% of the global number of temporary staffing agencies (Ciett, 2012a). The TSI traditionally concentrated in the manufacturing and service sectors has expanded into many different areas of the economy, evolving from a small-scale service provider, located in a handful of large industrial and major administrative centres, to a near ubiquitous and diversified business sector (Neugart and Storrie, 2006; Spermann, 2011; Jahn and Bentzen, 2012). Growing to over 9,400 agencies and over 838,000 temporary agency workers by 2014 (BA, 2015), the growth of the TSI in Germany has been rapid, but not without controversy or resistance. The wider institutional context contributed to a national system for temporary staffing which was had previously been largely shaped by interactions between trade associations, trade unions, and government through processes of collective bargaining (Coe, Johns and Ward, 2009; Coe and Ward, 2014).

This paper provides insights into the German TSI to examine the importance of relationships within the wider institutional framework of the industry in determining its characteristics. First, the key growth dynamics of the TSI are explored, followed by an overview of how the current regulatory framework developed. The issue of regulation is then used to explore important drivers of change in the Germany temporary staffing agencies, revealing a number of controversies and challenges. Changes to the landscape of trade associations and trade unions relevant for the temporary agency worker sector are explored before discussion of an important event related to the use of in-house

temporary staffing agencies which began to raise the profile of exploitative practices affecting temporary agency workers. The article then moves to chart the developments which led to the minimum wage for temporary agency workers in Germany, a significant milestone in the regulatory history of temporary agency work in the country. Together these issues reveal how the state has acted as both a de-regulator and re-regulator at different times, and in doing so has made efforts to mitigate exploitative practices in the temporary staffing sector, but also how other key relationships present challenges for the growth of temporary agency work in Germany.

Researching temporary agency work in Germany

Temporary agency work (TAW) involves a triangular relationship between an employer (firm), an agency (a second firm), and a worker, whereby an agency hires workers for the purpose of placing them in contracted placements (often open-ended) provided by client firms (Houseman, 2001; Mitlacher; 2007; Nielen and Schiersch, 2014). But beyond this triangular relationship there are a range of key actors (and interactions) which constitute a national temporary staffing industry: regulations on temporary staffing agencies and mainstream employment; welfare provision; involvement of the state in employment; national and international trade bodies; trade unions; domestic temporary staffing agencies; transnational temporary staffing agencies; and the composition of the wider economy (Coe et al, 2009; Coe and Ward, 2014).

The research for this article was conducted as part of a wider project which examined different institutional contexts for the TSI in three countries to represent different socio-economic systems as well as TSIs of different size, form, and maturity. Informed by wider discussions around national systems of production, 'varieties of capitalism', business and welfare systems (Becker, 2009; Boyer and Hollingsworth, 1997; Esping-Andersen, 1990; Hall and Soskice, 2001; Hancke et al, 2007; Lane and Wood, 2009; Whitley, 1999),

Germany, the Czech Republic and the United Kingdom were selected in order to reflect broadly different socio-economic systems (see Author, forthcoming).

Here Germany represented an exemplar of a corporatist policy regulatory context characterised by significant human capital investment, medium term employment relationships, high standards of employment protection, strong union representation in a tripartite system and strong public sector involvement in placing workers in employment¹.

The findings discussed here focus on the German case, formed from extensive reviews of available secondary data and grey literature as well as, interviews with stakeholders from across the industry: including temporary staffing agencies (both domestic and transnational), trade associations, trade unions, and governments representatives. In total 27 interviews were conducted in Germany between 2009 and 2012 with a further 5 interviews in 2013 in order to clarify the impact of any developments in the industry. This sought to contribute to discussions around the formation of nationally distinctive temporary staffing industries (Coe, Johns and Ward; 2009; Coe and Ward; 2014), the position of the TSI in the labour market (Cieltt, 2012b), and the roles of particular actors in shaping the temporary staffing market (Coe, Johns and Ward, 2009, 2011, 2012; Peck and Theodore, 2002; 2007). It aimed to highlight the key relationships which shape the growth and development of the TSI in Germany, extending the existing literature about TAW in the Germany context (see Antoni and Jahn, 2009; Jahn and Bentzen, 2012; Jahn and Ochel, 2007; Jahn and Pozzoli, 2013; Mitlacher, 2007; Nivalainen, Jahn and Singer, 2015 Spermann, 2011; 2013b).

In the context of rapid growth of TAW, some scholars sought to examine the role of, and demand for, temporary agency work in the labour market (Burda and Kvasnicka 2004; Jahn and Ochel, 2007; Jahn and Bentzen, 2012;

¹ This was alongside the UK representing a neoliberal policy environment, and the Czech Republic as a post-socialist regime.

