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for agency workers: the role of labour  
divides and labour market reforms**

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## **Explaining diverging bargaining outcomes for agency workers: The role of labour divides and labour market reforms**

This article investigates under what conditions unions can successfully regulate precarious employment by comparing the divergent trajectories of collective bargaining on agency work in the Italian and German metal sectors from the end of the Nineties until 2015. The different trajectories are explained through the interaction between trade unions' institutional and associational power resources, mediated by employers' divide-and-rule strategies and by unions' strategies to (re)build a unitary labour front. In both countries, the liberalisation of agency work allowed employers to exploit labour divides, undermining unions' associational power and preventing labour from effectively negotiating. However, while Italian unions remained 'trapped' in the vicious circle between weak legislation and fragmented labour, German unions were able to overcome their internal divides. The different degree of success depended on the nature of the divides within the labour movement, which affected the capacity of unions to sustain and to (re)build associational power.

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## Introduction

Given the growth of unstable low-wage jobs in advanced political economies, unions face the challenge to organise precarious workers and to bargain on their behalf. Even though some scholars argued that unions exclusively focus on the interests of core workers (Palier and Thelen, 2010), recent research in the field of industrial relations found that unions have started including precarious workers in their representation domain, even though with mixed outcomes (Gumbrell-McCormick, 2011; Pulignano et al., 2015). These studies found that unions' effectiveness depends on their strategic ability to take advantage of different power resources deriving from regulations and bargaining structures, union density, and national and local economic context (Keune, 2013).

This article investigates under what conditions unions can successfully regulate precarious employment, comparing the divergent trajectories of collective bargaining on agency work in the Italian and German metal sectors from the end of the Nineties until 2015. In terms of its effectiveness in improving agency workers' pay and conditions and limiting their employment, negotiated regulation became weaker in Italy, while progressively improving in Germany. This article argues that this diverging trajectory can be explained through the interaction between institutional and associational power resources, mediated by employers' divide-and-rule strategies and by unions' strategies to (re)build a unitary labour front. A strict legislation on agency work constitutes a crucial power resource for unions, and in both countries its liberalization provided employers the opportunity to exploit divides within labour, undermining unions' associational power. Employers reached agreements with the most moderate part of the labour movement, obtaining concessions and/or isolating the most militant segments. Employers' strategies are therefore responsible for triggering a vicious circle between weakening institutional power and weakening associational power. However, while Italian unions remained 'trapped', German unions reversed this circle and built more encompassing regulation by overcoming their internal divides.

These findings contribute to the advancement of the industrial relations literature on unions and precarious workers. This literature mostly considered power resources in isolation or, at most, in combination, explaining differences at one point in time through a constellation of factors including labour market conditions, institutions, union density and identity (e.g. Pulignano et al., 2015; Marino, 2015; Wagner and Refslund 2016). In contrast, this article offers a dynamic explanation for improving or worsening collective bargaining outcomes for precarious workers over time because it shows that different power resources do not just sum up to one another, but they reinforce or undermine each other creating virtuous or vicious circles. Indeed, while labour market deregulation offers employers the opportunity to segment the workforce and divide the union front, the latter can overcome their internal divides and (re-)build encompassing collective bargaining for precarious workers – as the German metal union did.

The different degree of union success in rebuilding a united labour front in Italy and Germany depended on the nature of the divides within the labour movement in the two countries, which affected unions' capacity to sustain associational power. While the German metal union could regain control over workplace bargaining by works councils thanks to its sectoral representation and bargaining monopoly, the horizontal cleavage between the three Italian confederal unions could be exploited by employers, leading to weak bargained provisions. By pointing out the role of internal divides, this article provides a further contribution to the literature on unions and precarious workers, which often treats labour as a united block which either excludes or includes them (Palier and Thelen, 2010). Finally, while based only on the case of agency work, this article connects to broader debates on the role of unions in institutional change (Doellgast et al., 2018), pointing out their central role in contrasting segmentation and particularly the crucial role of intra-union cooperation for building encompassing sectoral collective bargaining structures (Kornelakis, 2016).

The article unfolds as follows. The next section discusses the literature and develops the argument. The third section illustrates the case studies and methodology. The fourth and fifth sections respectively illustrate collective bargaining trajectories in the two countries and analyse bargaining dynamics and legislative changes. The final section discusses the findings and their implications for research on unions in segmented labour markets.

## **The role of power resources in collective bargaining on precarious work**

The availability of power resources to unions, and their strategies to (re)build them are considered crucial for unions' effectiveness in representing precarious workers (Frege and Kelly, 2004). Power resources can be broadly divided into three categories: structural, associational, and institutional (Silver, 2003). Structural power resources derive from workers' position in the labour market and in the labour process, and depend on the organization of production, product markets, technology and on the broader socio-economic context (Pulignano and Keune, 2015).

