

**From pressure for change to actual change:
How class actors' responses to labour migration shape
the trajectories of continuity and change in
employment relations institutions**

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Summary

This dissertation uncovers how pressure for change in the European Union (EU) open market is translated into actual change by explaining how employers' use of migrant labour, and trade unions' responses thereto, drive institutional developments in three areas central to the governance of work: collective bargaining, job security regulations, and workplace representation. Based on process-tracing case studies of the German manufacturing sector, the German, Norwegian, and Swedish construction and hotel and restaurant sectors, I trace how sectoral differences in the interactions between employers and trade unions trigger distinct causal processes that contribute either to institutional continuity or liberalization. The findings reveal that liberalization in Germany does not follow a single trajectory: while employers' and trade unions' responses to migrant labour in the manufacturing sector contribute to dualization, the responses in the construction and hotel and restaurant sectors instead contribute to deregulatory liberalization. I find that the class actors' responses in the Swedish construction and hotel and restaurant sectors, in turn, contribute to a third variety of liberalization – socially embedded flexibilization, whereas the actors' responses in the Norwegian construction sector trigger a process of institutional resilience creation, endeavouring to contribute to institutional continuity under high pressure for change. In capturing how individual employers through their use of migrant labour are pursuing non-politically controlled change strategies, this dissertation offers us the insight that employers' logic of action based on compliance with employment relations rules and practices is explicitly contested by the logic of action stimulated by the increased marketization generated through European integration. Aside from addressing the micro-level drivers of change resulting from the accumulated actions of individual employers, this dissertation also highlights the role of different labour supplies in enabling change processes to take place. It is argued that unless trade unions, as counterpart to employers, and nation states in their enforcement and legislative capacities create conditions that disable employers from non-compliance with existing institutions in their use of migrant labour, employers will follow the logic of action encouraged in the EU open market and use their access to migrant labour in ways that result in liberalization of the employment relations.

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Chapter 1

Introduction

1. Introduction

Over the last two decades, the establishment and expansion of the European Union's (EU) open market has created a new strategic space for political economic actors, with recent research suggesting that this space has opened new avenues for liberalizing employment relations institutions (Bernaciak (ed.) 2015). The market expansions in the 2000s entailed a drastic expansion of employers' recruitment base and led to considerable increases in labour and service mobility, with potentially far-reaching implications for the power relations between employers and workers in receiving labour markets.¹ In some economic sectors, such as the Norwegian construction sector, more than a six-fold increase in the number of foreign workers was recorded in the course of a few years following the expansion of the EU open market in 2004 (Statistics Norway), leading scholars to conceptualize the market expansion as a labour supply shock (Dølvik and Eldring 2008; Friberg 2013; Andersen et al. 2014a; Friberg and Hakkestad 2015).² While the EU open market has opened up new strategic space, it has also changed the conditions for political economic actors by increased marketization, from which intensified competition for both firms and workers has followed (Greer and Doellgast 2017). The changed conditions originating from free labour and service mobility in the EU open market have thus meant new opportunities as well as challenges for political economic actors, and generated pressure for change in EU countries with comparatively more organized and regulated labour markets as firms adapt to, and seek to cope with, the new market conditions (Lillie and Greer 2007; Höpner and Schäfer 2010; Andersen et al. 2014a; Dølvik et al. 2014b; Bernaciak (ed.) 2015). The employment relations institutions, that is, the institutions that regulate labour markets and power relations between employers and workers, stand at the frontline for exposure to this pressure for change.

¹ The market expansions referred to here are the accessions of new member states in 2004, 2007 and 2013. In 2004, ten new member states acceded to the EU; the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia. The 2007 enlargement included Bulgaria and Rumania, and the most recent enlargement in 2013 included Croatia in the open market.

² While Norway is not a member of the EU, it is part of the common market through the EEA Agreement since its establishment in 1994.

This introductory chapter first introduces, in brief, the argument advanced in this dissertation, clarifies the purpose that has warranted the study, and presents the empirical cases investigated. This is followed by a concise review of the literature on institutional continuity and change in the employment relations of the advanced capitalist political economies in focus – Germany, Norway, and Sweden – to make the point that in parallel with the increased use of migrant labour, the sphere of employment relations have undergone important institutional changes. Existing literature offers solid evidence that these national political economies have followed a general trajectory of change in the direction of liberalization, in one variety or another – with the common denominator that employer discretion has increased and a shift in the distribution of power and income from labour to capital has taken place. These developments have been particularly pronounced in Germany and Sweden, and less so in Norway. I then specify the research question that this dissertation sets out to answer, and explain how I have gone about answering it through process tracing (Beach and Pedersen 2016b). The chapter ends by introducing the structure of the dissertation.

1.1 The argument in brief

While the topic of labour and service mobility has been high on the research agenda over the last years, and existing literature has identified clear pressures for change originating from it, it remains unclear to what extent this *pressure* has translated into *actual* change in the employment relations institutions. Moreover, we are still left in the dark as to *how* increased labour and service mobility can contribute to ongoing processes of change in the employment relations institutions of advanced capitalist economies. In order to assess the extent to which the pressure for change has translated into actual change, and, conversely, how institutions for collective labour regulation can be maintained under conditions of free labour and service mobility in the EU open market – this dissertation theorizes how change originating from these developments occurs, focusing on potential impact on three core employment relations institutions that serve to distribute income between capital and labour, and that historically have served to limit employer discretion over the terms and conditions of employment; collective bargaining, labour legislation, and workplace representation.

The argument advanced in this dissertation is that the institutional impact of increased labour and service mobility in the EU open market depends on how employers and trade unions respond to it. This argument is based on the underlying understanding of institutional development as a dynamic process in which institutions evolve based on how they are used in practice (Streeck and Thelen 2005; Mahoney and Thelen 2010), grounded in action-based institutionalism (Mayntz and Scharpf 1995; Scharpf 1997; Streeck 2009; Jackson 2010), whereby the class actors using the institutions are placed at the centre of analysis. When attempting to study the causal effects of increased labour and service mobility, the first theoretical task must be

to disentangle what it is about these developments that actually have causal powers to change something.³ I argue that the causal power to trigger change lies in the hands of employers using the foreign labour to which they have been given access in the EU open market. This responds to a conceptual error that has been underlying – explicitly or implicitly – much of the existing research and political debates on the topic, and entailed a failure to identify the causal properties associated with the process of labour migration; I argue that attention needs to be directed away from migration and mobility per se, towards employers’ use of foreign labour supplies. It is employers’ access to different labour supplies that has the power to cause change, and the institutional impact of labour and service mobility is determined by how employers use this labour, and how trade unions respond to it, along with the contextual conditions established by the state that contribute to enhancing or limiting employers’ room for manoeuvre and the ability of trade unions to uphold their protective function (cf. Lillie and Greer 2007: 552-553; Dølvik et al. 2014a: 1; Andersen et al. 2014a: 89).⁴ As the broader developments in which these processes are taking place are defined by the shift in class power against trade unions, the state plays a key role in setting the context in which the power relations between employers and workers, and their representatives, play out (Baccaro and Howell 2017: 38). On the basis of this theoretical insight, employers – being the ones employing migrant labour – are recognized as dominant change agents in driving the processes of institutional development forward. Underlying the argument advanced in this dissertation is the claim that employers by accessing foreign labour supplies in the EU open market have wielded increased power over workers (see Friberg 2013: 82; Bernaciak 2014: 22, 2015: 15; Andersen et al. 2014: 87, 89 Dølvik et al. 2014b: 77), enabling them to challenge the institutions for collective labour regulation. Unless trade unions, as counterparts to employers, and the state in its enforcement and legislative capacities create conditions that disable employers from non-compliance with existing institutions in their use of migrant labour, employers will follow the logic of action encouraged in the EU open market and use their access to foreign labour to challenge the employment relations institutions, resulting in liberalization. This argument rests upon a power resources approach (Korpi 1983, 2006) that recognizes the inherently asymmetrical power relationship between employers and workers (Offe and Wiesenthal 1980), and, consequently, that the causal powers of employers to affect the development of the employment relations institutions are, in general, superior to those of organized labour. Institutional development is here understood as the outcome of an ongoing struggle between pressure from the side of employers, as self-interested capitalist actors, in their pursuit of survival and success in the market, on the one hand, and the demands for protection and compensation from labour, on

³ Causal powers refer to the attributes of a causal concept that has the power to cause something (Beach and Pedersen 2016b: 421), in the context of this study; the power to cause institutional change or to contribute to institutional continuity.

⁴ Contextual conditions are here understood as conditions that need to be present for a causal process to take place (see e.g. Falleti and Lynch 2009: 1152; Beach and Pedersen 2016a: 10).

the other hand (Streeck 2009). In conceiving of the institutions as the product of the (im)balance of power among the political economic actors (Baccaro and Howell 2017: 39), this theoretical foundation offers us the insight that the properties of these non-market institutions are exposed to constant contestation and ongoing renegotiation (Streeck 2009), and, conversely, that institutional continuity requires active support that generates institutional maintenance, and if necessary, due to the changed conditions in the EU open market, resilience creation and adaptation (see Mahoney and Thelen 2010).

1.2 The purpose

The empirical aim of this dissertation is to investigate to what extent the pressure for change originating from labour and service mobility in the EU open market has led to actual change in employment relations institutions in receiving labour markets in advanced capitalist economies, and in doing so, analysing how political economic actors, namely employers and trade unions, have promoted or damaged the sustainability of collective labour regulations through their responses to labour and service mobility in an integrated Europe. In order to do so, I build upon existing accounts of varieties of liberalization (Thelen 2014) and present a typology of the strategic interactions between employers and trade unions at the sectoral level, capturing how class actors' responses to the EU open market lead to different trajectories of institutional continuity and change. A precondition for assessing the extent to which the pressure for change has translated into actual change, and making any causal inferences about the potential causal relationships that existing literature has postulated, is to uncover the causal processes of *how* this pressure transforms into liberalization of the employment relations institutions. Drawing upon existing theorization of how institutional continuity can be achieved and how change occurs (Streeck and Thelen 2005; Mahoney and Thelen 2010), I develop four causal mechanisms that are triggered by different responses by employers and trade unions and that unpack the stepwise causal chain leading to distinct outcomes. The theoretical aim of the dissertation is thus twofold in that it seeks to offer propositions not only of how institutional change occurs, but also of how institutional continuity can be achieved under conditions of free labour and service mobility in the open market.

1.3 The empirical cases

The empirical cases investigated in this dissertation represent three economic sectors in three advanced capitalist political economies in which labour migration and service provision through posted work have become a prominent feature in the organization of work and come to play an increasingly important role over the last decade; the German manufacturing, construction and hotel and restaurant sectors, the Norwegian construction sector, and the Swedish construction and hotel and restaurant sectors. Germany is at the centre of the EU open market and recognized as

one of the main countries of destination for EU internal labour migration, and stands out as the primary destination for service provision through posted work in Europe (Wagner and Hassel 2016a: 168-169). Among the Nordic countries, Norway stands out as the main destination of EU internal labour migrants since the market expansions of the 2000s (Friberg and Eldring 2013: 13), and in a wider European perspective Norway has been a major receiver of labour migrants from the new EU member states also in relative terms (Andersen et al. 2014a). While Sweden has also been an important destination for EU internal labour and service mobility, Sweden's liberal third country labour migration regulations – introduced in 2008, and thus more or less coinciding with the EU market expansions – have, in addition, meant that labour migration from outside of the EU has also played an important role in employers' access to foreign labour supplies. Important in this context is that employers in certain sectors have demonstrated a greater demand for migrant labour than employers in other sectors. Existing literature has established that the majority of labour migrants from the EU member states that joined post-2004 have been recruited to perform relatively low-skilled work within specific sectors (e.g. Andersen et al. 2014a: 89). Similar to other receiving countries across Western Europe, the construction sectors in Germany, Norway, and Sweden, quickly became one of the main sectors of employment for migrant workers from the new EU member states (Friberg 2013: 26; Wagner 2015). Similarly, the hotel and restaurant sector, representing a low-end service sector, is across the countries a major employer of foreign workers, serving as a sector in which migrant, often female, workers get their first possibility to enter their host labour market. Lastly, the case central to Comparative Political Economy (CPE) – the German manufacturing sector – has a long tradition of using migrant labour, in earlier periods through the guest worker system and through bilateral agreements, and more recently through the free access in the EU open market.⁵ Through changes to the organization of work based on an increased recourse towards use of external labour through subcontracting or temporary agency work, or temporary forms of employment more generally, these sectors have increased their reliance upon migrant labour to keep costs down and meet labour force needs, more appropriately understood as a need for workers that are prepared to sell their labour on the terms that are offered (cf. Rosewarne 2013; Friberg 2013).

By studying the Norwegian construction sector, I offer an explanation of how contribution to institutional continuity can be achieved through institutional resilience creation and adaptation in a context of high pressure for change originating from the EU open market and the increased labour and service mobility within it. Subsequently, by studying the German and Swedish construction and hotel and restaurant sectors, and the German manufacturing sector, I offer explanations of how the same pressure for change can be translated into actual change in the

⁵ The specific parts of the German manufacturing sector in focus here are the metal, machinery and transport equipment industries.

form of liberalization as dualization, socially embedded flexibilization, or deregulation of the employment relations institutions.

2. Increased use of migrant labour and parallel changes in employment relations

While the history of labour migration and international recruitment in the sectors in the investigated countries starts well before the EU-enlargements of the mid-2000s, the market expansion meant free access to foreign labour supplies which had hitherto been bound to labour markets with considerably lower wage levels and inferior working and employment conditions. Existing research has demonstrated the occurrence of abusive practices in the employment of migrant labour, and hinted towards temporary as well as long-term effects of increased labour migration in host labour markets. The assessment of most scholars is that the inferior employment and working conditions offered to migrant labour put *pressure* on wage levels and working conditions and *undermines* or *challenges* the host labour market and its institutions (see e.g. Lillie and Greer 2007; Dølvik and Eldring 2006; Lillie 2012; Andersen et al. 2014a; Bernaciak (ed.) 2015).

In parallel with the EU market expansion and employers' increased use of migrant and mobile labour, the employment relations of advanced capitalist political economies have undergone wide-ranging processes of liberalization (Streeck 2009; Baccaro and Howell 2011, 2017; Streeck and Thelen 2005; Hassel 2014; Thelen 2014). Liberalization, within the sphere of employment relations broadly defined as a process that sets the market relations between employers and workers free from the social constraints upheld by the institutions for collective labour regulation, liberates employers from the discretion- and profit-limitations imposed on them by the institutions and leaves workers more exposed to economic dislocation (Polanyi 1985; Streeck and Thelen 2005; Baccaro and Howell 2017). While there by now is broad agreement in the CPE literature that advanced capitalist economies over the last decades have seen a broad process of liberalization that first and foremost has entailed increased employer power over workers along with the weakening of labour's organized power (Baccaro and Howell 2011, 2017: 23, 76; Bohle 2011: 92-93; Hassel 2013; Regan 2012: 1; Emmenegger 2014: 16-17; Doellgast et al. 2018: 25), amongst other things evidenced by drastically declined rates of industrial conflict (Glyn 2006: viii-x; Baccaro and Howell 2017: 47), and manifested as a decline in job security (Davidsson and Emmenegger 2012: 339; Emmenegger 2014; Hassel 2014: 60), a rise in the income taken by capital as opposed to labour and a generalized decline in wage growth relative to productivity (Greer and Doellgast 2017: 202; Baccaro and Benassi 2016; Baccaro and Howell 2017: 41), and increased wage and income inequality (Anderson and Hassel 2015; Greer and Doellgast 2017: 202; Baccaro and Howell 2017: 41), scholars continue to disagree over how far-

reaching the processes of liberalization have indeed been, the extent to which it is justified to speak about convergence across national political economies as a consequence of it, and, naturally, its causes and what best explains it. Scholars whose work can be ascribed to the Varieties of Capitalism (VoC) tradition, or as recently termed “the coordinationists’ camp” by Baccaro and Benassi (2016), recognize that liberalization has taken place but tend to be more modest in the assessment of how far it has proceeded, largely continue to reject the notion of convergence, and hold that liberalization primarily has occurred as a result of structural changes that follows from deindustrialization; simply put, the decline in manufacturing sectors and parallel growth in service sectors, in which the coverage of employment relations institutions is lower and the organization of class actors is weaker, result in liberalization as the composition of the economy shifts (see particularly Thelen 2014). The case at the centre of much of this debate has been the German political economy. While there is agreement that German employment relations have been liberalized through incremental but transformative changes, scholars who emphasize compositional shifts in the economy, along with intensified global competition for export-oriented manufacturing firms and domestically changed conditions following from German unification, as primary causes behind the process of liberalization have implicitly or explicitly also claimed that the employment relations institutions of the manufacturing sector have largely been maintained as the intensified competition for export-oriented firms have led them to intensify their cooperation with core workers, emphasizing liberalization as dualization *between* the manufacturing and service sectors (Hall 2007; Rueda 2007, 2014; Palier and Thelen 2010; Hassel 2014; Thelen 2014; Carlin et al. 2014). In emphasizing structural changes in the economy and in interpreting concession bargaining as cooperation between management and workplace union representatives, the changed power relations and the active role of employers in driving the processes of institutional change tend to be overlooked (for a similar point, see Ibsen 2015). Similarly, arguments that emphasize the role of producer-group coalitions, rather than compositional shifts in the economy, in processes of change in the service sector (e.g. Hassel 2014) also have a tendency to reduce the agency of service sector employers, while giving primary agency over the development of employment relations in service sectors to manufacturing employers and manufacturing trade unions (cf. Jaehrling and Ménhaut 2013: 706).⁶ In assessing the direction of change at the level of national political economies, the key institutional developments identified in this literature pertains to sustained or intensified coordination and cooperation in parts of the economy in combination with liberalising changes targeting the other (expanding) part of the economy, including formal deregulation of job security regulations

⁶ It may be noted that this latter argument, interestingly, bares resemblance with Baccaro and Benassi (2016)’s argument that “that the impetus for change comes from the export sector itself, and specifically from the firms’ cost-cutting imperative” (24), with the difference that Baccaro and Benassi identify export-oriented manufacturing firms alone – i.e. not in a form of producer-group coalition with the trade union – as the drivers of change.

designed as two-tier reforms where job security has been maintained for core workers employed under permanent contracts and weakened for other groups of workers by facilitating the use of forms of employment with low or no job security, resulting in dualization through sharper divisions between a declining labour market core and a growing periphery (Thelen 2014; Hassel 2014; Emmenegger et al. 2012; Davidsson and Emmenegger 2012: 440; Dølvik et al. 2014a: 24). Against this widely accepted narrative, Baccaro and Howell (2017) have recently argued that the major liberalising changes, in fact, foremost have taken place in the manufacturing sector itself, using the German and Swedish manufacturing sectors as cases to demonstrate their claim that processes of liberalization deeply affect the employment relations institutions and class actors in service as well as manufacturing sectors (2017: 18, 98, 180; see also Baccaro and Benassi 2016). Within the context of their broader argument that a far greater degree of liberalization of employment relations has taken place in a common direction that started almost two decades earlier than what had hitherto been recognized in the literature (Baccaro and Howell 2017: 10, 47; see also Streeck 2009), Baccaro and Howell identify cross-country trends of decentralized and individualized bargaining and increased derogation from collective agreements, constituting an erosion of collective bargaining (2017: 176) that takes place in the context of parallel changes to institutions for workplace representation that have been weakened and/or exposed to conversion of their functions, along with the generalized weakening of unions who have come to “bargain over concessions rather than gains” (ibid. 196). Their argument finds support in a larger literature of employment relations and CPE research generated over the last decade that offers accounts of wide-ranging processes of liberalization (e.g. Doellgast and Greer 2007; Bosch et al. 2007) in a common direction interpreted as convergence of institutional performance across countries (Howell 2003; Glyn 2006; Streeck 2009, 2016; Höpner et al. 2011; Doellgast et al. 2018). While Baccaro and Howell, in speaking to the CPE literature, place their convergence claim front and centre, a no less important contribution is their operational definition of liberalization as increased employer discretion over wage determination, hiring and firing, and the organization of work (2017: 2), which they conceive as the common, substantive, denominator of the liberalization that has involved a variety of changes in the functioning as well as formal structures of employment relations institutions in different political economies. In contrast to the scholarship that emphasize structural changes as primary cause of liberalization, scholars within this strand instead emphasize the role of employers in actively undermining and contesting the institutions for collective labour regulation (Kinderman 2005, 2017; Raess 2006; Streeck 2009; Emmenegger 2014), arguing that the liberalising changes have been driven by employers and their associations, whose ability to challenge the institutions has been enhanced through state support (Baccaro and Howell 2017: 177, 196). Scholarship in this strand tend not only to have more encompassing operational definitions of institutional change, but is also better equipped to uncover changes in the practical functioning of the institutions by paying attention to

developments at the sectoral and firm levels. In this vein, Greer and Doellgast (2017) identify increased marketization as a cause of institutional changes leading to liberalization through changed employer responses (4-6). Greer and Doellgast observe a shift from voice to exit in how managers seek to influence employment relations by abandoning collective employment relations institutions or by making use of their enhanced ability to threaten exit, the former resulting in institutional change as declined coverage and the latter as institutional change from within by weakening the position of their counterpart (2017: 199).

Before introducing the research question and presenting the structure of this dissertation, the below sections offer a concise review of the institutional changes that have been identified in the employment relations in the political economies in focus here – Germany, Norway, and Sweden – for the purpose of subsequently, in the case chapters, assess how employers' and trade unions' responses to migrant labour feed into or possibly countervail these ongoing processes of change. While the empirical analyses presented in chapter 5 through 8 focus on economic sectors as the level of analysis, where sector-specific trends in institutional development are accounted for, the below review focuses on broader trends in the private sectors as a whole in the respective countries.

2.1 Trajectory of institutional changes in German employment relations

Employment relations in Germany have traditionally been characterized by a high level of organizational strength on both sides of the class actors (Palier and Thelen 2010). In following the same trend as most other advanced capitalist economies, trade union density in Germany has declined drastically over the last decades. Between 1991 and 2011, union density, measured as union members as percentage of all employees in dependent employment, declined by 50 percent, from 36 to 18 percent (Visser 2016). With more or less half of the union members lost in the decades between 1990 and 2010, and less than a fifth of the workforce remaining organized, the German trade union movement was considerably weakened in relation to the organizational strength of employers, who despite a decline in employer density remain considerably better organized than workers (Streeck 2009: 46). While organized employers were estimated to employ between 75 to 80 percent of all workers prior to a decline that took off in the early 1980s (Visser and van Ruysseveldt 1996), German employers have, according to the scarce available data that exists and sectoral differences aside, experienced only a minor decline in their organizational rate, from 63 percent in 2002 to 58 percent in 2011 (Visser 2016). The organizational rates of manufacturing employers, historically among the best organized employers in the German private sector, have followed the trend of decline (Haipeter and Schilling 2005; Streeck 2009: 46-47), which scholars have attributed to discontent among small- and medium-sized firms with the wage levels set by sectoral collective agreements, with existing members withdrawing from the employer organization and new firms choosing not to join (Silvia 1997; Hassel and Rehder 2001:

5). Together, these developments have been described as the organizational erosion and disorganization of German employment relations (Hassel 1999; Bosch et al. 2007; Streeck 2009; Baccaro and Benassi 2016), although the greatest organizational decline has taken place on the side of labour (Baccaro and Howell 2017: 46-47). As succinctly summarized by Deeg, capital in Germany is less organized than in the past, but its structural power has remained strong (Deeg, 30 Aug 2017).

Developments in collective bargaining in Germany

Aside from the organizational erosion of the class *actors*, German employment relations *institutions* have undergone drastic changes. Bearing in mind that most accounts of institutional change in German employment relations explicitly or implicitly refer to developments in the important case of the German export-oriented manufacturing sector, key changes pertain to the “erosion and retreat” of collective bargaining (Baccaro and Howell 2017: 97), changing in both its form and function through decentralization, declined coverage as firms have withdrawn from sectoral bargaining, and widespread use of opening clauses eroding the content of collective agreements (Streeck 2009: 43, 52; Bispinck et al. 2010: 1; Carlin et al. 2014: 54-55; Baccaro and Howell 2017: 119; also Hassel 1999, 2002; Rehder 2003, 2006; Bosch 2004; Bispinck 2004). Hassel (2014) similarly recognized that the content of many collective agreements has become less regulated, permitting – if not outright delegating – more decision-making rights to the workplace level (61). While Thelen (2014) also identified erosion of collective bargaining, the erosion in Thelen’s account came from developments related to low bargaining coverage in the service sector, whereas stability was perceived to prevail in the manufacturing sector (36, 48, 51). In challenging Thelen’s account, Baccaro and Howell (2017) argue that sectoral collective bargaining is “full of holes and empty of content in the manufacturing core, while even its form is absent in the remainder of the [German] economy” (175). More generally, scholars have considered the institutional change in collective bargaining through decentralization and declined coverage as a manifestation of the transfer of power from workers and trade unions to employers (Bispinck et al. 2010: 1-2). The proportion of workers covered by sectoral collective agreements in the German private sector has since the mid-1990s declined by 20 percentage points. While there continues to be a major gap between the workers covered by collective bargaining in the western and eastern parts of the country, both parts of the country have strikingly experienced the same size of decline over the last two decades; from 66 percent of the workers in the private sector in the western parts of the country covered in 1996, to 46 percent in 2015, and from 48 percent coverage in the east in 1996, to 28 percent in 2015 – a level which has been maintained over the last few years (Ellguth and Kohaut 2016: 286, based on the IAB Establishment Panel). The result of this development is that, while circulating around the 50 percent threshold between 2008 and 2010, the coverage is since 2011 below 50 percent and the use of collective agreements thus no

longer constitutes dominant practice in regulating employment relationships in the German private sector in the western parts of the country. In the eastern parts of the country, the use of collective agreements did not constitute dominant practice even at its peak levels in the mid-1990s following German unification, reaching just below 50 percent. The declined employer density in the German economy has been identified as one of the factors that contributed to declined collective bargaining coverage (Schröder and Ruppert 1996; Silvia and Schröder 2007), although the link between employers' organizational rates and collective bargaining coverage has become weaker following the introduction in the 1990s by some German employer associations of a membership form that does not bind firms to a collective agreement (*Ohne Tarifbindung* (OT)-membership) – something, which in turn, also has negative effects on sectoral collective bargaining coverage (Streeck 2009: 48).

Developments in workplace representation in Germany

While collective bargaining was maintained as dominant practice in the private sector in the western parts of the country until 2011, the institution for workplace representation – in Germany, works councils – was displaced as dominant practice almost a decade earlier, in 2003, after having remained stable just above 50 percent since the early 1990s. Between 1993 and 2016, the proportion of workers covered by works councils declined from 51 to 43 percent (Ellguth and Kohaut 2016: 288, based on the IAB Establishment Panel). In the private sector in eastern Germany, workers covered by workplace representation were already in the mid-1990s well below the 50 percent threshold (43 percent in 1996). Following a 10 percentage points decline to 33 percent in 2014, it has since stagnated around 33-34 percent (*ibid.*). The common trend in the German private sector over the last two decades is thus a drastic decline in the proportion of workers covered by collective bargaining (-20) along with a gradual decline in the coverage of works councils (-8 in west, -9 in east). Aside from the displacement of collective bargaining as the main institution for collective labour regulation, and the defection from works councils as dominant practice in workplace labour relations, scholars have observed how works councils have been converted from functioning as subordinate institutions of trade unions in the workplace, to fill a function that allows firms to withdraw from sectoral employment relations and pursue a logic where the interests of the works council and firm are aligned to serve the short-term objectives of the firm, under the pretext of securing employment, whereby workers' interests are tied to their employer rather than to collective labour interests represented by a trade union (Höpner and Jackson 2002: 364; Jackson 2005; Streeck 2009: 152; Baccaro and Howell 2017: 117, 173). This development has taken place in the context of a more formal de-linking of works councils and trade unions, following a declining trend in trade union associated works councillors in the 1980s and 1990s (e.g. Hassel 2002). The transformation of works councils into an instrument for employers to make derogations from sectoral collective agreements is thus also

tightly linked to the erosion of collective bargaining, as the function of works councils has been conversed to “undermin[e] rather than support [...] sectoral bargaining” (Baccaro and Howell 2017: 117). Moreover, Streeck (2009) has noted how the weakened ability of works councillors to enforce collective agreements also undermines the efficacy of collective bargaining in practice (40). That being said, some scholars have, in contrast, continued to emphasize that workers have retained power resources at the workplace level, in spite of the general weakening of German trade unions (Carlin et al. 2014: 55; see also Rothstein 2018).

Developments in labour legislation in Germany

In the area of labour legislation, German labour law has, aside from the recent re-regulation through the introduction of the statutory minimum wage (SMW) in 2015, undergone considerable liberalization, most prominently through the Hartz reforms in the early 2000s (Hassel and Schiller 2010; Eichhorst and Marx 2011; Emmenegger 2014: 238-239). Adding to the deregulation of atypical employment that took place in 1996 when the duration of temporary employment contracts was extended from 18 to 24 months, the Hartz reforms deregulated temporary agency work and introduced new types of precarious employment. As the employment protection for standard contracts was kept intact, scholars have considered the Hartz reforms as clear-cut examples of dualising reforms based on selective liberalization that affected peripheral labour segments and deepened the divides in the labour market (Hassel 2014: 70; Thelen 2014: 130-131). The Hartz reforms were a success in terms of increasing the use of atypical forms of employment and the occurrence of low-paid employment, and scholars observed how these liberalising reforms by the German government not only meant withholding access to job security from a growing group of workers, but also contributed to a growing low-wage sector during the 2000s, and with that, increased wage inequality in the German labour market (Bosch and Kalina 2007; Palier and Thelen 2010; Hassel 2014; Carlin et al. 2014). A few years following the reforms, low wage workers accounted for more than one-fifth of the workforce (Kalina and Weinkopf 2012: 5), placing Germany among the European countries with the largest low-wage sectors (Schulten 2013). While scholars attribute the growth in low wage work in part to the unilateral liberalization by the German government through labour market reforms, it is in part also attributed to the declined collective bargaining coverage, changes by employers in the organization of work, and the weakened power of organized labour (Thelen 2014: 57; Streeck 2009: 41; Wagner and Hassel 2016a: 167). Whereas deregulation through labour market reforms is the most obvious way in which states contribute to liberalization, scholars have also more broadly emphasized the role of the German state in underwriting the institutional changes in German employment relations (Baccaro and Howell 2017: 181-183), for instance, through inaction by allowing a process of dualization to proceed (Thelen 2014: 205) and as a consequence

of the erosion of the German state's capacity to contain market actors' behaviour destructive to the continuity of the institutions (Streeck 2009: 24).