Mitlacher, 2007), highlighting the potential role of temporary staffing agencies to provide training (Spermann, 2011), to be used as a strategy to adjust to seasonal fluctuations in demand (Holst et al. 2010), or as a part of wider workforce strategy (Beckmann and Kuhn, 2009). Although as Spermann (2013b) later identified, the proposition of TAW as an important tool for flexibilisation has been criticised, particularly by trade unions, on the grounds that it represents a threat to the standard employment model (Dauser, 2009; Wetzels & Weigand, 2011), that there are significant disadvantages for workers who engage in temporary agency work, and that pay differences remain between permanent and agency workers (Spermann, 2013). Further investigation into these issues has revealed mixed results (Baumgarten & Kvasnicka, 2012; Jahn and Weber, 2013). For the German case other scholars have sought to examine the experience of TAW in terms of wage differentials (Jahn and Pozzoli, 2011; Neinhüser and Matiaske, 2006), and potential for TAW to act as a stepping stone to employment (Gebel, 2013; Kvasnicka, 2009). While these studies examined the experience of temporary agency workers, and charted some developments in terms of how these workers are used, a broad overview of the German TSI has yet to be explored in detail. This article seeks to address this research lacuna by presenting the institutional context for the German TSI, illustrating key actors, and some of their actions, which have contributed to its development, providing another example of a national distinct TSI (Coe, Johns and Ward, 2009). The article begins with an overview of the development of TAW in Germany, presented in the next section, to set the context for this.

Charting the growth of the German temporary staffing industry

The German TSI has experienced substantial growth since the early 1970s, with particularly rapid growth since 2003, reaching revenues of €22.3 billion by 2014 (an increase of 53% since 2009) (BA, 2011; Cielt, 2015). The penetration

rate of TAW in the German labour market more than trebled between 1996 and 2010, by which time it had reached 1.9%, increasingly more modestly to 2.1% by 2014, ranking fourth in Europe behind the UK, Netherlands and Luxembourg and slightly above the European average of 1.7% (Ciett, 2015).

Market access for temporary staffing agencies in Germany was historically restricted by regulation, in the form of sectoral bans and restrictions on the length of assignments (Eurofound, 2008). However, successive waves of deregulation have allowed greater use of TAW in the labour market. Steady growth in the number of temporary staffing agencies in Germany was experienced between 1996 and 2007, rising from 2,739 to 9,465 - a 231% increase (BA, 2015). As in most countries in Europe the financial crisis led to a decline in the number of agencies, which fell to 6,049 in 2010, rising against to around 9,400 by 2014 (BA, 2015).

Exhibiting characteristics of the mature TSIs of the UK, the market for temporary staffing agencies in Germany remained fragmented. Even the largest temporary staffing agency in Germany, Randstad (a transnational firm), with an annual revenue of nearly €1.9 billion and 60,000 temporary agency workers placed – only had a market share of just under 10% (Lünendonk, 2009; 2014). Furthermore, half of these agencies had less than 20 workers on placements at any time, 36% had between 20-100 workers, and only 14% had more than 100 workers, highlighting the prevalence of small agencies with their own small cohort of workers in the German market (BA, 2012). This is indicative of the wider business landscape in Germany where 80% of businesses are small businesses (Brucker et al, 2012) and where SMEs, the *Mittelstand* are considered the backbone of the economy (BWT, 2011). The difference between the revenues of the largest and smallest of these top 10 agencies illustrates the variation in size of agencies, and reinforces the supposition of smaller agencies dominating the German TSI.

TABLE 1 HERE

Table 1 illustrates that even in a short period of time (2006-2013) a significant change occurred in revenue size experienced by the top agencies; the greatest being experienced by Adecco (231.4%) a transnational agency in the top 10 for Europe in terms of revenue, followed by two German agencies which although much smaller in revenue size, have grown significantly.

While a very uneven pattern of change occurred for the agencies in terms of the number of temporary agency workers for these firms in **between 2006-2013**, this fluctuation did not correlate with the size of the agencies in terms of revenue or ranking position in the market. Reductions were experienced by Manpower (-5.0%) and Dekra Arbeit (-13.7%) only experienced minor changes in their overall revenue, so despite substantial losses in terms of numbers they were able to turn a profit. This could potentially be explained by a move towards higher margin work placements:

'Definitely there has been a growth in the number of workers we deal with but also there have been shifts in the areas of market that we work with. There has been an increase in the number of professional placements which of course have a higher return per individual' (Transnational Agency, February 2013).

The key message to draw from Table 1 is that while a range of large transnational agencies with high revenues and volumes of workers exist in Germany, the difference between the top and bottom of this group is substantial; the remainder of the market made up of the quintessential German business, the SME (Block and Spiegel, 2011).

Temporary staffing agencies an important component of the German TSI, as shown in Figure 1, which illustrates key actors in the Germany TSI using the

model originally introduced by Coe, Johns and Ward (2009). These actors include the state, trade unions, trade associations as well as both domestic and transnational temporary staffing agencies. The relationship between these actors is what makes the German temporary staffing industry distinctive (Author, forthcoming), as has been seen in other national TSI varieties (Coe, Johns and Ward, 2009, 2011, 2012)

INSERT FIGURE 1 HERE.