Associational power relies on unions' ability to promote collective organization, both in the form of high union density and ability to mobilise union members (Vandaele and Leschke, 2010), and their capacity to create alliances with other organizations and movements (Lévesque and Murray, 2005). Labour unity can be conceptualised as a form of associational power linked to egalitarian bargaining outcomes (Kornelakis, 2016). Divides in the labour movement often reflect different co-existing ideologies or identities, which can generate internal tensions as different workers' organizations might identify with the working class as a whole, or with a specific occupational or enterprise group (Hyman, 2001). They also depend on the structure of the labour movement, e.g. the presence of union confederations with a mandate to coordinate bargaining, such as in Italy (Oliver, 2011), or the existence of an institutionalised dual channel of representation, as in Germany (Pulignano et al., 2015). Bringing the two aspects together, Streeck (1993) suggests that different types of union organizations foster different aspects of workers' identities and vice versa, ultimately affecting unions' bargaining strategies and their ability to achieve encompassing agreements.

Lastly, institutional power derives from industrial relations and labour market institutions, which affect unions' organizational strength, bargaining position and mobilization capacity (Frege and Kelly, 2004). For example, Pulignano et al. (2015) and Wagner and Refslund (2016) found that bargaining decentralization, lack of equal treatment legislation, and opening clauses to minimum standards represent the main institutional obstacles that German unions face when trying to represent agency and migrant workers compared to Belgian and Danish unions.

Scholars discussed either the distinct contribution of specific power resources to unions' effectiveness in bargaining for precarious workers, or the combined effect of different power resources (Pulignano et al., 2015; Wagner and Refslund, 2016). However, as power resources are interlinked and mutually supportive (Lévesque and Murray, 2005), their interaction over time is likely to impact unions' effectiveness. For instance, scholars found that institutional loopholes in labour market and industrial relations institutions undermine unions' cooperation, preventing the development of encompassing sectoral bargaining. Employers drive this vicious circle by exploiting institutional loopholes to avoid the costs of centralised bargaining, weakening unions and their ability to close gaps in bargaining coverage (Benassi et al., 2016).

This argument suffers from institutional determinism because it depicts unions as trapped in a vicious circle between weak institutional power and fragmented labour. However, unions can undertake strategic initiatives to overcome divides: Greer and Hauptmeier (2012) show that unions at General Motors engaged in identity work to respond to management whipsawing strategies, and to build cross-national solidarity across European plants. Comparing collective bargaining institutions in the telecom sector in Italy and Greece, Kornelakis (2016) shows the greater capacity of Italian unions to overcome ideological divides thanks to the appointment of

unitary workplace structures.

This discussion suggests that associational and institutional power are in a mutual relationship, which is mediated by unions' and employers' strategies. Building on this insight, this article analyses the evolution of collective bargaining on agency work in the German and Italian metal sector, looking at how institutional and associational power resources reinforce or weaken each other over time, and at the strategic role of employers and unions.

## Cases and method

This article focuses on the Italian and German metal sector, which present similarities in terms of labour market segmentation and sectoral collective bargaining structures. In both countries, agency work is the most widespread form of atypical work in the metal sector, which significantly increased in the last twenty years. In Italy, the total number of agency workers increased from 14,677 in 1998 to 675,021 in 2016; almost half of them (47%) are employed in manufacturing (Assolavoro, 2017). In Germany, agency workers were 42,000 in 1985, and grew to over 960,000 in 2015, of which 29% in the metal and electronics industry (Bundesagentur für Arbeit, 2016). In both countries, the most important bargaining level is the sectoral level, which justifies the choice of the researched outcome, sectoral collective bargaining on agency work.

At the same time, the labour movement in the two countries is divided along different lines, which allows investigating the impact of divides on collective bargaining over agency work, and on effective labour coordination. In Germany, there is only one major trade union confederation, the DGB. In Italy there are three main confederations, distinctive in their ideological orientation; CGIL with communist roots, the more moderate Catholic CISL, and formerly Socialist UIL. IG Metall, affiliated to the DGB, is the only union negotiating sectoral agreements with the metal employer association, while in Italy there are three metal unions, FIOM-CGIL, FIM-CISL and UILM-UIL, affiliated respectively to each confederation, even though they traditionally bargain sectoral agreements together. Furthermore, the German industrial relations system is based on dual channel representation, with a formal commitment of works councillors to both the company's interests and its workforce, while the Italian model is single channel, with stronger connections between unions and employee representatives.

