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German capitalism and migrant work in meat. How COVID allowed to break the path-dependent labour exploitation

Abstract

Major COVID-19 outbreaks in slaughterhouses brought the extent of migrant labour exploitation in the German meat sector to the limelight. Adopting a historical-institutionalist perspective, we argue that the COVID-19 pandemic marked a critical juncture for migrant workers, albeit with highly contingent effects. Only in the meat sector could political salience enable a far-reaching policy response. By contrast, precisely to avoid any broader effects of the pandemic in terms of food supply, the social protection of seasonal workers was temporarily even lowered. While the reform's precise effects remain to be seen, our comparative case study shows that member states have regulatory options to shape the effects of European integration. We understand the reform resistance and path dependence of the meat sector in the context of German capitalism's export dependence. While undervaluation in the Euro regime is normally discussed as cause for wage restraint, underpaid migrant work as analysed in this paper appears as an additional explanation.

Keywords: Capitalism, Europe, Germany, institutionalism, low-wage employment, path-dependence

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1. Introduction

The poor working conditions of migrant workers in Germany were well-known and criticised for years, but brought to the limelight when the pandemic first hit Germany in spring 2020. Migrant workers were repeatedly at the heart of COVID "hotspots" and, thus, the pandemic was a "big reveal" (McNamara & Newman 2020; Ban et al. 2022). Precarious working conditions and mass accommodation were identified as driving up infections, e.g. in logistics centres (Tagesschau, 2020, May 25), among seasonal workers (Süddeutsche Zeitung, 2020, August 8), or in meat plants. Most famously, 1.500 workers tested positive in the plant of Germany's largest meat firm Tönnies in June 2020 (New York Times, 2020, June 25).

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Just one month later, the German government proposed a far-reaching legislative act to improve the enforcement of occupational health and safety measures, which was quickly adopted and entered into force by January 2021.

What might appear as a straightforward political response to a pressing problem at first sight (Neslen & Mears, 2020), is puzzling in at least two respects. First, the reform seeks to tackle abusive working conditions which were known long before the outbreak of the pandemic (Wagner & Refslund, 2016), but persisted previous reform attempts (Blauberger & Schmidt, 2022). Secondly, the new rules apply specifically to the meat industry, even though similar exploitative practices are known from other sectors, which had also witnessed severe COVID outbreaks.

To address these puzzles, we draw on a larger research project on atypical work in the European Union (EU), involving the analysis of legislative documents and interviews with stakeholders. Our argument proceeds in three steps. First, we situate the recent reform in the broader historical context of the transformation of German capitalism and its meat sector in particular. Institutional change is rarely radical, but often incremental and path-dependent (Streeck & Thelen, 2005). Widely acknowledged, German capitalism has undergone a transformation process and, based on restrictive wage policies and low fiscal spending, driving German export dependence to new heights (Scharpf, 2021). Much less attention has been given to an additional explanation for wage restraint, which is at the centre of our analysis: underpaid migrant work. Secondly, we show how the EU's enlarged single market provided the perfect opportunity structure for German meat producers to benefit from underpaid migrant work. The institutions of the German meat sector developed in a highly path-dependent fashion and made the industry aptly suited to profit from the wage differentials accompanying Eastern enlargement. This was facilitated because the German administration never sufficiently managed to control the adherence of companies to the complex rules on working conditions. Once political attempts to counter abuse grew, the industry structure was already set-up in a way that it mastered sufficient options of arbitraging rules to circumvent the stricter regime. Third, we argue that the early phase of the Covid pandemic was a critical juncture (Capoccia & Kelemen, 2007) for underpaid migrant workers in Germany, i.e. a moment of opportunity for potentially path-breaking reform, albeit with highly contingent effects. In the meat sector, large Covid outbreaks and infection control measures caused significant negative externalities for the general public such as regional lockdowns (Ban et al., 2022), opened a policy window for reform entrepreneurs (Möck et al., 2022), and also hampered opponents' attempts at preventing or watering down legislation. By comparing the meat sector to seasonal work, however, we show the peculiar circumstances, under which the critical juncture of Covid allowed actual policy change. In sectors such as seasonal work with similar exploitative practices and large Covid outbreaks, but without the same externalities for the general public, the pandemic was even used to reinforce pre-

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existing structures of exploitation and to justify deteriorating working conditions (Bogoeski, 2022).

The article is structured as follows. In the next chapter, we theorise institutional change from a historical-institutionalist perspective, generally expecting a prevalence of incremental and path-dependent change, but only exceptional and contingent instances of path-breaking change. On this basis, we lay out under 3) the sectoral characteristics of the German meat industry, showing how the combined conditions of the late introduction of a German minimum wage (in 2015) and a complex administrative structure facilitated Germany's development into a major meat exporting country, building on the path-dependence of the sector's institutions. The underlying exploitation of precarious work has long been known, but previous reforms largely failed. The recent reform, analysed under 4) appears different – too high has been the pressure on the German government to enact real reforms. Given challenges in court, it remains to be seen whether the reform can serve as a critical juncture to change the path dependence of the sector. The comparison with seasonal work shows that the reform of the meat sector is unlikely to have a signalling function for other sectors. For German export-dependent capitalism, the exploitation of low-skilled migrant work for services and some kinds of exports are likely to remain important and, we conclude, scholarship on the consequences of the fundamental freedoms for coordinated economies should pay more attention to the exploitation of the wage differential after Eastern EU enlargement.

2. Path-dependent institutional development in German capitalism

The German legislative reform raises intriguing issues about institutional continuity and change that have long occupied historical institutionalists (Streeck & Thelen 2005). At first glance, exploitative working conditions have a long tradition in the German meat industry and path-dependency explains their persistence against all reform attempts, while the pandemic was an external shock, i.e. the critical juncture that triggered sudden and radical change. But historical institutionalism has more subtle insights on offer that help us to understand better the development of the German meat industry and its recent reform.