The number of temporary agency workers in Germany has grown following the introduction of legislation which legalised TAW, in 1972 (See Figure 1). Growth continued in the 1980s and after the re-unification of Germany in 1989. From the middle of the 1990s TAW became a rapidly growing form of employment - between 2000 and 2014 the number of temporary agency workers more than doubled to 838,000 (BA, 2015). While TAW has risen it remains concentrated in the manufacturing and engineering sectors (over two thirds of workers) as well as transport and logistics (around 25% of workers) (BA, 2015), although is broadly indicative of strengths of the wider economy (Eichorst and Tobsch, 2013). The most rapid period of growth followed the Hartz reforms in 2003, where legislative changes were made to deregulate the industry, and by 2013 Germany had the third largest temporary agency workforce in the EU, after the UK and France (Ciett, 2015).

FIGURE 2 HERE

Much like the UK, indications of changes in the economy in response to the financial crisis were reflected in the use of TAW between June 2008 and 2009, in the form of a 22.2% reduction - around 300,000 less temporary agency workers (BA, 2015). The reduced demand was attributed predominantly to client firms in the manufacturing sector protecting their 'core' workforce by reducing the number of temporary agency workers (Spermann, 2011). The substantial

expansion and ensuing contraction displayed the responsiveness of the German temporary staffing industry to the economic system (as has been observed elsewhere with temporary agency work and periods of recession, for example in the US, see Peck and Theodore, 2007). Expansion in TAW soon returned in the following months, reaching levels similar to 2008 in June 2010 (BA, 2011) with a 6% increase for the first half of 2010 (BZA, 2011). German TAW has traditionally concentrated in the industrial occupations, reflecting the dominance of this sector in the wider economy; the largest users of temporary agency workers were in production of consumer goods, construction, mining, energy and water supply (BA, 2012).

Regulation and collective bargaining in the German temporary staffing industry

Until 1972 in Germany TAW was banned on the basis that it would disrupt the labour exchanges run by the Federal Employment Service (Spermann, 2011).

However, this was deemed by the Federal Constitutional court to violate free choice of occupation and therefore temporary staffing agencies were allowed to operate (Clauwert, 2000). Enacted in 1972, the Arbeitnehmerüberlassungsgesetz (AÜG) or 'Temporary Employment Act' introduced a comprehensive and stringent regulatory framework for TAW in Germany at a time when the industry was still being established.

Deteriorating labour market conditions and rising unemployment in the 1980s and 1990s (Lindlar and Scheremet, 1998) caused policy makers to reassess their restrictive stance towards TAW. A series of initially tentative deregulatory reforms followed (see Table 2). Starting in the mid-1980s, the reform process gained momentum in the second half of the 1990s, following the ending of the Federal Employment Service's monopoly on the placement of workers in 1994. This allowed temporary staffing agencies to operate more freely to place workers. These changes culminated in the Hartz reforms, which took place from

2003 went beyond previous policy initiatives, both in scope and depth by repealing a set of long-standing restrictive clauses of the AÜG (Akyol, Neugart and Pichler, 2013; Eichhorst and Marx, 2011; Leschke, Schmid, and Griga, 2006). They also introduced equal treatment and equal pay clauses, and actively encouraged collective bargaining among the social partners to set the terms and conditions of employment in the TSI – through collective agreements. The deregulation summarised in Table 2 was designed to make the labour market more flexible, and to make TAW more feasible.

TABLE 2 HERE

Collective agreements were a common feature in Germany, and they ensured the involvement of both trade unions and trade associations in labour relations (Müller-Jentsch, 1995). The collective agreements covered an estimated 95% of all temporary agency workers in Germany in 2009 (Industry Commentator, July 2010), but even in the case of those who were not covered by collective agreements, agencies would often refer to one of these agreements to set wages for their work (Government Representative, September, 2011). Collective agreements represented a defining feature of the TSI in Germany, and indicated the wide range of trade unions and trade association involvement in the industry, unlike many of the other more mature temporary staffing markets in Europe where this tool was either not present or used to such an extent (Arrowsmith, 2006; Neinhüser and Matiaske, 2006; Wilthagen and Tros, 2004). Through collective agreements trade unions and trade associations had a much more formalised and active role in the German labour market than witnessed elsewhere, as part of the German dual system of industrial relations (see Müller-Jentsch and Weitbrecht, 2003). The main focus of most collective agreements was the level of pay for agency workers, negotiated between the trade union and trade association (see for example BAP, 2011). The importance of these institutions is explored in the next section.

The changing landscape of trade unions, collective bargaining and trade associations

While there had been a decline in **trade union membership** and the share of workers covered by collective agreements (Hirsch and Schnabel, 2013), the TSI remained one area of the labour market which retains a high coverage of workers through collective agreements (Ahlberg, 2008; Arrowsmith, 2006, Spermann, 2011) – estimates as high as 97% from respondents in this research. This in part was due to the terms of the Hartz reforms which stated that equal pay for agency workers was required unless there was an established collective agreement (Eichhorst and Marx, 2011).