Collective bargaining over agency work is complicated by the 'triangular' nature of this employment form (Mitlacher, 2005), which implies that multiple actors, from labour and management side, are involved in the process that takes place in multiple arenas. Still, the collective bargaining structure shows remarkable similarities between Germany and Italy. In both countries agency work is regulated both through a collective agreement for the agency sector, setting minimum standards concerning wages, working conditions and benefits for all agency workers, and through the sectoral collective agreements of hiring industries, which define employers' use of agency work and might integrate agency workers' salary and benefits in their sector of employment. This leads to a clear division of responsibility between bargaining arenas, which contributes to reduce conflicts (or even foster cooperation) between different federations belonging to the same union (Benassi et al., 2016; Durazzi, 2017). In both countries, special union structures negotiate the agency sector's collective agreement: in Italy, they are three union federations affiliated with the general confederations (NIDIL-CGIL, FELSA-CISL and UIL-Temp) while in Germany it is a special bargaining body constituted by all DGB unions but no dedicated unions for atypical workers. The main difference is that collective agreements in Italy cannot derogate the principle of equal treatment set by law, while this is possible in Germany. This is crucial to understand variation in collective bargaining developments between the two countries.

The article relies primarily on 73 semi-structured interviews conducted in both countries

in two phases (2011-2013 and 2016-2017) (see Appendix). Interviewees were union officials at local and national level and workplace representatives in metal companies. The interviews explored the content and the process of collective bargaining over agency work, how it changed over time and why, and how it was related to employers' strategies, broader changes in the law and the relationship between different segments of the labour movement. Interviews were recorded, transcribed verbatim and analysed through the software Nvivo in search of emerging themes related to changing collective bargaining practices and their explanations. Interview findings were integrated and, when possible, triangulated through the analysis of collective agreements, documents from the Economic and Social Research Institute (WSI) and Eurofound online archive, unions' publications and secondary literature.

## **Diverging trajectories of collective bargaining for agency workers**

Unions' success in regulating agency work varied over time between the German and Italian metal sectors in two aspects: first, wages and working conditions, second, employers' discretion in using this form of employment, including quotas, reasons for hiring agency workers and transition rules from agency to permanent contracts. Two phases can be identified for both countries. The first phase is characterised by good bargaining outcomes for agency workers in Italy (1998-2002), while in Germany they were quite poor (1996-2006). In the second phase, the bargained regulation regarding in the use of agency work eroded in Italy (2003-2015), while in Germany unions managed to improve it, reducing the gap between permanent and agency workers (2007-2015).

### *T1: First phase*

In Germany, agency work was introduced in 1967 leaving the setting of wages and working conditions to the social partners (Schüren, 2012). Still, until the end of the Nineties, wages were autonomously set by the staffing agencies, because all DGB unions including IG Metall refused to bargain and advocated a ban on agency work, considering it a form of 'modern slave trade' (IG Metall, 1992). However, as agency work increased due to deregulation (see following section), in 1996 the DGB declared its commitment to regulate the phenomenon. Hence, 1996 is set here as the beginning of the first phase of collective bargaining on agency work in Germany.

At the time, IG Metall followed the DGB, and signed collective agreements with few staffing agencies at the local level, establishing workers' representation, and setting the maximum working time at 35h/w and salary levels below those in the metal sector (Bispinck, 2000). The first specific sectoral agreement for agency work was negotiated only in 2004, when a special bargaining body constituted by representatives from all DGB sectoral unions bargained for the agency sector. Wages were 30-40% lower than in the metal sector (Benassi and Dorigatti, 2015). The implementation of equal treatment rules, and limitations to the use of agency work (e.g. through quotas or transition rules from agency to permanent contracts), was left to the discretion of works councils. In some of the big manufacturing companies involved in this study, works councils managed to bargain company-level agreements improving the agency workers' conditions, but local union officials and a works councils survey (Wassermann and Rudolph, 2007) suggest that works councils more often did not regulate the phenomenon, and even used agency workers as cheap flexibility buffer.

Agency work was first introduced in Italy in 1997. Agency workers benefit from equal pay and treatment by law, and trade unions closely monitor the enforcement of this provision. Moreover, the collective agreement signed in 1998 by unions in the agency sector set additional

benefits such as income support for sickness, accident, maternity, or unemployment, and the right to training. They are provided by two bilateral funds, to which agencies devolve 4.2% of agency workers' salaries (Burroni and Pedaci, 2014). While the collective agreement in the agency sector did not set any constraint on employers' use of agency work, in the 1999 sectoral agreement the metal unions introduced a maximum quota of 8% of companies' total workforce and limited the use of agency work to specific circumstances. In this phase, sectoral agreements in the metal and agency sectors did not set transition rules from agency to permanent contracts, while some workplace agreements in metal companies did (Ballarino, 2005).

## *T2: Second phase*

The regulation of agency work improved in Germany since 2007, as IG Metall started a successful bargaining campaign; in 2010 it signed a collective agreement setting equal pay for agency workers in the steel sector; in 2012 a collective agreement with the staffing agencies' associations introduced a system of salary bonuses increasing with the duration of assignment, aimed at closing the gap between agency workers and direct employees. Moreover, the metal agreement in 2012 limited employers' discretion to use agency work, first by strengthening works councils' co-determination rights in hiring companies and, secondly, by introducing the obligation for hiring companies to permanently hire agency workers after 24 months of continuous assignment. Ameliorative provisions were also implemented in many companies through more than 1,200 workplace agreements, setting maximum quotas, better wages, and transition rules.