As a *first* refined historical-institutionalist insight, Streeck and Thelen remind us that path-dependent and only incremental adjustments may nevertheless add up to transformative change (Streeck & Thelen, 2005, 9). Thus, behind a striking continuity of abusive working conditions, the German meat sector underwent a major transformation over the last two decades. This sectoral transformation was in line with the more general development of the German economy towards export-led growth since the establishment of the European Economic and Monetary Union.

In his seminal characterisation of German capitalism, Streeck (1997b) points to the following comparative features after German unification: 1) Politically instituted and socially regulated markets, embedded in a welfare state. 2) Firms are

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social institutions, often in private ownership instead of on the stock exchange. Collective bargaining and co-determination are as much a characteristic as employer investments into skill-development. 3) The state is an enabling state that is inhibited from being interventionist by its federal structure and its fragmented horizontal sovereignty with, for instance, the independent Bundesbank. 4) Widespread associative governance uniting competitors and strengthening egalitarianism in the context of corporatist self-government as a central element of "Soziale Marktwirtschaft". 5) Traditionalist economic culture characterised by a long-term orientation and a vocational training system.

Many of these traditional features depended on the "closed" nature of the German system, forcing firms, for example, to collaborate in associations, rather than "free-riding" on collective efforts and going it alone. Streeck (1997a) coined the term "beneficial constraints" to account for the fact that apparently inhibiting regulations actually enabled competitiveness. The enforcement of the four fundamental freedoms in the EU's internal market, that increasingly gained force during the 1990s, put pressure on the system, facilitating, for instance, to avoid rules of co-determination (Höpner, 2018).

The introduction of the Euro, similarly, had far-reaching implications for the German economy. The common currency significantly strengthened the export-dependence of the German economy. Scharpf shows how the single interest rates of the Euro had very unequal effects across different member states between 1999 and 2008. Germany increased its exports by 62.46 %, much more than other member states, and its imports by 42.86 %. Compared to the other large economies France and Italy with exports around 30 % of GDP, Germany stands slightly above 45 % in 2015 (Scharpf, 2021, 171–178). In their analysis Baccaro and Pontusson (2016) characterise the German economy as following an export-driven growth regime. Wage restraint and the undervaluation due to the Euro regime are an important explanation for growth relying on exports (Scharpf, 2021, 179–180), and not so much "the conventional view of Germany's export success as based on high value-added, high productivity, and superior quality" (Scharpf, 2021, 189). Export-led growth requires workers, and the EU's free movement system secures supply, driven by significant wage differentials after Eastern enlargement.

As we show in the next section, in addition to the undervaluation caused by the Euro-regime, the exploitation of labour mobility allowed export-driven growth in the meat sector. Particularly the EU's freedom to provide services facilitates employment under the conditions of the home countries. The German meat sector had institutional preconditions positioning it to benefit from the combination of EU legal possibilities and economic conditions resulting from Eastern enlargement. Low wages offered by Eastern enlargement served as positive feedback. Path dependency implies not only that history matters, but that actors are socialised into institutions guiding their preferences.

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As a *second* lesson from historical institutionalism, Capoccia and Kelemen forcefully argue that critical junctures are situations of high contingency, i.e. they provide opportunities for path-breaking change, but opportunities may also pass unused and result in a restoration of pre-existing paths (Capoccia & Kelemen 2007, 352). Thus, the pandemic was indeed an enormous external shock for the German meat industry – and for many others. Taken in isolation, however, it is insufficient to explain why the German legislator used this critical juncture to tackle exploitative working conditions only in the meat sector.

Two recent contributions have already greatly enhanced our understanding of how the reform concerning the German meat sector became possible during the pandemic. Möck et al. (2022) show from a multiple streams perspective how Covid outbreaks opened a "policy window", which allowed reform entrepreneurs to set the problem of working conditions in the meat sector on the agenda and to push for policy solutions that were not politically feasible before. In a similar vein, Ban et al. (2022) describe the Covid outbreaks as a "perfect storm", which enabled an advocacy coalition to frame the problem as a "public health issue" and, thereby, effectively push for the reform of working conditions in the German meat industry. Our analysis adds a comparative dimension to these findings, highlighting that the critical juncture of Covid led to path-breaking change in the meat sector, while reinforcing the path of exploitation of seasonal workers. Whereas the health framing of the meat-sector reform resonated broadly with the German public, a very different framing of securing food supply prevailed in the case of seasonal workers, leading to continuity rather than path-breaking change. We begin by elaborating the first argument on the incremental, yet transformative change of German capitalism and turn to the second argument on the contingency of critical junctures when comparing Germany's COVID responses concerning the meat sector and seasonal workers in section four.

3. The path-dependent development of the German meat sector to migrant labour exploitation

Institutional change brought by the internal market's four freedoms confronts very different institutional conditions in different member states. Far from triggering parallel economic developments across member states, depending on institutional fit or mismatch, quite different developments follow (Giuliani, 2003). The German meat sector could capitalise on cheap Eastern European labour possible under EU law in a way that allowed it to outcompete companies in neighbouring member states, making it into a main exporter of pork (Wagner & Hassel, 2016b, 2).