Institutional outcomes associated with the development trajectory of German employment relations

While the general trajectory of change in German employment relations widely has been described as dualization between the core manufacturing sector and peripheral low-end service sectors (see e.g. Palier and Thelen 2010; Hassel 2014; Thelen 2014), there is strong evidence that the trajectory of liberalization has, in fact, cut across sectoral lines as the employment relations of both the manufacturing and service sectors have undergone considerable changes over the last two decades. In demonstrating changes in collective bargaining and associated changes in institutional outcomes related to wages and precarious forms of employment, Baccaro and Benassi (2016) have shown how the liberalization of collective bargaining has led to stagnated wage growth in the German economy; since the early 1990s, the wages of service sector workers no longer grew in line with productivity – and, a similar, although less pronounced, trend can since the early 2000s be detected in the wages of manufacturing workers (2-3, 20-22). Hassel (2014) has described this wage development as wage *restraint* in manufacturing and wage *decline* in services, demonstrating how service wages since the end of the 1980s has fallen relative to manufacturing wages (71-72). This development has been particularly pronounced in the German hotel and restaurant sector, where hourly wages in the 1970s reached 80 percent of manufacturing wages; by the mid-2000s, the share had fallen to less than 50 percent (ibid. 71). The overall stagnated wage growth and the non-existent wage growth for low-end service workers who have seen their wages slightly decline in real terms (Baccaro and Howell 2017: 118) demonstrate how the core function of collective bargaining, namely to transfer productivity increases into wage increases and to redistribute productivity increases within and across sectors, has been debilitated (Baccaro and Benassi 2016: 19, 24), if not lost. The institutional outcomes following from these changes are a declining wage share through redistribution of the value added from labour to capital, and an increased wage dispersion (Bosch and Weinkopf 2008; Streeck 2009: 41) that marks a disruption with the comparatively compressed German wage structure of the past and results in growing wage inequality between different groups of workers in the German labour market (Hassel and Schulten 1998: 487; Baccaro and Howell 2017: 119). Moreover, the core element of liberalization pertaining to declined job security is observed in the service as well as manufacturing sectors, where contingent work, including part-time, fixed-term, marginal, and agency work, has increased; in services from 36 percent in 1995 to 53 percent in 2013, and in manufacturing from 12.5 percent in 1995 to 22.3 percent in 2013 (Baccaro and Benassi 2016: 22). In view of the increase in the level of atypical employment in the manufacturing sector, Baccaro and Benassi (2016) conclude – in contradiction with earlier claims in the literature – that

manufacturing workers have not been protected from liberalization (24). While the liberalization currently has proceeded the furthest in the low-end service sectors, where the employment relations institutions were not only weaker to begin with but also hit harder by the Hartz reforms, and the lower half of the wage distribution, and thereby workers in the low-end service sectors such as hotel and restaurants, have been more affected both in terms of lack of wage growth and increase in precarious forms of employment (ibid. 21-22), the institutional changes in German employment relations have resulted in more managerial autonomy in German workplaces – including more widespread employer discretion also in the manufacturing sector (Baccaro and Howell 2017). Hassel’s depiction of the German political economy as one in which “manufacturing and low skilled service sector firms now work under different institutional regimes” (2014: 72; see also Thelen 2014: 51) reflects the continued differences between employment relations in different economic sectors, and invites us to further investigate the trajectories of development of the different sectoral employment relations. While the German labour market clearly contains strong elements of dualism, not the least in the area of employment protection legislation (Hassel 2014: 66-67), the current state of the art in the CPE literature suggests that we look beyond dynamics between economic sectors, towards intra-sectoral developments of employment relations, as a means to better grasp the ongoing processes of change.

2.2 Trajectories of institutional changes in Norwegian and Swedish employment relations

The development trajectories of the employment relations in the two Nordic countries of interest here share commonalities with the trajectory of German employment relations, including organizational changes to the class actors and increased wage inequality, as well as differences, such as maintained collective bargaining coverage in Sweden and maintained levels of job security in Norway. Similar to Germany, a one-sided organizational erosion has taken place among Swedish and Norwegian class actors, although the trend has been much more pronounced in Sweden than in Norway. From its peak in 1995 to its low-point in 2018, union density among blue-collar workers in Sweden declined by 26 percentage points, from 88 to 62 percent (Larsson 2018: 2). The loss in union members was drastically enhanced through a reform by the bourgeois government in 2007 that introduced high increases in unemployment insurance fees based on a differentiation of insurance fees according to unemployment risk (higher risk = higher fees) combined with deteriorated insurance conditions, which triggered workers to leave the trade unions and resulted in a 10 percentage points decline in trade union density in the course of a few years, from just below 80 percent in 2006 to less than 70 percent in 2010 (Larsson 2012: 14; Kjellberg 2009, 2017: 58-60). The reform, which also eliminated tax deductions for union fees (Kjellberg 2011b: 67) – while employers’ tax deductions for organizing were kept – was a frontal

attack not only on the unemployment insurance system, but due to the Ghent system present in Sweden also entailed a forceful attack by the government on trade unions. Since then, the decline has slowed down but nevertheless continued in a similar pace as before the introduction of the reform, and the unions had to endure more than a decade of conditions severely unfavourable to recruiting and retaining members before the tax deduction on trade union fees was reintroduced in July 2018. With German trade unions losing half of their member base between the 1990s and 2010s, the decline in union density in Sweden is not of the same scope but, nevertheless, of a considerable magnitude, and – in contrast to Germany, where the decline in union density appears to have been halted somewhere around 2010 (Dribbusch et al. 2017: 201) – the gradual decline has continued among blue-collar workers in Sweden, and even though there has been an increase in white-collar workers' organizational rates over the last decade, this has not compensated for the general decline in union density (Larsson 2018: 2). In parallel with the decline in union density, the organizational rate of employers in the Swedish private sector increased modestly from 77 percent in 1995 to 82 percent in 2015 (+5) (Kjellberg 2017: 85). The developments have been more stable in Norway, with a minor decline in union density and a parallel significant increase in employers' organizational rates. Between 1990 and 2013, union density in Norway declined from 59 to 52 percent (-7), with the main loss occurring in the 1990s (Andersen et al. 2014a: 11). Employers' organizational rates in the Norwegian private sector increased from 52 percent in 1995 to 65 percent in 2009 (+13) (Visser 2016). As a consequence of these developments, employers in Sweden and Norway are – similar to the situation in Germany – better organized than workers (with the reservation that the available estimates of employer density in Norway and Germany are a decade old), and – in contrast to German employers – Swedish and Norwegian employers have even strengthened their organizational rates.

Developments in collective bargaining in Norway and Sweden

Contrary to the developments in Germany, the coverage of collective bargaining has remained more stable in the two Nordic countries (Andersen et al. 2014a: 6). The last two decades saw a modest decline in workers covered by collective bargaining in the Swedish private sector, from 90 percent in 1995 to 85 percent in 2015 (-5) (Kjellberg 2017: 86). The main decline took place in the mid-2000s, and appears since 2010 to have stabilized around 84-85 percent. With coverage largely maintained – and collective bargaining still univocally constituting the main institution through which employment relationships are regulated – the retreat or abandonment of this institution, which was a central part of the trajectory of liberalization in Germany, has not occurred in Sweden. Instead, scholars have identified changes in the functioning of collective bargaining through decentralization (Granqvist and Regnér 2008; Thelen 2014; Andersen et al. 2014a; Baccaro and Howell 2017) and an associated individualization of wage bargaining, along with a parallel strengthening of coordination including increased state involvement in wage-

setting (Baccaro and Howell 2017: 167-170, 173). Furthermore, scholars have also documented increased derogation from legal limits on temporary forms of employment, whereby job security regulations have been liberalised through collective agreements (Baccaro and Howell 2017: 164). Aside from the increased discretion that employers gain through decentralized bargaining with a weak counterpart, employer discretion has thus been enhanced not only over wage determination but also over hiring and firing – within the scope of collective agreements (ibid. 173). While collective bargaining has been maintained as the main institution for the regulation of employment relationships in Sweden, the use of derogation as a means to liberalize collective bargaining from within is thus a common trend found in both Germany and Sweden. The mix of decentralization and recentralization has resulted in a change in the *functioning* of collective bargaining; the flexibility introduced in central agreements has meant that bargaining outcomes in a large part of the Swedish labour market now are determined in local negotiations based on the ‘local conditions’ of firms, and collective bargaining itself has become a means by which employers achieve greater discretion over wages and working conditions (ibid. 161, 164, 169-170). As the decentralization has been accompanied by an individualization and associated decollectivization of bargaining, the function of collective bargaining has in practice been transformed from within by eroding its content, reducing its collective properties, and – in large parts of the labour market – turning it into an instrument for individualized wage bargaining (ibid. 144).⁷

While collective bargaining in Sweden has seen parallel decentralization and recentralization, developments in Norway have primarily involved reinforced centralization. Framed by scholars as adjustments to restore the coordinating capacity of collective bargaining following a period of wage inflation and wage drift, strengthened coordination at the confederal levels with important state involvement took place in the early 1990s (Andersen et al. 2014a: 32). In contrast to developments in Sweden, the strengthened coordination in Norway involved formalizing stricter criteria for local wage bargaining in central agreements, whereby multilevel negotiations were maintained within the context of reinforced centralization supported by state-led income policies (ibid. 36). The changes in collective bargaining in Norway entailed both more centralisation and less decentralization than in Sweden, with the confederal employer and union organizations playing a central role in collective bargaining (ibid. 37). Moreover, workers covered by collective bargaining in the Norwegian private sector saw a minor but gradual decline over the last two decades, from 62 percent in 1992 to 54 percent in 2015 (-8 percentage points) (Visser 2016), suggesting a slow and ongoing process of drift of collective bargaining, approaching the

⁷ While the changes pertaining to decentralization and individualization of wage bargaining covers a majority of the workers in the Swedish labour market and represent a general liberalization of collective bargaining in Sweden (Baccaro and Howell 2017: 161, 163; see also Andersen et al. 2014a: 36; Thelen 2014: 184-185), it may be noted that the sectoral collective agreements in the sectors investigated in the empirical part of this dissertation – the construction and hotel and restaurant sectors – have maintained sectoral agreements with limited scope for local bargaining.

threshold of no longer constituting dominant practice in the regulation of employment relationships. While there are some indications that the ongoing drift in the coverage of collective bargaining in Norway has been accompanied by an erosion of the content of collective agreements in specific sectors, including the construction and some service sectors (Dølvik et al. 2014b: 81), and that there has been some increased derogation from central provisions in practice (Baccaro and Howell 2017: 37-38), existing literature suggests overall continuity in collective bargaining in Norway following the adaptations in the 1990s.

Developments in workplace representation in Norway and Sweden

When it comes to the development of workplace representation, existing literature has suggested that the coverage of workplace representation has taken a hit following the declined union density, particularly in Sweden but partly also in Norway, as it erodes the basis for workplace representatives (Dølvik 2009; Kjellberg 2011a: 77; Andersen et al. 2014a: 11, 53). As this development in Sweden takes place in the context of decentralized collective bargaining, whereby the coverage and negotiation capacity of workplace representatives have become ever more critical (Andersen et al. 2014a: 67-68; Baccaro and Howell 2017: 165), the prospects for employers to pursue liberalisation at the workplace level have increased. Aside from the context of peace obligation under which local negotiations takes place, which has a negative impact on the negotiation capacity of workplace representatives, there are indications that a similar conversion of the function of workplace representation that has been identified in Germany, has been initiated also in Sweden following the decentralization of collective bargaining. Local negotiations are guided by “a decentralized logic in which workers and their local union are encouraged to think about the needs of their particular employer,” as opposed to “the principle of equal pay for equal work regardless of the profitability of individual firms” that once guided wage bargaining in Sweden (Baccaro and Howell 2017: 169). With both bargaining sides accepting the interests of the firm as having precedence in negotiations, the function of workplace representation has in the context of decentralized bargaining been transformed into an instrument to generate worker concessions, evidenced, for instance, by the increased flexibility in working time and increased derogation from job security regulations achieved in collective agreements (ibid.). Moreover, as the decentralization of bargaining in Sweden has also been accompanied by an individualization of bargaining, the role of workplace representation in negotiations has in many workplaces been outright displaced; scholars have observed how the development of decentralized and individualized bargaining has entailed that workplace representatives have come to lose their negotiation function, reducing the role of union workplace representation to monitoring the enforcement – rather than negotiating the content – of collective agreements (Ahlberg and Bruun 2005: 131; Baccaro and Howell 2017: 169). There are, however, simultaneously indications that also the enforcement function has been negatively affected

following the last years' developments. Trade union presence in the workplaces is critical to the enforcement of collective agreements, as trade unions through their members and workplace representatives are assigned the main role in monitoring the enforcement of collective agreements in Sweden; when union membership and the coverage of workplace representation decline, the enforcement capacity of workplace representation also declines.

Developments in labour legislation in Norway and Sweden

In the area of labour legislation, changes parallel to those in Germany have also taken place in Sweden, where job security regulations have been liberalized in several rounds. Sweden took the lead in liberalizing temporary agency work in 1993, whereas this type of atypical employment was liberalized in the early 2000s in Germany and Norway (Dølvik et al. 2015: 253). The next move in liberalising job security regulations was taken by the social democratic government in 1996 when the scope for negotiated derogation from the employment protection legislation was expanded through a legal change that enabled “negotiated temporary employment” also in local collective agreements (Prop. 1996/97:16; Rönmar 2010: 58-59), whereby liberalization of job security regulations subsequently has taken place through negotiated derogations at the firm level (Baccaro and Howell 2017: 160, 164). This deregulation was, in turn, followed by the introduction of a new atypical form of employment referred to as “general temporary employment” by the bourgeois government in 2007, giving employers free recourse to use temporary employment by removing the obligation to justify the use of temporary as opposed to permanent contracts (Emmenegger 2014: 255; Baccaro and Howell 2017: 160). To grasp the scope of this liberalising change it may be noted that the legal amendments gave Sweden the most liberal rules on temporary employment in the EU (Dølvik et al. 2014b: 69), and even received reactions from the European Commission who claimed that the rules contravened the EU directive on temporary work (Dølvik et al. 2015: 253) as the reformed law was considered to lack procedures to counter abuse of temporary employment, partly because of its lack of a clear upper-limit time period for multiple general temporary employment contracts following one another (Hamskär, 23 Apr 2010). Two more legal changes introduced by the same bourgeois government merit particular attention as they eroded the legal basis upon which the collective employment relations had rested; the 2007 change to the unemployment insurance system that was in an unequivocal liberal direction, and the 2009 legal limitation on trade unions' rights to take industrial action against foreign firms, following the European Court of Justice (ECJ) Laval ruling (Woolfson et al. 2010; Höpner and Schäfer 2012: 444; Baccaro and Howell 2017: 159, 173). While the social democratic government gave back the right to trade unions to take industrial action against foreign firms when repealing Lex Laval in 2017, the Swedish trade unions had to endure almost a decade of restrictions on their ability to ensure that posted workers were covered by collective agreements. While scholars have tended to emphasize that only modest deregulation of labour legislation has

taken place in Sweden (e.g. Thelen 2014: 188-189), these changes do, taken together, in the Swedish context – which is the appropriate point of comparison when evaluating the magnitude of these changes – represent far-reaching liberalization of Swedish labour legislation, both in the area of job security regulations – which directly affect the power relations between workers and employers (Emmenegger 2014) – *and* more generally in terms of legislation that used to support the existence of collective labour regulations. The changes have been of an unequivocal liberal character and one-sidedly redistributed power over employment relationships away from workers to employers, and, as noted by Baccaro and Howell, actively weakened the position of trade unions by debilitating the ability of workers to engage in collective action, partly by the restrictions placed on industrial actions against foreign firms and more generally by making it considerably more expensive for individual workers to organize in trade unions (2017: 173). While Baccaro and Howell are correct in identifying changes to trade union strength and in collective bargaining as “the real source of expanded employer discretion” in Sweden (2017: 167), the liberalization of the labour legislation has, in turn, been a real source of weakening trade unions, enabling employers to pursue liberalising changes within the framework of the collective employment relations institutions.

While the development of labour legislation in Norway has also involved some liberalising changes demonstrating parallels to the developments in Germany and Sweden, the general trend in Norway has been less radical deregulation, occurring later, and with re-regulatory elements along the way. In the context of the economic crisis of the early 1990s, the Norwegian social democratic government went in the opposite direction of Sweden and re-regulated the use of temporary employment, including temporary agency work, in 1994 (Nergaard et al. 2011: 31). The changes meant that temporary employment could not be used as part of any regular activities, and while it was still possible to make negotiated derogations through collective agreements, these derogations were limited to situations when specific criteria were fulfilled (Hippe and Berge 2013: 52). These restrictions were maintained until 2000, when the use of temporary agency work was liberalized. The subsequent fifteen years saw a protracted way towards liberalization of temporary employment. In 2005, the centre-right government liberalized temporary employment, but the deregulation was repealed a few months later by the incoming social democratic and green government (Dølvik et al. 2015: 253). The general restrictions on the use of temporary employment were then maintained until 2015 when political shifts led to liberalising changes following the path of Sweden and Germany, although without proceeding as far. Aside from the developments in the area of job security regulations, re-regulation has taken place in parts of the Norwegian labour market over the last decade, following increased use of legal extensions of collectively agreed minimum standards. Some scholars argue that this re-regulatory measure, adopted as legislation in 1993 in conjunction with Norway’s integration in the European Economic Area (EEA) and increasingly used since the mid-2000s, represents a form of adaptation

that serves to strengthen collective bargaining in the context of free movement of labour and services in the EU open market (e.g. Alsos and Eldring 2008; Eldring et al. 2011; Friberg and Eldring 2013). Yet, the causal implications for the development of the collective employment relations institutions remain ambiguous. Whether this re-regulation represents a move away from collective labour regulations or not will be examined in the case chapter (chapter 5) accounting for the process of institutional development in the Norwegian construction sector.

Institutional outcomes associated with the development trajectories of Norwegian and Swedish employment relations

The institutional outcomes associated with the last decades' developments in Sweden have been modest average real wage growth, increased wage differentiation and increased wage inequality, along with a considerable decline in job security manifested in increased levels of temporary employment. While the ability of collective bargaining to transform productivity growth to wage growth, unlike in Germany, appears not to have been incapacitated, it would in view of the modest average real wage growth – which during the last five years' economic boom has been weaker than after the economic crisis, increasing on average by 1.2 percent annually between 2013-2018, compared to 1.9 percent between 2012-2015 (Swedish Mediation Office 2019: 85-86, 94) – be more than a stretch to claim that contemporary collective bargaining in Sweden functions to redistribute *from capital to labour*. Following the absence of wage moderation during the post-war period in Sweden, when wages increased faster than productivity, which in contrast contributed to a redistribution from capital to labour and reduced inequality, a considerable decline in the wage share took off in the 1980s and continued during the 1990s (Bernaciak 2014). Scholars have even identified this decline as one of the largest and fastest declines in wage shares among the advanced capitalist political economies (Peters 2011: 92), leading to a shift in income from labour to capital. Real wage increases in Sweden have been kept down both through lower wage increases in central collective agreements, plus lower additional increases in local wage formation (Swedish Mediation Office 2019: 93).⁸ Moreover, while there has been a positive average real wage growth in the economy as a whole, effects of the increased employer discretion over wage determination following from decentralization and individualization of bargaining is reflected in increased wage differentiation and wage inequality, including a widened wage gap between white and blue collar workers, as well as increased wage differentiation among white

⁸ The changed rapport between centralized and decentralized wage-setting, where the content of central agreements have increasingly been interpreted as maximum conditions that the individual workers need to *again* locally negotiate, is evidenced by a reduced discrepancy between centrally and locally agreed wage increases. While local agreements used to generate higher wage increases than the centrally agreed norm, the discrepancy between centrally and locally agreed wage increases has diminished over the last 20 years, with local wage increases now showing very small increases in addition to the centrally agreed wages (Swedish Mediation Office 2019: 92). This trend also reveals the effect of individualized bargaining; as individual workers systematically are in a weaker bargaining position than their employer, local wage increases decline as individualized wage bargaining gains ground.

collar union members (Oliver 2008, 2011: 556; Granqvist and Regnér 2008: 501; Baccaro and Howell 2017: 166, 169; Swedish Mediation Office 2019: 99, 167). In terms of sectoral divides, the reduced wage differentials between the manufacturing sector and low-end service sectors in Sweden during the 1980s were countered by an increase in wage dispersion in the 1990s, although smaller than in Germany where the increased wage dispersion has been considerably greater (Andersen et al. 2014a: 82-83; Anderson and Hassel 2015: 15; Swedish Mediation Office 2019: 165). Yet, existing literature suggests that the institutional changes in Swedish employment relations have, similar to changes in Germany, been accompanied by a weakening of the function of collective bargaining to generate a compressed wage structure (Baccaro and Howell 2017: 160, 170; Carlin et al. 2014: 84). Similar to Germany, the core element of liberalization pertaining to declined job security has also been part of the trajectory in Sweden. Following the formal deregulations of and negotiated derogations from job security regulations, the share of temporary employment in Sweden has increased slowly but gradually over the last 25 years, from 9 percent of all workers in 1990 to 15 percent in 2015 (Larsson 2017: 6), with the total number of workers as well as the share of workers in temporary employment increasing with more than 60 percent between 1990 and 2014 (Larsson 2014: 25). The trend has been even more pronounced among blue-collar workers, among which temporary employment more than doubled in the same time period, reaching 21 percent in 2016 (Larsson 2017: 6), and particularly among workers in low-end services, including the hotel and restaurant sector, where workers have seen a drastic decline in their job security over the last 25 years; from 12 percent being in temporary employment in 1990 to 31 percent in 2000, and then a stable share above 40 percent over the last decade (Larson 2014: 29, 2017: 10). “General temporary employment,” where no reason for the temporality needs to be specified or justified following the legal change in 2007, has in the course of the last two decades emerged as the most common form of temporary employment in Sweden (Larsson 2014: 28).⁹ While there is an asymmetrical distribution of job security in the Swedish labour market (Davidsson 2009: 12, 2010: 128-129; Emmenegger 2014: 250; Dølvik et al. 2014b: 69), where low-end service workers and non-unionised blue-collar workers have less access to job security, the liberalization observed in Sweden has, nevertheless, challenged the position of permanent employment as the norm (Rönmmar 2010: 64; Baccaro and Howell 2017: 160). These developments have placed Sweden above the EU average when it comes to employers’ use of temporary employment (Rönmmar 2010: 55), and while it is not completely straightforward to

⁹ Among the workers in general temporary employment, the types of employment that have increased the most are the most precarious ones, where the worker is only contracted based on the hourly need of the employer (Larsson 2017: 18-19). These highly precarious forms of employment, lacking any form of job security and often involving sudden reductions in working time and no guaranteed income, have been enabled by collective agreements through negotiated derogations from the employment protection legislation. The bargaining success of employers in managing to introduce these forms of temporary employment in collective agreements reflects the strengthened position of employers and the weakened position of trade unions in the Swedish labour market.

compare the share of temporary employment in Sweden and Germany as the countries offer employers different types of atypical work, Sweden does by any measure at least level with Germany in terms employers' use of temporary employment, and probably even trounces it.

The institutional outcomes following from the last decades' development of Norwegian employment relations institutions demonstrate continuity in the area of job security, with the level of job security not only being maintained but even slightly enhanced, and a fairly strong average real wage growth, although in the context of increasing wage inequality through widened wage dispersion and a shift in the redistribution of income from labour to capital, reflected in a considerable and ongoing decline in the wage share (Hippe and Berge 2013: 139-140; Andersen et al. 2014a: 36; Dølvik et al. 2014b: 31-32). Even though Norway has had a high average real wage growth compared to Germany and Sweden, particularly in the 2000s when it occasionally peaked at 3.5-4 percent annually (Andersen et al. 2014b: 24), scholars have described the bargaining outcomes as wage moderation following the strengthened central coordination (Andersen et al. 2014a: 36; Dølvik et al. 2014b: 31-32), with a considerable decline in the wage share over the last decades, despite the fairly high real wage growth (Hagelund et al. 2017; Hippe and Berge 2013: 139). Furthermore, wage differentials have increased considerably in Norway over the last 20 years, particularly during the 2000s when the wage growth was particularly high (Andersen et al. 2014a: 20, 46; Dølvik et al. 2014b: 75). The increased wage differentials between the top and bottom of the wage structure has meant that Norway now demonstrate similar wage inequality levels as Sweden, whereas Germany is at considerably higher levels. The last two decades' developments have also meant that Norway has surpassed Sweden when it comes to wage inequality between the middle and lowest wage earners (Andersen et al. 2014a: 46). Similar to Sweden and Germany, then, the redistributive capacities of collective bargaining have been weakened also in Norway, both in terms of transforming productivity growth into wage growth, and in terms of redistributing wage gains across groups of workers. In contrast to Germany and Sweden, the Norwegian labour market demonstrates remarkably low levels of temporary employment, which have been slowly but continuously declining over the last two decades; from 12.7 percent in 1996 to 8.4 percent in 2018 (Statistics Norway). In the hotel and restaurant sector, which in most other advanced capitalist economies, not the least in Germany and Sweden, demonstrate high levels of temporary employment – the decline has even been greater than in the economy on average, from 20.3 percent in 1996, to a low-point of 11.4 percent in 2009, followed by a minor increase to 14.5 percent in 2018 (*ibid.*). In contrast to Swedish employers who have challenged the position of permanent employment as the norm, Norwegian employers have instead demonstrated their support for upholding it as norm. Added to this picture is, however, a sharp increase in the use of temporary agency work (Håkansson et al. 2014; Nergaard et al. 2011), following the legalization and liberalization of the temporary work agency industry in conjunction with the EU market expansion (Friberg and Eldring 2013).

Summing up, recent accounts have uncovered far-reaching liberalising changes in German and Swedish employment relations. The trajectory of liberalization has most plausibly come the furthest in Germany, not the least in terms of the organizational erosion of the class actors and the defection from collective bargaining in a large part of the economy. Nonetheless, the multiple purely deregulatory changes that have taken place in Sweden have meant transformational change in a similar direction, even though the countries had different starting points and continue to be “at different locations along a liberalizing trajectory” (Baccaro and Howell 2017: 2). In fact, Swedish employment relations have over the last decades been liberalized to an extent that largely has gone under the radar of existing literature (Baccaro and Howell 2017; see also Svallfors 2014), which instead has tended to emphasize the relative strength of Swedish employment relations institutions and class actors in a comparative perspective, and interpreted the last decades’ developments as institutional adaptations within the context of largely maintained employment relations (e.g. Andersen et al. 2014a; Dølvik et al. 2015). There are striking commonalities found in the developments in Germany and Sweden. Important components of change in both countries have been state-induced liberalization that comprised strong causal forces affecting the power relations between employers and trade unions, and between employers and workers. In both Germany and Sweden, the unemployment insurance systems were dismantled and the use of temporary and atypical forms of employment were deregulated – changes that weakened the position of workers in relation to employers. By making the situation of unemployment more difficult to bear for individual workers and making workers more prepared to acquiesce to the terms of employers, greater low-wage pressure was created in both labour markets (Baccaro and Howell 2017: 112, 160; Eichhorst and Marx 2011). This state-induced liberalization which one-sidedly contributed to strengthen employers’ power position, in turn, triggered action-induced liberalization caused by changes in employers’ behaviour, including, for example, increased use of temporary forms of employment. In contrast to Germany and Sweden, the Norwegian state has abstained from actively redistributing power from workers to employers in the way that Swedish and German governments have done. The institutional development of Norwegian employment relations stands out in that it demonstrates more institutional continuity and less change, although liberalization is, nevertheless, manifested in drifting collective bargaining coverage, a redistribution of income from labour to capital, increased wage inequality, and a modest decline in union density coupled with a parallel increase in employer density.¹⁰

¹⁰ The general disagreement in the literature as to the extent to which employment relations institutions have been liberalized not only pertains to developments in the German political economy, but is also reflected in the assessments of the institutional developments in Norway and Sweden. Baccaro and Howell (2017)’s assessment of institutional change in Swedish employment relations identifies both more rapid and more far-reaching liberalising change that has led to an individualization and parallel decollectivization of labour relations (144, 168, 194). This direction of change is also evidenced by the conflictual state of

In this context, where employers across the sectors in the investigated countries have gained increased discretion over employment and working conditions over the last two decades, firms are further invited and encouraged to increase their discretion by using migrant labour and posted work through service provision – potentially outside of the scope of existing institutions for collective labour regulation – as a means to regain or maintain competitiveness in the EU open

Swedish employment relations, revealing employers who actively seek to liberalise the collective employment relations institutions on multiple fronts, and the weakness and acquiescence – rather than cooperation – of trade unions. In spite of the general trend of declined rates of industrial conflicts in advanced capitalist political economies, which is also present in Sweden, where industrial conflicts strongly declined in the early 1990s, and since the 2010s have been reduced to extraordinary low levels (Swedish Mediation Office 2018: 2-3), there is strong evidence of a highly conflictual situation in Swedish employment relations – far from the cooperative relations as they were pictured in the past. This is, for example, manifested in the push by organized employers to limit workers’ right to strike, with the support of the incumbent Social Democratic and Green government and, paradoxically, the leadership of the main trade union confederation (LO) in opposition to several of its member unions (Arbetet, 12 March 2019; Dagens Arena, 15 March 2019; Thörnqvist, 28 Feb 2019), in job security regulations being targeted for further liberalization – this time the employment protection of permanent contracts is targeted as organized employers push for deregulation with the support of the government who has instructed the class actors to ‘solve the issue’ or introduce unilateral liberalization itself (Danielsson Öberg, 22 Feb 2019), and in a struggle over increased employer-discretion over working time taking place in workplaces and in the labour court (Pelling, 4 Jul 2018). Dølvik et al. (2014b) have noted that the intensified competition in the EU open market, increasing the incentives for and offering new opportunities to exit collective agreements, has led to rising strife between the class actors in both Sweden and Norway (47). Yet, most Nordic observers have, in contrast to Baccaro and Howell (2017), tended to interpret the last decades’ developments as institutional adaptation contributing to maintenance and continuity in collective bargaining through cooperation between the class actors and the state (Andersen et al. 2014a; Dølvik et al. 2014b; Dølvik et al. 2015). Through the lens of a historically grounded perception based on a largely benevolent view of employers and compromise-oriented employment relations, changes have been interpreted as negotiated adaptations (Andersen et al. 2014a: 88, 91). Andersen et al. (2014a), for instance, recognize that the power relations between workers and employers in the Nordic countries have changed (15), not the least due to the free labour and service mobility in the EU open market (87), but do not infer that this has affected the viability of the employment relations institutions. The accounts have in common that they emphasize that Swedish unions continue to hold a comparatively strong position (e.g. Bengtsson 2014: 3; Dølvik et al. 2015: 278; Thelen 2014: 191), which, however, matters little for the institutional development as the counterpart of Swedish unions are employers, and not unions in other countries. While recognizing that collective bargaining as an institution has been “challenged on a number of occasions” during the 1980s and 1990s (Andersen et al. 2014a: 7), these scholars conclude that the institutions, following adaptive measures, have remained intact in Sweden as well as in Norway (Andersen et al. 2014a: 7-8, 15, 19-20, 80; Dølvik et al. 2015: 253) – interpreting the increased flexibility at the firm-level as “innovative adjustments” in line with employment relations practices of the past (Dølvik et al. 2015: 278; Andersen et al. 2014a: 15), as opposed to liberalising institutional change. While these assessments seem more appropriate for Norway than for Sweden in view of the instrumental institutional changes and changes in institutional practices that have taken place, some scholars have suggested that the fragmentation between core and peripheral workers manifested as increased inequality in wages and working conditions have come even further in Norway than in the other Nordic countries (Dølvik et al. 2014b: 74, 166). Thus, while emphasizing institutional adaptation and maintenance, these scholars do, at the same time, identify a risk of dualization in the presence of new tensions and unresolved challenges (Andersen et al. 2014a: 13-14, 83-84, 88; Woolfson et al. 2013: 2, 7) or recognize the emergence of new and expanding secondary tiers of employment with inferior conditions outside of the scope of the collective labour regulations in both Sweden and Norway (Friberg and Eldring 2013; Dølvik et al. 2014b: 47; Bengtsson 2014: 16). Together, these accounts demonstrate well the state of the literature in terms of having identified pressures for change, without inferring actual change. While there is a noticeable contradiction between claiming that the employment relations have been adapted and maintained, which if it were to be true would be reflected in maintained institutional deliverables, while simultaneously claiming presence of dualization, this contradiction is helpful in that it reveals a need to improve our assessments of these trajectories of change.

market. The context in which contemporary labour migration is taking place is not only one of expanded employer discretion. It has also been identified as a period of a generally enhanced willingness of employers to challenge the collective employment relations institutions (Baccaro and Howell 2017: 177; Streeck 2009: 50; Emmenegger 2014: 256; Kinderman 2017). In light of the insight offered by Piore (1979) already four decades ago, namely that migrant labour constitutes a particularly attractive means for employers to evade the regulatory limitations imposed on their room for manoeuvre (41, 109), employers are in the context of the EU open market not only able but also expected to strategize around inherent workforce divides (Lillie 2010, 2012; Ong 2006). In the same time as migrant labour can offer an attractive means for employers to circumvent the employment relations institutions, the decline in labour's organized power has rendered trade unions less able to contribute to the enforcement of the institutions – making it easier for employers to pursue circumvention and challenge the employment relations institutions (cf. Baccaro and Benassi 2016: 5). In view of the ongoing processes of liberalization of the employment relations in advanced capitalist political economies and the clear evidence of pressure for change following the EU market expansions in the 2000s, this dissertation responds to Bernaciak (2015)'s call for more knowledge about the consequences of bottom-up practices in the context of intra-EU labour and service mobility and a more detailed exploration of their link to liberalization (233). In order to investigate this, the first analytical task must be to disentangle what it is about these processes that carry causal properties to trigger institutional changes, and uncover *how* increased use of migrant labour is linked to the development of the employment relations institutions, feeding into or countervailing ongoing processes of liberalization. This is the task of this dissertation.