In Italy, the collective agreement in the agency sector was renewed three times between 2003 and 2015 and unions were able to maintain the same wage standards and improve welfare provisions (Burroni and Pedaci, 2014). However, the negotiated limitations to employers' discretion in the use of agency work weakened over time, following the liberalization trajectory of the law. The 8% quota in the metal sector was lifted in 2004 by the separate collective agreement between employers and the two moderate unions (FIM and UILM); furthermore, the requirement to specify the reasons for hiring agency workers was relaxed in 2004 and lifted in 2014. The 2008 agency sector agreement introduced the obligation to hire agency workers after 42 months of continuous employment, which was then removed in 2014. The only exception to this erosion was the introduction in 2008, through the only unitary metal agreement in the period 2003-2015, of a transition rule ensuring the permanent hiring of temporary workers (both agency and fixed-term contracts) after 44 months of even non-continuous assignment. Meanwhile, FIOM separately negotiated around 1,000 workplace agreements in 2003-2004 regulating employers' use of agency work to contrast the detrimental effects of the separate sectoral collective agreement (FIOM, 2004). They set quotas around 10-20%, required employers to specify the reasons for hiring agency workers, and set transition rules to permanently hire them, usually after about 12 months. Similar agreements were negotiated in other metal companies in the following years, often as a joint initiative of all three unions; however, this regulation was never extended to the sectoral level and, therefore, it covers only a limited segment of the sectoral workforce.

The table below illustrates the main characteristics of agency work regulation in the two countries, as well as its diverging trajectories over time.

*Table 1 about here*

## **Explaining diverging trajectories**

The different trajectories in the negotiated regulation of agency work can be explained through

the interaction between two distinct power resources: first, institutional power resources, particularly the legislation on agency work, defining the bargaining room of workers' representatives; second, associational power resources, affected by employers' strategies aimed at obtaining concessions from a divided labour and by unions' strategies for overcoming those divides.

### *T1- Germany: Weakening legislation and divided labour (1996-2006)*

In Germany, the Temporary Employment Act (1972) limited temporary assignments to three months, forcing staffing agencies or hiring companies to hire workers on permanent contracts; it also prevented the latter from re-hiring the same agency worker on another agency contract right after the end of the assignment, while it left wage setting to collective bargaining. During the Nineties, the legal limitations to the use of agency work progressively weakened; the 2003 labour market reforms lifted limitations to re-hiring agency workers on agency contracts, restrictions to the assignment duration, and the prohibition for agencies to employ workers on contracts of the same duration as their assignment in user companies. The Hartz reforms introduced the equal pay principle, but allowed its derogation via collective agreements, opening a new bargaining arena where labour representation was very weak in terms of union density and workplace presence (Schüren, 2012).

As those reforms unfolded, there was cross-party and societal consensus around the necessity to flexibilize the labour market and to compress labour costs to reduce unemployment and to increase the competitiveness of German production sites (Rehder, 2003). This context and the risk to be excluded from the institutional bargaining arena in the agency sector, pushed the DGB unions (including IG Metall) to cooperate with employers for regulating it. Thus, they accepted to negotiate an agreement with the staffing agencies' association, confident that they would achieve better standards (Helfen, 2015). However, alongside the negotiations between the DGB bargaining body and two staffing agencies' associations, a third association signed a collective agreement with the moderate and usually marginal Christian Federation of Trade Unions, setting low wages and working conditions. This competition undermined the bargaining power of the DGB bargaining body, and its agreement achieved poor outcomes. This is clearly stated by a national DGB representative:

[...] when the ink on the agreement (*between the DGB and the staffing agencies*) was not dry yet, the Christian Unions had already signed an agreement. Then we had no influence on it anymore. We could basically only copy and paste from them and add a little something on top' (DGB national official, 2011)

Employers did not only exploit the divides within the labour movement in the new and poorly organised agency sector, but they also took advantage and reinforced the divide between works councils and IG Metall. The political linkages which made works councils serve as an 'extended union arm' in the workplace (Streeck, 1993) had been weakening due to the decentralization of collective bargaining through opening clauses since the Nineties. In the metal sector, workplace agreements were bargained under the credible threat of outsourcing production to cheaper locations in Eastern Europe (Rehder, 2003). In such negotiations, agency work was often used as bargaining chip to avoid plant closure or outsourcing, to increase cost competitiveness, or to protect the core workforce.