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3.1 A long tradition of cheap migrant labour and complex administrative control

Germany could profit more than other member states from the wage differentials of Eastern enlargement, given the characteristics of its meat sector, where slaughterhouses had a tradition of subcontracting services, and, from the late 1980s problems of labour supply were answered with contingency contracts and bilateral agreements with other European countries (Wagner & Hassel, 2016b, 8). In addition to this tradition of cheap migrant labour in the meat sector, control and enforcement of workers' rights has always been complex in German cooperative federalism, where typically the Länder and municipalities are responsible for implementation but also enjoy significant degrees of freedom how to organise their administration (Article 83 of the Basic Law). The relevant system of administrative control relies on the Länder implementing the labour protection code, including the establishment of administrations and administrative procedures (Article 83 and 84 I Basic Law), in close cooperation with the trade associations acting as statutory accident insurance providers. Since 2003, in addition, the FKS (Finanzkontrolle Schwarzarbeit, Fiscal Control of Black Market), enforces as part of federal customs the provisions of posted workers and minimum wage as well as combating illicit work. In German administrative federalism, cooperation with a federal bureaucracy is unusual (Seibel, 2016). Accordingly, it has been difficult for the FKS to find its place within the established system of Länder cooperation. Lastly, the federal states committee for labour protection (Länderausschuss für Arbeitsschutz und Sicherheitstechnik (LASI)) coordinates the activities of the Länder administrations, social partners, and accident insurers (Deutscher Bundestag, 2020b, p. 2). The structure implies some heterogeneity in the way administrative control is organised. Successful controls of premises require information exchange with different Länder authorities – and different IT systems. Bringing this complex administrative system to work efficiently takes time – and this time was beneficial for the major meat companies to perfect their system of profiting from cheap labour.

3.2 Path-reinforcing EU enlargement

Eastern enlargement in 2004 allowed a far-reaching transition, building on the sector's institutional structure and cheap labour, helped by a relatively weak union, and the lack of a minimum wage in Germany. A concentration process almost halved the number of companies between 1999 and 2014 (from 16,359 to 9,137); turnover grew by 77 %, but the number of jobs under German social security declined by 23 % (Bosch et al., 2020, 4). There are no reliable figures on the growth of subcontracting. As for posting, Wagner and Hassel (2016b, 8–11) estimate that these made up 38 % of workers in meat processing in 2012. Workers in regular employment earned about 80 % more than those employed by subcontractors (Wagner & Hassel, 2016b, 11). In 2017 Germany was the largest exporter of pork, but it has

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fallen to third place in 2020, with Spain taking the prime place (Weltexporte, 2021).

In the concentrated meat industry, the largest four players (Tönnies, Vion, Westfleisch and Danish Crown) are responsible for 60 % of pig processing, with Tönnies slaughtering a third of all pigs (Kuhlmann & Vogeler, 2020, 5). In the course of this development, companies relocated from neighbouring countries into Germany. Before a minimum wage was made binding in 2015, wages were reported to be as low as EUR 3, with up to 60 hour working weeks. Belgium even lodged a complaint with the European Commission accusing German of social dumping (BBC, 2013, September 4).

To understand the impact of the European Union's legal regime, different categories of labour migration need be distinguished. The free movement of labour allows EU citizens to be employed in any member state under the same conditions as national employees. The same holds for the freedom of establishment, which however has been abused for bogus self-employment, allowing to evade binding wage- and labour regulations. The free movement of labour and the freedom of establishment both follow the rules of the member state of activity, so that it should make little difference whether natives or EU citizens are economically active.

For exploiting wage differentials in the enlarged internal market, the freedom to provide services has been most problematic. The cross-border service provider is regulated according to the home country, where social insurance and taxes are paid, but service provision takes place in another member state, resulting in significant challenges for administrative cooperation, pressure for domestic institutional change, and room for arbitrage possibilities (Arnholtz & Lilli, 2019). For posted workers, there was no transitional period after Eastern enlargement different to the free movement of workers. While binding rules, such as a minimum wage, apply to posting (Rush Portuguesa, C-113/89), the lack of a German minimum wage allowed paying very low wages. Because the administration of the home member state controls whether posting-companies abide to all relevant rules; administrations in the host country are limited in their possibilities of inspection, if they do not engage in complex cross-border administrative cooperation (Rennuy, 2020). It need be mentioned that next to the freedom to provide services, three directives on posting detail the relevant rules (directives 96/71/EC; 2014/67/EU; 2018/957/EU).

Several sectors were and are particularly impacted by the posting of workers: next to construction and the meat industry, in-house care for the elderly, road haulage, and, more recently, parcel services and logistics. In this paper we focus on the transformation of the German meat industry, but the fact that meat industry is not exceptional is important to keep in mind, as it is a main problem when we turn to the recent reforms in Germany.

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3.3 A long list of unsuccessful attempts to improve labour conditions

The dismal conditions in the German meat industry did not go unnoticed. Domestically, there were several, almost continuous initiatives over the years to ameliorate the conditions. The failure to improve working conditions in the German meat sector, therefore, can only partly be explained by a lack of political will (Hassel et al. 2016). In addition, administrative control and enforcement proved elusive as large meat producers always found new ways of circumventing existing rules (Blauberger & Schmidt, 2022). In order to demonstrate that COVID proved indeed a critical juncture, we will go into some details about these attempts.

In 2007, saw the first – failed – initiative for a sector-specific minimum wage. Only when the general minimum wage was on the horizon in 2014, the sector agreed on 7,75 €. Moreover, the four big players set up a voluntary codex covering, amongst others, the quality of accommodation, to be controlled by public accountants, but only few companies signed the agreement (Bosch et al., 2020). As many subcontractors failed paying the sectoral minimum wage, another voluntary codex was signed in the fall of 2015 by the six largest companies after the federal ministry for economic affairs had threatened action. Part of the agreement was that from mid-2016 onwards the companies would only host workers being employed and subject to social security in Germany. Interestingly, the requirement of employing under German law hardly changed the proportion of workers directly employed in the companies taking part (only +2 %) (Bosch et al. 2020, 9). Once the minimum wage was introduced, subcontracting remained relevant but the number of workers subject to social security in Germany rose by 13 %, with posted work declining. The proportion of foreign workers being regularly employed in the meat sector grew from 9.2 % in 2008 to 28.2 % in 2018 (Bosch et al., 2020, 10).