Despite such a high level of collective agreement coverage, temporary agency workers represented a small proportion of trade union membership (Dörre et al, 2006), estimated by Vitols (2004) in 2003 to be fewer than 5%. Until the late 2000s trade unions in Germany had made little attempt to engage temporary agency workers as members). Despite temporary agency workers often receiving worse conditions and lower pay than their permanent counterparts, low levels of union membership can be explained by several factors. First, trade union culture had difficulty engaging temporary agency workers on the basis that work placements were often short term (less than 3 months) so workers may have felt they did not have the same attachment to an industry as permanent workers. Second, the traditional methods of attracting union members such as strikes, would be unlikely to attract agency workers as they would simply be sent back to the agency and likely made redundant.

In 2007 trade unions began to change their strategies regarding temporary agency workers. As the trade unions realised that the TAW sector was being supported by labour regulation; and therefore if they were to exert any influence over the way this form of employment was used, they would have to engage with issues related to this sector.

New activities from unions and union confederations included conducting research on the extent and characteristics of temporary agency work (DGB, 2007, 2008, 2009, 2010); publishing other documents related to temporary agency work (Verdi, 2007, 2009); creation of information portals for temporary agency workers, lobbying national and European Commission regarding legislation and creation of petitions around terms of use for temporary agency work (see Author, forthcoming). While the undertones of trade union strategies remained critical of TAW, particularly IG Metall (2012; DGB, 2008), their activities, related to the sector took three main forms: establishing suitable collective agreements; providing guidance and practical assistance; and campaigning for change (IG Metall, 2007). It was argued that if skilled workers were to be used, it should only be to cover peaks in demand, not as a long-term personnel management strategy (IG Metall, 2007). There were three main strands of trade union campaigns: the realisation of the principle of equal treatment and equal pay, the reduction of the use of TAW, and the recruitment of temporary agency workers in an attempt to organise the sector. By ensuring equal pay and therefore raising the costs of agency workers, it was hoped that firms would reduce their use and opt for permanent workers).

One of the most active unions on issues of TAW was IG Metall which launched campaign in 2008 on the negative impact of TAW and established the initiative Leiharbeit fair gestalten: Gleiche Arbeit – Gleiches Geld – Equal Work for Equal Pay (IG Metall, 2008). The union carried out research on the extent and activities of the TSI, providing information for temporary agency workers regarding equal pay, ensuring existing agreements on pay were implemented in the workplace and pushing for the use of TAW to be high on the discussion agenda, not only for unions, but for other employment institutions too (IG Metall, 2007, 2010, 2012).

While trade unions were keen to promote the fair treatment of temporary agency workers, they also stressed that TAW should not be used as a substantial part of the workforce (Trade Union, March 2010). This became evident in 2012, when Lufthansa announced it intended to hire a further 200 temporary agency workers to work as flight attendants it was met by calls from the union Ver.di and by flight attendants union UFO (Unabhängige Flugbegleiter Organisation) to change their plans (Wall Street Journal, 2012). More hints at underlying negative views of TAW were made by the DGB (the union federation which negotiated the two major collective agreements), which argued that TAW failed as an employment mechanism and was disintegrating the working world (DGB, 2007; 2008), and by IG Metall (2011) which continued to use a slogan that implied TAW was modern slavery. Despite this opposition, some unions actively sought to increase their temporary agency worker members (Meyer and Fuchs, 2008). IG Metall made efforts through campaigns to recruit TAW members, on the premise that they were usually difficult to reorganise at the level of the agency, and also set up networks for communication for temporary agency workers at the local level (Meyer and Fuchs, 2008). Efforts at recruiting temporary agency workers were variable (Wölfe, 2008), although as Meyer and Fuchs (2008) have shown in the case of IG Metall membership, this was in part a reflection of the spatial distribution of TAW in Germany, concentrating around manufacturing and industrial centres.

There appear to have been two strategies from trade unions: on the one hand, oppose TAW, and on the other recruit their members. One union took their role in TAW further. The DGB also established part ownership of the temporary staffing agency Start Zeitarbeit (Henning, 2011). Therefore, it not only contributed to the legal basis by which temporary staffing could be deployed across the country, but also would benefit to some extent from the profits of it. Much like the government, unions recognised that TAW was now a feature of the German labour market, and that in order to work towards a model where TAW could be used effectively, reduce exploitative practices and protect the

interests of their permanent workforce members, they had to engage with TAW issues and stakeholders.

Here it is important to acknowledge another key component of the collective bargaining relationship - the trade associations; and as of 2014 there were two remaining trade associations for the TSI, outlined in Table 3.

TABLE 3 HERE

In April 2011, BZA (Federal Association of Temporary Work Agencies) announced a merger with AMP (Association of Medium sized Temporary Employment Agencies) in order to form one larger organisation BAP (Federal Employers' Association of Personnel Services), representing approximately 70% of Germany's temporary agency workers, changing the overall trade association components of the TSI (Stettes, 2012). The changes took place in response to legal developments following evidence of malpractice. In December 2010 the Berlin Labour Court (BAG) made a ruling which disqualified Christian Trade Unions for Temporary Employment (CGZP), from having the right to negotiate minimum salaries for temporary agency workers as the unions were not representative of their members. This affected mainly small and medium sized agencies (through AMP) and CGZP was accused of lobbying for the employer while disguising itself as a trade union, consistently negotiating for collective agreements with significantly lower wages than other unions (SIA, 2011d). Uncovering unfair practices was just one example in the German case that prompted institutional change, in this case the merger of trade associations. Further changes to the TSI landscape were instigated by what is referred to in the media as the 'Schlecker scandal', discussed in the next section.