A national IG Metall representative explained the difficult position of works councils:

I think that there have always been companies which let themselves be put under pressure and [...] were politically weak, badly organised and maybe with a works council which



was not politicised in regard to these issues. I would also mention another category constituted by those (*works councils*) who were under pressure in big companies, in particular the question what happens if the company comes to me and says ‘we are competing internationally, these three car models are going to be produced, and we can do it in Bochum, in Kassel or in Wolfsburg, but ultimately we can also build them in Poland, Bulgaria or somewhere else’ (IG Metall national official, 2012)

Even though works councils in some big companies managed to strictly regulate agency work through company-level agreements, existing research suggests that the concession bargaining described above was more common (Jürgens and Krzywdzinski, 2006).

### *T1: Italy (1998-2002): Strict legislation and united labour*

In Italy, agency work was introduced in 1997 through a labour market reform agreed upon by social partners during trilateral negotiations resulting in the ‘Pact for Employment’ in 1996. Union consent was mainly due to the dramatically high unemployment rates following the 1993-95 recession (Molina and Rhodes, 2007: 805). However, unions' involvement in the reform made sure that Law 196/1997 strictly limited agency work, allowed only for medium/high-skill activities and under specified circumstances, e.g. for substituting workers on leave or for acquiring skills required only temporarily. The law allowed sectoral agreements to identify further cases for the use of agency work, thereby encouraging its regulation within industries. Furthermore, the law granted agency workers equal pay and treatment and introduced a compulsory contribution to a sectoral bilateral fund co-managed by employer associations and trade unions, setting additional benefits. Hence, this was an excellent bargaining platform for unions to regulate agency work at the sectoral level. As a representative of the CGIL union for atypical workers told us:

[...] the fact that the law itself, when agency work was introduced, would set certain constraints made trade unions' intervention easier to a certain extent (NIDIL-CGIL official, 2011)

As a result, compared to the German case, the three unions for atypical workers could more easily coordinate their bargaining strategies and negotiate with staffing agencies' associations as a united labour front. As mentioned above, the agreement in the agency sector even set benefits in addition to equal pay. Furthermore, the three metal unions constrained employers' use of agency work in the 1999 sectoral agreement, specifying the cases in which agency workers can be hired and limiting their quota to 8% of the workforce. While employers in Germany could exploit the weak legislation and competing agreements at company level and at sectoral level, the legislation and the collective agreements in Italy provided a level-playing field for the whole sector. Therefore, the workplace agreements on agency work negotiated in this period set provisions only above the sectoral standards, mostly transition rules from agency to permanent contracts (Ballarino, 2005: 181).

### *T2: Germany (2007-2015): Overcoming divides and strengthening collective bargaining*

The collective agreement in the agency sector was renewed in 2006 and 2010, progressively improving the standards for agency workers. In 2010 the Federal Labour Court declared the

Christian unions not able to conduct collective bargaining in the agency sector, invalidating former collective agreements (Hensche, 2016). One year later, the lowest salary level of the DGB collective agreement was extended by law as minimum wage for the whole sector, until the introduction of the national minimum wage in January 2015. Still, the standards in the agency sector remained much lower than in the metal sector and, therefore, IG Metall needed to raise them to avoid wage dumping. Since the government was not going to introduce equal pay by law in the short term, IG Metall made the bargaining at sectoral level a priority. In 2007, IG Metall launched the national campaign ‘Same Work, Same Wage’ aimed at recruiting agency workers and including them into the traditional structures of representation. At company and sectoral level, IG Metall dedicated significant resources to develop specific training modules and bargaining guidelines, pushing works councillors and union officials to engage in collective bargaining on agency work. At national level, IG Metall launched a confrontative media campaign to re-shape the public image of labour market flexibility as an unfair employers’ strategy with negative externalities for the wider society, thereby, building the pressure of public opinion on employers and government (Benassi and Dorigatti, 2015).

Even though there is still some variation in bargaining outcomes for agency workers across plants (Pulignano et al., 2015), the campaign strengthened works councils' capacity to re-regulate agency work across the sector and enabled IG Metall to regain control over the standard-setting process in the workplace, overcoming the differences in bargaining priorities between the union and the works councils. By 2011, more than 1,200 firms signed agreements setting quotas on agency work, better working conditions for agency workers (such as equal pay with directly comparable workers), and stronger codetermination rights for works councils.

Moreover, IG Metall took advantage of its monopolistic bargaining position and reached sectoral agreements improving agency workers' wages and working conditions. In 2010, an equal pay agreement was achieved in the steel sector, while the 2012 metal collective agreement set transition rules and encouraged employers to negotiate with works councils. Parallel to bargaining with metal employers, IG Metall conducted a successful bargaining round on salary bonuses directly with the staffing agencies, because the hiring companies cannot bargain on this issue, not being the actual employers. To put pressure on the staffing agencies and the employers on the issue of agency work, IG Metall refused to bargain wages for the metal sector and threatened strikes until the salary bonuses were agreed, as explained by a local IG Metall official:

We have refused to bargain over salary increases (*in the metal sector*) for around three months [...] And we said, we negotiate over salaries when an agreement on the issue of agency work comes about [...] We have used the salary increases and the possibility to strike over salary increases as political blackmail for re-balancing the lacking organizational power of agency workers (IG Metall local official, 2013)

These sectoral agreements helped to limit cross-company competition, as suggested by an IG Metall representative in charge of the campaign:

It makes sense to say: ‘Collective agreements are there to switch off salary competition among workers’. There should be competition about the product, the services, but not about the salaries. The agency workers brought this competition in the companies and a company alone cannot really regulate it without putting itself at risk and therefore it was necessary and right to regulate it at national level and through the hiring companies (*rather than the agencies*) and through politics (IG Metall local official, 2011)

The parallel re-regulation process at national level offered further support to the initiatives of works councils and unions. The campaign contributed also to a change in the public

discourse on labour market inequalities (Jaehrling et al. 2016: p.137, Marx and Starke 2017), putting pressure on the legislator for stricter labour market regulation. In 2011, the legislation re-introduced some limits to the use of agency work, specifying that companies should hire agency workers only on a temporary basis and prohibiting companies to re-hire dismissed workers on agency contracts since 2012 (Bundesagentur für Arbeit, 2016). The Federal Labour Court expanded codetermination rights specifying that employers need works councils' approval for hiring agency workers, and must provide information on agency workers' characteristics, job position and length of assignment. The Court also stated that works councils can oppose the hiring of agency workers who are not temporarily employed and contest the dismissal of permanent workers in presence of agency workers. Finally, since 2013 the number of agency workers also counts for determining the size of works councils (IG Metall Zoom, 2016).

Collective bargaining initiatives on agency work started before any relevant changes in the legislation and contributed to promoting them; in turn the legislative re-regulation process strengthened unions' institutional power and offered further support to the following collective bargaining initiatives. In the interviews, works councils suggested that they found it easier to contest the use of agency work at workplace level thanks to these legal provisions. For instance, a works council brought the management to court because agency workers were employed for years in the same job positions without any prospects of permanent hiring. The collective agreement achieved by IG Metall in 2012 also relied on these legislative changes, allowing works councils to prevent the use of agency contracts to replace permanent contracts.

### *T2-Italy (2003-2015): Weakening legislation and deepening divides*

In Italy, during the period 2003-2015 agency work went through progressive liberalization, enabled by – and conducive to – deepening ideological divides among the three unions at national and sectoral level. Labour market flexibility was central to growing disagreement between the government and employers, on the one side, and unions, on the other, but also among unions themselves. At the beginning of 2000s, the new centre-right Berlusconi government, with the support of the employer association Confindustria, abandoned concertation as a policy-making process for labour market reforms, and presented a White Paper containing provisions for labour market flexibilization, including deregulation of dismissal protection (art.18 L.300/70). These measures led to extensive social protests and were initially opposed by all three major unions. Still, labour unity proved shaky; while CGIL maintained a militant and opposing position, CISL and UIL signed the Pact for Italy with the government, considering it better than the government's unilateral intervention (Molina and Rhodes, 2007). The 'Pact for Italy' was translated into Law 30/2003, which introduced open-ended agency work, weakened the linkage between agency work and temporary needs of employers, and relaxed companies' obligation to provide specific reasons for the use of agency work.

Deregulation affected the power balance between the metal trade unions and the employer association Federmeccanica in the 2003 bargaining round. As argued by a representative of the moderate union FIM,

there has been a sort of pitch invasion of the law (...) which pushed collective bargaining in a direction more favourable to employers and less to trade unions (FIM-CISL national official, 2016)

Following the new legal framework, Federmeccanica wanted to remove any constraints on the use of fixed-term and agency work, while the union front was split. The left-wing union FIOM mobilised workers against the labour market reform and tried to limit the impact of the law

through collective bargaining. It demanded stricter rules on the use of all atypical contracts, a maximum quota (18%) for fixed-term and agency workers, and a rule for turning those contracts into permanent employment after eight months of assignment. Also, the two moderate unions, FIM e UILM, wanted to reduce the negative effects of liberalization, but were more sceptical about the capacity of the contract to limit the effects of the law. The two different strategies are exemplified in the two quotes below:

FIOM (...) presented a platform which did not translate into the collective agreement what was happening in the law, it tried to set some limits (...). But the counterpart did not even take it into consideration, (FIOM-CGIL national official, 2016)

If the law sets some rules, it is complicated for collective agreements to completely overturn them, right? (FIM-CISL local official, 2016)

The tough bargaining round resulted in a separate collective agreement signed only by FIM and UILM. As requested by the employer association, a specific commission would harmonise the collective agreement to the new legal framework on agency work. However, the commission was never actually set, and the new legal framework was directly applied. According to several representatives of both the moderate and the militant unions, the law contributed to dismantle the previously agreed restrictions on the use of agency work, but labour divisions reinforced the effect of the legislation.