The continuation of subcontracting allowed employers many possibilities to circumvent the minimum wage, by imposing over-time, levying exaggerated cost for lodging as well as work utensils, for instance. Wages rose only very moderately, despite the decline in posting (Bosch et al., 2020, 11–12). In view of this development, in mid-2017 a new law instituted a general contractors' liability in the meat industry with possible fines reaching 50,000 €, requiring to record social-security payments as well as daily working time. Tellingly, the reform was agreed on in secrecy, for fear of the politically influential major meat companies (Kuhlmann & Vogeler, 2020, 7; Bosch et al., 2020, 12). Despite some improvements (Bosch et al., 2020, 13, 15), controls of the largest 30 meat companies in North-Rhine Westphalia in 2019 nevertheless revealed almost ubiquitous violations of regulations (MAGS, 2020).

A 2020-report of the European Federation of Food Agriculture and Tourism Trade Unions comparing the situation in slaughterhouses for several countries showed that German meat companies were largely able to keep their competitive edge in the employment of East Europeans thanks to the established practices of sub-

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contractors (EFFAT, 2020b). Though workers were employed under German law and posting declined, dependence remained high: subcontractors employed persons in their home countries, organised transport as well as accommodation, did not inform of rights and labour standards under German law, and workers lacked German language. Moreover, on-site controls of labour conditions were rare, to say the least.

4. Lex Tönnies: exiting the path of labour exploitation only in the meat industry?

Against this background of highly path-dependent institutional conditions that successfully blocked reform attempts, the scope and speed of Germany's legislative response during the pandemic are surprising. In the following, we briefly present the cornerstones of the reform of working conditions in the meat sector and contrast them with measures concerning seasonal workers, adopted almost simultaneously, but reducing their level of social protection. We argue that the outbreak of the COVID-19 pandemic was a critical juncture, with highly contingent effects: whereas working conditions in meat plants became a matter of general public interest in the fight against the pandemic, COVID-19 outbreaks among seasonal workers were less perceived as a public health problem, but as a challenge to secure food supply. In addition, attempts to ameliorate the conditions in the meat sector had a long, and unsuccessful history, while the conditions of purely temporary seasonal work had never stood in the limelight. Finally, more than two years after its entry into force, we ask whether the reform of working conditions in the meat sector actually managed to exit the path of labour exploitation.

4.1 The Occupational Safety and Health Inspection Act

The "Occupational Safety and Health Inspection Act" ("Arbeitsschutzkontrollgesetz") was introduced at high speed, shortly after the Tönnies incident reached its climax in June 2020. The draft bill was registered by the Bundesrat, the upper house of the German parliament representing federal states, on 7 August 2020 as a bill of exceptional urgency according to Article 76 (2) of the German Basic Law, leading to its first reading in the Bundestag, the lower house of the German parliament, before the adoption of the Bundesrat's position in September. Since the Länder implement federal laws, their voice is crucial to good policymaking. In its assessment, the German National Regulatory Council criticised that the preparation of the bill was "another negative example for the increasingly common practice to ignore deadlines for important political projects" (Deutscher Bundestag, 2020a, Annex 2). Minor changes were introduced by the Bundestag, and the law could enter into force as originally planned by 1 January 2021.

The reform is an omnibus law, introducing changes to several pieces of existing legislation. Regarding labor protection, it obliges regional authorities to inspect work-

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place conditions in a minimum of 5 % of resident enterprises per year from 2026 onwards, raises the fines for infringements against the law on working hours, and establishes a new federal commission attached to the Ministry of Labour and Social Affairs to assist in questions of occupational health and safety. It also establishes stricter standards for group accommodation of employees. These general provisions on labour protection attracted relatively little attention during the legislative process. But the core of the reform bill concerns only the meat sector.

An amendment to the "Act to secure employees' rights in the meat industry" (Gesetz zur Sicherung von Arbeitnehmerrechten in der Fleischwirtschaft, GSA Fleisch) requires the electronic recording of working hours to prevent the evasion of German minimum wage rules. Most importantly, the law prohibits both contracts for services and temporary work in the meat industry, starting in 2021. The prohibition of temporary work, used to compensate seasonal peaks, was highly contested, and meat producers managed to extract very limited exceptions. But in general, meat firms have to hire directly all employees in the core areas of slaughtering, butchering and processing, allowing clear responsibilities, which facilitates control next to integrating large parts of formerly excluded workers in channels of interest representation.

In sum, both its speed and its sector-specific approach make the reform extraordinary. The government praised it as the "end of irresponsibility" in the meat industry (BMAS, 2020b); it was welcomed as a "historic milestone" allowing to "reorganise the entire industry" by trade unions (NGG, 2020a), and criticised as being "unbearable", "illegal" and as "strangulating" many businesses in the German meat industry by its opponents (AWZ, 2020). Several meat companies addressed the Constitutional Court seeing their basic right to professional freedom violated through the reform (BVerfG, 2022). Before explaining this extraordinary reform process, we contrast it with measures regarding seasonal work.