Uncovering the practices of in-house agencies

After the deregulation of the TSI through the Hartz reforms (Jacobi and Kluge, 2006), some firms began establishing in-house temporary staffing agencies

(Wirtschafts Woche, 2010). These agencies were separate entities established by firms, often as a subsidiary with the remit of supplying temporary agency workers to the host firm. For example, DB Zeitarbeit, owned by Deutsche Bahn for work in the railway industry (Deutsche Bahn, 2012); and AutoVision owned by Volkswagen for work in the automotive industry (AutoVision, 2015). The largest of these agencies for 2009 are detailed in Table 4. Referring to the situation in 2009:

‘It was estimated that around 7% of companies [referring to large employers] had established their own in house agency, or at least an internal agency unit designed to deal with human resources’ (Trade Association, January 2011).

While some in-house agencies were established to facilitate a more efficient use of temporary agency workers, as was the case of for DB Zeitarbeit, they were also thought to be established to evade collective agreements (Trade Association, March 2010). In some cases agencies engaged in 'revolving door' practices, whereby permanent workers were made redundant and then re-employed through their own in-house agency at a much lower wage (Spiegel, 2010b). The most high profile example of these practices was that of Europe's largest pharmaceutical chain, Schlecker. The company made a large number of their workers redundant and re-employed them through their own in-house agency, Meniar, at significantly lower wages, and without the benefits of permanent employment (Spiegel, 2010b).

TABLE 4 HERE

The Schlecker scandal received widespread media attention in Germany (Focus, 2010), and put the firm under pressure from the government and wider society, to change its policy of using staff from the in-house agency. The firm had been closing some of its smaller branches and opening up new larger branches, re-employing the same staff through the agency and paying wages

around €6-7 an hour, significantly lower than workers would have received had they still been employed on a permanent contract (Spiegel, 2010a). The scandal highlighted the potential misconduct that was evident in the use of in-house agencies, and contributed to the negative image and poor reputation that TAW had developed in many sectors of German society (Spermann, 2013a). In addition, there was indication that this was not an isolated case; DGB (the largest confederation of trade unions in Germany), highlighted that firms, particularly in the engineering sector, were often replacing employees with temporary agency workers on significantly lower pay (either through an in-house agency or separate agency):

'For year's we've been seeking a creeping process in which workforces are being replaced by agency workers' (WAZ, 2010)

While this may seem like a simple case of undesirable practices being reported, it was significant in the German case because it prompted high profile responses, and generated discussions which led to more significant changes in the German TSI. Schlecker ceased its practices of using the in-house agency after high levels of pressure from the highest echelons of German society. The Federal Employment Minister, Ursula von der Leyen, developed the name 'Red Baroness' in the press after publicly criticising the firm's use of these agencies to exploit its staff (Financial Times Germany, 2010). This is significant, as it is extremely rare for a cabinet minister to voice such a direct criticism of an individual firm, and for Ministers to be publicly discussing the practices of temporary staffing agencies.

The Schlecker scandal even provoked an explicit criticism from Chancellor Angela Merkel, who stated that she would not act passively when 'companies like drugstore chain Schlecker simply sack their staff and re-employ them at half the pay via staffing agencies', and that these practices were 'bordering on immoral' (Die Zeit, 2011). The scandal highlighted to government that an

element of regulation and monitoring was needed in the German TSI. It sparked debates in the German Parliament, and parliamentary questions led to the confirmation that there were a significant number of breaches of regulation by temporary staffing agencies - rising from 510 in 2005 to 2,139 in 2008. **These agencies were fined more than €3.72 million in 2009 (SIA, 2010d). Breaches of regulation included failure to pay social security contributions, late payment of taxes, failure to pay the correct salaries, and failure to allow holidays for temporary agency workers (SIA, 2010d).**

The government were keen to stress that breaches of regulations, laws and agreements would not be accepted and could incur a fine up to €500,000, and as a response to these events, in 2011 the BA (Bundesagentur für Arbeit), the Federal Employment Agency, employed an extra 25 inspectors, bringing the total to 100 - almost twice the number of the Employment Agency Inspectorate in the UK (BA, 2011). **Temporary staffing agencies, both transnational and domestic were keen to stress that they were critical of the poor practices witnessed from some agencies, and were in support of the breaches of law being addressed**, and appropriate measures brought into place; so unlike regulations on wages, intervention in this area of the industry was welcomed.