Indeed, immediately after the separate agreement, FIOM tried to re-enter negotiations through a national campaign, aimed at affirming its demands for the (failed) sectoral bargaining round through workplace agreements. One of the crucial issues was the regulation of atypical work, including quotas for fixed-term and agency contracts and transition rules to permanent employment. Thanks to the campaign and the engagement of FIOM employee representatives, over 1,000 agreements at workplace were signed and applied to over 350,000 metalworkers (FIOM, 2004). The FIOM campaign showed employers that a collective agreement without the largest union could lead to conflicts in the workplaces. Hence, most of Federmeccanica members pushed for re-opening negotiations with FIOM, and a unitary agreement was signed in 2008. Within the agreement, the parties agreed on (minimal) constraints to employers' discretion, defining a mechanism for the direct and permanent hiring after 44 months of assignment on fixed-term or agency contracts.

Again, the unity of action both at sectoral and national level was short-lived. In 2009, the three union confederations split again at national level on the issue of a framework agreement for introducing the use of opening clauses in collective bargaining. The split was mirrored in the metal sector, where Federmeccanica reached a separate agreement with moderate unions which introduced them in the sectoral agreement. Labour market deregulation and separate collective agreements in the metal sector continued in the following years. Labour market reforms in 2012 and 2014 lifted the remaining limits to employers' use of agency work and the obligation to justify it. This trend was reflected in the metal agreements, as the obligation for employers to justify the use of agency work was first removed for specific types of workers (e.g. long-term unemployed) and then removed altogether. Now, therefore, metal employers can use agency work at will, with the only limitation set by the transition rule introduced through the unitary agreement in 2008.

## **Discussion**

This article examined the diverging trajectory of collective bargaining for agency workers in the German and Italian metal sector. Negotiated regulation was initially strong but progressively weakened in Italy, while it was weak and then improved in Germany. This difference is explained through the interaction of two power resources: institutional power resources, deriving primarily from the legal regulation of agency work, and associational power resources, which are affected by employers' and unions' ability to respectively exploit and bridge divides within the labour movement.

The empirical evidence shows that national legislation represents a fundamental institutional power resource (Frege and Kelly, 2004), which directly affected unions' effectiveness in regulating agency work. For instance, thanks to the law setting equal treatment, Italian unions were able to negotiate benefits on top of equal pay, while the sectoral agreement by IG Metall just reduced the gap between agency workers and permanent workers without eliminating it. However, the liberalization of agency work also affected unions' associational power because it enabled employers to exploit divides within the labour movement to obtain concessions. In regard to this mechanism, the parallels between the two cases are striking: In the first phase in Germany, employers took advantage of the weak legislation and exploited existing divides between, on the one hand, the DGB unions and the Christian unions, and, on the other hand, between unions and works councils in order to bargain favourable agreements. Similarly, in the second phase in Italy, thanks to deregulation and union divisions employers could exclude the most militant union from the bargaining table and were able to fence concessions from the moderate faction. Hence, the provisions in the metal collective agreement were progressively weakened and the virtuous circle between strict national legislation, coordinated bargaining and encompassing outcomes for agency workers was reversed. Both cases show how institutional and associational power resources are mutually reinforcing, as liberalization triggered strategic divisions within the labour movement, which, in turn, reinforced the impact of deregulation on the labour market and industrial relations.

Still, the empirical evidence suggests that vicious circles can be turned into virtuous ones if labour overcomes divides and (re)builds its associational power. In the second phase, IG Metall could stir workplace bargaining through its campaign targeting works councils and union representatives and bargained a sector-wide agreement on agency work. The unity of action at workplace and sectoral level led to better negotiated regulation and created an even level-playing field for labour, ultimately contributing to put pressure on the legislator for better regulation of agency work. In contrast, Italian unions could not counteract deregulation as effectively through encompassing sectoral agreements, even though FIOM and its employee representatives ran a campaign and achieved workplace agreements setting better conditions for agency workers and constraints on employers. Hence, the trajectories in the two countries show that not only the law but also associational power resources matter.

The explanation of union's different capacity to overcome divides in the two countries, which affect their associational power and their ability to bargain effectively, lies primarily in the different nature of the divides in the two labour movements, which derive from both ideological and institutional reasons. The divide between sectoral unions and workplace representative bodies, is rooted in the institutional design of labour representation (Streeck, 1993). In Germany, works councils are formally independent from unions, and, therefore, the campaign was necessary to coordinate workplace bargaining and to provide a level-playing field to avoid concessions at workplace level. In Italy, the single channel of employee representation enables unions to easily coordinate bargaining between the workplace and sectoral level and reduces the risk of employers' 'divide-and-rule' strategies at company level. The divide between unions, which characterises Italy but is visible also in Germany between DGB and Christian unions, derives mostly from different ideologies and willingness to compromise with employers. These divisions among Italian unions at national level and particularly in the metal sector prevented contrasting liberalization and maintaining strict negotiated rules constraining employers' use of

agency work, while IG Metall could use its bargaining monopoly to shift the main negotiations from the agency sector and the workplace level to the metal sector, where the union is most powerful. In contrast, FIOM's bargaining activity was confined to the workplace, because the Italian collective bargaining arena is highly disputed and, during the second phase, mostly dominated by the two moderate unions, which enjoy the same legitimacy as FIOM.