4.2 The social-security exemption for seasonal workers

Precarious working conditions of seasonal workers resemble those in the meat sector in many respects – including hard physical work at low wage levels, short-term contracts, group accommodation, a large share of migrant workers – and have also been known before the pandemic. In Germany, trade unions and like-minded actors established the "Initiative faire Landarbeit" in 2016 to improve the working conditions of seasonal workers. Their annual reports repeatedly highlighted similar problems also known from the meat sector: untransparent and incorrect working time records, unjustified wage deductions for equipment, alimentation and accommodation as well as enforcement deficits regarding labor protection (Initiative Faire Landarbeit, 2015). Strikingly, these similarities regarding exploitative practices were even acknowledged by opponents of the German reform in order to challenge the "discrimination" of the meat industry. During the legislative consultations on the

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Occupational Safety and Health Inspection Act, for example, the association of food industries argued that the meat sector's "parallels to seasonal workers regarding accommodation and working conditions" were "strikingly obvious, without any differences being observable" (VdEW, 2020, July 2020). What is more, severe COVID outbreaks among seasonal workers have been reported early on and throughout the pandemic, in Germany and across Europe (ETUC, 2020). And yet, the German government's response to the pandemic has been strikingly different concerning seasonal work.

Most importantly, already at the end of March 2020, the German legislator adopted the "Social protection package I" (BMAS, 2020c) and, thereby, changed the rules for the marginal employment of seasonal workers. Initially limited until October 2020, the new rules allowed agricultural producers to employ seasonal workers as "marginal employees" exempted from social-security contributions for up to five months or 115 days (instead of 70 days in normal times). This social-security exemption was renewed in 2021 and allowed marginal employment of seasonal workers for up to four months or 102 days until October 2021 (BMEL, 2021). The rationale of this reform as a COVID response (and its inclusion in a law entitled "Social Protection package") is not self-explanatory as it affirms exploitative employment relations in the agricultural sector and further weakens the social protection of seasonal workers. Originally, the social-security exemption was meant to facilitate marginal employment e.g. of students as seasonal workers during their summer holidays, but not as a form of primary employment. Already before the pandemic, however, this provision was used by agricultural producers to save social-security contributions by simply replacing seasonal workers after 70 days (Bogoeski, 2022). The temporary extension to 115 days in 2020 and 102 days in 2021 basically endorsed this practice. Thanks to the extended social-security exemption, it was argued, seasonal workers could be employed for a longer period in these challenging times for agricultural businesses, which reduced mobility and the risk of infections (BMEL, 2020).

Opponents of these measures from the political left criticised this justification and argued that high fluctuation and mobility of seasonal workers could have been reduced more effectively by employing them under fair working conditions for the entire season rather than stretching the rules for marginal employment (Deutscher Bundestag, 2021, 28552). But social democrats (SPD) in parliament voted for the reform as a matter of loyalty to the governing coalition with the conservatives (CDU/CSU), while opposing it verbally (ibid: 20550). Already in normal times, the social-security exemption rested on questionable premises, which became even more problematic during the pandemic. The condition that marginal employment must not be the primary employment of a worker is difficult to control in practice and partly unrealistic, if many seasonal workers are otherwise unemployed and depend on seasonal work as an important part of their annual income (Bogoeski, 2022). This fiction of a mere extra income for seasonal workers gets even more

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implausible if "marginal" employment is extended to five months per year. As a consequence, the assumption that seasonal workers do not need "additional" social and health insurance since they are already sufficiently protected through their primary employment is hardly sustainable. Instead, extended periods of marginal employment left seasonal workers particularly vulnerable during the pandemic, for instance if there was no health insurance, and reduced future pension entitlements (DGB, 2023, February 15).

In addition to the social-security exemption, other measures in response to COVID further weakened the protection of seasonal workers. Among its "Corona relief measures", the German Federal Ministry of Food and Agriculture also listed the temporary flexibilization of working-time rules, including higher maximum-working hours and lower minimum-rest periods, as well as a suspension of certain requirements for temporary employment (BMEL, 2020). As a consequence of these measures, combined with labour shortages during the pandemic, seasonal workers described their working conditions in 2020 and 2021 as even more exhausting than usually (Initiative Faire Landarbeit, 2021). Trade unions criticised insufficient labour inspections and reported about limited access to seasonal workers through trade union representatives and advisory centres, often justified by COVID restrictions (ETUC 2020, p. 7). Finally, problems that were already known before the pandemic – such as crowded group accommodation or lacking health insurance of many seasonal workers – were not solved, but even aggravated due to the pandemic (Initiative Faire Landarbeit, 2022).

In sum, as in the meat sector, seasonal workers were affected by COVID outbreaks in the early phase of the pandemic and subject to important legislative reforms in response to the pandemic – but these legislative changes took a very different direction by temporarily lowering the social protection of seasonal workers. We now turn to the question what explains these different reform trajectories across sectors.

4.3 Explaining different reform trajectories

The early phase of the COVID pandemic was a critical juncture, i.e. a relatively short period of time in which political actors had an opportunity to promote institutional change (Capoccia & Kelemen, 2007, 348). By late February 2020, the pandemic had become the all-dominant political issue in Germany and any other issue linked to the pandemic received much greater public attention than it would have attracted in pre-pandemic times. Early outbreaks of COVID-19 clustered among migrant workers were a cause of concern across Europe and shed a spotlight on the working conditions in the meat (EFFAT, 2020b) and agricultural sectors (EFFAT, 2020a). The German legislator used the opportunity to pass a potentially path-breaking reform of labour regulation in the meat sector, while reinforcing existing practices of exploitation of seasonal workers – despite broad similarities between the two sectors and the shared Covid context: their reliance on cheap