3. Research question and methodology

Triggered by empirical developments and prompted by a gap in existing literature, the research question that this dissertation sets out to answer is *How do employers' and trade unions' responses to labour migration affect the employment relations institutions?* The formulation of this research question responds to, and attempts to rectify, the conceptual error that has been underlying much of the current research on the effects of labour migration, by clarifying that it is not the fact that people are moving to work that causes change, but how employers use the migrant labour supply – and how trade unions respond to it. Moreover, this research question explicitly directs our attention to the causal mechanisms at work in the processes of institutional evolution, aiming to unpack the 'how'. Without an understanding of *how* the class actors' responses to the changed conditions of free labour and service mobility in the EU open market contribute to institutional continuity or change, we will not be able to make any causal inferences about the impact of these developments on the institutions regulating employment relationships.

The way that we are able to make inferences about change originating from increased labour migration is by moving away from establishing correlation or assessing average causal effects, and instead demonstrating a causal link that uncovers how the causal process leading to change has played out, enabling us to assess to what extent the pressure for change in the open market has translated into actual change.¹¹ In the context of the research topic in focus here, causal claims have been made in existing literature investigating the effects of increased labour migration, but the causal logic underlying the claims have largely been left in the dark as the cause(s) as well as the outcome(s) have been underspecified and no causal mechanism has been made explicit. As we are not told what the actual causal process is, we have thus far been unable to properly evaluate the evidence of these causal claims, leaving the debate with weak causal claims.¹²

In setting out to investigate the hypothesized causal relationship between increased use of mobile and migrant labour and the evolution of employment relations institutions, a process-tracing method (Beach and Pedersen 2016b) is employed in which causal mechanisms linking the causes and outcomes are theorized and tested empirically. This causal case study method, which is based on a mechanistic understanding of causality, allows us to uncover how increased labour and service mobility, based on how the actors respond to it, is linked to the development of the employment relations institutions. Based on within-case analyses, process-tracing offers analytical tools to investigate actual causal processes at the level at which they occur, that is, the case-level. By theorizing four causal mechanisms that contain theoretical expectations that make explicit how the causes translate into the observed outcomes, I am able to trace a stepwise causal chain. In doing so, this method enables stronger causal inferences, and allows us to advance the debate by upgrading or downgrading our confidence in a causal relationship between the class actors' responses to labour migration and the institutional development of the employment relations. In making use of novel analytical tools, and giving them a proper test round that can contribute to continued methodological improvements, this research responds to existing under-theorization by making explicit the causal processes of how increased labour and service mobility in the EU open market can lead to institutional change. Moreover, by placing the analytical focus

¹¹ This position is based on the established consensus that a plausible causal mechanism should be part of any theory that seeks to make a causal argument (Mayntz 2004; George and Bennett 2005; Falleti and Lynch 2009; Brady and Collier 2010; Gerring 2008; Beach and Pedersen 2013, 2016b). While this can be described as a 'mechanistic turn' in the methodological debate within social sciences, in their substantive research many scholars tend to continue to focus on cross-case variation where the focus on the actual causal process itself is lost, and the type of inference that can be made is about average causal effects at the population level (Beach and Pedersen 2016b). Given that many philosophers of science believe that causal inferences are only possible when we have either mechanistic within-case evidence or manipulated experimental evidence of difference-making (see Jackson 2011), empirically testing causal mechanisms at the level at which the causal process occurs, that is, the case and not the population level, through process-tracing is arguably the only way that we can make strong causal inferences in social sciences when the research questions we are interested in cannot be answered by manipulated experiments (Beach and Pedersen 2016b: 395).

¹² The one exception that should be noted here is Bernaciak (2015)'s excellent introduction and conclusion to the edited volume (Bernaciak (ed.) 2015).

on causal processes, we are also forced to identify what the causes are that triggers the processes – and, in doing so, clearly distinguishing between causal and contextual conditions.

More concretely, I propose and test predictions of what we should see in the empirical record of what can be referred to as typical cases if the four theorized causal processes have played out as expected. The logic of case selection in this causal case study method is based on selecting typical cases, which implies cases where the cause, the outcome, and the requisite contextual conditions are present, whereby the causal mechanism theoretically may be present. The relevant sectoral characteristics of the investigated cases is that migrants are extensively employed in the sectors, meaning that pressure for change is present, and that the sectors contain low- to medium-skilled labour segments that are in comparatively weak positions in relation to their employers, meaning that there is potential for employers to opt out of the dominant employment relations rules and practices in the use of migrant workers, and thereby pursue change. Together, the multiple within-case analyses carried out in this dissertation allows us to uncover sectoral similarities that cut across countries, while in the same time revealing that differences in the actions of key actors – that is, trade unions, employers, and nation states – lead to distinct outcomes in either contributing to institutional continuity or achieving change.

The processes under investigation cover roughly 15 years, taking the mid-2000s as point of departure, up until the late 2010s. In this empirical investigation, I use evidence from official government documents, legal documents, reports from employer organizations and trade unions, interviews with the central and sectoral employer organizations and trade unions, and state agencies that were carried out between April and July 2015, and descriptive statistics of working and employment conditions, as well as existing case studies as secondary sources. This evidence allows me to analyse whether a Resilience Creation Mechanism has been present in the case of the Norwegian construction sector, a Neglect Mechanism in the case of the German manufacturing sector, a Redirection Mechanism in the Swedish construction and hotel and restaurant sectors, and a Defection Mechanism in the case of the German construction and hotel and restaurant sectors – and whether the four mechanisms function as theorized.

In view of the inter-relatedness of the employment relations institutions, in that change occurring in one institution is likely to affect the formal structures or functioning of the other institutions (Streeck 2009), this dissertation analyses the impact on the core employment relations institutions that regulate employment relationships by distributing income between labour and capital and limiting or expanding employer discretion: collective bargaining, labour legislation, and workplace representation.

4. Structure of the dissertation

The dissertation is organized as follows. Chapter 2 introduces the understanding of the creation and expansion of the EU open market as increased marketization, which has intensified the competition between firms as well as between workers (Greer and Doellgast 2017). The increased marketization has created a context in which the pressure for change in the employment relations institutions has increased, and the free access to foreign labour has offered employers more possibilities to exploit workforce divisions and to exploit options to exit the dominant rules and practices of the employment relations institutions (cf. Doellgast et al. 2018). The chapter also provides descriptive evidence of employers' increased use of migrant labour to substantiate the point that pressure for change originating from increased labour and service mobility is present in all six examined cases, discusses the purposes of employers' use of migrant labour, and reviews the literature on the effects of increased labour and service mobility on employment relations institutions, establishing our current knowledge about these effects and arguing that the literature has so far failed to provide strong causal inferences as no causal mechanism explaining how institutional impact occurs has been uncovered.

Chapter 3 presents the causal theory of how employers' and trade unions' responses to labour migration affect the employment relations institutions, outlining four causal mechanisms – institutional resilience creation, institutional neglect, institutional redirection, and institutional defection (Streeck and Thelen 2005; Mahoney and Thelen 2010) – that make explicit how these causal processes play out and specifies what type of change can be caused. A typological theory is presented that provides a logical structure of possible responses and identifies what it is about employers' and trade unions' responses that is causally relevant for institutional evolution, distinguishing between the responses that contribute to continuity and those that trigger institutional change. In this typological theory, trade unions' responses are categorized as either being *protective* of migrant labour or as a response that results in *non-effective protection*, and employers can either *comply* with dominant employment relations rules and practices in the use of migrant labour, or *opt out* of such rules and practices. The responses have distinct causal properties that crucially boil down to the following: whether they trigger a process in which the employment relations institutions are not challenged, and where the required active support for the institutions is provided in the context of high pressure for change in the EU open market, which in turn is translated into institutional resilience creation – or, whether they trigger a process in which the employment relations institutions are challenged, and there is absence of institutional support that would discontinue a process towards institutional change in a liberalizing direction. Based on the typological theory, the chapter makes propositions about what type of responses are needed from the class actors for them to contribute to institutional continuity in both the formal structures and functioning of collective bargaining, labour legislation, and workplace

representation – and, conversely, what sets of responses trigger institutional change that contributes to liberalization as dualization, socially embedded flexibilization, or deregulatory liberalization – all of which leads, to different extents, to increased employer discretion and a redistribution of income from labour to capital. The chapter also makes explicit the contextual conditions under which the causal processes are expected to play out, and offers an explanation of what has shaped employers’ and trade unions’ responses to migrant labour, specifically emphasizing the role of the state in establishing conditions under which employers continue to comply with the employment relations institutions as they face the market conditions of the EU open market.

Chapter 4 introduces the causal case study method applied, process-tracing (Beach and Pedersen 2016b), and explicates the procedure of the method as well as its underlying ontological and epistemological assumptions and standpoints that are based on a mechanistic and deterministic understanding of causation, coupled with a probabilistic epistemology, which guides the formulation and evaluation of predictions about the causal mechanisms, and determines the type of casual inferences that can be made. Subsequently, the measurements of the causes, outcomes, and causal mechanisms are introduced. This part of chapter 4 is very important for the argument advanced in this dissertation, as it specifies the causal properties of employers’ and trade unions’ responses, and explains why the formal structures and functioning of the employment relations institutions can be affected by their responses. The chapter also presents the case selection strategy and discusses the causal homogeneity of the populations investigated, and the empirical material serving as basis for the empirical investigation. The chapter ends by making explicit the types of inferences that are enabled by this research design, namely to upgrade or downgrade our confidence in that there is a causal relationship between employers’ and trade unions’ responses to migrant labour and the evolvement of the employment relations institutions, and, more specifically, how this causal relationship plays out as actual processes.

The six empirical case studies are presented in chapter 5 through 8. These within-case analyses demonstrate presence of divergent responses by the class actors in the different economic sectors, offer evidence of varying strength of the presence of the theorized Institutional Resilience Creation Mechanism, Institutional Neglect Mechanism, Institutional Redirection Mechanism, and Institutional Defection Mechanism in the different cases, and assess the outcomes of these processes by examining whether the actors’ responses to labour migration have contributed to institutional continuity or change, and in case of the latter, what form the change has taken. The type of causal claim that is made in these chapters is that the identified cause – employers’ and trade unions’ responses to migrant labour – *contributes to* institutional continuity or change. Taken together, the empirical evidence provided in the chapters allows us to update our confidence in the overall hypothesized causal relationship, that is, that there is a causal relationship between how the class actors’ respond to labour migration and the institutional

development of the employment relations. The investigated cases demonstrate how sectoral differences in interactions between employers and trade unions trigger distinct causal processes, which in turn contribute to different outcomes in terms of their impact on the institutions regulating employment relationships. Importantly, the empirical case studies serve as contrasting cases for demonstrating how collective labour regulations can be maintained in the context of the EU open market and how pressure for change is transformed to actual change, feeding into ongoing processes of liberalization of the employment relations institutions.

The concluding chapter (chapter 9) offers general theoretical conclusions and policy implications based on the empirical findings and the theoretical propositions advanced in this dissertation. First of all, I conclude that the way that the class actors respond to labour migration influence both the functioning and the coverage of the employment relations institutions. The free labour and service mobility in the EU open market has – through employers’ and unions’ responses towards it – contributed to multiple modes of institutional changes in the employment relations, as the situation in which employers do not fully comply with the dominant employment relations institutions in their employment of migrant labour has been the most common over the last decade and a half. In substantive terms, these developments have contributed to increased employer discretion over working and employment conditions. While it remains for future research to thoroughly assess the distributive outcomes associated with the changes, it is proposed that the developments have also contributed to a redistribution of income from labour to capital. Consequently, the broader conclusion that is drawn based on this research is that the process of European integration, through the establishment of free movement of labour and services and internal market expansions, has served as a driver of liberalization of employment relations institutions. The findings presented in the empirical chapters suggest that employers’ logic of action based on compliance with the rules and practices of the employment relations in these countries that historically have been characterised by high levels of class organization and strong collective regulations is explicitly contested by the logic of action stimulated in the EU open market, where competition is placed outside of the scope of the institutions for collective labour regulation. Aside from the crucial role of trade unions’ responses, which in interaction with employers’ responses influence the direction of change, I also conclude that the nation states play a key role in establishing the context in which these processes play out, which, in turn, shapes the class actors’ responses and determines whether they will be successful defendants or challengers of the collective employment relations institutions. Concrete policy implications follow from the clear propositions that are made about the conditions that need to be established by the state for the causal powers of the class actors’ responses to result in contribution to continuity or change. While recognizing the high costs associated with ensuring enforcement of labour standards in a context where opt out of the dominant employment relations rules and practices is encouraged as logic of action in the EU open market, I propose that high levels of enforcement, most plausibly

along with re-regulatory measures, are requisite for maintenance of the collective employment relations institutions, or for adaptation that re-embeds the liberalising changes. The chapter also deals with the issue of whether it is analytically and substantially relevant to distinguish between varieties of liberalization, or whether we in analyses of labour relations should solely focus our attention on liberalization as increased employer discretion tout court. In having seriously engaged with Thelen (2014)'s varieties of liberalization, and extended the operational definitions of them, I conclude that they indeed offer a powerful conceptual tool kit for understanding contemporary transformations.

Chapter 2

Labour migration and European integration

1. Introduction

In 1992, the member states of the EU agreed to the creation of a common European market constituted by free movement of goods, services, labour, and capital. The launch of this open market in January 1993 marks a milestone in the process of European integration.¹ While Norway and Sweden were included in the EU open market in 1994, West Germany, as one of the six original members of the EU, played a key role in the development of it, which was initiated almost four decades earlier as one of the core objectives of the Treaty of Rome in 1957. German governments have in this way played an active role in the creation of the EU open market, and scholars have argued that one of the aims on the agendas of German policy makers was to introduce temporary migration channels to avoid the type of guest worker programs that historically had led to temporary migrant workers permanently settling in the country (Ellermann 2014). For firms, the creation of the open market meant free access to foreign labour supplies, and the possibility to buy and provide services from and to firms operating in the open market. Whereas capital mobility and relocation options have long been available to firms, particularly in the manufacturing sector, the EU open market offered means for firms across all economic sectors to make use of foreign labour and service providers in their home market. This entailed a major change for firms in sectors such as construction and hotel and restaurants, where relocation of production was never an option; European integration made firms not only in manufacturing but also in the construction and hotel and restaurant sectors less bound to their domestic markets and local labour forces (Lillie and Greer 2007: 552; Andersen et al. 2014a: 81-82). For workers, their role in the process of market creation was based on “the image of the Community worker as a mobile unit of production, contributing to the creation of a single market and to the economic prosperity of Europe” (Craig and de Búrca 2003: 701), with the EU regulatory framework seeking to enable mobile workers as individual market actors (Lillie 2016: 48). Labour migration,

¹ As of 2018, EU’s 28 member states and three members of the European Free Trade Association (EFTA) (Iceland, Lichtenstein and Norway) were part of the European Economic Area (EEA) that sets the boundaries for the common market.

primarily within but also from outside of the EU, has in this way played a central role in EU market-making policies (Lillie 2016: 62; Doellgast et al. 2018: 23).

The market creation in the early 1990s was followed by two important market expansions in 2004 and 2007 that gradually, depending on the transitional rules adopted by the member states, entailed a drastic expansion of employers' recruitment base and led to considerable increases in labour and service mobility.² Scholars have demonstrated how these market expansions, driven by forces of capitalist market expansion enhanced by the four fundamental freedoms, have generated the greatest population movement on the European continent since World War II (Friberg 2013: 24). What distinguished these rounds of enlargements in a historical context was that they took place within the context of the open market and that the differences in wage levels, labour standards, and unemployment rates in the old and new member states were considerably larger than in earlier EU enlargements (Brücker and Baas 2009: 2).

At the core of European integration has been the removal of market-restricting regulations (Höpner and Schäfer 2012; Höpner 2018a). The past 25 years have seen the removal of regulations and the introduction of new rules that apply across the open market as a means to guarantee the fundamental freedoms. As the regulatory framework of the EU internal market functions as pressure for member states to introduce legal reforms in order to reduce differences and remove 'bottle-neck regulations' that obstruct the internal market, tensions have been generated in relation to national employment relations arrangements (Hyman 2001), leading scholars to claim that the economic integration promoted in the open market systematically challenges labour market governance based on non-market institutions (Höpner and Schäfer 2010: 352; Höpner 2017). In this process, which to a large extent has been shaped by case law established by the European Court of Justice (ECJ) (Cremers 2011; Höpner and Schäfer 2012: 448; Dølvik et al. 2014a: 14-15; Kristiansen (ed.) 2015), the economic freedoms of capital have gained priority over labour rights (Dølvik and Visser 2009: 492, 505) – particularly *collective* labour rights (Höpner and Schäfer 2012: 444; Zhang and Lillie 2015) – as emphasis has been on ensuring that foreign firms do not face competitive disadvantages in relation to domestic firms (Dølvik et al. 2014b: 85) and on protecting employers' right to exploit wage differentials as a competitive advantage (Lillie 2016: 42). The restrictions imposed by the ECJ on the possibilities of national level actors to regulate economic activities have entailed that European integration through law in practice has made capitalist firms' short-term interests for profit superior to fundamental labour rights (Höpner and Schäfer 2010: 358). Scholars studying the legal effects at the national levels have identified a struggle for territory between labour law and economic law and have, for example in Sweden, concluded that after a decade of EU membership, Swedish

² In 2004, ten new member states acceded to the EU; the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia. The 2007 enlargement included Bulgaria and Rumania. The most recent enlargement in 2013 included Croatia in the open market.

labour law had gone through “a quiet revolution,” where several minor changes together have contributed to a trend where the ECJ has gained increased power over the national labour law and left national legislators with less control (Bruun and Malmberg 2005). This judicialization of labour regulation has, most importantly, led to restrictions imposed on the right to strike, following the 2007-2008 Laval Quartet of ECJ decisions, which have enhanced the power imbalance between trade unions and employers further in favour of the latter (Kilpatrick 2009: 845-849; Ahlberg 2012; Dølvik et al. 2014b: 85). By limiting the right to strike and placing formal restrictions on the ability of trade unions to demand use of collective agreements in the case of posted workers, the ECJ gave employers legal space to undermine national collective labour regulations and simultaneously established a restrictive framework for how trade unions can respond to employers’ use of migrant labour, depriving them of their strongest leverage to push employers, here foreign firms, into collective bargaining (Lillie 2016: 42, 60; see also Dølvik and Visser 2009: 493). As it recently has been substantiated that the quartet of ECJ judgements are part of a larger pattern of labour market conflicts (Bengtsson 2014: 16-17), the EU and the ECJ have in their interpretation of EU law become central in setting the rules to which the class actors have to adapt (Höpner 2017).

Contradictions between the EU regulatory framework of posted work and national collective labour regulations – and the exploitation of regulatory gaps resulting in employment and working conditions drastically below national standards – have made posted work an area of particular contestation, which has received considerable attention in political debates as well as in the academic literature (e.g. Cremers 2011; Lillie 2010, 2016; Wagner 2015; Wagner and Hassel 2015a). The reason why this dissertation treats both labour and service mobility pertains to the common denominator that both forms of mobility allow employers to access foreign labour supplies, whether through labour mobility where migrant workers offer their labour in the host labour market, or through service mobility where a foreign firm offers their labour. The different forms of mobility typically has implications for the purposes that employers’ use of migrant labour may serve, which will be explored later in this chapter, and whether employers’ comply or opt out of dominant employment relations rules and practices in their use of migrant labour, which will be demonstrated in the case chapters.

This chapter first introduces the understanding of the creation and expansion of the EU open market as increased marketization, drawing upon Greer and Doellgast (2017), and discusses the implications for the competitive situation of firms and workers. I then provide descriptive evidence of employers’ increased use of migrant labour to substantiate the point that pressure for change originating from increased labour and service mobility is present across the cases examined in this dissertation, showing that employers in these sectors have demonstrated a great demand for migrant labour despite divergent trajectories of economic development. I then discuss the purposes of employers’ use of migrant labour, and end by reviewing the literature on the

effects of increased labour and service mobility on employment relations institutions, establishing our current knowledge about these effects.

2. European integration and increased marketization: Competition in the Open Market

European integration has through the establishment and expansion of the EU open market, and the free labour and service mobility within it, led to increased marketization, from which intensified competition for both firms and workers has followed (Bernaciak 2015: 10-11, 226; Greer and Doellgast 2017: 195, 198). Marketization involves the imposition or intensification of price-based competition that alters market-based transactions. In the EU open market, this takes place as competition is opened up to a greater number of market participants – both in terms of firms and workers – and through increased competition at the level of transactions, which induces a response from market actors to make choices more purely on the basis of price, including the price of labour (Greer and Doellgast 2017: 195). Intensified competition between firms and between workers has been an explicit intention in EU market-making efforts (see e.g. European Commission 1993; ECJ Judgement C-341/05 2007; see also Greer and Doellgast 2017: 203; Hyman 2001: 287-89), and the level of labour standards has been considered as a potential source of competitive advantages for firms as well as workers in the EU open market (Lillie 2012: 151; Berntsen and Lillie 2015: 45). By establishing a common market based on free movement of goods, services, labour, and capital, that expanded free trade, facilitated vertical disintegration of firms, led to increased labour migration, and created political pressure for reforms to liberalize labour markets and employment relations regulations (Greer and Doellgast 2017: 198), the increased marketization generated by European integration has powerfully reinforced the dynamics of the globalization of capitalism and exposed workers and firms in all sectors to intensified competition (Baccaro and Howell 2017: 44; Höpner 2018b).

2.1 Intensified competition between firms

While the manufacturing sector through its export-oriented nature historically has been exposed to international competition, European integration has intensified price competition between firms also in largely domestic-oriented sectors such as construction and hotel and restaurants, where firms reduce costs through the use of migrant labour, foreign subcontractors and temporary work agencies (Andersen et al. 2014a: 81-82). For firms, a consequence of this changed context is that the intensified competition increases market uncertainty and narrow profit margins (Greer and Doellgast 2017: 200). An expected response from employers in this context is risk mitigation by transferring a larger share of the risk to individual workers, and an increased focus on maximizing short-term returns, associated with (labour) cost reduction and/or the identification of new sources of profits, for example by changing the organization of work (Appelbaum and

Batt 2014; Greer and Doellgast 2017: 200; Doellgast et al. 2018: 23). In this way, the intensified price competition directs employers to base their competition on lowering expenditure on wages and reducing the quality of the working and employment conditions (Bernaciak 2015; Greer and Doellgast 2017). This can be contrasted with the competitive situation prior to globalization and European integration, where strong organization on both sides of the class actors and high collective bargaining coverage contributed to take wage costs out of competition between firms operating under the same agreement within national political economies (Baccaro and Howell 2017: 159).

Recognizing European integration as being a matter of increased marketization draws our attention to the increase in competition that it creates (Greer and Doellgast 2017: 195), and placing competition front and centre enables us to better understand how market actors – here, employers – react to changes in the market situation that has increased the pressure on them to be successful in order to survive, for example, as domestic firms see their market shares shrink when foreign firms increase their presence (Andersen et al. 2014a: 81; see also Bernaciak 2012, 2015).³ A focus on the micro-logic of competitiveness is thus important for understanding why the context of the open market has increased the pressure for change in the institutions that restrict employer discretion over the terms and conditions of the employment relationships in which they engage, or the services that they procure, in their use of migrant labour. The increased marketization in the EU open market has not only created a context in which the pressure for change in the employment relations institutions has increased. The free access to foreign labour has simultaneously offered employers more possibilities to exploit workforce divisions and options to exit dominant employment relations rules and practices (Greer and Doellgast 2017: 198- 199; Doellgast et al. 2018: 23-24). In other words, employers in the open market operate under conditions that pushes them to pursue change, and the open market has offered them new ways to do so through the use of migrant labour and procurement of services from foreign firms. What matters in the analysis of institutional continuity and change is whether competition remains within the scope of the institutions and new competitors are simply added to the existing competitive situation, or whether firms act as disruptors by introducing a new logic of action in their use of migrant labour, thereby placing competition outside of the scope of the institutions.

2.2 Intensified competition between workers

Liberalising the movement of labour has also led to intensified competition between workers in the open market (Greer and Doellgast 2017: 197). Adding to the competitive situation is the

³ While Greer and Doellgast (2017) treat increased marketization as a cause, arguing that marketization alters both the formal structures and functioning of redistributive non-market institutions by leading to disorganization and the simultaneous strengthening of institutions that support profit extraction (202), increased marketization is here understood as the context to which the actors respond, rather than a cause.

vertical disintegration of firms, to which the EU open market has contributed by the right of establishment and free service provision, as managers and worker representatives are forced to compete for jobs in different locations (Lillie and Greer 2007; Hardy 2015: 189; Greer and Doellgast 2017: 196). While competition between workers is inherent in capitalism, and continuously exploited by employers, free labour mobility in the open market enhances this dynamic by further intensifying competition between workers with different terms of references when it comes to the conditions under which they are prepared to sell their labour, thereby increasing employers' power to exploit workforce divisions (Offe and Wiesenenthal 1980; Doellgast et al. 2018: 25). What makes the migrant labour supply specifically attractive to employers is not simply the additional labour that it offers, but the greater control, among other benefits, that employers can gain from employing a comparatively more powerless group of workers (Hardy 2015: 190). To the extent that migrant workers are prepared to accept precarious employment contracts, employers are able to further promote intensified competition between workers in labour markets and across production chains, and thereby gain leverage to reduce labour costs (Gumbrell-McCormick 2011: 300; Lillie 2012: 148-151; Doellgast et al. 2018: 25, 34).