This article contributes to the literature on unions' representation of precarious workers, by exploring the conditions under which unions are effective (Gumbrell-McCormick, 2011; Keune, 2013). Its contribution to this literature is twofold. While most studies highlight the relevance of different power resources (Marino, 2015; Pulignano et al., 2015), this article shows how institutional and associational power resources reinforce or weaken each other in virtuous or vicious circles mediated by the strategies of unions and employers. Through this 'dynamic' perspective, this study explains evolving bargaining outcomes for precarious workers over time rather than differences at one point in time. It also points at the nature and structure of internal labour divides (Kornelakis, 2016; Marino, 2015) to understand the conditions under which unions can successfully bargain on precarious work, distinguishing itself from existing literature on unions in segmented labour markets, which considers the labour movement as a united block with homogeneous preferences (Palier and Thelen, 2010).

In particular, it highlights labour unity as crucial success factor, which can be enabled or constrained by the (weakening) legislation and the structure of labour divides. Thus, our analysis moves away from country-level analyses which have argued that collective bargaining institutions and unions are in hopeless decline (Baccaro and Howell, 2017) and destined to cover only the (shrinking) core workforce (Palier and Thelen, 2010). By taking into consideration sector-specific power dynamics – especially in relation to associational power – and national-level developments, we show that, under the conditions discussed above, unions can re-build encompassing sectoral collective bargaining structures even in times of liberalization. The importance of associational power and labour strategies at sectoral level seems also to be supported by evidence of cross-sectoral variation in both countries. In Italy, the metal collective agreement is one of the least restrictive of employers' use of agency work, while collective agreements in other sectors kept restrictions even after labour market deregulation (e.g. the banking and electricity sector have a quote of respectively 5% and 9%, see Tiraboschi and Tomassetti, 2014). In Germany, collective agreements on agency work were only concluded in few other sectors beyond metalworking where labour is strong and unite (Jaehrling et al. 2016: 46). Thus, this article contributed to broader debates on the role of labour in increasingly dualized and deregulated labour markets, showing its centrality in processes of institutional change and in reconstructing solidaristic institutions (Doellgast et al., 2018).

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**Online appendix**

	Germany	Italy
National confederations	1	2
Unions in the agency sector	Do not exist	7
Unions in the metal sector	16	17
Workers' representatives in metal companies	23	7
Total	40	33

**Table 1. Negotiated regulation of agency work in Germany and Italy**

Germany	Italy
<p>1996-2006</p> <p><b>Employment conditions</b> Sectoral and workplace level (agency): lower wages than direct employees</p> <p>Workplace level: some agreements setting equal pay.</p> <p><b>Limits to employers' discretion</b> Sectoral level: none</p> <p>Workplace level: in some companies, agency work used as a buffer; in other companies, quotas and transition rules</p>	<p>1998-2002</p> <p><b>Employment conditions</b> Law: equal pay</p> <p>Sectoral level (agency): additional benefits (e.g. income support and further training)</p> <p><b>Limits to employers' discretion</b> Sectoral level (metal): quota (8%) and definition of the cases in which agency work can be used</p> <p>Workplace level: some agreements setting transition rules</p>
<p>2007-2015</p> <p><b>Employment conditions</b> Sectoral level: sectoral bonuses (metal); minimum wage (agency)</p> <p>Workplace level: over 1,200 agreements setting equal pay</p> <p><b>Limits to employers' discretion</b> Sectoral level: strengthening of codetermination rights and transition rule after 24 months</p> <p>Workplace level: over 1,200 agreements setting quotas and transition rules</p>	<p>2003-2015</p> <p><b>Employment conditions</b> Sectoral level (agency): strengthening of the benefits</p> <p><b>Limits to employers' discretion</b> Sectoral level (metal): quota lifted (2004); requirement to specify the reasons for hiring agency workers progressively relaxed (and removed in 2014); transition rule after 44 months (2008)</p> <p>Sectoral level (agency): transition rule after 42 months introduced (2008) and then lifted (2014)</p> <p>Workplace level: over 1,000 agreements defining quotas, conditions for hiring agency workers, and transition rules</p>
<p><b>Trajectory over the two phases</b> Employment conditions: ↑ Limits to employers' discretion: ↑</p>	<p><b>Trajectory over the two phases</b> Employment conditions: = Limits to employers' discretion: ↓</p>