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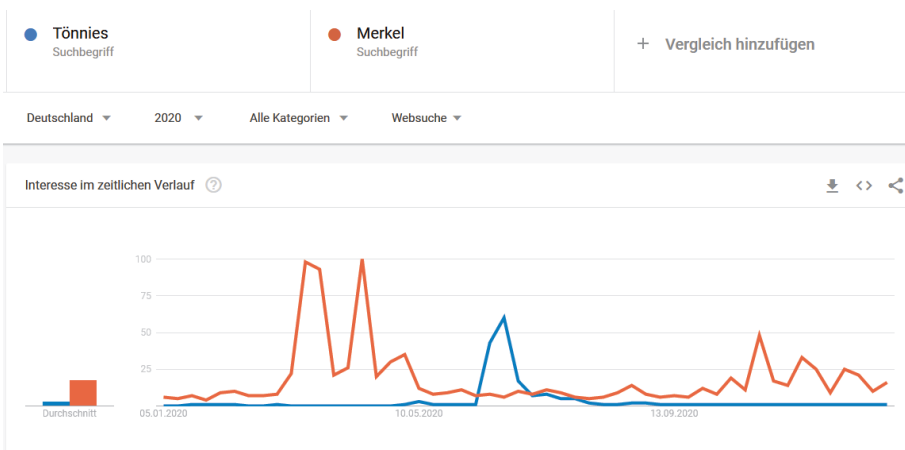
migrant labor, the power asymmetry between large food producers and weakly organised workers, their affectedness by clusters of COVID outbreaks, the primary responsibility of the same ministry (labour and social affairs) for the drafting of the reforms and their justification in terms of health protection.

As we will show in the following, however, only the fight against COVID clusters in meat plants spilled over to the general population and turned working conditions in the meat sector into a matter of great public interest. Once the issue had become salient, interested political actors could draw on the long history of (previously unsuccessful) reform proposals for the meat sector and frame the reform as a necessary measure in the fight against COVID. By contrast, COVID outbreaks among seasonal workers never raised the same level of public concern and were mainly perceived as a problem of labour supply and food security.

Figure 1: German google searches for "Merkel" as compared to "Tönnies" in 2020



Source: google

In Germany, several clusters of COVID infections in meat plants were reported from different regions (EFFAT, 2020b, 7) already in May 2020 and led the federal government to publish a "Working programme" concerning labor protection in the meat sector on 20 May 2020 (BMAS, 2020a). Public attention for the issue reached an unprecedented level after the Tönnies incident with 1.500 infected workers in June 2020. A simple comparison of German google searches for "Tönnies" and chancellor "Merkel" illustrates this point (Figure 1). While not reaching the levels of searches for Merkel when she addressed the public in a historic televised speech on the pandemic (18 March 2020) and when announcing the first easing of restrictions (15 April 2020), searches for Tönnies exploded around the end of June 2020.

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The sheer number of infections in meat plants partly explains the public attention for working conditions in the sector. Due to the Tönnies incident, Germany as a whole reached a new record level of average daily cases per 100.000 inhabitants in the second half of June (Interview 3). Even more importantly for explaining the extraordinary salience of the issue, however, the measures following the Tönnies incident to contain the pandemic significantly affected the broader public (cf. Ban et al., 2022). Although clusters of infections were largely confined to the local workforce inside slaughterhouses, safeguard measures in response to the outbreaks went further. Eventually, the Gütersloh and Warendorf regions with 640.000 inhabitants faced the stigma of travel restrictions throughout Germany just at the beginning of their summer holidays and a renewed temporary lockdown similar to the earliest phase of the pandemic in March 2020. A hearing in the parliament of North Rhine-Westphalia on 24 June 2020, the day the regional lockdown entered into force, illustrates the heated atmosphere: a representative from the business-friendly liberals (FDP) blames the "system Tönnies" for its irresponsibleness and expresses sympathy for the public anger against the enterprise, which had risked public health and even lives; the conservative minister responsible for labor and social affairs Laumann (CDU) gets reprimanded for his vulgar language when talking about Tönnies (Landtag Nordrhein-Westfalen, 2020, 37, 45–47). Similarly, during the plenary debate of the German Bundestag on the reform bill, one supporter refers to the lockdown measures after Tönnies to argue that "the neighbours of the meat industry were quasi being held hostage" (Deutscher Bundestag, 2020c, 21662).

The extraordinary salience of the issue in the context of the pandemic and after the Tönnies incident was also widely acknowledged during parliamentary debates before and during the legislative reform. Minister Laumann from North Rhine-Westphalia drew one positive conclusion from the parliamentary hearing in June 2020: "The Tönnies affair has one advantage. I believe we now have the majority for legislative changes and this is what we have to do" (Landtag Nordrhein-Westfalen, 2020, 45). During the first reading of the reform bill in the Bundestag, German Minister of Labour and Social Affairs Hubertus Heil, introduced his intervention by stating: "The corona crisis has bluntly exposed these grievances. I have to say personally: it is awful that it required a pandemic for that to reach the public awareness" (Deutscher Bundestag, 2020c, 21648). Critics either blamed the Minister for acting too late, having "known the catastrophic working conditions in the meat industry for long" and only "awakening from deep sleep" due to the pandemic (ibid: 21650, 21654), or for premature activism, accusing the reform of constraining thousands of firms due to a mere "Tönnies complex" (ibid: 21665). One news article suggested a "Fukushima effect" (cited in Erol & Schulten, 2021, 2) and drew an analogy to the nuclear disaster, which had led chancellor Merkel to fundamentally change her government's energy policy in the immediate aftermath. All our interview partners agreed with the statement that the reform bill, even

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though drawing on extensive preparations preceding the pandemic, would have been hardly conceivable without the Tönnies incident.