Recognizing the inherent competition between workers in capitalism enables us to grasp the systemic nature of this dynamic to which all workers are subject through wage labour (Offe and Wiesenenthal 1980: 70), and to place the competition in a wider context – beyond the potential conflict between migrant and non-migrant labour. While potentially intuitive, this point merits further substantiation. What makes for the inherent worker-to-worker competition in capitalism is that, in contrast to capital that is comprised of many units of labour that has been generated by labour power in the past, and that is organized under a unified command in the organizational form of a firm, “each individual worker only controls one unit of labour power, and [...] has to sell this under competitive conditions with other workers who, in turn, have to do the same” (Offe and Wiesenenthal 1980: 74).⁴ This individuality of labour entails that workers in capitalism by definition are divided by competition (ibid.). While the insight that competition between workers is inherent in the exchange between capital and labour avoids an overemphasis on the differences between groups of workers, there is one important difference between migrant and non-migrant labour; namely, what makes migrant workers willing to sell their labour under conditions inferior to the host labour market. Based on insights from Offe and Wiesenenthal (1980)'s seminal work, this has to do with the fact that the conflict that is built into the relationship between capital and wage labour is bound to remain very limited as long as workers act as individual units of labour, that is, in the absence of associational efforts on the part of workers (74) – for example, when

⁴ This is also the reason for the emergence of an asymmetrical power relationship between capital and labour, and explains why capital's superior power is inherent in capitalism. This point is further elaborated in Chapter 3, 2.2 Power resources approach and action-based institutionalism.

trade unions are not effectively protective of migrant labour. The result of the minimization of this conflict is what can be described as the ‘willingness’ to accept the conditions put forward by the employer. Put differently, this describes a situation in which (migrant) workers have insufficient bargaining power to improve the employment and working conditions, because each individual worker who starts to make such demands would risk being replaced by another worker (ibid.). As labour in a capitalist society always has a greater preference for being employed (versus being unemployed) than the employer has to employ any specific worker (especially in an open market with free access to foreign labour supplies), employers’ advantage over labour is amplified as the leverage held by labour in relation to employers – that is, employers’ reliance upon the willingness of workers to sell their labour – is diminished in the open market, at least in absence of associational efforts that would restrict workers’ “willingness” to accept the conditions (see Offe and Wiesenhal 1980: 73, 77). In the competition between migrant and non-migrant workers, the acceptance of inferior conditions, including reduction in wages, longer working hours, and/or higher work intensity, instead functions as leverage for the employer to choose migrant labour. Scholars have indeed suggested that the mobility of workers is central to the dynamics of capitalism and migrant workers play a distinct role, not only by serving as a “reserve army of labour,” but specifically by representing a comparatively more powerless labour supply that can be used to intensify worker-to-worker competition and achieve acquiescence also from the native labour supply (Piore 1979: 43, 87; Lillie 2012: 150-151; Hardy 2015: 190; see also Engels 1987 [1887]: 133; Castles and Kosack 1972). Based on this insight, it also becomes clear that labour market insiders, among whom non-migrant workers are overrepresented in relation to migrant workers, are also affected by the intensified competition (Dorigatti 2017: 921, 939); with reference to competitive pressures, employers can seek concessions from in-house workers as a condition for their job security, and justify a shift towards external workers on precarious employment contracts (Gumbrell-McCormick 2011: 297; Lillie 2012: 162; Doellgast et al. 2018: 23). While migrant labour can temporarily provide a way through which non-migrant workers, particularly labour market insiders, are able to escape the role that the logic of the capitalist system otherwise would have assigned to them (Piore 1979: 42), they are by no means insulated from the competition. Although migrant workers may use employers’ perceived – often translated into actual – advantages of employing them as leverage in the competition over jobs (Piore 1979; Berntsen 2016), it is for analytical reasons important to recognize that the leverage originates from the capitalist who promotes intensified worker-to-worker competition and holds the power to determine who gets employed and not. What has been lost in much of the political, and partwise also the academic debates on the topic of EU internal labour migration – regularly referred to as low wage labour migration – is that, while migrant workers’ preparedness to accept inferior conditions is an important conditioning factor, the power over the conditions offered are held by employers.

As European integration through the creation of the open market and the establishment of the legal framework regulating it has contributed to institutionalise neoliberalism and denationalize European political economies, scholars have identified European integration as a driver of liberalization, which – along with the parallel globalization of firms, product and financial markets – has increased employers’ opportunities to challenge, and exit, national employment relations institutions by exploring more attractive forms of regulation (Streeck 2009, 2014: xviii; Höpner and Schäfer 2010, 2012; Bohle 2011: 92-93; Baccaro and Howell 2017: 188; Doellgast et al. 2018: 23). As differences in the strength of collective labour regulations continue to exist in the member states, the EU open market has in effect entailed the creation of a market of employment relations regulations in which competition can take place based on offering employers the most flexible package of employment relations (Streeck 1992; Leibfried and Pierson 1995; Höpner and Schäfer 2010: 360; Papadopoulos and Roumpakis 2013: 257, 271). In this vein, scholars have drawn attention to how not only the competitive situations for firms and workers have changed, but also how EU member states have come to compete with each other as if they were firms (Troost and Hersel 2012). In sum, the staging of competition that holds the potential to drive down labour standards takes place at two levels; concretely by managers in workplaces, reacting to the overall context shaped by the competition staged by EU-level policymakers (Bernaciak 2015). While employers can benefit from the intensified competition between workers, particularly in a legal context that favours the freedoms of capital while constraining the rights of (organized) labour (Lillie 2016: 42), the intensified competition between firms threatens to degenerate into a situation from which neither firms nor workers benefit, as will be demonstrated in the case chapters.

3. Labour migration trends: Increased use of migrant labour despite divergent paths of economic development

Over the last two decades, the empirical cases investigated in this dissertation have undergone divergent paths of economic development, reflected in the development of the sectoral employment and firms’ annual turnover. The German and Norwegian construction sectors particularly stand out, with the former having experienced continuous and substantial growth whereas the latter has had an overall negative economic development trajectory and experienced a large detraction. Among the other investigated sectors, the Swedish construction and hotel and restaurant sectors experienced considerable growth, whereas the German manufacturing and hotel and restaurant sectors have demonstrated positive but more modest growth during a large part of the investigated time period.

In the Norwegian construction sector, the sectoral employment more than doubled between 1994 and 2014, and Norwegian construction firms increased their annual turnover

fivefold (Figures 2.2 and 2.8). While the Swedish construction sector has also experienced considerable employment and economic growth during the 2000s, the employment growth has been more modest than in the Norwegian construction sector (Figures 2.2-3). What is striking about the Swedish construction sector is that firms' annual turnover is considerably greater than that of the Norwegian construction sector (Figures 2.8-9), whereas the number of workers employed in the Norwegian construction sector is considerably greater than the number of workers in the Swedish construction sector. This is plausibly explained by Swedish construction firms' extensive activities abroad, including in Norway. Employment in the German construction sector was, in contrast, reduced by more than 50 percent between 1995 and 2005 (Figure 2.1). Following the construction boom associated with the German reunification in the early 1990s, the number of workers employed in the German construction sector decreased from over one million in 1995 to just above 500 000 in 2015. The considerable downturn experienced by German construction firms in their annual turnover came to a halt in 2005, and returned to growth after the economic crisis of 2008. Yet, the growth in the number of workers employed in the German construction sector has only been modest, with a modest employment growth returning around 2010, while firms' annual turnover has demonstrated a stronger growth trend, and by 2015 reached similar levels as by the end of the 1990s (Figure 2.7). The economic development of the German manufacturing sector has over the last decade been somewhat unstable, with the sector being significantly affected by the economic crisis of 2008, from which a decline in the sectoral employment as well as in firms' annual turnover followed (Figures 2.6 and 2.12). Since then, employment growth has returned, and in 2013 surpassed pre-crisis levels. German manufacturing firms' annual turnover regained pre-crisis levels already in 2011, and has since seen a positive development. The hotel and restaurant sectors, representing a low-end service sector, have across the countries experienced employment and economic growth over the last decade. The years preceding the growth period were more modest and unstable in terms of employment growth. In the German hotel and restaurant sector, the employment growth took off around 2010, whereas it in Sweden started a few years earlier (Figures 2.4-5). The growth in Swedish hotel and restaurant firms' annual turnover has been markedly steep, and more than doubled between 2004 and 2015 (Figures 2.10-11). Figures 2.1 through 2.6 demonstrate the trends in sectoral developments, including the increase in foreign workers employed (where the data situation allows it), and Figures 2.7 through 2.12 demonstrate trends in firms' annual turnover between 1995 and 2017 in the six investigated cases.

Figures 2.1-6 Trends in sectoral employment and foreign workers employed in the investigated sectors, 1995-2017 (number of workers employed, in thousands)

Figure 2.1 German construction sector

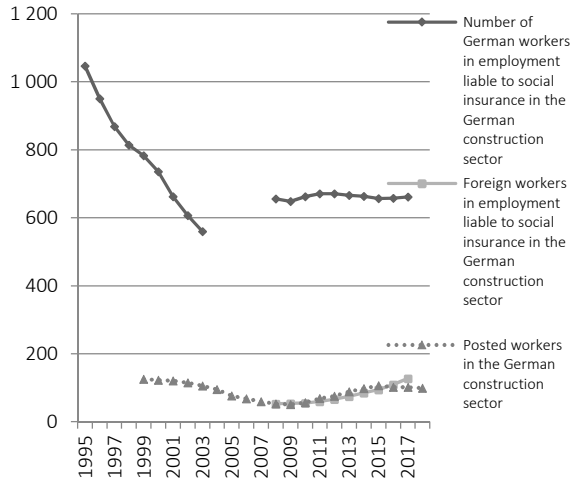


Figure 2.2 Norwegian construction sector

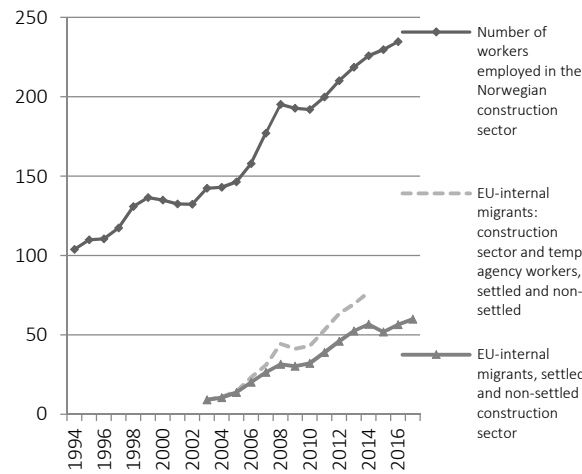


Figure 2.3 Swedish construction sector

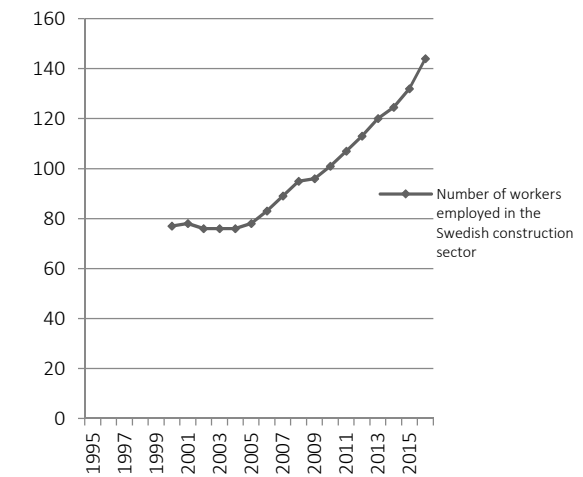


Figure 2.4 German hotel and restaurant sector

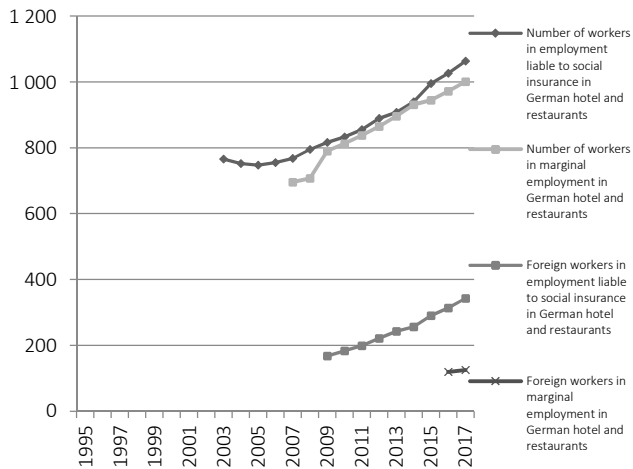
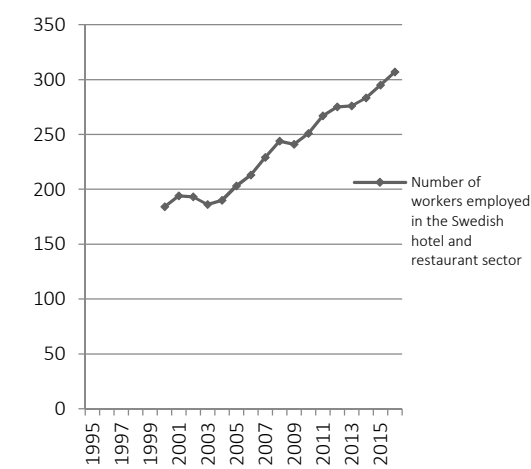
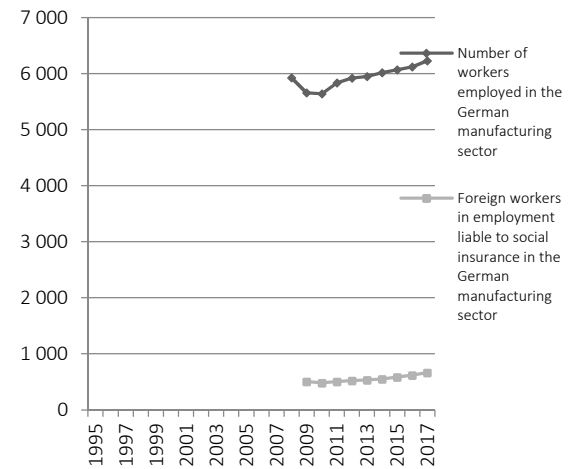


Figure 2.5 Swedish hotel and restaurant sector



2.6 German manufacturing sector



Sources: Germany: The Federation of the German Construction Industry (number of German and foreign construction workers in employment liable to social insurance, based on data from the German Federal Employment Agency) and the social insurance fund of the German construction sector (SOKA-Bau, 23 May 2018) (posted workers 2009-2015), and the Federation of the German Construction Industry (3 April 2019) (posted workers 2016-2018); the German Federal Employment Agency, Arbeitsmarkt für Ausländer (2010-2018) (foreign workers in employment liable to social insurance in the hotel and restaurant and manufacturing sectors); Dehoga (2017: 5) (number of workers in employment liable to social insurance and marginal employment in the German hotel and restaurant sector, based on data from the German Federal Employment Agency); the German Federal Employment Agency, Migrationsmonitor 2016 and 2017 (Number of foreign workers in marginal employment in the German hotel and restaurant sector); and the Federal Statistical Office of Germany (number of workers employed in the manufacturing sector). Norway: Statistics Norway. Sweden: Statistics Sweden.

Notes: These trends should be understood as estimates, as different sources tend to differ in the exact number of workers (including total, domestic, and foreign workers) across the different sectors.

Germany: The numbers of German and foreign workers in employment liable to social insurance in the German construction sector exclude persons in management positions, office staff, or in apprenticeships (Figure 2.1). The construction sector includes WZ08: F41-43 (*Bauhauptgewerbe*). The data on the number of construction workers in employment liable to social insurance in the years 1995-2003 is mainly included to demonstrate the decline in the sectoral employment, but should not be directly compared to the time period 2008-2017 because foreign workers in employment liable to social insurance were not separated from the category of construction workers in employment liable to social insurance in the period 1995-2003. Moreover, the data covering 1995-2003 represents yearly averages of the number of construction workers, whereas the data on German and foreign construction workers in employment liable to social insurance 2008-2017 represents snapshots in the month of June each year. The number of posted workers are based on posted workers registered in the social insurance fund of the German construction sector (SOKA-Bau), calculated cumulatively throughout the year. Across the three sectors, foreign workers are measured as registered foreign workers in employment liable to social insurance. The number of workers in employment liable to social insurance (dark grey line) as well as workers in marginal employment (light grey line) together make up the sectoral employment in the German hotel and restaurant sector (Figure 2.4). Marginal employment refers to employment types in which the employer is relieved from the obligation to pay social security contributions, including 'Minijobs' where the worker earns a maximum of 450 Eur/month, and jobs that do not cover more than 50 days in one year (German Federal Employment Agency 2014b: 2). The hotel and restaurant sector includes WZ08: I 55-56. The German manufacturing sector covers employees working in the manufacturing sector as a whole (WZ08: C 10-33).

Norway: The full light grey line includes settled and non-settled EU internal labour migrants in the Norwegian construction sector (Figure 2.2). The dashed line includes settled and non-settled EU internal labour migrants in the Norwegian construction sector, and in temporary work agencies. The data on temporary agency workers between 2003 and 2008 only include non-settled EU internal labour migrants. Non-settled workers cover workers registered as non-settled in the central population register, and include short-term labour migrants whose stay is no longer than six months, including, for example, posted workers whose presence has been registered. Self-employed foreign workers using the freedom of establishment are not included in the registered non-settled foreign workers.

Sweden: The statistics include yearly averages of the number of employees in the respective sectors. The Swedish construction sector includes figures based on industrial classification NACE Rev. 2; construction developers (code 41), civil engineering contractors (code 42), and contractors for specialised construction activities (code 43). The Swedish hotel and restaurant sector includes figures based on industrial classification NACE Rev. 2; hotels, holiday villages, youth hostels, holiday cottages, camping sites etc. (code 55), and restaurants, catering establishments, bars (code 56). Due to a lack of reliable estimates of the number of foreign workers in relation to the number of native workers, Figures 2.3 and 2.6 of the Swedish construction and hotel and restaurant sectors do not, unlike the other cases, include numbers of foreign workers.

Figures 2.7-12 Trends in firms' annual turnover in the investigated sectors, 1995-2017 (bill. EUR)

Figure 2.7 German construction sector

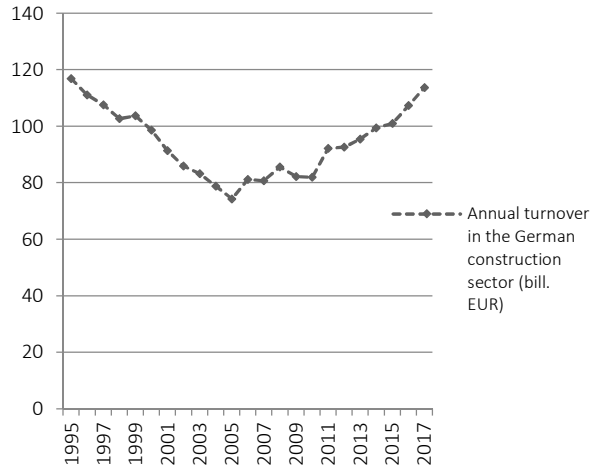


Figure 2.8 Norwegian construction sector

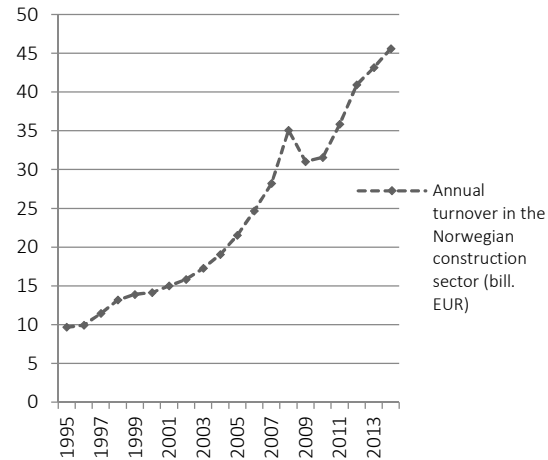


Figure 2.9 Swedish construction sector

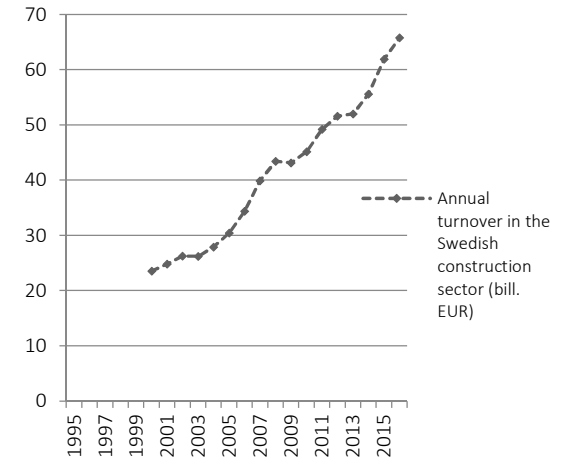


Figure 2.10 German hotel and restaurant sector

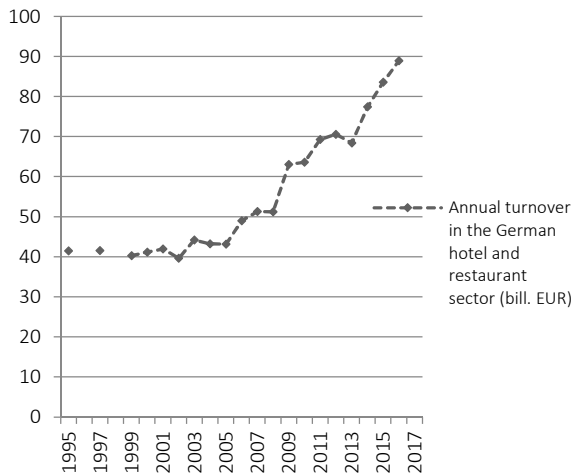


Figure 2.11 Swedish hotel and restaurant sector

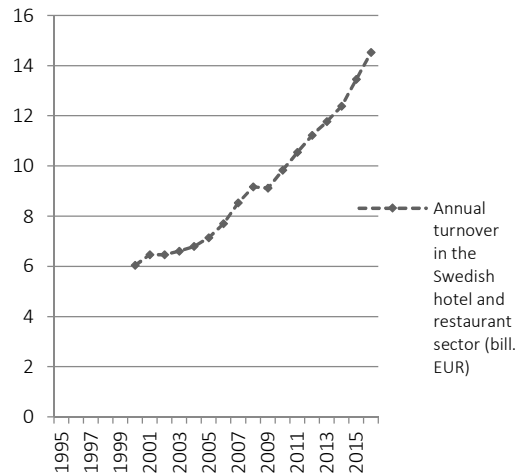
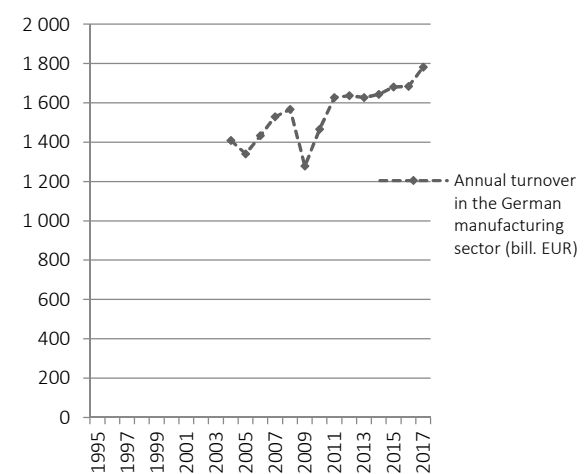


Figure 2.12 German manufacturing sector



Sources: Germany: The Federation of the German Construction Industry (annual turnover in the German construction sector, based on data from the German Federal Statistical Office); German Federal Statistical Office (annual turnover in the German manufacturing sector and hotel and restaurant sector). Norway: Statistics Norway. Sweden: Statistics Sweden.

Notes: The scales on the Y-axis all show billion EUR but are not uniform across all diagrams as there are considerable variations in the sizes of the annual turnovers of the different sectors. The Norwegian and Swedish business statistics are based on their national currencies and have been translated into Euro, and should therefore be understood as approximates. NOK was translated to EUR based on exchange rate 1 NOK = 0.10 EUR. SEK was translated to EUR based on exchange rate 1 SEK = 0.095 EUR. German hotel and restaurant sector: 1995-2004 is based on the industrial classification WZ2003 Gastgewerbe 55, whereas the data for 2005-2016 is based on the industrial classification WZ2008 Gastgewerbe 55-56. For the full industrial classification, please refer to the note associated with figures 2.1-6.

Despite that the sectors investigated here have undergone divergent trajectories of economic development over the last two decades, the use of migrant labour has increased in all sectors. While the history of labour migration and international recruitment in most of the sectors starts well before the EU-enlargements of the mid-2000s, previously taking place through bilateral agreements or enabled by third country labour migration regulations, the market expansions meant free access to foreign labour supplies that has been associated with considerable increases in the use of foreign labour. The below sections map the developments in employers' use of migrant labour across the investigated cases, starting with the German construction, manufacturing and hotel and restaurant sectors.

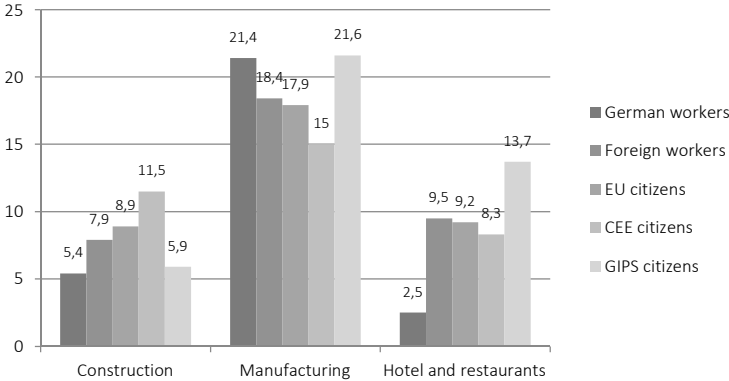
3.1 Migrant labour in the German construction, manufacturing and hotel and restaurant sectors

All forms of labour mobility to Germany have increased following the market expansions in the 2000s; foreign workers in employment liable to social insurance, marginal employment, self-employment, and posted work (Wagner and Hassel 2015b). Citizens from the member states that joined the EU in 2004 and 2007 have accounted for the main increase; the number of Central and East European (CEE) citizens working in Germany increased from roughly 150 000 prior to the 2004 market expansion to approximately 1 250 000 in 2012 (ibid. 56-57). Most of these citizens are temporary labour migrants, many of who are posted workers (ibid.). In parallel, labour migrants from the EU15 countries, that is, the old EU member states (EU15), increased from just below 500 000 in 2003 to just above 800 000 in 2013 (ibid. 55). Among the EU15 citizens, the main increase has taken place among labour migrants from Greece, Italy, Portugal, and Spain (GIPS), following the economic crises that hit these countries hard post-2008 (ibid. 8).

As different modes of mobility need to be considered in conjunction with one another in order to obtain a complete picture, it remains difficult to assess the total number of foreign workers present in the respective sectors. Workers in employment liable to social insurance are registered by the German Federal Employment Agency, and tells a part of the story. Figure 2.13 shows a snapshot of the sectoral distribution of German and foreign workers in employment liable to social insurance in 2017, demonstrating how large a share of all German and foreign workers in employment liable to social insurance work in the construction, manufacturing, and hotel and restaurant sectors respectively. The

figure makes evident that foreign workers, and CEE citizens in particular, are overrepresented in the German construction sector. Foreign workers are also strongly overrepresented in the hotel and restaurant sector, particularly workers from the GIPS countries. While foreign workers in employment liable to social insurance are not overrepresented in the manufacturing sector, a considerable share – 18.4 percent – of the foreign workers were in 2017 employed in the German manufacturing sector. Among GIPS citizens, the share was higher, and equivalent to the share of German workers employed in the manufacturing sector.

Figure 2.13 Sectoral distribution of German and foreign workers in employment liable to social employment, percent, 2017



Source: German Federal Employment Agency, Migrationsmonitor 2017.

Notes: Foreign workers is based on the measure *foreign citizens* and include all non-German citizens, i.e. EU citizens as well as third country citizens. A majority of the foreign workers are EU citizens; 62.9 percent in the construction sector, 53.4 percent in the manufacturing sector, 53.7 percent in the hotel and restaurant sector.

German construction firms started to make extensive use of migrant labour already in the early 1990s, primarily through bilateral agreements with neighbouring countries. Since the market expansions of the mid-2000s, the use of migrant labour has steadily increased. Recent data indicate that the number of foreign workers in employment liable to social insurance in the German construction sector more than doubled between 2008 and 2016; from 53 268 in 2008 to 109 419 in 2016, in turn, followed by a major increase recorded in 2017 when 127 697 foreign workers in employment liable to social insurance were registered (Figure 2.1) (Federation of the German Construction Industry, March 2018b, based on data from the German Federal Employment Agency). The increase in foreign workers in employment liable to social insurance took off in 2011, following the end of the transitional restrictions on workers from the 2004 accession countries, with average annual increases of 14 percent in foreign construction workers in employment liable to social insurance between 2011 and 2017 (Figure 2.15), a majority of who were EU internal labour migrants. The return to growth by the end of the 2000s also meant that many unemployed German construction workers found employment again; between 2009 and 2015, the number of unemployed construction workers declined by 44 percentage points, and by 2017 it had declined by 60 percentage points compared to 2009 (Federation of the German Construction Industry, March 2018a). Prior to that, however, there was between 2008 and 2015 a considerable gap between the

number of unemployed construction workers and available construction work vacancies; in 2008 there were approximately 9 000 open vacancies, and almost 58 000 unemployed construction workers (ibid.). This gap – the fact that there was a domestic labour reservoir of unemployed construction workers – did, however, not seem to affect construction firms' increased use of migrant labour. Conversely to the annual increases in foreign construction workers in employment liable to social insurance, the annual change in the share of German construction workers has largely been negative or stagnant over the last decade (Figure 2.15).

A central part of German construction firms' use of migrant labour has been posted workers. Germany has, on a European level, been identified as the country to which most workers are posted, not only in total numbers but also in relative terms, and the construction sector is one of the main sectors for posted work (Wagner and Hassel 2015b: 40, 44). Prior to the 2004 market expansion, the number of registered posted workers was well above 100 000. It then gradually declined following the market expansions, to again increase in 2010. For a period of time, between 2011 and 2015, the number of registered posted workers even exceeded the number of foreign workers in employment liable to social insurance; in 2015, the social insurance fund of the German construction sector registered 106 964 posted workers, compared to 94 385 foreign workers in employment liable to social insurance (Figure 2.1).⁵ Measured as share of the sectoral employment, foreign workers in employment liable to social insurance made up 6.3 percent in 2003, prior to the 2004 market expansion, to then remain fairly stable up until 2010, when the share was 6.9 percent (Figure 2.14). Following quite rapid increases, the share of foreign workers in employment liable to social insurance had in 2017 increased to 15.4 percent of all construction workers in employment liable to social insurance (Figure 2.14).⁶ While being a rough (and most plausibly moderate) estimate, the share of posted workers in the sector can, based on the available data, be estimated to – since around 2012 and henceforth – make up between 10-15 percent of the sectoral workforce (SOKA-Bau, 23 May 2016; the Federation of the German Construction Industry, March 2018b). The SOKA-Bau estimated that the ratio of posted workers to domestic construction workers was approximately 20 percent in 2015, compared to 11 percent in 2009 (SOKA-BAU, 23 May 2016). Taken together, then, the share of foreign workers (including foreign workers in employment liable to social insurance and registered posted workers) are estimated to make up about 25-30 percent of the sectoral workforce. If additionally taking the very rough and unreliable estimate of the number of migrant workers in bogus self-employment into account, which at the end of the 2000s was estimated to be around 100 000 (Cremers 2010: 24), the share of foreign workers in the German construction

⁵ An important disclaimer, which hampers this type of comparison pertains to the fact that the number of posted workers is registered cumulatively throughout the year, and thus biased upwards in relation to the number of German as well as foreign workers in employment liable to social insurance.

⁶ These estimates can be compared to the estimates of the Federation of the German Construction Industry, who – also based on data from the German Federal Employment Agency – calculated the share of foreign workers in employment liable to social insurance to be 16.2 percent in 2017, increasing from 7.7 percent in 2009 (Federation of the German Construction Industry, March 2018b).

sector would be considerably higher, adding an additional 10-15 percentage points, arriving at about 40 percent of the sectoral workforce.