'There are not just a few black sheep in the industry. There are dirty tricks, which some agencies use regularly. Holiday and sickness pay are systematically avoided in order to save money. Temporary employees are intentionally incorrectly categorised in order to employ people on 'minor job schemes' for longer than is legal....The industry must sort this out and we have to do something about people's impression that we are making money by paying people badly. Temporary employment does not just have a communication problem. It has a problem with the way some in this industry operate. The Schlecker scandal was an absolute nightmare for temporary employment because it showed how incorrectly

the industry sees and represents itself. We have to start taking criticism seriously' (Managing Director, USG People Germany, SIA, 2010f).

In the wake of the Schlecker scandal, some employers sought to distance themselves from the use of in-house agencies. For example, the chemical giant Bayer sold its in-house temporary staffing agency Job@ctive to Hanfried Personaldienstleistungen, a temporary staffing agency based in Hamburg. Both companies have a policy of treating staff fairly' (SIA, 2010b).

While the use of in-house agencies represented a relatively small proportion of the overall temporary agency workforce (which itself only represented around 2.1% of the Germany workforce) (Industry Commentator, December, 2011), the media attention paid to such practices raised the profile of TAW in the public domain (Focus, 2010; Spiegel, 2010a), and acted as a driver for these issues to enter the political sphere to a greater extent. Due to this attention the Schlecker scandal, as it became known, was a key event and driver which led to government intervention which sought to reduce exploitative practices in the TAW sector. However, through this event the TSI gained a negative image within Germany driven by media exposure of poor pay and working conditions of temporary agency workers, with temporary agency work presented as the epitome of vulnerable and insecure employment (which is not always the case – see Spermann, 2013a).

Interactions in the fight for a minimum wage for temporary agency workers

The discussions on labour market reforms for the TSI that followed the Schlecker scandal were instigated by Minister for Employment, Ursula von der Leyen (CDU), who encouraged the introduction of a legally binding minimum wage for all temporary agency workers in Germany (Spiegel, 2012). In order to understand the key events in these discussions and the eventual decisions, a

timeline is presented. Germany did not have a nationally binding minimum wage at the time, as it was negotiated on a sector by sector basis between unions and employers (or employers' associations), and as mentioned earlier in this article for TAW this was largely addressed by collective agreements (Arrowsmith, 2009). The Minister suggested that employers and unions should agree on a legally binding minimum wage for all temporary agency workers, whether they were members of any union or not, as well as outlawing the 'revolving door' practices of some in-house agencies.

TABLE 5 HERE

In contrast, the Federal Minister for Economics and Technology, Rainer Brüderle (FDP) had fundamentally different views on the introduction of a minimum wage, remarking:

'It is generally a mistake for governments to set minimum salary levels. Minimum salary agreements in the temporary employment sector are perfectly adequate. The government must not interfere' (SIA, 2010e).

An interesting development took place when the Free Democrats (FDP), who diametrically opposed the concept of a minimum wage, put forward proposals that supported an 'equal pay for equal work' concept for all temporary agency workers, as this would be more in line with the requirements of the EU Agency Workers Directive (EC, 2008). The EU Temporary Agency Workers Directive (2008.104/EC) was the result of over a three decade of discussions and negotiations to reach an agreement on the regulation for temporary agency workers. The Directive was created as it was felt by many of the social partners and national institutions in Europe that the TSI needed regulation at a similar level across Europe. Its main aim was to establish a level of equal treatment for agency workers across the EU, as part of a wider EU attempt to address atypical work (Countouris and Horton, 2009). The Directive, aimed at

harmonising regulations for TAW across Europe in terms of pay and conditions, and removing unjust restrictions did not affect Germany to a great extent as wages were already set through collective agreements (Trade Association, December 2011)².

It became evident that while trade unions recognised the need for minimum standards in the TSI - to bring it in line with other industries more generally - there was hostility from all trade unions (and a few government representatives) regarding the issue of equal pay for equal work (Financial Times Germany, 2010). The drive to ensure a minimum wage was also related to the opening of the German market to Eastern European workers from 1st May 2011. The concern was that Eastern European agencies would facilitate the movement of workers across the national border with wages at a much lower level which could mean existing agencies would be priced out (BA, 2010). In an industry where many domestic agencies were operating on a very low profit margin - particularly at the low skilled end of the market - this could have been potentially detrimental.

The concept of a minimum wage was generally accepted as a positive move by unions and some government officials: in contrast, the concept of equal pay for equal work was not as widely welcomed (2010, www.bza.de).

A transnational agency manager echoed this view:

'The concept of equal pay for equal work obviously appeals to the sense of justice of large sections of society. However, the palaver these people

² This meant that Germany at this stage was ahead of some of the developments in regulation of TAW at the European level as a key component of the European Temporary Agency Workers Directive was to try to ensure equal treatment of workers. However, as most temporary agency worker wages were set at the sectoral level by a series of collective agreements this meant that in practice temporary agency workers did not yet experience full equal treatment to permanent workers with respect to pay, if this pay was set at a lower level. The main action required from Germany in response to the Directive was to remove restrictions on TAW in the construction sector – 'unjust' restrictions on TAW were required to be removed. The restriction was removed in November 2011 (SIA, 2011a).

are making bears no relation with reality. The collective know-how of a company is built over many years by its permanent employees. The fact that these permanent employees are simply more productive and create greater added value than agency temporary employees is only natural. That is the reason why they are paid more' (Transnational agency, February 2010).