Finally, in this context of extraordinary public attention, initial opposition to the reform proposals remained strikingly weak. In the past, the meat industry had been very successful in preventing stricter regulation of working conditions. Facing the risk of further public backlash after the Tönnies incident, however, large German meat producers announced far-reaching changes seemingly in line with the government's proposals. For example, only a few days after the imposition of the Gütersloh lockdown, Tönnies promised to rely only on direct employees instead of contracted workers in its core businesses as of 1 January 2021 and to improve the housing conditions of its employees (Tönnies, 2020, June 2020). Tönnies' main competitors followed with similar announcements (NTV, 2020, June 23) and the head of the association of food industries declared in an interview that contracted work would be generally phased out in core areas of meat production until 1 January 2021: "Thereby, the meat industry recognises the societal discussion and sends a clear signal to consumers, social partners, commerce and politics" (Kühlcke, 2020). Union representatives, in turn, denounced these promises as mere tactics of large meat producers in order to appease public outrage and to pre-empt stricter regulation by voluntary self-commitment as in the past NGG (2020b).

Figure 2: German google searches for "Mamming" as compared to "Tönnies" in 2020

Source: google

By contrast, COVID-19 outbreaks among the workforce in other sectors did not trigger comparable consequences for the broader public. The largest cluster of COVID infections among seasonal workers in Germany occurred in the Bavarian town of Mamming in early August 2020. Two related outbreaks among seasonal

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workers and the employees of a canning factory involved 400 positive cases in a town of only 3000 inhabitants. Nevertheless, the general population in the town and surrounding areas was spared from the consequences of the outbreaks – no spillover of infections was reported and no specific regional measures to combat the pandemic were adopted. Instead, the affected vegetable farm was ring-fenced and the entire workforce of about 500 people was quarantined to keep the virus to a closed group of people (Süddeutsche Zeitung, 2020, August 4).

The Mamming incident is not only important because of the great number of infections, but because it illustrates more generally the German policy towards seasonal workers during the pandemic, which has been described as a "de-facto quarantine with simultaneous work opportunity" (Weisskircher et al., 2020). Working conditions of many seasonal workers remained precarious and health protection deficient (Mantu, 2020, 3), but the broader public was shielded from potential spillover effects. Already in normal times, migrant seasonal workers are particularly "dis-embedded" or even "isolated" from their host societies "as farms and accommodation facilities are physically far away from most places where social interaction occurs" (Bogoeski, 2022, 6). As a consequence, these working conditions never became a public matter of comparable salience as in the case of the meat sector (see also Figure 2 comparing google searches for the Tönnies and Mamming incidents).

Accordingly, political actors did not mobilise the issue of seasonal workers to the same extent as in the meat sector. Trade unions and left opposition parties (cf. Deutscher Bundestag (2020d) tried to push the working conditions of seasonal workers on the political agenda, but the government was able to keep public attention for its reforms concerning seasonal work at lower levels and partly reframed them in more popular terms. The decision-making process regarding seasonal workers during the early stages of the pandemic was described as one of backdoor politics between the ministry of agriculture and the farmers' association bypassing workers' representatives (Initiative Faire Landarbeit, 2020, 6; Interview 12). Legal changes for seasonal workers such as the extended social-security exemption were effectively hidden by attaching them to legislative packages with a different purpose – the Social Protection Package in 2020 and, even less intuitive and without any broader public debate, the fourth amendment of the Marine Fisheries Act in 2021. The latter was criticised by left opposition politicians as a "Trojan Horse" to hide the problematic extension of the social-security exemption (Deutscher Bundestag, 2021, 28551).

And when seasonal work and potential policy measures became a salient issue during the pandemic at all, public debate largely centred around the question of secure food supply, e.g. the issue of saving the asparagus harvest in face of labour shortages (BILD, 2020). In this context, the categorization of seasonal workers as "essential workers" rarely referred to the need for improving their working conditions, but was rather used as a justification to suspend COVID-related travel restrictions and

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safety measures and, thus, to even aggravate their situation (cf. Rasnaca 2020). Interview partners from German employment services admit their awareness of the unacceptable working conditions of many seasonal workers, but describe the prevalence of political concerns about securing labour supply at the time (Interviews 9 & 10). A qualitative analysis of the coverage of seasonal work in leading German online media during the pandemic concludes that workers hardly got a chance to speak for themselves: "Above all, employers speak: about the required labor force and sensitive vegetables" (Drexel, 2021, 22).

In sum, early COVID outbreaks among migrant workers meet all criteria of a critical juncture. The fact that political actors used the opportunity only in the meat sector to promote institutional change shows that the COVID outbreaks were only a necessary, not a sufficient condition. It was only when the German public was affected as well, that for a brief period with extraordinary public interest, the range of feasible policy options regarding labour regulation in the German meat industry has expanded significantly. In contrast to failed (self-)regulatory attempts of the past, the new law has significant potential to promote path-breaking change in this sector. And yet, we are cautious not to underestimate the forces of inertia.

4.4 The reform as a game changer in the meat sector?

Despite its far-reaching approach, it remains to be seen whether the reform succeeds serving as a punctuated equilibrium, breaking the existing path dependence of institutional conditions in the German meat sector. Now two years after its entry into force, the assessment of the reform shows mixed effects.

Two major changes triggered by the reform stand out. First, due to the prohibition of contracted and temporary work, many workers are now directly employed by the meat companies (WELT, 2020) and the reform has left no obvious loopholes for continued "organised irresponsibleness" (Erol & Schulten, 2021) vis-à-vis companies' own workers. The exemption for temporary workers is narrow enough that it cannot be used to simply replace contracted workers by temporary workers on a larger scale and without collective agreements. Yet, as the prohibition of contracted and temporary work covers only slaughtering, meat cutting and processing, companies can explore the grey areas outside this "core business". Still, the new rules establish a much clearer responsibility of meat companies for protecting their workers, the electronic recording of working hours makes abuses more difficult, companies have to ensure appropriate group accommodation, and administrative controls regarding direct employments face less hurdles than when subcontractors and posted workers are involved. Secondly, the reform has also led to an empowerment of workers' interest representation (Bogoeski, 2021). After several rounds of negotiations, social partners reached a collective agreement on a new minimum wage in May 2021, to bind the entire sector (Fleischwirtschaft, 2021). The reform's vetting of exceptional temporary employment only under the condition of an

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existing collective agreement spurred employers' willingness to negotiate. Moreover, chances increase also that EU migrants' interests are represented in the work councils at the company level, when they are directly employed (Götzke, 2022).