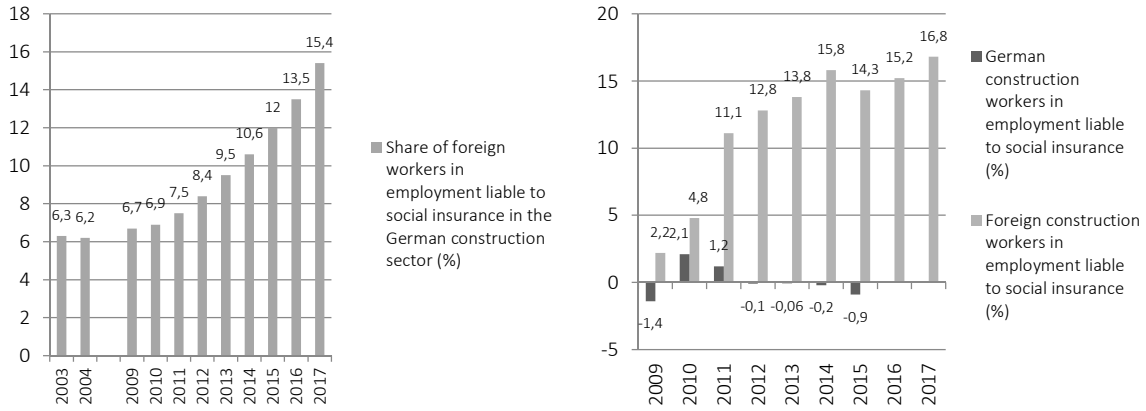
Similar to German construction firms, manufacturing firms had long-established practices of using migrant labour prior to the market expansions in the 2000s, for example, through the guest worker programme decades earlier. Along with foreign exchanges in terms of relocating abroad and outsourcing to foreign firms, use of migrant labour has been considered as indispensable in the production processes of many German manufacturing firms (Interview 1, 2). While this sector has seen more modest percentage increases compared to the construction and hotel and restaurant sectors, there has, nevertheless, been an increase in manufacturing employers' use of foreign workers. Between 2009 and 2017, the number of foreign workers in employment liable to social insurance increased with 156 793 workers. Following a trend of slightly declining employment in the German manufacturing sector among the native-born population as well as among newly arrived EU citizens, mostly pronounced among Eastern European immigrants, between 2000 and 2009 (Granato 2014: 13), there has since 2011 been an increase in the number of registered foreign workers in employment liable to social insurance in the German manufacturing sector. Between 2011 and 2017, the share of foreign workers in the sector increased from 7.8 to 9.7 percent (Figure 2.16), representing annual increases of on average 5 percent (Figure 2.17). In parallel, the employment growth among German manufacturing workers remained more limited (Figure 2.17).⁷ EU citizens make up roughly half (53.8 percent in 2017) of the foreign workers in employment liable to social insurance in the German manufacturing sector. Among the EU internal labour migrants, CEE citizens have over time increased their share relative to GIPS citizens; in 2017, 51.1 percent were CEE citizens and 31.8 percent were GIPS citizens (German Federal Employment Agency).⁸ As registration schemes for posted workers have been deemed as 'disproportionate restrictions' on the freedom to provide services (Dølvik et al. 2014a: 23), there is a lack of viable statistics on the number of posted workers in the German manufacturing sector, which, in contrast to the construction sector, do not have a bipartite agency, such as the SOKA-Bau, registering posted workers. In a recent study, Hassel and Wagner (2018) found that 93 500 workers were posted in the German industry in 2015, suggesting that posted workers might make up around 10 percent of the sectoral workforce.

⁷ While the specific parts of the manufacturing sector in focus in this study are the automotive, electrical, machinery, and transport equipment industries, the data presented here illustrates the manufacturing sector as a whole. If considering the metal, electro, and steel industry, for which data is available as of 2014, the share of foreign workers is similar to that of the manufacturing sector as a whole; in 2016, 9.2 percent of all workers were foreign citizens.

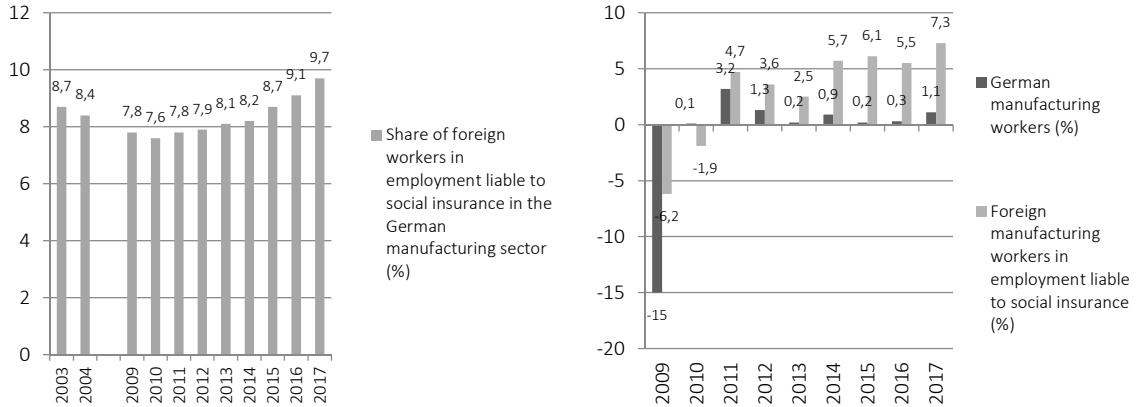
⁸ The share of EU internal labour migrants among the foreign workers in the metal and electro industries is similar to the proportions in the manufacturing sector as a whole.

Figures 2.14-19 Share of foreign workers in employment liable to social insurance in the German construction, manufacturing, and hotel and restaurant sectors 2003-04 and 2009-17, and annual increase/decrease of foreign and German workers 2009-17 (change in percent from previous year)

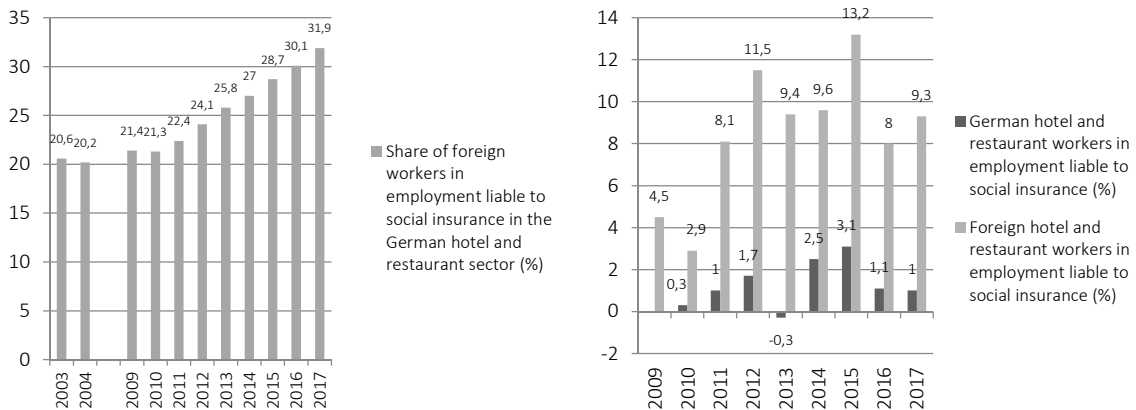
Figures 2.14-15 German construction sector



Figures 2.16-17 German manufacturing sector



Figures 2.18-19 German hotel and restaurant sector



Sources: German Federal Employment Agency, *Arbeitsmarkt für Ausländer* (2004, 2010-2018) (shares of foreign workers in employment liable to social insurance in all three sectors). The Federation of the German Construction Industry (annual increases/decreases of German and foreign construction workers in employment liable to social insurance, based on data from the German Federal Employment Agency). Federal Statistical Office of Germany (number of workers employed in the manufacturing sector), Dehoga (2017: 5) (number of workers in employment liable to social insurance), based on data from the German Federal Employment Agency.

Notes: Foreign workers are measured based on foreign citizenship. The reported numbers of foreign workers in 2003 and 2004 are from the month of December, the numbers in 2009 from June, and the reported numbers in 2010-2017 are from September. The annual change in German workers employed in the manufacturing and hotel and restaurant sectors should be understood as estimates and interpreted with caution, as the number of German workers have been calculated in relation to the number of foreign workers, while the sources of the data on total numbers of workers and foreign workers differ, which compromises the precision of the estimates. For the construction sector, the same source of foreign and German workers has been used for assessing the annual changes, and is thus more reliable.

While the history of employment of migrant labour in the hotel and restaurant sector differs from the construction and manufacturing sectors in that hotel and restaurant sector employers have been less active (and more restricted) in recruiting foreign workers from abroad, the hotel and restaurant sector has a long history of employing foreign workers, particularly so newly arrived immigrants (Granato 2014: 14). Similar to the construction and manufacturing sectors, hotel and restaurant employers increased their use of migrant labour following the EU market expansions. Between 2009 and 2017, the number of foreign workers in employment liable to social insurance more than doubled in the German hotel and restaurant sector; from 168 203 in 2009 to 343 194 in 2017 (Figure 2.4). Roughly half of these foreign workers are EU internal labour migrants (53.7 percent in 2017), a majority of whom were CEE citizens, followed by GIPS citizens. To obtain an overview of the employment in the German hotel and restaurant sector, workers in employment liable to social insurance need to be considered in conjunction with workers in marginal employment. The number of foreign workers in marginal employment has increased in parallel with the foreign workers in employment liable to social insurance, and amounted to 124 883 workers in 2017 (German Federal Employment Agency 2018).⁹ Additionally, the number of seasonal workers from Poland and Rumania, for whom the hotel and restaurant sector is an important sector of employment, has also increased over the last decade (Wagner and Hassel 2015b: 34). The increase in the number of foreign workers in this sector is reflected in a considerable increase in foreign workers' share of the sectoral employment; in 2003, foreign workers made up 20.6 percent of all workers in employment liable to social insurance, in 2009, the share was 21.4 percent, and in 2017 the share had increased to 31.9 percent (Figure 2.18). Similar to the developments in the construction sector, the major increases took off in 2011. Compared to the considerable annual growth in the number of foreign workers in employment liable to social insurance – on average, 9.9 percent annually between 2011 and 2017 – the employment growth of German hotel and restaurant workers was more modest (Figure 2.19).

Germany adopted transitional arrangements that imposed maximal transitional restrictions on the free movement of labour following the 2004 and 2007 accessions. While it in absence of a counterfactual scenario is difficult to assess whether the transitional arrangements has influenced the total volume of labour migrants, existing research suggests that the transitional restrictions had little impact on the volume, and instead shaped the distribution of migrant labour between labour and service mobility, and freedom of establishment (Dølvik and Eldring 2006: 228; Wagner and Hassel 2015b,

⁹ Supplementary to the registered numbers of foreign workers is an unknown number of undeclared migrant workers, thought to be particularly prevalent in the hotel and restaurant sector (Interview 5).

2016b). While a considerable increase in EU internal labour migrants in employment liable to social insurance in the German construction sector indeed took place after 2011 (Figure 2.14), when the transitional restrictions imposed on the 2004 accession countries came to an end, a parallel increase in the number of posted workers took place (Figure 2.1), and so did the number of self-employed foreign workers from the CEE countries, most prominently Poland (Wagner and Hassel 2015b: 9). Similar to the construction sector, the major increase in the number of EU internal labour migrants in employment liable to social insurance in the German hotel and restaurant sector started in 2011, following the end of the transitional restrictions.¹⁰ The general conclusion in the German cases is that, although regular labour migration based on free movement of work increased once the transitional restrictions came to an end, irregular forms of labour migration, such as posting of workers and self-employment, have increased simultaneously (ibid. 55). Wagner and Hassel (2016b) have demonstrated that the transitional restrictions imposed by Germany on citizens from the CEE countries following the 2004 and 2007 EU market expansions spurred increases in irregular forms of labour migration to Germany. In line with findings from Norway (Friberg et al. 2014), the authors conclude that the transitional arrangements adopted by Germany contributed to a shift in employers' hiring practices, directing firms towards using migrant workers via atypical forms of employment – and, that these practices were not reversed when the transitional restrictions came to an end (Wagner and Hassel 2016b: 21). The early prediction by Dølvik and Visser (2009), who already prior to the end of the transitional arrangements noted that employers' staffing strategies had changed and would be hard to reverse when the restrictions on free movement would come to an end (499), appears strikingly valid.

3.2 Migrant labour in the Norwegian construction sector

The increased labour migration to Norway following the EU market expansion has been recognized as the largest migration flow to Norway in the history of the country (Friberg 2013: 10). Based on register data, the number of settled and non-settled EU internal labour migrants employed in the Norwegian construction sector increased more than fivefold between 2004 and 2014, from 10 600 to more than 56 000 (Figure 2.2). In parallel with the market expansions of the 2000s, the temporary work agency sector grew rapidly in many European countries, and growing numbers of foreign labour were used as agency workers following the market expansions. This development was particularly rapid in Norway (Andersen et al. 2014a: 78), and existing research has shown that foreign temporary agency workers in Norway largely have been catering to the construction sector (Friberg 2011: 2). If taking EU-internal temporary agency workers into account when assessing the use of foreign workers in the Norwegian construction sector, the increase in employers' use of migrant labour was even greater; from the 10 600

¹⁰ The German manufacturing sector has also seen an increase in the number of CEE labour migrants in employment liable to social insurance since 2011, although it remains difficult to assess the different forms of mobility in relation to one another in the German manufacturing sector, particularly in lack of data that would enable an assessment of the use of migrant workers as temporary agency workers.

in 2004, to more than 77 000 in 2014 (Figure 2).¹¹ The extensive increase in Norwegian construction firms' use of foreign labour has meant that, by 2013, EU internal labour migrants made up more than 20 percent of the sectoral employment, based on the registered number of settled and non-settled EU internal construction workers (Figure 2.20). It has since continued to gradually increase; in 2017, EU internal labour migrants registered as settled and non-settled made up 23.3 percent of the sectoral employment. A more encompassing assessment, combining different data sources beyond the official employment statistics, and including settled, temporary, and posted migrant workers, suggests that the share of migrant workers in the Norwegian construction sector is considerably higher, and was close to 30 percent already in 2012 (Bjørnstad 2015: 44, based on data from Frischsentret/Bratsberg). Migrant workers employed as temporary agency workers are excluded from these estimates. If taking these workers into account, the share of migrant workers in the sector is well above 40 percent (see Nergaard 2017).¹² Migrant labour in the Norwegian construction sector comes almost exclusively from within the EU.¹³ Among the EU internal labour migrants, most originate from Eastern Europe; in 2008, Eastern European migrant workers made up more than half of all registered EU internal labour migrants in the Norwegian construction sector, and in 2017 they made up 77 percent (Statistics Norway). Settled as well as non-settled EU internal labour migrants have over the last decade increased in parallel, although the share of settled relative to non-settled labour migrants has with time become greater; in 2008, EU internal construction workers registered as settled made up 50.3 percent – in 2017, they made up 61.7 percent. Yet, while the share of workers registered as settled has increased over time, and scholars have noted that many of the Eastern European labour migrants end up settling for a longer term in Norway (Friberg 2013), non-settled workers nevertheless continue to be an important source of labour, making up almost 40 percent of all EU internal labour migrants in the Norwegian construction sector in 2017. While many EU internal workers previously came from the neighbouring Nordic countries, mainly Sweden, Eastern European construction workers has over the last decade gradually become the dominant group among EU internal workers.¹⁴

In contrast to the considerable growth in employment among foreign workers, domestic employment growth in the Norwegian construction sector was over the last decade minimal (Figure

¹¹ Added to these numbers of registered settled and non-settled migrant workers is an unknown number of unregistered and undeclared migrants, particularly among self-employed foreign workers using the freedom of establishment, who are not included in the statistics of non-settled foreign workers as they by definition are not classified as workers (Andersen et al 2009: 55; Friberg 2011: 2; Nergaard 2014b: 9).

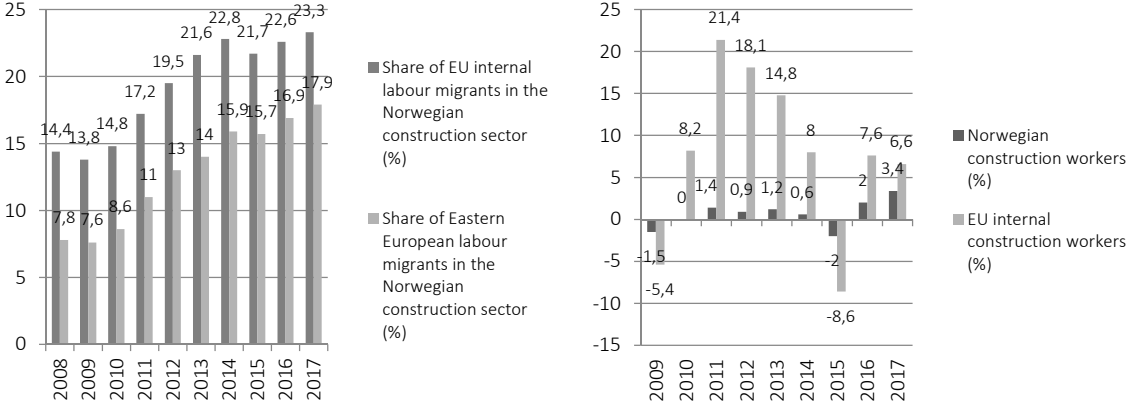
¹² According to Nergaard (2017)'s assessment, between 14 and 18 percent of all construction workers in the Oslo region, where agency work is the most widespread, were, in 2017, agency workers. In the rest of the country, the shares were between 8 and 11 percent (ibid.).

¹³ Throughout the investigated time period, EU internal labour migrants represented almost 90 percent of all registered migrant workers in the Norwegian construction sector.

¹⁴ This development is particularly pronounced among the non-settled workers. In 2008, Nordic workers (excluding Norwegian) made up 41.3 percent of all non-settled EU internal migrant workers in the Norwegian construction sector; in 2017, their share had declined to 19.4 percent. In contrast, Eastern European workers made up 44 percent of all non-settled workers in 2008, and in 2017 they had increased their share to 69.1 percent (Statistics Norway).

2.21), and native workers' share of the sectoral employment declined by 10 percentage points between 2008 and 2017, from 83.3 to 73.6 percent (Statistics Norway). While the Norwegian construction sector had experienced continuous employment growth since the mid-1990s, the growth pace increased following the EU-enlargement in 2004. Scholars have claimed that this unprecedented employment growth is largely linked to the increased use of migrant labour (Friberg and Haakestad 2015). According to calculations by Friberg and Haakestad, close to 60 000 out of the roughly 80 000 workers who entered employment in the Norwegian construction sector between 2005 and 2012 were foreign citizens, mainly originating from the new EU member states in Eastern Europe (187). The strong employment and economic growth in the Norwegian construction sector over the last ten years is thus directly linked to employers' use of migrant labour.

Figures 2.20-21 Share of migrant labour (settled and non-settled) in the Norwegian construction sector 2008-2017, and annual increase/decrease of Norwegian and EU-internal migrant workers 2009-2017 (change in percent from previous year)



Source: Statistics Norway, own calculations.
 Notes: The figures include employed persons between 20 and 66 years of age. Migrant workers include both settled and non-settled migrant workers, categorized based on country background. This means that among the settled workers, this measure is less sharp in terms of capturing migrant workers than the measure of foreign citizens would have been (which the German data, presented above, is based on), as part of the settled workers with foreign country background may have resided in Norway for a considerable period of time. When it comes to the group of workers in focus here, that is, EU-internal labour migrants, and Eastern European in particular, the trends do, however, show a clear increase following the market expansions, revealing that many of workers with Eastern European background are recent labour migrants. Non-settled workers cover workers registered as non-settled in the central population register, and include short-term labour migrants whose stay is no longer than six months. Self-employed foreign workers using the freedom of establishment are not included in the registered non-settled foreign workers. Eastern European countries are included in the category EU members in Eastern Europe from the year that they became members. The reference period is the third week of November for each year.

Similar to Germany, Norway adopted transitional arrangements, although the restrictions were lifted earlier than in Germany, and no restrictions were imposed on cross-border service provision. In spite of the transitional arrangements, the relative as well as total numbers of (registered) EU internal labour migrants in Norway have been considerably higher than in neighbouring Sweden, who abstained from any transitional arrangements (Friberg and Eldring (eds) 2013a: 29). Taking note of the difficulties to assess whether the transitional arrangements have influenced the total number of labour migrants, the

transitional arrangements appear to have had limited impact on the volume also in the Norwegian construction sector, as the number of settled EU internal labour migrants has continuously increased – and settled EU internal labour migrants have, throughout the investigated time period, been dominant to non-settled labour migrants. Thus, employers do not appear to have been directed towards mainly using posted workers or self-employed foreign workers in presence of the transitional restrictions.

3.3 Migrant labour in the Swedish construction and hotel and restaurant sectors

While the data situation makes it difficult to estimate the scope of EU internal labour mobility in Sweden, most assessments agree that the EU market expansions led to an increase in the number of temporary EU labour migrants (LO 2006; Andersson Joona and Wadensjö 2011; Zelano et al. 2014).¹⁵ Prior to the removal of a registration requirement for EU citizens in 2014, data on the number of EU citizens registered as workers or self-employed in Sweden demonstrates a clear increase following the market expansion in 2004; from 3 303 registered rights of residence for employment reasons in 2003, to 8 669 in 2005 (Swedish Migration Agency). Following a peak of 10 164 registrations in 2006, the yearly averages of registrations recorded up until 2013 when the registration requirement was abolished were approximately 8 500 (ibid.). In contrast to these, fairly low, official records, an assessment by the Swedish worker confederation, LO, estimated that approximately 30 000 EU internal labour migrants came to Sweden through the free movement of labour in 2005 alone (LO 2006: 7). Aside from this incomplete record of temporary labour migrants, the Swedish national statistical office provides population statistics that include foreign citizens who have declared their intention to stay for at least one year in Sweden, that is, registered settled foreign citizens. While this register data is plausibly underestimated as there may be labour migrants who do not register their presence, a strong and continuous increase in the number of registered settled CEE citizens has followed the market expansions of the mid-2000s (Figure 2.22). Between 2004 and 2017, the number of CEE citizens registered as settled in Sweden increased by more than 400 percent; from 23 171 to 94 644 (Statistics Sweden 2018). While this data is not disaggregated by sector, the knowledge that Polish and Lithuanian workers, who together make up a majority of the settled CEE citizens (Figure 23), are dominant among the foreign workers in the Swedish construction sector (Zelano et al. 2014: 14), makes it plausible that a considerable share of these recent labour migrants are employed in the construction sector, reflecting Swedish construction firms' increased use of migrant labour.

¹⁵ The labour migration statistics available in Sweden have considerable gaps when it comes to temporary EU internal labour migration. Prior to 2014, EU citizens (excluding Nordic citizens) were obliged to register with the Swedish Migration Agency if their stay was longer than three months. According to the Swedish Migration Agency, the record that existed up until 2013 is likely underestimated, as all EU migrants did not comply with the registration requirement (Zelano et al. 2014: 6). In 2014, the registration requirement for EU citizens was abolished altogether, which means that temporary EU internal labour migrants (i.e. those who do not chose to register as settled) are not registered.

Figure 2.22 Number of registered settled EU28 and CEE citizens in Sweden, 1990-2017

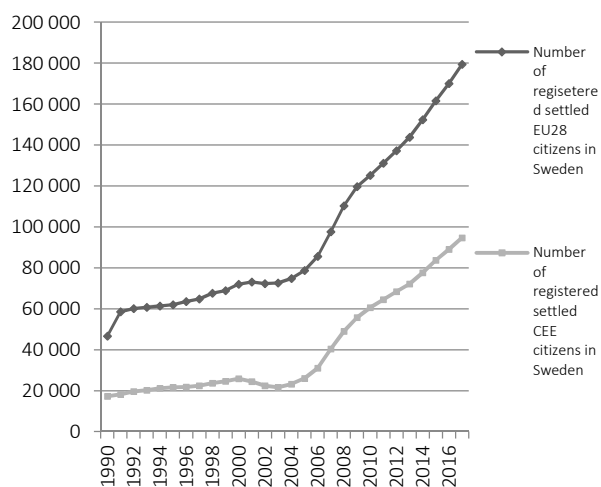
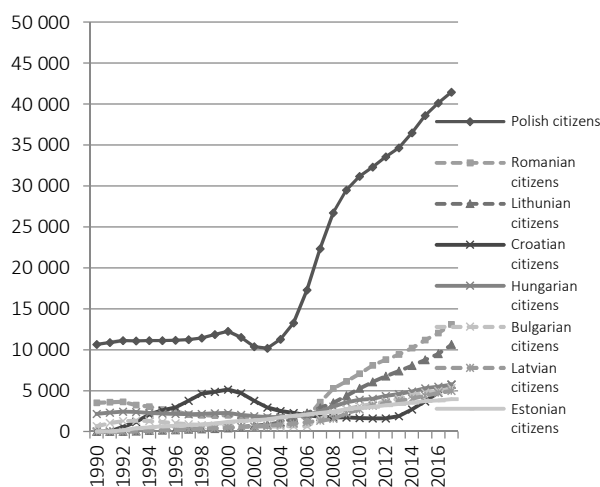


Figure 2.23 Number of registered settled CEE citizens, main countries of origin



Source: Statistics Sweden (SCB), population statistics, updated 2018.03.21.

Notes: The data includes citizens that are between 18-64 years old. Persons with double citizenship out of which one is Swedish are not included. Nordic citizens are excluded from the EU28 category. Central and Eastern European (CEE) citizens include Croatia, Cyprus, the Czech Republic, Bulgaria, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, and Slovenia.

Whereas the registration requirement for temporary EU labour migrants staying longer than three months but shorter than one year was lifted in 2014, an obligation for foreign firms and posted workers to register their presence was introduced in July 2013. The main sector for posted work in Sweden is the construction sector; in 2017, 60.1 percent of all registered postings pertained to construction work (Swedish Work Environment Authority 2014: 1). Between 2014 and 2017, the number of registered postings in the Swedish construction sector increased by more than 300 percent; from 14 001 registered postings in 2014 to 43 596 in 2017 (Figure 2.24). Most of the posted workers in the Swedish construction sector have been posted through service provision within the EU. In 2017, 89.5 percent of all postings came from within the EU, most of which originated from Eastern Europe (Swedish Work Environment Authority). Prior to the introduction of the registration requirement of posted work in 2013, the Swedish Trade Union Confederation carried out a survey among its member unions' local representatives. According to the results, approximately 15 000 workers were posted in occupations within the organizing area of the building workers' union in April/May 2013 (Jonsson and Larsson 2013: 11-12), which is considerably higher than the annually registered number of posted workers. As a response to this, the employer organization claimed that it was a matter of approximately 1 500, and not 15 000, foreign workers employed in the Swedish construction sector (Sveriges Radio, 2013.07.22). Aside from the posted work, the union also estimated that approximately 3 700 foreign workers were active as self-employed at the time of the survey, with the local union representatives noting that there is a large number of unknown self-employed as it is very difficult for the union representatives to detect and get

an overview of these workers, particularly those who cater to private households (Jonsson and Larsson 2013: 12).

While trade unions as well as employer organizations, and the Work Environment Authority, agree that the registered number of postings are considerably below the actual number of postings (Jonsson and Larsson 2013; Swedish Construction Federation 2013: 5; PA Consulting Group 2014; Swedish Work Environment Authority 2014: 7; Sveriges Radio Ekot, 2018.03.09), the registered postings – while inaccurate in terms of the scope – give a clear indication of Swedish construction firms’ increased use of posted work. The lack of reliable statistics on the number of labour migrants in Sweden has made for considerable difficulties in assessing the scope of employers’ use of migrant labour and the extent to which it has increased following the market expansions of the 2000s. This uncertainty has also made for a disagreement between trade unions and employer organizations about the scope of employers’ use of migrant labour, and posted work in particular. While early estimates by the trade unions suggested that posted workers made up approximately 19 percent of all workers in the Swedish construction sector (Jonsson and Larsson 2013: 4), and up to 45 percent of all workers in large infrastructure projects (Jonsson et al. 2010: 4), the sectoral employer organization has made its own assessments, proposing that temporary foreign construction workers made up between 3 to 5 percent of the sectoral workforce (Swedish Construction Federation and TNS Sifo 2010: 2-3, 6), and that posted workers made up between 1 to 2 percent of the sectoral workforce (Swedish Construction Federation 2013: 3). Based on the *registered* number of postings, posted workers’ share of the sectoral workforce has increased from approximately 5 percent in 2014 to roughly 10 percent in 2017. While existing data does not permit us to estimate the share of temporary EU labour migrants, the number of registered settled EU citizens (excluding Nordic citizens) has increased from approximately 1 percent of the sectoral workforce in 2004, to approximately 4 percent of the sectoral workforce in 2011 (Swedish Construction Federation 2013: 7, based on data from Statistics Sweden). In view of the continued and substantive increase in the number of registered settled EU citizens in Sweden in recent years (see Figure 2.23 above), their share of the sectoral workforce has most plausibly increased in parallel. Taken together, a very moderate estimate would be that the share of foreign workers (posted workers and settled EU workers) in the Swedish construction sector was at least 15 percent in 2017.

Figure 2.24 Number of registered posted workers in the Swedish construction sector, 2013-2017

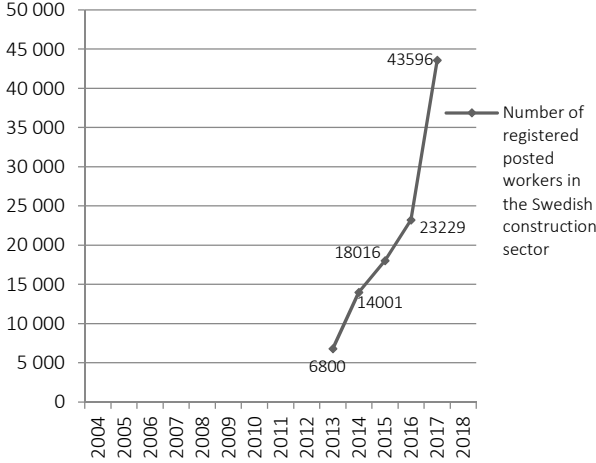
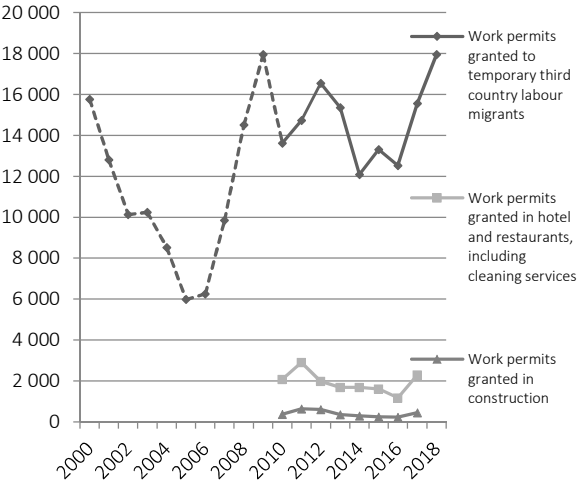


Figure 2.25 Temporary third country labour migration to Sweden, first-time permits granted, 2000-2018



Sources: Swedish Work Environment Authority (Figure 2.24), Swedish Migration Agency (Figure 2.25).