The trade unions however were broadly in favour of both minimum wage and equal pay for equal work:

'The government needs to ensure that temporary employees earn the same amount as a permanent employee. We also need a minimum wage for temporary employees in order to prevent wage dumping at the bottom end of the income scale' (Trade Union, March 2010).

In order to put pressure on the government regarding these issues, the DGB and its affiliate union IG Metall carried out a series of strikes across the country, as seen outside a Huber Technology factory in Öhringen (Hohenlohe Ungefilert (2011) outside a BMW factory in Regensburg (Regensburg Digital (2011), demonstrating the importance they placed on this issues. A key concern for many of the trade unions was the increasing prevalence of temporary agency workers in certain sectors, particularly when:

'Permanent employment has become the exception. Temporary employment is beginning to seriously threaten permanent employment in this country [Germany]. It's alarming as it seems the government is opening all gates and doors for wage dumping with their new reform of the temporary employment sector because the reforms do not include any sort of time limit for the temporary employment contract...temporary employment is, and should be a part of a company's staffing policy. Temporary employment was designed to complement permanent

employment, it does not, and should not replace it' (Trade Union, March 2010).

Again this demonstrates that the trade unions had raised the profile of an issue with TAW, maintaining the momentum that had developed in response to the Schlecker scandal. While the temporary staffing agencies (both transnational and domestic) were generally in favour of TAW reforms, they were concerned about 'overregulation' which could inhibit future growth of an industry that has just begun.

'Germany has come out of the [financial] crisis so well because employers were quickly able to react to the boom before employing more staff. Temporary employment was very important in this and one in each three new jobs is a temporary job. If we lose this flexibility, employers will become far more reluctant to hire new staff...Equal pay would deprive companies of their flexibility, create enormous bureaucracy and quite simply destroy jobs' (Transnational agency, May 2010).

This is not surprising that temporary staffing agencies would be against increased regulation, (or any other change that could affect their profit margin), there were concerns from agencies and firms who used temporary agency workers about the development of too much regulation which would not address the real mistreatment of such workers:

'It is always a good thing to get rid of abuse but the Ministry for Employment should limit its actions to real cases of abuse [and not too much red tape]' (Transnational Agency, April 2010).

Trade unions and BZA put a proposal forward for a collective agreement that ensured a minimum wage for all temporary agency workers in Germany in 2011, it was accepted in the German Cabinet in the same year (SIA, 2011B).

The new minimum wage would be applied to all temporary agency workers in Germany from 1 January 2012 (Stettes, 2012). Wages were set at €7.89 per hour in Western Federal States, and €7.01 in Eastern Federal States (SIA, 2011a). The wage disparity here points to the distinct regional variations the TSI experiences in Germany, and the labour market more generally (Niebuhr et al, 2012; Möller, 2010), but also that the distinct history of the institutional development in the German system has impacted on the features of the industry (including the strength of unions and collective agreements).

After this decision was made, trade unions and trade associations were both remained adamant that government should not be getting involved in wage setting as this was the territory of the trade associations and trade unions. While some viewed the issue of mistreatment of workers being brought to the foreground as positive, it meant that this led to a series of interventions from the state that affected their operations, which they felt were beyond the traditional remit of state involvement in the TAW sector. As one trade association stated when commenting about a merger of trade associations:

'The recent negotiations about the minimum wage for temporary workers for as opposed to equal pay for equal work has demonstrated to the rest of the market how dependent the temporary staffing industry is on decisions made by politicians in Germany. Hopefully in the future we can work to make it less dependent, and combining our efforts [with other trade associations] is therefore an important step towards a better representation of the industry... and hopefully we will be able to move on from all the media attention about Schlecker and focus more on the benefits agency workers bring to the market'
(Trade Association, November 2011).

While the discussions surrounding minimum wages and equal pay may indicate that the government was in favour of encouraging TAW, this position was not

shared across those in government. The Business Minister of the Federal State of Thuringia, Mathias Machnig, announced in 2011 his intention to reduce investment subsidies (or cut them completely), for companies who employ 'too many agency employees' (SIA, 2011a). **Proposals were made that employers with temporary agency workers as 10-30% of their workforce would only receive basic levels of investment subsidies as part of the labour cost subsidies system of the European Social Fund (ESF) (SIA, 2011c).** This was followed in 2012 by the regional government of Saxony-Anhalt stating that firms where temporary agency workers represented more than 20% of staff would be excluded from public investment subsidies (Staatskanzlei des Landes Sachsen-Anhalt, 2012). BZA termed the plans 'discriminating and not legally tenable' as this would be in direct conflict with the European Agency Workers Directive (SIA, 2011a). A trade association commented that:

'It's clearly making an unacceptable move of discrimination against agency work. Agencies would be severely disadvantaged even though they create regular jobs for people who are legally employed and pay their taxes and social security contributions. He is not thinking about both sides of the temporary work arguments and it's quite bizarre that the government wants to fight what is effectively one of the main engines of growth for Germany at the minute' (Trade Association, November 2010).