As for the legal challenges, the reform has been subject to different judicial contestations, regarding for instance the delineation of core business in the meat sector. The Constitutional Court, however, for the time being declined to take on the matter, on the one hand for formal reasons, and on the other hand because the companies had not addressed lower courts (BVerfG, 2022). It also argued that the question which companies are targeted or not will need more time and rulings for courts to clarify. Indeed, this is happening. At financial courts, who are responsible for adjudicating measures of the customs authority and hence the FKS, there have been several cases where meat processing firms asked for a notice of assessment for in how far their business-model is subject to the new restrictions.[1] Therefore, it remains to be seen whether the decision of the German legislator to employ a sector-specific approach is proportionate, withstanding judicial contestation.

And yet, the legislative reform alone will not suffice to leave the path of worker exploitation in the meat sector. To begin with, despite clearer responsibilities for meat companies, administrative control of worker protection remains insufficient. The new obligation for regional labour inspectorates to control at least 5 % of resident enterprises per year, translates into one control every 20 years on average. Given the fragmentation of control responsibilities between Länder-level institutions and the FKS at the federal level, exchange and cooperation between authorities remains challenging. Hence, it is crucial that EU migrants are informed about their workers' rights. Trade unions invest increasing resources into bottom-up information and consultancy in projects such as "Faire Mobilität" at the federal level or "Arbeit und Leben" at the Länder-level, aiming to compensate language barriers, low levels of education, and high turnover by raising the awareness about rights and access to legal remedies. Even if awareness rises, however, many workers are still kept from claiming their rights due to manifold dependencies. Importantly, as long as recruitment of workers in South-East Europe is still entrusted to the same actors, relying on the same networks, dependence persists. Workers sometimes have to pay back hiring fees to these 'brokers' from their first salaries and also rely on them e.g. regarding administrative formalities in Germany. While accommodation in Germany is said to have improved, its link to employment further increases employees' dependence. The significant wage differentials as well as high unemployment levels in home countries imply that many workers remain easy to exploit.

1 FG Hamburg, Beschluss vom 20.05.2021 – 4 V 33/21; FG Nürnberg, Urteil v. 20.07.2021 – BeckRS 2021, 22123; FG Münster, Beschluss vom 19.01.2022 – 8 V 3108/21 F; BFH Beschluss vom 10. Februar 2022, VII B 85/21

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5. Conclusion

In this article, we adopted a historical institutionalist approach in order to explain the evolution of working conditions in the German meat sector and their reform during the COVID pandemic. The path-dependent development of the German meat sector allowed companies to exploit the opportunities of the large wage differentials accompanying Eastern enlargement, particularly given the fact that there was no binding minimum wage until 2015. Germany became one of the largest exporters of pork in the course of this development. Recurrent criticism about the desolate working conditions resulted in different reform attempts, but it was always too easy for meat producers to circumvent the measures.
COVID, we argue, was a critical juncture, which made a more fundamental reform of the meat sector possible. The comparison with seasonal work shows, however, that high infection rates among migrant workers as such are insufficient to explain this reform. Rather, the severe consequences for the local population appear relevant and led political actors to push for the reform. Drawing on a long history of attempts to ameliorate working conditions in the meat sector, the new reform profited from the lessons of these attempts. COVID outbreaks in the context of seasonal work, where those affected could be easily isolated, did not rouse similar concern. To the contrary, the social protection of seasonal workers was even lowered during the pandemic in order to secure food supply.

It is still too early to say whether the reform of the meat sector can be enforced sufficiently, and whether it is legal to constrain the options of only one sector in this way, when COVID in other sectors is no reason for prohibitions. Depending on how the reform is adjudicated and its aims survive legal contention, the reform does show that member states have regulatory options to shape the effects of European integration and its single-market regime at the national level. At the same time, factors concomitant to the reform such as higher standards for animal welfare and agriculture, next to changed consumption patterns, contribute to relocation of the industry to other member states, notably to Spain.

We have situated our analysis in in the context of scholarship on the consequences of EU membership for German capitalism, suggesting it to pay more attention to the exploitation of the wage differential after Eastern EU enlargement. The Euro-regime has furthered the export-dependence of German capitalism, driven by undervaluation rather than quality products. The benefits of being able to draw on cheap migrant labour for services, not least transport and logistics, and exports, as our example of meat shows, have not been explored to this point (Höpner & Baccaro, 2022)

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Interview 2 via Zoom on 7 May 2021, workers' rights advisor.

Interview 3 via Zoom on 20 May 2021, trade unionist.

Interview 4 via Zoom on 28 May 2021, workers' rights advisor.

Interview 5 via Zoom on 16 June 2021, four officials from regional ministry of labour and social affairs.

Interview 6 via Zoom on 2 July 2021, meat business representative.

Interview 7, via Zoom, 29 November 2021, trade unionist.

Interview 8, via Zoom, 22 December 2021, workers' rights advisor.

Interview 9, via Zoom, 13 January 2022, offical from federal employment agency.

Interview 10, via Zoom, 18 January 2022, official from federal employment agency.

Interview 11, via Zoom, 21 January 2022, official from federal ministry of labour and social affairs.

Interview 12, via Zoom, 26 January 2022, workers' rights advisor.

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