Notes Figure 2.24: The number of registered postings in 2013 is not comparable with the subsequent years as it only covers 1 Jul-31 Dec 2013, following the introduction of the registration requirement on 1 July 2013.

Notes Figure 2.25: The figures prior to 2010 do not only include the number of first-time work permits granted, but also permanent residence permits granted for employment reasons, and are thus not fully comparable to the figures post 2010. 2018 only includes Jan-Oct.

Aside from the free access to migrant labour in the EU open market, Swedish employers have, since 2008, unrestricted access to third country labour migrants. The far-reaching liberalisation of Swedish labour migration regulations in 2008 went against the European trend of tightening third country labour migration regulations (Kahmann 2015) and made Sweden the country with the most liberal labour migration regulations in the EU, and even across the OECD (Menz and Caviedes 2010; OECD 2011). The liberalisation in 2008 transferred the right to determine the need for migrant labour from the state to employers (Prop 2007/08:147). Since then, Swedish employers unilaterally decide whether or not they need migrant labour, and are allowed to employ non-EU labour migrants at all skill levels, without any limits on the number of permits issued.¹⁶ As a consequence, Swedish hotel and restaurant sector employers have, in contrast to Swedish construction employers who make extensive use of posted work through EU internal service provision, made use of third country labour migration as a means to access temporary labour migrants. Following the introduction of the reform, between half and two thirds of all third country labour migrants have been recruited into low-skilled occupations, in what often is considered as labour surplus sectors (Swedish Migration Agency; Frödin and Kjellberg 2018). Between 2010 and 2017, between 9.5 and 19 percent of all third country labour migrants were recruited to work in the hotel and restaurant sector and cleaning services (Swedish Migration Agency). Based on the Swedish Employment Agency’s labour shortage index, there is high competition between jobs in the

¹⁶ The only requirement for the approval of a work permit is that the job has been advertised within the EU for at least 10 days, that a job offer exists, and that the proposed wage is in line with the applicable collective agreement.

hotel and restaurant sector, and employers in this sector are consequently not recognized as having recruitment problems pertaining to labour shortages. Yet, jobs in the hotel and restaurant sector have been among the top occupations to which third country labour migrants have been recruited (Swedish Migration Agency). To counter abuse of the liberalised regulations, the Swedish Migration Agency introduced stricter rules for employers who want to hire a third country labour migrant in January 2012, by demanding proof of the firms' financial status and, if the employer has employed a third country labour migrant before, proof of the salary that has been paid. These adapted rules appear to have had a somewhat dampening effect in terms of hotel and restaurant employers' use of third country labour migrants (Swedish Migration Agency; see also Jansson and Larsson 2013: 25).¹⁷ In total, approximately 70 000 temporary work permits, including first-time permits and extensions, were granted between 2009 and 2012, following the liberalisation (Figure 25) (Swedish Migration Agency). However, as the yearly granted work permits are accumulated, depending on the length of the work permit, the number of granted work permits do not reveal the actual number of foreign workers employed at the same time, whereby it is not possible to assess foreign workers' share of the sectoral workforce.

In sum, the EU market expansions substantially affected Swedish construction firms' use of migrant labour, whereas the liberalization of third country labour migration affected firms' use of migrant labour in the Swedish hotel and restaurant sector. As Sweden was the only EU country that did not adopt any transitional restrictions (Great Britain and Ireland implemented only minor ones), neither in 2004 nor in 2007, there were expectations that EU internal labour migration to Sweden would increase drastically (Zelano et al. 2014: 4). In relative terms, not the least in comparison to Norway, the incomplete but available data suggests that labour migration following the EU market expansions has been more limited in Sweden.¹⁸ Nevertheless, all forms of labour migration, including free movement, posting, and third country, have increased – and, construction and hotel and restaurant firms' increased use of migrant labour has been significant. Moreover, while it might have been expected that the absence of transitional restrictions, whereby the regular route of free movement of labour was available, would have prompted less posting of workers, this does not appear to have been the case. Puzzlingly, Swedish construction sector firms seem to have made more extensive use of posted work, whereas firms' use of migrant labour in the Norwegian construction sector to a larger extent has been based on the free movement of labour. The reasons for this will be investigated in the case chapters.

In spite of the difficulties and limitations associated with assessing employers' use of migrant labour at the sectoral levels, the available data leaves little room for doubt about employers' increased

¹⁷ A further consequence of the 2008 reform has been that a Swedish work permit has become a route to Europe for refugees. This is reflected in the work permit statistics, where jobs in the hotel and restaurant sector, including cleaning, have been the top occupations for work permits granted to Syrian citizens (Swedish Migration Agency).

¹⁸ As a complement to the weak estimates of migrant workers' shares of the sectoral workforces in the Swedish construction and hotel and restaurant sectors, the share of foreign born workers can be taken into account. Between 2008 and 2016, the share of foreign born workers increased from 0.7 percent to 12.1 percent in the construction sector (Kjellberg 2017: 96). In the hotel and restaurant sector, the share of foreign born increased from 34.9 percent in 2008 to 42.8 percent in 2016 (ibid.).

use of migrant labour following the EU market expansions. The fact that the sectors have undergone divergent economic development trajectories and employers across the sectors nevertheless have made extensive use of the foreign labour supply accessible in the open market, suggest that the “timely labour supply shock,” for example, experienced by Norwegian construction firms in a period of extensive growth (Friberg 2013; Friberg and Hakkestad 2015), was equally “timely” and desired by employers in the German construction sector, despite periods of lower growth and higher levels of unemployment among domestic construction workers. On this note, the next section discusses the purposes of employers’ use of migrant labour.

4. The purposes of employers’ use of migrant labour

In recognizing free labour and service mobility as context and directing our attention towards employers’ use of migrant labour, this section discusses the different purposes that employers’ use of migrant labour may serve. Five main channels for the recruitment and employment of migrant labour in the EU open market can be distinguished: employers in a host labour market can directly employ an EU/EEA national in their own firm when workers make use of the free movement of labour, they can procure services from a foreign EU/EEA firm that brings along its own posted workers, hire a foreign EU/EEA worker from a foreign temporary work agency (also entailing posting of workers), hire foreign EU/EEA workers from a domestic temporary work agency, or procure services from a self-employed one-man foreign firm (Dølvik and Friberg 2008; Friberg 2013: 23). The different forms of mobility may, in principle, serve different purposes, and as there is some variation in the legal bases of the forms of mobility, most importantly related to wage determination, applicable working conditions, and rules for taxes and social benefits, employers have an incentive to choose the arrangement that best meets their needs and preferences (Dølvik and Friberg 2008).

As existing research has pointed out that employers’ calls for migrant labour typically are expressed in terms of labour and skill shortages that need to be filled but cannot be met from within the domestic labour force (Ruhs and Anderson 2010: 15; Andersen et al. 2009: 27), this acclaimed purpose of the use of migrant labour merits to be scrutinized, before moving on to the purposes of reducing costs, increasing internal and external flexibility, increasing productivity and profitability, and increasing employers’ power over employment relations that the use of migrant labour may serve.¹⁹ Assumptions about labour and skill shortages maintain a strong position in contemporary dominant economic discourse, and labour migration has widely been described as key in meeting shortages and in maintaining the size and capacity of the European labour forces, typically also with reference to demographic ageing (e.g. Favell 2008: 704; OECD 2012). However, while employers tend to explain

¹⁹ The aspect of internal flexibility that is relevant here is that which relates to adjustments in working time; maximizing (or minimizing) the working hours of the firm’s workforce. External flexibility here refers to the firm’s ability to adjust the size of its workforce to fluctuations in demand by using workers that are not regular in-house workers.

and justify their demand for and recourse to temporary migrant labour with reference to labour and skill shortages (Chan et al. 2011; Lillie and Greer 2007; Interview 7, 16, 20), both labour and skill shortages are highly contentious terms, not only because they are difficult to measure, but also as there are no universally accepted definitions of them. The definition of shortage that typically underlies employers' demands for migrant labour is that "the demand for labour exceeds supply at the *prevailing* wages and employment conditions" (Ruhs and Anderson 2010: 3-4). From this follows that estimates of labour or skill shortages consequently refer to "employers' difficulties with finding the 'right' workers to fill vacancies at *current* wages and employment conditions" (ibid. 4). This, in turn, means that the shortages are instead better understood as *perceived specific staff shortages* rather than a labour shortage. This type of shortage is thus more correctly described as a *recruitment problem* that can be explained by the conditions being offered, which may be unattractive for local labour – thus recruitment problems occur, and employers turn to migrant workers, who, due to their lower expectations and weaker and more modest demands, and less attractive alternative options available in their labour markets of origin, are recruitable under the conditions offered (Piore 1979: 90). In terms of skills, the line between skills and behaviour is often blurred when it comes to migrant labour, especially in low skilled occupations where no or little formal qualifications are required. Soft skills shade into attitudes and characteristics that are associated with the migrant status that employers find desirable as it suggest that migrant labour will be compliant and have lower expectations about wages and employment conditions (MacKenzie and Forde 2009; Ruhs and Anderson 2010: 20). Scholars have, for instance, demonstrated how "work ethics" that facilitate control and enable higher productivity are considered a skill when it comes to migrant labour (Ruhs and Anderson 2010: 28-32; Friberg 2013: 72). Moreover, scholars have identified how migrant workers tend to conform to employers' perceived advantages of them by strategically using the perceptions as leverage in market competition, whereby the perceived advantages become self-fulfilling prophecies, and the workers become active participants in their own exploitation (Piore 1979; Friberg 2013: 6, 72; Berntsen 2016). Against this background, the legitimacy behind claims that migrant labour mainly is used to fill labour and skills shortages must be questioned, at least in the context of low to medium skilled occupations. Crucially, labour demand and supply are mutually conditioning rather than generated independently from one another. As Ruhs and Anderson (2010) have pinpointed, "employer demand for labour is malleable, aligning itself with supply: 'what employers want' can be critically influenced by what employers 'think they can get' from different groups of workers, while at the same time, labour supply often adapts to the requirements of demand" (16). Employers' expressed need for migrant labour to fill a labour shortage might therefore rather reflect the availability of migrant labour that is adaptable to the requirements and desires of the employer.

Leaving aside the acclaimed labour and skill shortages, then, employers' use of migrant labour can, and most often does, serve multiple purposes at the same time. The context in which employers use of migrant labour is taking place across the sectors investigated in this dissertation is strongly influenced by changes in the competitive situation whereby employers have become increasingly prompted to seek

cost reductions, including reducing costs related to their use of labour. By considering migrant workers' employment and working conditions, the purposes of employers' use of migrant labour can be revealed – irrespective of whether the purpose was explicit and intentional, or rather a side-effect inevitably following from the way by which migrant labour is used. One can here distinguish between procedures related to working conditions (wages and reimbursement issues, working hours, undeclared work, and work environment) that function as *cost saving measures*, and procedures related to employment conditions (type of employment contract, access to written contract, and undeclared work) that function as means to *increase employers' power over employment relationships*:

Procedures related to working conditions function as cost saving measures. By paying migrant workers below wage levels that are dominant among native workers, for example by applying an inaccurate wage category in paying skilled work according to unskilled work, thereby lowering skilled wages by accessing overqualified workers at a lower price (Ruhs and Anderson 2010: 28-32), or by not paying for overtime, by paying an illegally low wage (if such statutory provisions exist), or by fully abstaining from payments are all procedures that function as cost saving measures for employers. Similarly, other reimbursement issues, such as abstaining from offering paid sick-leave, or by making migrant workers pay for work equipment and clothing, accommodation, or travel costs – or by deducting such costs from the wages – serve as means to save costs through the use of migrant labour. Moreover, by increasing working hours, either within the legal scope but above average working time, or beyond what is legally permitted, employers may not only achieve cost saving but increase profitability through an increase in labour input. Increased internal flexibility may also take place through the introduction of shift work, which local labour may be less inclined to accept but which temporary migrant labour tend to see as attractive as a means to earn as much as possible while on location, allowing employers to make the most possible use of the means of production (Interview 19). Aside from increased internal flexibility, employers may use migrant labour as a means to intensify work (Rosewarne 2013: 282), allowing them to extract greater surplus value by increasing productivity without paying more for the labour input (Andersen et al. 2009: 33). Additionally, in cases of undeclared work, employers abstain from paying income taxes and social security contributions, and thereby save costs. Finally, inferior working conditions associated with a poor work environment can also serve as a cost saving measure by saving money on inadequate occupational safety training, or by abstaining from providing any training at all. All of the above mentioned procedures are in many cases common working conditions for migrant labour and illustrate how employers' use of migrant labour may not only serve to reduce costs but simultaneously to increase the value added of production.

Procedures related to employment conditions, on the other hand, function as a means to increase employers' power over employment relationships. By using temporary employment, which is common in the use of migrant labour, employers withhold workers' access to job security, and thereby gain power over the employment relationship. More precarious forms of employment conditions faced by migrant labour may also include undeclared work or employers who abstain from providing a written

employment contract; in undeclared work, workers are in a very weak position, and in absence of a written contract, the terms of employment are difficult to enforce and workers are left in an arbitrary position in relation to their employer. A form of undeclared work common among migrant workers in certain sectors is bogus self-employment, representing a precarious form of employment in which employers fully abstain from their employer responsibilities and gain power over workers who find themselves in a position where they are not considered as workers but instead treated as firms, and thereby have no access to job security, are not entitled to a minimum wage, and are not covered by collective agreements. More generally, when employers do not use a collective agreement in the employment of migrant labour, employers gain power over employment relationships; where individual workers stand as counterpart to employers, in contrast to organized labour as counterpart in collective bargaining, the power imbalance between employers and workers increases, as individual workers – particularly migrant workers – stand in a weak bargaining position. Employers naturally stand to gain power by one-sidedly offering an individual agreement that the migrant worker can only choose to accept or reject, but have little or no influence over the terms of the agreement. Similarly, in cases where migrant workers do not have access to workplace representation, employers also gain power over the employment relationships and increase their discretion as workers without collective representation stand in a weaker position vis-à-vis employers. While absence of workplace representatives primarily is due to trade unions' failure to establish workplace representation, it is plausibly also a consequence of employers making migrant workers' workplaces inaccessible to the local trade union. Associated with this is the level of enforcement of labour standards in the employment of migrant labour; a lack of enforcement of labour standards, whether based on a written individual employment contract that has been offered or based on a collective agreement, is *a manifestation of employers' power* over employment relationships. To the extent that these employment conditions are more widespread among migrant workers than among non-migrant workers, employers thus stand to gain power over employment relationships by using migrant labour.

Whatever the main purpose of employers' use of migrant labour may be, their use of migrant labour is reasonably best understood as a competitive strategy. The question is whether this competition remains within the scope of the established employment relations, or whether employers compete by using migrant labour as a means to circumvent the dominant institutions with which they otherwise would have to comply. The use of migrant workers through sub-contracting and temporary work agencies – which are common ways through which they are used – can offer competitive advantages by serving the purposes of reducing costs, increasing internal flexibility, associated with increased productivity and profitability, and increasing external flexibility, associated with minimizing and managing risks by increasing or decreasing production according to need (Kalleberg 2001; Doellgast and Greer 2007; Andersen et al. 2009: 29-30; Friberg 2011: 11; Interview 17). In recognizing employers' use of migrant labour as a competitive strategy that simultaneously serves multiple purposes between which there are no contradictions, the claim that migrant labour is used as a response to labour or skill

shortages becomes irrelevant; when taking migrant labour's working and employment conditions into consideration, the results of cost reductions or flexibility increases are the same, whether one claims that there was a shortage or not presupposing the use of migrant labour. As will be demonstrated in the case chapters, the main purposes for using migrant labour across the sectors appear to be to decrease costs and increase external flexibility to manage risks; particularly in hotel and restaurants where labour costs make up a big part of overall costs, but also in the construction and manufacturing sectors where there is extensive use of sub-contracting and temporary agency work.

5. Our current knowledge about the effects of EU internal labour migration on employment relations institutions

The topic of EU internal labour migration has over the last 15 years received considerable attention in the academic debate, generating a vast empirical literature that primarily has been concerned with describing the employment and working conditions of migrant labour and how employers have changed their strategies in organizing work as a response to free labour and service mobility in the EU open market. An extensive literature has demonstrated the inferior conditions offered to migrant labour, including precarious forms of employment, inferior wages relative to average and collectively agreed wage levels, including unpaid overtime, wages that do not correspond to the skill level of the workers, and unlawful deductions made to the actual wage, longer working hours and non-respect of daily or weekly rest periods, and non-respect of occupational health and safety standards, including lack of safety training and safety equipment, associated with higher risk of workplace accidents for migrant workers (Dølvik and Eldring 2006; Lillie and Greer 2007: 566; Cremers et al. 2007: 533; Lillie and Sippola 2011; Cremers 2011: 9; Bispinck and Schulten 2011; Friberg 2011; Lillie 2012; Bernaciak 2012: 26; Friberg and Eldring 2013: 14–16; Wagner 2014; Wagner and Hassel 2015a, 2016a: 164).²⁰ As summarized by Bengtsson (2014), European labour mobility following the market expansions in the 2000s has often taken place in a context of employment precariousness, with which inferior working conditions tend to be associated (6). While the way in which employers organize work may differ across sectors, firms' new production and manpower strategies, assumed to be grounded in employers' pressure for more labour flexibility and cost reduction, have entailed that EU-internal migrant workers often are employed in complex subcontracting chains where foreign firms are involved, and/or as temporary agency workers or self-employed (Dølvik and Eldring 2005; Lillie and Greer 2007; Dølvik and Visser 2009; Wills 2009; Anderson 2010; Gumbrell-McCormick 2011; Meardi et al. 2012; Woolfson et al. 2013; Marino et al. 2015: 7). The implication of more complex modes of work organization, such as long sub-contracting

²⁰ While this study is concerned with employers' use of migrant labour, which may involve different forms of mobility, most studies have up-to-date focused specifically on posting of workers, resulting in a focus on the sectors in which use of posted work has been most prevalent: construction, meat-processing, and ship-yard industries (e.g. Cremers 2011; Lillie 2012; Wagner 2014; Wagner and Hassel 2015a). The focus on posted work has consequently also led to a focus on sectors in which abusive practices have been most prevalent.

chains involving a multitude of firms and workers originating from different countries, or use of agency workers where the employer is separate from the firm where the work is actually carried out, is that it has become more difficult to regulate and enforce labour standards (Dølvik and Eldring 2006: 221, 225; Lillie and Greer 2007: 552; Lillie and Sippola 2011; Greer et al. 2013). Early on, scholars noted that many of the type of employment relationships that occur in the context of the open market are not subject to the regulatory capacity of established employment relations institutions (Menz 2005: 79), and that there are considerable challenges related to monitoring and enforcement of labour standards in transnational labour markets (Lillie and Greer 2007: 552) – the consequence of which is that the risks of repercussions from non-compliance are low, at the same time as high profits are to be made (Berntsen and Lillie 2015: 58). These problems appear largely yet to be overcome, as they have been continuously re-emphasized in the literature, particularly in relation to the use of subcontracting and posted work, where main contractors and unions may even face legal restrictions that prevent insight into the working conditions applied by subcontractors (Cremers 2011: 9; Wagner 2014: 693; Wagner and Hassel 2015a: 209; Lillie 2016: 41). While the EU open market has created opportunities for employers to pursue new practices through their use of migrant labour, it has simultaneously created new challenges for trade unions (Dølvik and Eldring 2006: 229; Lillie and Greer 2007: 559; Meardi 2012; Andersen et al. 2014a: 89). While employers in the open market have been offered possibilities to circumvent collective agreements, and opt out of their responsibility to enforce labour standards, trade unions' ability to contribute to the maintenance of high levels of enforcement in the context of the open market has in parallel been debilitated, and scholars have in several cases identified insufficient enforcement capacities of state agencies (Dølvik and Eldring 2006: 221; Woolfson et al. 2013: 1).

5.1 Early assessments

When it comes to the effects of employers' increased use of migrant labour, the early assessments of most scholars were that the free labour and service mobility exerted increased *pressure* on prices and profit margins for domestic firms (Dølvik and Eldring 2006: 225) and *pressure* on wages and working conditions in host labour markets (Dølvik et al. 2005: 84; Dølvik and Eldring 2006: 227; Woolfson 2007: 200), which may lead to a growth in precarious employment conditions (Dølvik and Eldring 2006: 228) and stagnated wage growth (Lillie and Greer 2007: 553). Importantly, scholars also noted that increased labour mobility in the open market created *pressure* for change in political economic institutions (Menz 2005: 1-2), and that it *undermines* national employment relations institutions (Lillie and Greer 2007: 555), and specifically the function of collective agreements (Dølvik and Eldring 2006: 228).²¹ Dølvik et al. (2005) additionally identified declined collective bargaining coverage, declined

²¹ While the literature review offered here focuses on contributions mainly located in the area of employment relations research and sociology, labour economists have through quantitative assessments attempted to estimate mean causal effects of labour migration on wage levels and (un)employment rates, showing no or limited negative effects at national aggregate levels (e.g. Barrell et al. 2010; Kahanec and Zimmermann 2010; Brücker and Jahn 2011; Tamas and Münz 2006). It has been recognized that short-term negative effects on wages can occur,

organizational rates among employers, increased pressure on worker representatives, and weakened ability of trade unions and collective employment relations to influence the competitive situation in the labour market as *potential* effects of employers' use of migrant labour (84-85). In line with this, scholars investigating the pressures of globalization have found that intensified cross-border worker-to-worker competition – which is an integral part of the EU open market – “undermines union power by weakening control over labour market competition” (Anner et al. 2006: 7). Aside from the very early contribution by Dølvik et al. (2005), the strongest contribution among all early assessments of the effects of EU internal labour migration is Lillie and Greer (2007)'s contribution that identifies a range of potential effects, which have subsequently been reiterated by scholars who have generated considerable empirical evidence from the same as well as other empirical cases over the last decade. According to Lillie and Greer (2007), who investigated developments in the construction sectors in Germany, Finland, and the United Kingdom, free labour and service mobility is implemented in a way that undermines national employment relations institutions; employers in the open market seek to avoid employment relations rules, and through their use of migrant labour they undermine collective bargaining and employment regulations (552, 555). At the core of their argument lies the identification of a key feature of the changed context in the open market, namely that it provides firms with more exit options, allowing employers to contest or escape the employment relations rules and avoid worker representation in their worksites (ibid. 555-556). One of the main strengths of Lillie and Greer (2007)'s contribution is their actor-centred approach, placing employers as well as trade unions front-and-centre, and recognizing that employers will only continue to comply and thereby contribute to the continued existence of the employment relations institutions if unions have sufficient leverage – and use the leverage – to push employers not to abandon the institutions (553, 574). As Lillie and Greer identify that the EU regulation of labour and service mobility undermines unions' power resources (558), the situation in the open market is, in general, one in which unions lack the required leverage. The result is that employers undermine

particularly among low skilled labour segments, and there are examples of quantitative studies that have found negative effects on wages in specific regions and sectors (Åslund and Engdahl 2013). In the context of free labour migration in the EU open market, where labour migration is continuously ongoing (and increasing), and not a one-time event, the short-term effects are continuously present and may accumulate. To this end, one critique against the assessments by labour economists has been that wages and working conditions typically do not change that quickly, and that it instead is more plausible that the impact of labour migration unfold through slow and long-term processes of adjustment (Friberg 2013: 79; Bengtsson 2014: 4). This literature is not reviewed in further detail here, as I join scholars who have noted the inability of statistical methods to capture potential institutional impact of employers' increased used of migrant labour (see e.g. Friberg 2013: 79; Eldring and Schulten 2012: 235; Friberg and Eldring 2013: 52; Bosch and Weinkopf 2013; Arnholtz and Hansen 2013), due to a focus on high, and inappropriate, levels of aggregation that masks intra-sectoral changes, narrow macro-indicators at the outcome-end that fail to capture changes in the functioning of the institutions, and because correlation reveals little about causality as the potential causal relationship is black-boxed. A fundamental reason for the inability of the aforementioned studies to capture the ongoing developments pertains to the underlying assumption that labour migration affects labour markets uniformly (Friberg 2013: 79). To the extent that employers' use of migrant labour remains limited to a specific labour segment or specific occupations, it may not necessarily be expected to trigger far-reaching change in the employment relations institutions (Cremers 2011: 7), assuming that those specific labour segments were outside of the reach of the institutions and accessed only comparatively lower labour standards to begin with. Piore (1979) has, however, offered us the critical insight that such labour segments may with time expand and affect the sectoral labour market as a whole.

collective bargaining as well as worker representation through the circumvention of labour standards in their use of migrant labour, in turn resulting in concession bargaining and stagnating wages (ibid. 552-553). From these insights, it can be deduced that declined collective bargaining coverage and declined coverage of workplace representatives may be expected as longer term effects of employers' use of migrant labour. To the extent that employers do not simply abandon collective bargaining, the undermining of collective bargaining may also – similar to what was suggested by Dølvik and Eldring (2006) – involve changing the functioning of the institution, not the least as it from unions' weakened power also follows that negotiation dynamics are affected. Parallels can here be made to findings from a growing body of literature that has investigated the impact of organizational transformations involving increased use of subcontracting, proposing that it affects the power relations that shapes the development of the employment relations institutions as subcontracting is a means through which firm relations can be used to redefine the power relation between capital and labour in favour of capital (MacKenzie 2000, 2002), and that subcontracting can be used as an employer strategy to escape or undermine worker resistance (Grimshaw and Rubery 2005; Lillie 2012: 149-150). Following this reasoning, scholars have claimed that organizing work through subcontracting undermines union representation, in turn affecting unions' bargaining ability, and thus have potential distributive consequences (Wills 2009; Grimshaw and Rubery 2005).

In line with the early assessments, a number of studies have subsequently reiterated that wages and working conditions, at least in certain sectors and occupations, are under pressure (Cremers 2011; Lillie and Sippola 2011; Lillie 2012; Meardi 2012; Bernaciak 2012, 2015; Lindahl 2013; Kvam 2013; Wagner 2014), that employment relations institutions are under pressure (Woolfson et al. 2013: 5), and that labour mobility in the EU open market is bringing about fundamental changes to national employment relations (Lillie and Sippola 2011). The tendency identified by Dølvik and Eldring already in 2006 that employers increasingly are strategically circumventing collective agreements in their use of migrant labour (218-219) has since been further reiterated (e.g. Andersen et al. 2014a: 13; Dølvik et al. 2014b: 86; Refslund 2016: 599-600), and, in the context of posted work, the claim has even been extended as far as non-compliance with labour regulations being “more the rule than the exception” (Lillie 2016: 50). Aside from abstaining from using collective agreements altogether, scholars have also identified strategies that involve the use of a collective agreement that offers the cheapest deal for employers (Cremers 2011: 9), as well as selective application of minimum standards, enabled by the EU regulatory framework on service provision (Lillie 2010: 693, 2012: 162). This is a finding of considerable importance for the development of employment relations institutions in countries such as the Nordic countries and Germany, where collective labour regulation largely builds on collective agreements.

5.2 More recent assessments

While claims about increased pressure on collective bargaining exerted by employers' use of migrant labour has maintained a central role in scholars' analyses of the implications of EU internal labour migration (Hippe and Berge 2013: 59; Dølvik et al. 2014b: 83; Andersen et al. 2014a: 89), more recent assessments have also emphasized that the inferior employment and working conditions offered to migrant workers *challenge* the host labour market and its institutions (Friberg and Eldring (eds.) 2013a: 52; Andersen et al. 2014a: 7, 86; Refslund 2016: 598, 616). More specifically, Andersen et al. (2014a) have claimed that the bargaining systems in the Nordic countries are challenged, arguing that low wage competition in the EU open market may contribute to declined collective bargaining coverage (14, 68) and that it increases the risk of erosion of the content of collective agreements (89) – both of which consequently risks increasing inequalities in wages and working conditions between and within sectors (14, 82; also Dølvik et al. 2014b: 25).²² Based on the logic that “more and more businesses feel compelled to operate outside of the bargaining system” (Dølvik et al. 2014b: 81), scholars expect the EU market expansions to diminish the scope of collective agreements as employers are offered exit options from collective bargaining and firms are “encouraged [...] to divert activities outside the collective bargaining system to reap cost advantages” (ibid. 80). The claims of these scholars pertain to *the risk* that increased labour migration will contribute to these outcomes, that is, the impact that these developments *may* have, while recognizing that such effects are yet to be detected. To substantiate the plausibility of these effects, parallels can be made to the acclaimed effects of marketization, recently outlined by Greer and Doellgast (2017). According to Greer and Doellgast (2017), “marketization alters the structure and functioning of non-market institutions, leading to the disorganization of socially protective and redistributive institutions and the strengthening of institutions in the private and public realms that support profit extraction,” the result of which is increased social and economic inequality (202).

In line with Lillie and Greer (2007)'s early claim that the EU regulation of labour and service mobility undermines unions' power resources (558), scholars have continued to stress that migrant labour can be used to weaken the position of trade unions (Rosewarne 2013: 282; Bengtsson 2014: 4; Arnholtz and Eldring 2015: 84) and enhance power imbalances in the workplace (Wagner 2014: 693; Andersen et al. 2014a: 87). A key aspect identified by scholars in terms of the potential for change that free labour and service mobility holds is that it diminishes employers' dependence on local workforces (Friberg 2013: 81-82; Bernaciak 2014: 22). Migrant labour is thought to affect the relationship between employers and the domestic labour force in favour of the former; as the supply of labour increases, employers gain leverage to push down wages and working conditions (Bernaciak 2014: 22). This has

²² In line with this claim, Refslund (2016) has reported tendencies towards weaker wage growth in sectors where employers' have made extensive use of migrant labour in Denmark, thus challenging the compressed wage structure that historically has prevailed in the country (608).

led scholars to propose that the bargaining position of labour is weakened when there is a considerable increase in the supply of labour, such as through employers' access to the migrant labour supply in the EU open market (Friberg 2013: 82; Dølvik et al. 2014b: 77; Andersen et al. 2014a: 87). Within the context of the EU open market, employers simultaneously gain bargaining power due to the increased possibilities to exit collective agreements (Dølvik et al. 2014b: 77; Greer and Doellgast 2017: 198-199). In parallel, scholars have also claimed that increased labour mobility is one of the causes contributing to declined trade union density and weakened workplace representation (Andersen et al. 2014a; Dølvik et al. 2014b; Wagner and Hassel 2015a: 210). In noting that the use of migrant labour through sub-contractors and temporary work agencies poses particular challenges to local trade union representatives as these firms tend to have few unionised workers (Nergaard 2014b: 4, 14; Telljohann 2015; see also Refslund 2016: 613), potential effects on the negotiation function as well as enforcement function of workplace representation can be deduced. Similarly, Arnholtz and Eldring (2015) notes that migrant workers' lack of engagement with local bargaining can challenge local bargaining processes (84). Existing literature also allows us to deduce that negative effects on levels of job security are plausible, depending on the extent to which migrant labour is used as a means to enhance firms' external flexibility (Raess and Burgoon 2013; Dølvik et al. 2014b; Bernaciak 2015: 232).