Furthermore, BAP highlighted that the EU Agency Workers Directive was designed to remove unjustified restrictions, which these actions clearly contravened (BAP website, 2011). However, there was an even more extreme viewpoint from the left wing party Die Linke who made a case to the German Bundestag for the abolition of TAW completely on the grounds that agency workers were made to become second-class members of society (SIA, 2013).

These developments signal three interesting points: first that there was still a level of hostility towards TAW in Germany from some areas of the state; second

it hints at a conflicting relationship between some of the trade associations and the government in the German system; and third the importance of politicians and state involvement in the German TSI as a driver of re-regulation. What is revealed is a conflict in the German system; there was a need for flexibility in the labour market, acknowledged by government, temporary staffing agencies, trade associations and, to some extent, trade unions. However, where temporary agency workers grew to become a growing portion of the workforce (albeit still a relatively small proportion at 2.1% of the overall workforce), they were often met with resistance from trade unions, and some politicians. This conflict is not specific to Germany, the need for flexibility over the rise of precarious work, is well discussed (Barbieri, 2009; Bernhardt and Krause, 2013; Kalleberg, 2009), but the German case is more distinctive because of the political involvement at the individual level, which was instrumental in instigating changes to the regulatory framework.

Conclusions

The German temporary staffing industry has experienced rapid expansion since the enactment of the Temporary Employment Act in 1972. While the industry has grown in terms of number of agencies, and turnover, it has remained very fragmented by international standards. Although growing over time in size, agencies remain small, which may evidence a comparative advantage of the SMEs in the German system, but also the importance of spatial proximity of the agencies to their customer base, given the regional variations that Germany experiences in the wider labour market. Despite these regional specificities it has been the developments at the national level which have largely been discussed in this article. Further work is needed around the regional variations of the temporary staffing industry, investigating the role of transnational and domestic temporary staffing agencies the industry, as well as regional and local labour markets.

Successive waves of legislation reform regarding temporary agency work acted as a primary driver of change. Trade unions and trade associations were key in shaping changes in regulation alongside influences from the state – in particular the Federal Employment Minister – around issues of terms of use for temporary agency workers and their pay. Agencies have since responded to these changes, and have capitalised on the opening up of areas of the market from which they were previously excluded. As social partners who are linked through collective agreements for temporary agency work in Germany, both trade unions and trade associations had a crucial role in shaping the prevalence and experience of temporary agency work in Germany. Germany did not, until May 2011, have a minimum wage as such for temporary agency workers. Minimum salaries were negotiated by sector via collective agreements between trade associations and unions.

The actions of some in-house agencies prompted intervention by the state to ensure mistreatment of workers would be reduced. This demonstrated the potential for direct state intervention, led by individuals, in the activities of the TSI, which has not been the usual pattern in other more mature markets for temporary agency work (see Coe, Johns, Ward, 2008, 2009; Author forthcoming). Although some efforts were made by unions to engage with temporary agency workers, or with issues regarding their use, the underlying messages from trade unions remained negative. Trade unions stressed that temporary agency work should be used as a tool for short term flexibility as the labour market demands, not as a viable employment option. Nevertheless they engaged with the issue of TAW, developing from acknowledging collective agreements and campaigning against its use, to recognition of the TAW sector as a component in the workforce, and the development of strategies to incorporate some of their issues into their own activities.

Much of the increased media attention that focused on temporary agency work, either driven by practices of in house agencies, activities of trade unions, or

discussions in political spheres focused on the use of temporary agency workers by larger companies. Given the fragmentation of the market identified earlier in this paper further research is needed to examine the experience of the small temporary staffing agencies, and the impact of changing regulatory frameworks on the everyday experiences of a temporary staffing agencies, particularly the SME component, and their temporary agency workforce in Germany. Furthermore given that the fragmented nature of the industry, compared to other European markets, more work is needed to explore their role in shaping the market, against the backdrop of changing regulations.

The German temporary staffing industry provides an interesting example of where the industry has experienced significant development in a relatively short period of time, and where involvement of the state has been a crucial driver of change, particularly for attempting to mitigate exploitative practices of temporary staffing agencies. Despite the expansion of transnational agencies into the German market, and changing regulatory frameworks (from both Germany and the EU), it was the German state which continued to play a strong role in the operation of the temporary staffing industry. Deregulation of temporary agency work acted as a spark for development, but the state later acted to protect temporary agency workers from exploitation through the introduction of regulations on pay and conditions. This highlights how the state can play both the role of a deregulator and re-regulator, and as such the potential for both dynamics should be considered in any exploration of a national temporary staffing industry or labour market landscape, alongside other key components including temporary staffing agencies (both transnational and domestic), trade unions, trade associations, and of course temporary agency workers.

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