More recent contributions have also paid explicit focus on deliberate changes to wage-setting institutions, identifying re-regulation through the establishment of minimum wage levels, and in some cases minimum conditions beyond wages, as a response to increased use of migrant labour (Dølvik et al. 2014a; Afonso 2016; Wagner and Hassel 2015a: 211). This type of re-regulation has either taken place through legal extensions of minimum conditions in collective agreements, or through the introduction of a statutory minimum wage. Finally, scholars have also noted that collective labour rights have been narrowed following ECJ judgements (Höpner and Schäfer 2012: 444; Woolfson et al. 2013: 3; Zhang and Lillie 2015), underlined the important insight that legal conflicts over European labour market regulations represent evidence of the renegotiation of labour market regulations in practice (Bengtsson 2014: 16-17), and argued that the way that mobility is regulated in the EU has the effect of weakening collective labour institutions (Lillie 2016: 39).

Around the time of the market expansion in 2004, political debates and subsequently also scholarly debates around EU internal labour migration were strongly focused around the concept of social dumping, involving concerns that the integration of the labour markets in the EU would lead to competition based on lowering wages and working conditions. During the initial years, this debate suffered from considerable conceptual flaws, and later became solidly conceptualised, defined, and analysed by Bernaciak (2012, 2014, 2015). By analogy with the concept of trade dumping, Bernaciak defined social dumping as "the practice, undertaken by self-interested market participants, of undermining or evading existing social regulations with the aim of gaining a competitive advantage" (2014: 4; see also Vaughan-Whitehead 2003). A major contribution of the social dumping debate was to draw attention to the role of competition in understanding the logic behind the practices undertaken

by employers; “companies [seek] to improve their competitiveness by depressing social standards, rather than by relying on product innovation or improvements in the spheres of work organisation or production technology” (Bernaciak 2012: 32). In this way, Bernaciak (2012, 2015) advanced the debate by redirecting attention from the discrepancies between employment and working conditions in different EU countries towards the role of firms in exploiting such differences, as well as the role of workers and governments in enabling and facilitating such firm practices. In distinguishing between short-term and long-term effects of social dumping practices in the area of labour and service mobility, Bernaciak (2015) argued that the intensification of efforts to undercut or circumvent social standards and regulations exerts downward pressure on wages and working conditions in host labour markets, from which short-term impact on wages and working conditions are likely (227, 232). Aside from depressing wages and working conditions, growing unemployment and increasing numbers of company bankruptcies were identified as likely effects (Bernaciak 2012: 24-25). While the short-term effects mainly pertain to *pressure* on wages and working conditions, the key point in Bernaciak’s argument is that if pursued by a large number of actors over a long period of time, dumping practices can lead to the erosion of social standards and employment protection systems in host labour markets, threaten social cohesion by creating new social divisions or reinforce divisions that already exist, and ultimately lead to the disintegration of the market order, thereby also removing the beneficial effects that social regulations have on company performance and productivity levels – thus entailing long-term implications for the stability of social and economic systems (2012: 26; 2014: 6; 2015: 227, 232). By explaining the logic behind how wages and labour standards can be affected, Bernaciak has thus far come the furthest in unpacking the causal logic involved in the process of social dumping; “the spread of rule-bending is likely to induce a change in the behaviour of previously rule-abiding market participants: when adherence to social and labour standards turns into a competitive disadvantage, such participants will have no choice but to follow suit and compromise on their own compliance” (2015: 232).²³

Taken together, early as well as more recent assessments have not ventured much beyond the general conclusion that the free labour and service mobility in the EU open market has created pressure for change, concluding that migrant workers *can* be used to reduce wages and other entitlements, to intensify work, and to weaken the position of trade unions, that it *may* have detrimental impacts on labour standards and *may* influence institutional developments by undermining, challenging, or eroding employment relations institutions, and negatively affect institutional outcomes, with an emphasis on

²³ A short note on why the conceptual framework in this dissertation abstains from using the concept of social dumping is here warranted. One of the key tasks of this dissertation is to capture what is causally relevant about employers’ use of migrant labour for the development of the employment relations institutions, wherefore I chose to place employers’ compliance and non-compliance at the centre of attention, the latter which very well may involve practices that can be described as social dumping. I argue that what matters for the institutional development, as will be elaborated in the next chapter, is whether employers comply or opt out of *dominant* employment relations rules and practices.

effects on wages, wage dispersion between sectors, and the level of employment precariousness. The dominant theoretical explanation used to interpret the implications of these empirical developments has been dual labour market theory, based on the very early insights from Piore (1979) that the migrant labour supply constitutes a particularly attractive means through which employers can escape the requirements associated with the employment of native workers, whereby a secondary labour market in which inferior conditions prevail exists parallel to a native-dominated primary labour market in which workers access average employment and working conditions (41, 109). Following Dølvik and Eldring (2006: 225), who pointed towards dualization as a plausible outcome of increased EU internal labour and service mobility already in 2006, the main outcome that scholars have claimed that increased labour migration contributes to is growing labour market segmentation, manifested as a widened gap between workers in permanent employment and those in precarious forms of employment, associated with greater inequality in wages and working conditions (Lillie 2012: 148; Meardi et al. 2012: 8, 19; Bernaciak 2015: 233; Dølvik et al. 2014b: 74). In Germany, studies of the meat-processing and construction sectors have concluded that EU internal labour and service mobility has contributed to and reinforced the dualization between core and peripheral workers (Wagner 2014: 696; Wagner and Hassel 2016a: 165), whereas scholars investigating the effects in the Nordic countries have noted that tendencies toward dualization have been accentuated by employers' use of migrant labour, with conclusions primarily emphasizing an increased risk of growing segmentation (Dølvik and Eldring 2006: 225; Friberg 2013: 82; Woolfson et al. 2013: 1, 16; Andersen et al. 2014a: 78, 82-84; Dølvik et al. 2014b: 25, 74-75; Bengtsson 2014: 16; Refslund 2016: 614). While most scholars have claimed to have found evidence of labour market segmentation, or increased risk thereof, as a consequence of EU internal labour and service mobility, two different understandings and interpretations of labour market segmentation can be distinguished in this literature; on the one hand, those whose work can be interpreted as understanding the role of migrant labour as a flexible buffer that enables employers to make cost reductions and adjust to fluctuations in the production process while the native labour supply is largely relieved of such uncertainty and continue to benefit from the presence of the employment relations institutions (see e.g. Meardi et al. 2012; Afonso and Devitt 2016; Wagner and Hassel 2016a), and on the other hand, those who explicitly have claimed that segmentation also affects native, core workers (Lillie 2012; see also Refslund 2016). While scholars have often recognized that the impact of labour migration tend to be unequally distributed between different groups of workers (Eldring and Schulten 2012: 238–239; Krings 2009: 54; Dølvik et al. 2014b: 73), noting that low-skilled workers and workers with foreign background are more exposed to adverse effects, Lillie (2012)'s contribution moves beyond such general claims and proposes that labour market segmentation that is caused by posting of workers undermines the conditions also for native workers (148). The reason why this is the case, Lillie argues, is because direct price competition with workers accepting inferior conditions is introduced, generating pressure on wages in general (ibid. 148-149). Contrary to the expectation that the use of peripheral workers would shield core workers from uncertainty, Lillie argues that migrant labour

– and peripheral workers more generally – in practice are used to pressure and/or replace the core (native) workforce (ibid. 162-163). In line with Lillie (2012)'s argument, more recent contributions have also suggested that native workers in sectors in which employers have made extensive use of migrant labour are increasingly affected by declining working conditions and wages, and that the increased pressure, for instance, has led native workers to lower their wage claims (Refslund 2016: 614-615). Similarly, findings from a quantitative assessment in Norway has suggested that wage levels in industries with a high share of migrant labour decline also for native workers (Bratsberg and Raaum 2013). Despite the different interpretations of the implications of dualization, scholars largely agree that the employment relations in these countries now face two potential pathways; one being continued drift away from collective labour regulations towards less regulated employment relations, and the other being increased state interference (Refslund 2016: 616).

Based on existing literature, we know that the free labour and service mobility that led to increased use of migrant labour following the EU market expansions has offered employers new opportunities to adapt the organization of work, to reduce costs, and to increase flexibility, while simultaneously having gained leverage to challenge collective labour regulations through the access to foreign labour supplies. We also know that this changed context has created pressure for change, as the competitive situation for both firms and workers has changed, and firms adapt to, and seek to cope with, the new market conditions. While existing research has demonstrated the occurrence of abusive practices in the employment of migrant labour, and pointed towards potential temporary and long-term effects of increased labour migration in host labour markets, only relatively weak causal claims about the effects thereof are warranted based on existing literature. While identifying clear pressures for change and making plausible propositions about the impact of the free labour and service mobility in the EU open market, it has largely remained unclear *how* the changed environment related to increased labour migration could theoretically contribute to some form of institutional change in host labour markets. As the causal process of the postulated causal relationship has not been made explicit, existing literature has been unable to move beyond 'potential implications' and draw any stronger causal inferences about the extent to which the pressure for change has led to actual change. While only weak causal claims have been enabled by existing research, a consensus has over the last decade, nevertheless, emerged around the assumption that the increased free labour and service mobility has led to a downward pressure on wages and working conditions. Aside from the weakness in existing literature in terms of failing to provide explicit and plausible causal links, a fundamental problem has been the failure to explicitly identify and properly specify the causes and outcomes of these processes. A conceptual error which has been underlying – explicitly or implicitly – much of the existing research, for example, exemplified by Afonso and Devitt (2016)'s recent review of the literature on the impact of migration on labour market institutions, has been the strong focus on 'inflows' and 'mobility', conflating causal and contextual conditions and entailing a failure to identify the causal properties associated with the process of labour migration. As a means to distinguish between causal and contextual conditions, and uncover the causal

powers that can lead to change, attention needs to be directed away from migration and mobility per se, towards employers' use of foreign labour supplies. At the outcome-end, the subjects of causal claims have broadly been *labour markets* or *labour market institutions*. While it based on existing literature has been possible to deduce which properties of the institutions that may be subject to change, as demonstrated in the above account, the consequence of the under-specification of the outcome has been a failure to robustly demonstrate presence of the outcome, that is, the impact of increased EU internal labour migration.²⁴ In view of the inter-relatedness of the employment relations institutions, in that change occurring in one institution is likely to affect the formal structures or functioning of the other institutions (Streeck 2009), it is also plausible that the proposed effects would reinforce – or potentially counteract – each other. To be able to assess the change, then, the outcome needs to take into account the formal structures and functioning of the employment relations institutions taken together, to systematically investigate them in conjunction with one another. As the cause(s) and the outcome(s) have been underspecified and no causal mechanism has been made explicit in the existing literature, we have thus far been unable to properly evaluate the evidence of the causal claims made, as we are not told what the actual causal process is – leaving the debate with weak causal claims only. In making important theoretical contributions in her analysis of market actors' behaviour in the EU open market, and drawing our attention to the key role of firms in shaping the effects that free labour and service mobility may have in host labour markets, the contribution that has come the furthest in making the causal logic explicit is Bernaciak (2015). Yet, empirical testing of the propositions, and thus empirical evidence of the causal relationship and its potential effects, are missing. In building upon the achievements of the existing literature, this dissertation seeks to advance the debate both in terms of offering a well-specified conceptual and operational framework, including the causes, causal mechanisms, and outcomes involved in these processes, and in terms of testing the propositions empirically – with the aim of assessing to what extent the pressure for change has been translated into actual changes.

6. Conclusion

This chapter has set the stage for the rest of this dissertation by offering an empirical introduction to the topic of European integration and labour migration. It has argued that the creation and expansion of the EU open market is best understood as increased marketization (Greer and Doellgast 2017), making explicit that this changed *context*, with which free labour and service mobility is associated, has intensified the competition between firms as well as between workers. The increased marketization has created a context in which the pressure for change in the employment relations institutions has increased,

²⁴ Refslund (2016) has offered one of the more elaborate propositions in this regard. Nevertheless, the conflating of impact on “wages and working conditions,” “collective labour market institutions,” and “the functioning of the labour market” remains problematic, as the former deals with institutional outcomes, the second aspect with the actual institutions, and the last point remains unclear as it is underspecified.

and the free access to foreign labour has offered employers more possibilities to exploit workforce divisions and to exploit options to exit the dominant rules and practices of the employment relations institutions (cf. Doellgast et al. 2018). To substantiate the point that pressure for change originating from increased labour and service mobility is present in the cases examined in this dissertation, the chapter provided descriptive evidence of employers' increased use of migrant labour, revealing that employers across the sectors have demonstrated a great demand for migrant labour despite divergent trajectories of economic development. Migrant workers' share of the sectoral workforces has increased considerably across the cases over the last decade, and – based on moderate estimates – in 2017 ranged from at least 15 percent in the Swedish construction sector, approximately 20 percent in the German manufacturing sector, more than 30 percent in the German hotel and restaurant sector, and potentially up to around (or even above) 40 percent in the German and Norwegian construction sectors.²⁵ Following a discussion about the purposes of employers' use of migrant labour, which recognizes employers' use of migrant labour as a competitive strategy that simultaneously serves multiple purposes – identifying cost reduction, internal and external flexibility increases, and increased power over employment relationships as the main purposes being served, while largely rejecting labour shortages as a pertinent purpose in the context of contemporary EU internal labour migration – a review of the literature on the effects of increased labour and service mobility on employment relations institutions was offered. The review reveals that early as well as more recent assessments have centred on demonstrating migrant labour's inferior conditions and on reiterating that pressure for change in the host labour markets and its institutions has increased following the EU market expansions in the 2000s. In establishing our current knowledge about the effects of employers' increased use of migrant labour, from which potential effects on the formal structures and functioning of collective bargaining, labour legislation, and workplace representation can be deduced, the review concluded that the literature has so far failed to provide strong causal inferences as the cause(s) as well as the outcome(s) have been underspecified, and no causal mechanism explaining how institutional impact occurs has been uncovered.

While this chapter has argued that pressure for change is present across the empirical cases investigated in this thesis, similar responses are not expected across the cases, nor are convergent outcomes (see Crouch 1993). The next chapter presents a causal theory of how employers' and trade unions' responses to labour migration affect the employment relations institutions, specifying the type of change that can be caused and making explicit how these causal processes play out by outlining four causal mechanisms that explain how contribution to institutional continuity or change occur as a consequence of free labour and service mobility in the EU open market.

²⁵ Available data does not permit an assessment of migrant workers' share of the workforce in the Swedish hotel and restaurant sector.

Chapter 3

Theorizing institutional impact from labour migration

1. Introduction

The institutional realm of employment relations is at the core of national political economies, representing the arena in which the power relations at the heart of capitalist economies, namely that between capital and labour, are regulated. The non-market institutions investigated in this dissertation – collective bargaining, labour legislation, and workplace representation – are the key institutions in regulating the relationship between employers and workers, and can be understood as the codification of the power relations inherent in employment relationships. In regulating the terms and conditions of employment, the employment relations institutions determine the cost of labour, and serve to distribute income between capital and labour as well as between groups of workers within and across sectors in national economies (Machin 1997; Rueda and Pontusson 2000; Baccaro and Benassi 2016: 14). A fundamental function held by these institutions has also been to limit employer discretion over employment and working conditions (Baccaro and Howell 2017). Yet, while these institutions historically have reduced employers' room for manoeuvre, they have also increased capitalist viability and stability (ibid. 21). In view of their systemic importance for capitalist economies (ibid. 24), theoretically understanding and empirically investigating institutional evolution in the area of employment relations is critical for understanding contemporary capitalist development.

Below, I will introduce a causal theory of how increased labour migration is associated with the institutional development of employment relations, drawing upon existing theorization of how institutional continuity and change occur (Streeck and Thelen 2005; Mahoney and Thelen 2010) in combination with more recent theorization about varieties of liberalization and related trajectories of institutional change (Thelen 2014). My aim is not to offer a causal theory that provides a sufficient explanation of ongoing processes of institutional change and liberalization of employment relations, but to specifically investigate the institutional impact of employers' and trade unions' responses to labour migration – which, I hold, is one of many causes affecting the institutional development – as a means to understand how institutional continuity can be achieved

under high pressures for change, and, conversely, how pressure for change is translated into actual change. That being said, the causal theory proposed here is applicable more broadly to interactions between political economic actors and the effects that their actions have on institutional evolution, beyond their responses to migrant labour.¹ The propositions made here can be used as a framework for analysing institutional development outside of the specific scope of responses to labour migration; the typological theory introduced in this chapter captures the universal implication of compliance and non-compliance by dominant change agents in processes of institutional development, and makes explicit what is, in general, required from the side of organized labour to ensure maintenance of a coalition of institutional supporters in order to contribute to institutional continuity. The chapter is organized as follows. I first introduce the understanding of these non-market institutions as being under constant contestation and ongoing renegotiation, and introduce the power resources approach and action-based institutionalism underlying the causal theory developed. I then present the typological theory of how employers' and trade unions' responses to labour migration affect the employment relations institutions, capturing the interactions between the responses and specifying the mechanisms that link the identified causes with divergent outcomes. This is followed by two sections that define the conditions under which the four theorized casual processes are expected to occur and elaborate the causal mechanisms in greater detail. The latter section is very important for the argument of this dissertation, which rests upon the ability to demonstrate theoretically plausible links between the class actors' responses and the outcomes ranging from contribution to institutional continuity and three varieties of liberalization. I end by offering a theoretical explanation of what has shaped employers' and trade unions' responses to migrant labour.

2. Investigating institutional continuity and change in non-market institutions in advanced capitalist economies

2.1 Institutions under constant contestation and ongoing renegotiation

A starting point in this analysis is that institutional change is understood as the norm in capitalist economies (Streeck 2009; Baccaro and Howell 2011). The inherently contradictory and conflictual nature of capitalist development results in constant pressure for change and ongoing renegotiation of the properties of institutions for economic governance (Streeck and Thelen 2005: 19; Streeck 2009: 5). As a consequence of being “constant objects of contention,” the non-market institutions governing employment relationships are conceived as unstable, based on largely “temporary compromises between fundamentally incompatible action orientations” from the side of capitalist firms and organized labour as their counterpart (Streeck 2014: x); continuity is a

¹ I thank Virginia Doellgast for pointing this out to me.

temporary product of political construction, whereas change is “endemic” (Streeck 2009: 2).² The institutional development of the employment relations is in this way understood as the outcome of an ongoing struggle between pressure from the side of employers, as self-interested capitalist actors, in their pursuit of survival and expansion of their market shares, on the one hand, and the social demands for protection and compensation from labour, on the other hand (Streeck 2009).³ While change is largely endogenous, and need not have exogenous origins, externally changed conditions, such as the creation of the EU open market, may, however, be a requisite contextual condition for a change process to take place (cf. Streeck and Thelen 2005; Streeck 2009: 2; Mahoney and Thelen 2010). The contemporary “capitalist ethos of maximization,” which ensures that market actors cannot be content with their existing level of profit, is reinforced by the intensified competition in the EU open market, as advantage-seeking firms make use of foreign labour, for example, through service provision, and thereby disrupt the established distribution of market shares by operating with a competitive advantage (Streeck 2009: 5). As capitalist actors are obliged to constantly defend their existing position, partly by seizing new opportunities in striving for market survival, the collective employment relations institutions – to the extent that they impose obligations that have a restraining function on individual employers – are at risk of being continually undermined, and ultimately abandoned and replaced (see Streeck 2009: 5).

Understanding change as the norm enables us to grasp the transformative power of capitalist development, and, conversely, forces us to recognize that institutional continuity is not a stable equilibrium, nor something that just happens. A logical consequence of recognizing that these institutions are subjected to continuous renegotiation is that institutional maintenance and continuity requires ongoing mobilization of institutional support – and, in case of changed contextual conditions that increase pressure for change or open up new avenues for change to be pursued, institutional adaptation and resilience creation is required (Mahoney and Thelen 2010). The recognition of the contradictory core of capitalist development is a shared theoretical assumption with Regulation Theory (see e.g. Boyer 2004), which also provides us with the insight that regulation serves a key role in such resilience creation processes by politically modifying

² This also means that employment relations “systems” or “regimes,” as often referred to in the literature, are better understood as more or less temporary moments in *continuous processes of change* (Streeck 2009: 2).

³ While here explicitly placing the conflictual and contradictory environment of the non-market institutions in capitalist economies at the forefront, this understanding shares basic assumptions with Hall (2010)’s and other scholars in the historical institutionalist tradition more benign way of describing the institutions as “distributional instruments laden with power implications” (Mahoney and Thelen 2010: 8). Mahoney and Thelen (2010) have termed this a power-distributional view of institutions, and emphasized ongoing struggles within and over prevailing institutional arrangements (xi). Following this understanding, pressures for change are built into the institutions that inherently contain tensions because of their resource distributional consequences (ibid. 8). A dynamic component is thus naturally built into the employment relations institutions, as they represent compromises of relatively durable but continuously contested settlements based on coalitions that existed in a specific point in time (ibid.). In this view, the institutions are always vulnerable to change (ibid.), and constantly evolving as a result of internal deliberation and external pressures (Pierson 2001; Streeck and Thelen 2005).

economic processes to constrain the contesting and contradictory elements, thereby temporarily stabilizing the non-market institutions (Neilson 2012: 161; Baccaro and Howell 2017: 23).

While the class actors' overall preferences may remain relatively stable over time, institutional evolution is a process resulting in intended as well as unintended consequences following from the actors' actions (Streeck 2005b). In this regard, Mahoney and Thelen (2010) have helpfully pointed out the importance of disentangling actors' short-run behaviours from their long-run strategies, and not confusing immediate rule-conforming behaviour with an overall goal of institutional maintenance (22). This implies that institutional change need not emerge from actors with transformative motives (*ibid.*); many of the employers are likely not, as individual actors, intending to trigger institutional change by their behaviour – here, by their responses to migrant labour – but simply try to stay competitive and survive in the market. Their behaviour may, nonetheless, result in institutional change. As clarified by Baccaro and Howell (2017: 24), there is no “grand designer” behind the institutions, which may contain inherent ambiguities or carry other properties prone to endogenous change; instead, the institutions are subject to continuous renegotiation – the outcome of which depends on the strength and strategies of the negotiating parties. This understanding is prompted by Streeck (2009)'s call for causal theories that are able to “[...] recognize a pattern of development without assuming intelligent design by all-powerful governance, [...] capable of conceiving of undetermined, “random” events as fitting in and indeed constituting a long-term, intelligible but non-teleological logic of change” (11). Taking these considerations seriously, these fundamental insights form the basis of the causal theory developed in the remainder of this chapter. Before moving on to the causal theory of how employers' and trade unions' responses to labour migration affect the employment relations institutions, a short note on the underlying analytical approach is warranted.

2.2 Power resources approach and action-based institutionalism

Power resources and the asymmetrical power relationship between employers and workers

The analytical approach underlying the causal theory advanced in this dissertation is based on a power resources approach which conceives of the politically constructed employment relations institutions as the product of the power struggle between economic actors (Korpi 1983, 2006; Baccaro and Howell 2017: 23-24). This power resources approach places employers and organized labour at the centre of analysis, as the class actors represent the two sides between which the power is distributed. At the same time, this approach incorporates the important role of the state in determining the context in which the power relationship plays out.⁴ A power resources

⁴ Thelen (2014), whose work my causal theory draws upon, acknowledges power resource theory as “one of the most prominent and powerful arguments” as she maps through theoretical approaches that can inform her institutional analysis of changes in political-economic institutions, and although it makes up an

approach directs our attention to the class context in which institutions operate, and thereby enables us to grasp the class relationships, compromises, and struggles (between, but also within classes) that structure the political settlements that are the basis for the construction and reconstruction of the employment relations institutions (Coates 2000; Howell 2003: 120; Baccaro and Howell 2017: 21). In line with the notion of *change as the norm*, the power resources approach leaves us to expect that while the competing forces of which the institutions are a product can potentially reach temporary states of balance, or more plausibly – the power imbalance between the competing forces may under certain conditions decrease – there is ultimately no expectation that the non-market institutions will be grounded in a form of equilibrium or self-reinforcing state resulting in continuity (Baccaro and Howell 2017: 23).⁵

important building block of her proposed theoretical framework, she claims it to be insufficient when it comes to explaining cross-national differences by only attributing “different trajectories of change to the strength of the organized labour movement” (18). In my view, narrowing power resource theory to only be about the level of strength of organized labour, and thereby, largely leaving out the role of employers as change drivers, and – what lies at the core of Thelen (2009, 2014)’s theoretical framework – coalitional politics, makes for an unjust reduction of the analytical conceptions offered by this approach. While Thelen’s depiction of the power resources approach leads her to find it incomplete, my understanding of it – and the key insights that I draw based on it – pertains to its focus on the *power relations* between capital and labour, thus placing employers *and* organized labour at the centre of attention. Thelen (2014) underlines how she does not see coalitional politics as reducible to a question of labour strength against capital, noting how also the state plays an important role in coalitional politics, and that her argument thereby departs from power resource theory (207). Yet, if one considers the state as influencing the context in which the power relations between the two main actors in the employment relations play out, the state does indeed hold a central role in the power resources approach.

⁵ Korpi (2006), and more recently Baccaro and Howell (2017), have made strong cases for a return to the power resources approach, which – along with various power-based explanations drawing upon it (see e.g. Emmenegger 2015; Ibsen 2015) – played a prominent role in political economy research prior to the dominance of the Varieties of Capitalism (VoC) theoretical tradition in which the “powering” function of institutions came to be replaced by coordination as their main recognized function (Howell 2003: 120). Unlike institutional accounts that recognize the power dynamics underlying institutional development, and emphasize the importance of employment relations institutions in distributing power, the VoC framework – partly as a consequence of the shift from capitalism to markets as the object of inquiry (Howell 2015: 401) – depoliticized their function and narrowed the scope of the institutions as primarily being instruments to “structure strategic interaction between economic actors and solve firms’ coordination problems” (Howell 2003: 105), emphasizing “the extent to which institutions are the product of the rational coordination needs of firms rather than the balance of power among economic actors” (Baccaro and Howell 2017: 22). By redefining workplace conflicts between employers and workers as a coordination problem, the VoC turned a blind eye to the “power [that] is exercised by actors with different interests and unequal resources and capacities” (Howell 2003: 112). Moreover, in their legendary launch of the VoC framework, Hall and Soskice (2001) argued that the institutions were in fact stabilized by the self-interest of employers benefitting from them, rather than by labour strength contributing to a power balance that allowed for institutional maintenance. As scholars have noted, the logical consequence of this conceptualization is that employers ought to have little incentive to dismantle the institutions, in turn making the framework inapt to explain institutional change as it fails to grasp the ongoing contestation inherent in processes of institutional development of non-market institutions in capitalism (Baccaro and Howell 2017: 22; Streeck 2009). Another important difference between a power resources approach to political economy, as opposed to non-power based institutional accounts, is that the former conceives of institutions as the product of cross-class *compromises* rather than cross-class *alliances* around shared interests, in which trade unions’ lack of ability to achieve their first-order preference leads them to make concessions and settle for compromises that might, for example, result in (partial) protection of their members at the expense of other groups of workers. As noted by Korpi (2006), a fundamental difference between the two approaches is thus that the latter considers “class-related conflicts of interest [to be] generally overtaken by conflicts among actors in different sectors of the economy, such that the common interests of employers and employees

A further important insight that the power resources approach draws our attention to is that the employment relations institutions encompass the fundamentally asymmetrical power relationship between capital and labour. The inherent power differential between those who employ and those who are employed, regardless if they are migrant or non-migrant workers, has been thoroughly elaborated by Offe and Wiesenhal (1980) in their seminal work offering a multitude of invaluable insights. The key message is, simply put, that labour in a capitalist economy is more dependent on capital than capital is on labour. This pertains to the fact that workers, that is, individual owners of labour, are “less likely to be able to afford to be unemployed than the individual capitalist is likely to be able to refrain from employing” any individual worker (Offe and Wiesenhal 1980: 76). While both parties stand before the same two options – to engage in an employment relationship or not – the extent to which the option to engage in an employment relationship is preferred differ between workers and employers, consequently leading to an inherent power differential between employers and workers and an imbalance in the power relationship already at the outset (ibid. 75-77). The asymmetrical dependency relationship also explains why (organized) labour regularly finds itself in a position where it has to make concessions in bargaining processes where ‘the survival of the firm’ is placed as first-order priority of both bargaining parties, and workers are pushed to take on responsibility for the prosperity of capitalists, whereas this asymmetrical dependency relationship conversely has as consequence that capitalists are less concerned with the well-being of the working class, whose interests will always be subordinate in bargaining processes (ibid. 76). Moreover, under the competitive pressure that capitalists put upon each other, they are obliged to consistently improve the efficiency and costs of production. As workers have limited or no means “to increase the efficiency of the process of reproduction of their own labour power” (ibid. 75), the inherent imbalance in the power relationship between employers and workers is further cemented. By labour-saving changes, such as use of new technology or changes in the organization of work, employers can partially release themselves from their dependence on the labour supply. In doing so, they are able to depress wages. Workers, on their side, cannot release themselves from their dependency upon employers’ willingness to employ them, and can instead only resort to lower wages as employers become less dependent on the supply of labour (ibid. 75-76). This dynamic is further reinforced as employers gain free access to foreign labour, making them less dependent on local workforces; employers’ access to foreign labour supplies in the EU open market has

within each sector trump each group’s common interests with its counterparts in other sectors” (177). Such underplaying of potential conflicts of interest masks the inherent tensions and pressure for change, and makes it difficult to identify the causal powers leading to reconfigurations of the employment relations institutions. In contrast, viewing the employment relations as encompassing of the power relationship between employers and organized labour – two actors with diametrically conflicting interests – enables us to recognize the persistent class conflict over institutional construction and reconstruction (Baccaro and Howell 2017: 22).

served as a means for employers to increase their power resources and functions as a means through which concessions from workers and trade unions can be achieved (Bernaciak 2015). While the more powerful side (employers) will continuously attempt to minimize the difference between its preference to employ and not employ, it would be in the interest of the less powerful (workers) to seek the opposite, although they have little means at their disposal to accomplish it (Offe and Wiesensthal 1980: 77), not the least in an open market. The conflict and ongoing renegotiation over the properties of the institutions that regulate employment relationships must be understood in the context of this inherently asymmetrical power relationship. As the potential to change these power relations is determined by the very power relations that are to be changed, the class actors logically do not have the same chances of success when it comes to affecting the power imbalance and the direction of the institutional development of the employment relations (ibid.). In setting out to understand the implications of the changed conditions created by free labour and service mobility in the EU open market, the starting point must thus be to recognize the historical context of class contestation over the properties of these institutions central to capitalist political economies and the asymmetrical power relationships that the institutions encompass. By recognizing the common dynamics of capitalism – that is, capitalism itself, rather than theoretical variations thereof (Coates 2000: 233; Howell 2003: 120-121; Bohle and Greskovits 2009: 382) – we can better grasp the universalism of *the logic of capitalism*, which not only helps us to recognize that institutional change is the norm (Streeck 2009), but also enables us to identify where the causal forces driving changes are coming from.

Action-based institutionalism

The typological theory forming the backbone of this dissertation is grounded in what can be referred to as action-based institutionalism (cf. Mayntz and Scharpf 1995; Scharpf 1997; Streeck 2009: 3-4; Jackson 2010).⁶ From an action-theoretical point of view, institutional continuity and change is contingent upon the actions of the key actors in relation to the institutions. Accordingly, I propose that what explains different trajectories of continuity and change is the class actors' actions; it is their actions that have the causal power to affect the institutional development. This understanding of how institutional continuity and change occur makes it clear that a theory attempting to capture the institutional impact of labour migration must place employers and their counterpart front and centre; through their use of the institutions in regulating employment

⁶ In contrast to actor-centred institutionalism, which “emphasizes the influence of institutions on the perceptions, preferences, and capabilities of individual and corporate actors” (Scharpf 1997: 38), I use action-based institutionalism as the basis for understanding how the institutions evolve. In doing so, I specifically emphasize the actions that carry causal powers to affect the institutions. While the institutional framework naturally distributes power between employers and trade unions, and thus plays an important role in shaping the actors' behaviour, the causal relationship under investigation here is the reversed: how the class actors through their actions shape the trajectories of continuity and change in the employment relations institutions.

relationships, their actions determine the impact that increased labour migration will have. This approach takes into account changes in both the formal structures and functioning of institutions, and understands institutional development as a dynamic process in which the institutions become what they are used as in practice; the actions of the actors may amount to active support and institutional maintenance, or a lack of the required active support, or they may challenge the institutions in different ways, resulting in intended or unintended change (Streeck and Thelen 2005; Mahoney and Thelen 2010). Providing institutional analysis with this type of micro-foundation based on a theory of institutional action makes it possible to offer an account of institutional development (Streeck 2009: 4, 11) that captures how power operates at the workplace level where employment relationships actually play out (Greer and Doellgast 2017: 204; see also Rothstein 2018: 3). Although change strategies may also take place at other levels, including the national and sectoral levels, the power over employment relationships – and the actual enactment of the institutions regulating employment relationships – is ultimately practiced in workplaces. In contrast to contributions in this debate in which institutions are treated as more or less autonomous entities with agency to reproduce themselves, a key insight that action-based institutionalism makes clear to us is that institutions do not enforce or reproduce themselves – actors do (cf. Thelen 2014: 11). Institutions can, for example, not ‘hold back’ liberalization – it is *actors* who enforce, or abstain from enforcing, the institutions, and thus determine how they function in practice. Only if the institutions are enforced can they serve to restrict actions leading to liberalization. This conceptualization makes a clear distinction between the actors (employers and trade unions) and the power resources at their disposal, on the one hand, and the institutions (collective bargaining, labour legislation, and workplace representation), on the other hand. This distinction enables us, for instance, to recognize that even if the formal institutional arrangements are still present, this does not automatically lead us to assume that the traditional power resources that they offered to workers are still available; even if the institutional framework is still present, workers’ power resources to contribute to enforcement of the institutions may have been lost (see Bacaro and Howell 2017). These insights are essential to the remainder of the argument presented in this dissertation, as they establish the basis for my actor-centred typological theory and action-based causal theory of how employers’ and trade unions’ responses to migrant labour affect the employment relations institutions. To make an analogy to a famous logic in criminology, to become successful change agents – or successful defendants of the existing institutions – the class actors need a combination of: *means* (power resources, including coalitional support), *opportunity* (structural constraints versus space provision) and *motive* (preferences, if one assumes that change originates from long-term strategic behaviour, or, instead, motives driven by the more fundamental goal of market survival through which change occur as an accumulation of the actions of individual employers).

3. How employers' and trade unions' responses to migrant labour affect the employment relations institutions – Hypothesized trajectories of continuity and change

While existing literature has made causal claims about the potential impact of increased labour and service mobility in the EU open market, and emphasized pressure for change originating from it, it has remained unclear *how* increased labour and service mobility can lead to institutional change, *what type* of change it can cause, and to *what extent* the pressure for change has transformed to actual change. As a means to improve our understanding of these causal processes, this dissertation develops a typology of the strategic interactions between employers and trade unions at the sectoral level, capturing how class actors' responses to the EU open market lead to different trajectories of institutional continuity and change. At the core of this causal theory is the proposition that the causal power to trigger change lies in the hands of employers using the foreign labour to which they have been given access in the EU open market. Their actions are, however, mediated through the response of their counterpart in these institutions, namely organized labour, whose actions determine the scope that employers have to use the migrant labour supply, and to pursue change.

There are different ways that employers can use migrant labour, and there are different ways that trade unions can respond to this use. The typology proposed here categorizes employers' and trade unions' responses to migrant labour based on their distinct causal powers. Trade unions can either be *protective* of migrant labour, or pursue a response resulting in *non-effective protection*. Employers can either *comply* with dominant employment relations rules and practices in their use of migrant labour, or *opt out* of such rules and practices. A trade union response that protects migrant workers has different causal properties than a trade union response through which migrant workers are not effectively protected. Similarly, the employer response that complies with dominant employment relations rules and practices have different causal properties than the employer response that opt out of such rules and practices. In sum, the causal properties of the responses boil down to the following: whether they trigger a process in which the employment relations institutions are not challenged, and where the required active support for the institutions is provided, which in turn is translated into institutional resilience creation – or, whether they trigger a process in which the employment relations institutions are challenged, and there is an absence of institutional support that would discontinue a process towards institutional change (drift, conversion, or displacement) from taking place.

I define trade unions' protective response as ensuring *equal treatment* for migrant labour, while not doing so – including only ensuring *minimum standards* (or approving of sub-standards)

– is considered as non-effective protection.⁷ Despite declined union density rates and weakened power of unions that have affected unions’ ability to be encompassing and protective, the role of trade unions, grounded in the power resources approach, is to represent the interests of all workers. This understanding forms the basis for my concept definition of what constitutes protection and non-effective protection, with equal treatment laying at the core of the definition of a protective response. This definition does not disregard the considerable effort involved from the side of trade unions in ensuring minimum standards. The reason for not including both equal treatment and minimum standards, that is, a protective response ranging from ensuring equal treatment to minimum standards only, in the concept of trade unions’ protective response is because it is theoretically highly plausible that ensuring minimum standards have different causal properties than ensuring equal treatment – that is, the effect of ensuring equal treatment is not the same as the effect of ensuring minimum standards only. While ensuring minimum standards is clearly more protective than no protection, it does not result in equal treatment, and opens up space for change strategies to be pursued by employers in their use of migrant labour. In aiming to capture the causal powers of each of the responses, trade unions’ responses would also be categorized as non-effective protection if the trade union does not have the capacity to achieve a response that results in protection of migrant labour in practice. The guiding question which has served to capture the qualitative threshold between the two responses is whether the trade unions’ response in the specific sector largely results in effective protection in practice or not.⁸ If the response largely results in protection the causal implication is – given presence of the requisite contextual conditions – that space is closed down for employers to opt out and consequently pursue change strategies, whereas non-effective protection of migrant labour opens up for differential treatment of workers and offers space to pursue change.

Employers’ responses are defined as compliance with *dominant* employment relations rules and practices in the use of migrant labour, or opt out of such rules and practices. The concept definitions of employers’ responses are thus contingent upon what constitutes dominant employment relations rules and practices. In a context where collective bargaining is the dominant way to regulate employment relationships, as in the cases investigated here, applying a collective agreement is a prerequisite in following the dominant employment relations rules and practices, and not doing so is considered as opt out. The action of not using a collective agreement holds the causal power to trigger defection from collective bargaining as an institution. The use of a

⁷ This equal treatment definition is also in line with EU regulations and directives that have clarified that EU citizens working in another EU member state are entitled to the same rights as host country nationals without discrimination based on nationality (see e.g. Regulation 1612/68, Regulation (EU) 492/2011, Directive 2004/38/EC).

⁸ In this research, qualitative thresholds are understood as the point at which causal relationships kick in, reflecting a ‘crisp-set’ (in contrast to ‘fuzzy-set’) understanding of sets and the causal theories linking sets (Beach and Pedersen 2016b: 180). An elaborate discussion on the qualitative thresholds and their measurements is offered in chapter 4.

collective agreement in the employment of migrant labour is thus pivotal for the continued collective regulation of employment relationships; not using collective agreements ultimately means defection from collective bargaining. When it comes to the enforcement responsibilities of employers, a general assumption adopted here is that complying employers logically have a responsibility over the enforcement of labour standards in the employment relationships in which they engage. If they do not take on such a responsibility they do per definition not comply. Moreover, there are two types of employers' compliance responses; *full compliance* and *compliance with minimum standards only*. Employers' compliance with minimum standards captures the situation in which employers exploit the difference between minimum and standard levels of protection and compensation by abstaining from complying with dominant levels of employment protection in their employment of migrant labour and by applying conditions of a collective agreement to migrant labour that is not equal to that of native labour. The difference in terms of causal implications is that applying minimum standards opens up space to pursue institutional change; equal treatment – at the core of the definition of a full compliance response – is required for the provision of active institutional support from the side of employers. Employers' opt out, in contrast, can, for example, be non-compliance with labour legislation, or different types of breaches or circumvention of a collective agreement. Opt out responses may thus be either legal or illegal. It may be legal in the sense that it only deviates from employment relations practices that are dominant for national workers, but without being inconsistent with the legislation. In the cases studied here, where much of the collective employment relations are based on voluntary compliance as opposed to being legally obliging, *legal* opt out is key to capture what is causally relevant for the institutional evolution, and must therefore inevitably be part of employers' opt out response.⁹ While illegal opt out indeed involves an increase in undeclared work and loss of tax contribution, both forms of opt out – whether legal or illegal – have the causal power to trigger institutional change. The question defining the qualitative threshold between compliance and opt out has been to estimate whether or not there is widespread and systematic use of migrant labour outside of the scope of the employment relations institutions, whereas the qualitative threshold between full compliance and compliance with minimum standards only captures the border between applying equal treatment or minimum levels of protection and compensation.

⁹ For a similar discussion, see Bernaciak (2015: 230) and Jaehrling and Ménhaut (2013: 707).

Figure 3.1 Typology of labour migration responses with associated outcomes and the mechanisms linking them

		Trade unions' responses	
		Protection of migrant labour (equal treatment)	Non-effective protection of migrant labour
Employers' responses	Full compliance	Outcome 1: Maintenance of employment relations rules and practices – Contribution to institutional continuity Causal mechanism: Resilience creation in institutions 1	Outcome 2: Liberalization as dualization – Institutional change through drift Causal mechanism: Deliberate neglect of institutions 2
	Opt out	Outcome 3: Liberalization as socially embedded flexibilization – Institutional change through conversion Causal mechanism: Re-direction of institutions 3	Outcome 4: Liberalization as deregulation – Institutional change through displacement Causal mechanism: Defection from institutions 4

Figure 3.1 presents the typological theory at the core of this thesis, demonstrating how the interactions between employers' and trade unions' responses are linked to different outcomes through four different causal mechanisms. As the analyses of institutional continuity and change are intimately linked (Mahoney and Thelen 2010: xi) and we in order to understand change in parallel must be able to explain and identify what constitutes continuity (Hall 2010: 207), the outcomes range from contribution to continuity in the employment relations institutions to different forms of change. Outcome 1 hypothesizes how contribution to institutional continuity can be achieved under conditions of high pressure for change originating from the EU open market, whereas Outcomes 2 through 4 represent three varieties of liberalization, associated with different distributive outcomes (Thelen 2014: 5) and different effects on the level of employer discretion. Building upon Thelen (2014)'s theorization of varieties of liberalization, the typology distinguishes between three divergent trajectories of liberalization conceptualized as dualization, socially embedded flexibilization, and deregulation. Below, I present the concept definitions of the four outcomes.

3.1 Maintenance of collective employment relations rules and practices – contribution to institutional continuity

The causal process captured in the upper left corner of Figure 3.1 follows from employers' full compliance with dominant employment relations rules and practices in their use of migrant labour and trade unions' effective protection of migrant labour, and is through a Resilience Creation Mechanism expected to contribute to institutional continuity in maintaining the employment relations institutions. As institutional continuity is "a function not simply of positive feedback but

of active, ongoing mobilization” (Mahoney and Thelen 2010: xi; see also Thelen 2004), both actors’ active support, following from the interaction of their responses, is required for the institutions in question to be maintained. As made explicit by Streeck and Thelen (2005), there is nothing “automatic” about institutional continuity (24); institutions do not survive by remaining static in a dynamic environment. To remain what they are, institutions require active maintenance that may involve greater or smaller adaptations to changes in the political and economic environment (ibid.) such as the establishment and expansion of the EU open market, or active efforts to resolve potential institutional ambiguities that threaten institutional continuity (Thelen 2004). In absence of resilience creation and adaptation as a means to cope with the pressure for change and make the institutions survive in the changed context, they are exposed to different forms of change and can, for instance, be subject to erosion through drift (ibid.).

Whether we identify continuity or change naturally depends on our definitions of what constitutes continuity and change. Based on the insight that institutional maintenance requires ongoing mobilization, active support, and – in cases of changed contextual conditions – adaptation, a static conceptualization of continuity would fail to capture the essence of institutional continuity. A conceptualization of institutional continuity as a ‘freezing of rules’ is not only too strict as a logical outcome, but would in the changed context of the open market and associated pressure for change most plausibly result in institutional neglect and drift rather than institutional continuity. Instead, an encompassing definition of institutional continuity that allows for adaptation to take place as part of institutional maintenance is required. This adaptation may include reconfiguration in both the formal structures and functions of the institutions, leaving space for both re-regulation and strengthened enforcement as potential resilience creation measures. That being said, the conceptualizations of continuity and change must also enable us to distinguish ‘real’ change from merely adaptive change (Streeck and Thelen 2005: 2). Just because changes may be considered as ‘minor’, it does not mean that they per definition are associated with adaptation and continuity, and neither are ‘major’ changes per definition associated with discontinuity. All three varieties of liberalization, associated with the remaining three outcomes presented below, can in principle proceed through incremental change, as opposed to drastic, disruptive change. In fact, as established by Streeck and Thelen (2005), most transformative change proceeds incrementally, and an accumulation of what appears as minor incremental changes can result in far-reaching change. In avoiding placing excessively high demands on what constitutes ‘real’ change – but simultaneously also avoiding being too permissive in what constitutes change as opposed to adaptation – the distinction between continuity and change adopted here pertains to *institutional maintenance* in that the institutions continue to deliver similar results. Taking seriously Kinderman (2005)’s contribution that offered us the insight that “the continued existence of institutions should not be conflated with a continuity of outcomes or results,” and that “we do not value institutions for their own sakes, but rather for

what they deliver” (455), institutional maintenance and continuity crucially boil down to continuity in the institutional deliverables. The core of the definition of this outcome is thus that the formal structures and functions of collective bargaining, labour legislation, and workplace representation are *maintained* in that they continue to limit employer discretion and provide distributive outcomes that limit social and economic inequalities, plausibly as a result of adaptation and resilience creation measures. Furthermore, this outcome is defined as *contribution to institutional continuity* as the identified cause – employers’ and trade unions’ responses to labour migration – investigated here is just one of many causes affecting the evolvement of the employment relations institutions, where reinforcing or countervailing factors together shape the trajectory towards continuity or change.

3.2 Three varieties of liberalization

The different trajectories of change that I hypothesize to be linked to the remaining three combinations of employers’ and trade unions’ responses to migrant labour draws upon recent theorization about varieties of liberalization and related trajectories of institutional change (Thelen 2014). Outcomes 2, 3 and 4 in the typological theory represent three trajectories of change associated with different forms of liberalization: dualization, socially embedded flexibilization, and deregulatory liberalization. Hall and Thelen (2009) have argued that the term liberalization that is widely used in the literature, and which has become shorthand for describing change within contemporary capitalism (Howell 2015: 401), may be too encompassing to be useful in assessing the substantive meaning and implications of the various developments subsumed under the term (Hall and Thelen 2009: 22-24). In seeking to advance a more precise analytical framework that better enables us to grasp the different aspects of liberalization, Thelen (2014) proposed a differentiated way of thinking about contemporary changes by distinguishing between divergent trajectories of liberalization that are driven by different political dynamics and associated with different distributive outcomes (1, 5, 11). For the purpose of this analysis, the important message from Thelen (2014)’s contribution is that common pressures for change are channelled in different ways, thereby resulting in different outcomes, and that by distinguishing between the three trajectories of change, we come to recognize that liberalization take different forms (xx, 13). While Thelen investigates national dynamics by cross-case analysis, this insight is particularly useful when investigating processes of change at the sectoral levels, as it opens up for the possibility that the varieties of change occurring *within* national economies may be beyond one particular trajectory of liberalization.

While building upon Thelen (2014)’s varieties of liberalization, the conceptual and operational definitions of deregulatory liberalization, dualization, and socially embedded flexibilization adopted here differ to some extent from the way in which Thelen defines and

operationalizes the three concepts.¹⁰ In seeking correspondence with the understanding of capitalism underlying this research, and for the purpose of assessing effects on institutional continuity and change in the formal structures and functions of the employment relations institutions, the three varieties of liberalization are here defined to capture what is relevant in relation to the causal theory developed and assessed in the context of this study, and – crucially – *only* include what can actually be the outcomes of the investigated causes, that is, employers’ and trade unions’ responses to labour migration. Below, I present the conceptual definitions of what constitutes deregulatory liberalization, which is the most far-reaching form of liberalization, and subsequently dualization and socially embedded flexibilization as two intermediary – but distinct – varieties of liberalization. These outcomes are recognized as ongoing processes and as directions of institutional change (see e.g. Streeck and Thelen 2005: 4), and thus conceptualized as *trajectories*. Similar to how the first outcome is conceptualized as *contribution* to institutional continuity, the remaining three combinations of employers’ and trade unions’ responses to labour migration also result in *contribution* to one of the varieties of liberalization.

Liberalization as deregulation – Institutional change through displacement

The most drastic trajectory of change captured in the typology occurs in the lower right corner of Figure 3.1 and follows from employers’ opt out of dominant employment relations rules and practices in their use of migrant labour in combination with trade unions’ non-effective protection of migrant labour, which through an Institutional Defection Mechanism is expected to contribute to the outcome of deregulation. Deregulatory liberalization as defined by Thelen involves “the active political dismantling of coordinating capacities (on one or both sides of the class divide) and declining coverage – and with that a marked individualization of risk” (Hacker 2006 cited in Thelen 2014: 13). While effects on coordination fails to capture what is causally relevant as outcome in the causal relationships investigated here, the key take-away from Thelen’s conceptual

¹⁰ Thelen’s definitions are based on the two components of *coordination*, using the meaning attached to the term by VoC scholars in aiming to capture the extent to which employers engage in strategic coordination (Hall and Soskice 2001; Thelen 2014: 12), measured as degree of coordinated wage bargaining and centralization of bargaining levels, and inclusiveness of the institutions in terms of their *coverage*, measured as collective bargaining coverage and union density, aiming to capture the level of solidarity and egalitarian outcomes offered by the institutional setting. Institutional liberalization as conceptualized by Thelen thus has two distinct meanings; undermining coordination, primarily through decentralization, and/or undermining solidarity, primarily through dualism as a result of declined coverage and restricted encompassingness (Howell 2015: 400). By distinguishing between these two aspects, Thelen constructs the three distinct trajectories of liberalization, based on different combinations of high/low levels of coordination and high/low levels of coverage (Thelen 2014: 12). Deregulatory liberalization, as defined by Thelen, involves a decline in both coordination and coverage (and thus, based on her logic, declined solidarity); dualizing liberalization involves a decline in coverage (and thus solidarity) but not in coordination, and embedded flexibilization involves a decline in coordination but not in coverage and solidarity (ibid. 13-14). Consequently, Thelen’s definitions of the varieties of liberalizations construct the possible combination of continued high levels of solidarity and equality with significant liberalization (ibid. 1), as in socially embedded flexibilization. While naturally contingent upon the concept definitions, this is a claim that I will return to in the concluding chapter.

definition of deregulatory liberalization pertains to the declined coverage of the institutions as well as the individualization of risk. Deregulatory liberalization is here defined as the situation in which institutions for collective labour regulation are set aside in favour of arrangements based on individualization of rights, resulting in increased employer discretion over employment and working conditions (see Howell 2003: 106), increased uncertainty for all workers, and in a shift in the distribution of income from labour to capital. In this process, “collective institutions imposing social obligations on individual actors to restrain themselves are continually undermined, and wherever possible and necessary they are replaced with economically expedient contractual arrangements that are voluntary rather than obligatory” (Streeck 2009: 5). Among the three varieties of liberalization, deregulatory liberalization generates the greatest increase in employer discretion, and is associated with the greatest redistribution from labour to capital.

Existing literature has suggested that each trajectory of liberalization typically proceeds through a specific mode of institutional change (Thelen 2014: 13; also Streeck and Thelen 2005). The mode of transformation theorized to be associated with deregulatory liberalization is institutional *displacement*, defined as “slowly rising salience of subordinate relative to dominant institutions” (Streeck and Thelen 2005: 31). Mahoney and Thelen (2010) have subsequently defined institutional displacement as the removal of existing rules and the introduction of new ones, or the replacement of an old institution with a new one (15, 22). While institutional displacement is often associated with ‘frontal attacks’ on institutions, this mode of change may take place either outright and abruptly *or* as incremental but transformative change (Streeck and Thelen 2005: 30-31; Mahoney and Thelen 2010: 22). Deregulation through institutional displacement may thus – but does not need to – involve abrupt change and frontal attacks that replace an old institution with a new one. Displacement may, however, also be a slow-moving process through gradually declining coverage of the institutions, which incrementally leads to their displacement (Mahoney and Thelen 2010: 16). This type of gradual displacement may, for instance, occur when new institutions or new rules or practices are introduced that directly compete with, rather than supplement, an older set of institutional practices; if the coalition of institutional supporters of the old order are unable to prevent defection to the new rules and practices, gradual displacement will follow (*ibid.*). As individual employers are the main actors driving this type of process forward, the old institutions will eventually be abandoned as more employers defect to the new institutional practices, which may be individual agreements as opposed to collective agreements, and/or a completely new institution, such as a statutory minimum wage that entails the introduction of legally based individualized rights as opposed to collective labour regulation, slowly replacing the previously collectively based arrangements.¹¹

¹¹ Whether a statutory minimum wage serves as a complement or supplement to collective bargaining is an empirical question that needs to be assessed in each individual case.

This type of change may occur either through endogenous displacement, for example when employers through their practices abandon collective agreements and turn to the use of individual agreements only, or through exogenous change where a new institution is introduced that alters the old institutional order (Streeck and Thelen 2005: 22). Importantly, endogenous and exogenous change tend to be interrelated in that changed external conditions, such as the creation and expansion of the EU open market, generate potential and provide the basis for actors (employers) to pursue endogenous change by turning to a new logic of action that is outside of the scope of the old institutions (Streeck and Thelen 2005: 22; Deeg 2005).

Liberalization as dualization – Institutional change through drift

The two remaining outcomes, captured in the upper right and lower left corners of Figure 3.1, represent what can be considered as two intermediate varieties of liberalization. The first intermediate variety follows from employers' compliance with minimum standards and trade unions' non-effective protection of migrant labour, which through an Institutional Neglect Mechanism is hypothesized to contribute to the outcome of dualization. Dualization has broadly been defined as a process characterized by the differential treatment of different groups of workers typically referred to as labour market insiders and outsiders, or core and periphery, with outsiders generally defined as both unemployed and workers in non-standard employment relationships (cf. Rueda 2005; Emmenegger et al. 2012: 13). In contrast to deregulatory liberalization, which increases uncertainty and deteriorates conditions for all workers, dualization is defined by maintained conditions for insiders who continue to be covered by the institutions, while existing and new categories of outsiders experience declining pay and security (Emmenegger et al. 2012: 10). Dualization can thus be described as a type of asymmetric liberalization; the institutions continue to be upheld between unions and firms representing and employing labour market insiders, while the scope of the arrangements resulting from collective labour regulations is gradually narrowed.¹² Accordingly, dualization is here understood as the situation in which institutions for collective labour regulation are becoming less encompassing and where

¹² The concept of dualization has received considerable attention in the academic literature over the last decade and has become a core concept in the VoC debate, with the German political economy used as the hallmark case to illustrate dualization between economic sectors, where employment relations institutions are pictured as maintained in the manufacturing segment of the economy and at the same time weakened and eroded in the service sector (see e.g. Palier and Thelen 2010; Hassel 2014; Thelen 2014; Carlin et al. 2014). In spite of the multidimensionality inherent in the concept of dualization, most accounts treat the dualization thesis in continuity with the VoC framework and seek to analyse national-level dynamics of change, having in common that they describe dualization *between economic sectors* that are assumed to fulfil different functions within national political economies. While these definitions have focused on national dynamics shaped by the interaction between different economic sectors, the core of the definition of dualization adopted here instead primarily draws upon the much earlier work of scholars advancing the dual labour market theory (Doeringer and Piore 1971; Piore 1979), which, in contrast to more recent adaptations of the concept of dualization, concerns dualization *between different labour segments*. The type of dualization investigated here is thus intra-sectoral dualization where different labour segments within the same sector are treated in different ways.

differential treatment of workers takes place either within or outside of the scope of the institutions, resulting in increased employer discretion over the employment and working conditions of certain groups of workers, and in widened wage dispersion.

Dualization is theorized to typically be associated with a mode of transformation that has been termed institutional *drift* (Thelen 2014: 14), which occurs as a consequence of “neglect of institutional maintenance in spite of external change resulting in slippage in institutional practice on the ground” (Streeck and Thelen 2005: 31; see also Hacker 2002). Central to this process are shifts in the surrounding context, and responses thereto, which result in changed impact of the institutions (Mahoney and Thelen 2010: 16). Preventing drift requires institutional supporters to take active steps to ensure continued support for the institutions; in absence thereof, changes in institutional practices, affecting both the coverage and functioning of the institutions, can be expected (ibid. 20). In this way, drift occurs either as employers act opportunistically and exploit the possibilities offered in the new context that allows them to abdicate previous responsibilities of compliance with the institutions (Streeck and Thelen 2005: 25), thus deliberately refraining from supporting and adapting the institutions to the changed circumstances – or, as trade unions fail to adapt the institutions in order to maintain their functioning in the changed environment (Mahoney and Thelen 2010: 19). This reflects the ambiguity present in a process leading to drift; it may either be associated with inaction or passivity – erosion occurs as the institutions developed for one purpose in a certain context fails to receive the support needed to survive under new conditions (Mahoney and Thelen 2010: 17; Thelen 2014: 14) – or, it may be of a more active character as a result of *deliberate* neglect, what Streeck and Thelen (2005) has described as “a kind of passive aggressive behaviour” that abstains from halting the drift caused by exogenous developments, such as the creation and expansion of the EU open market, entailing that a ‘failure’ to actively maintain an institution means *actively* allowing it to decay (25).

Applied to the type of processes investigated here, dualization through drift means that the institutions developed for the collective regulation of employment of a homogenous native workforce do not hold as the composition of the workforce changes and new ways to organize work is associated with the use of foreign labour supplies; the institutions continue to be upheld for regular native in-house workers, but, due to trade unions non-effective protection and employers differential treatment of the foreign labour supply, the institutions do not extend to migrant workers, who are part of the most precarious segment among labour market outsiders. Consequently, the coverage of the institutions declines as an unorganized and unregulated periphery is allowed to grow outside of the scope of the institutions (Thelen 2014: 14). Aside from the declined scope of the institutions, gradual erosion from within takes place as the enforcement and negotiation functions of workplace representation are negatively affected, and the negotiation dynamics are shifted in favour of employers due to the power held in leveraging workers against one another, and as job security is withheld from a segment of the labour supply.

While this outcome, similar to deregulatory liberalization, also represents an erosion of the employment relations institutions governing the regulation of employment, the scope of the erosion and declined coverage of the institutions is less far-reaching than in deregulatory liberalization. Nonetheless, the power gained by employers through the ability to leverage different groups of workers against one another holds the potential to generate causal powers that may trigger more far-reaching changes as the power relations between employers and unions are altered.

Liberalization as socially embedded flexibilization – Institutional change through conversion

The second intermediate variety of liberalization follows from the interaction between employers' opt out of dominant employment relations rules and practices in their use of migrant labour and trade unions' protection of migrant labour, which through an Institutional Conversion Mechanism is hypothesized to contribute to the outcome of socially embedded flexibilization. Socially embedded flexibilization is defined by simultaneously containing elements that introduce enhanced flexibility and embed the changes in measures that collectivizes risk, resulting in maintained levels of equality (Thelen 2014: 14-15).¹³ In the context of this study, this entails that the institutions for collective labour regulation are adapted to incorporate migrant labour within the scope of the institutions, while employers at the same time take the chance to redirect the functioning of the institutions to introduce and/or make use of more flexibility in the pretext of the changed conditions related to increased labour migration in the open market, resulting in increased employer discretion over employment and working conditions – although the lowest comparative increase in relation to the other two varieties of liberalization – and, maintained equality levels. What distinguishes socially embedded flexibilization from the other varieties of liberalization is that the liberalizing and fundamentally market-promoting changes, such as weakened employment protection premised on increasing labour market mobility, are combined with a collectivization of risk, and not an individualization of risk as in deregulatory liberalization, or a differentiated distribution of risk as in dualization.¹⁴ In contrast to dualization and

¹³ For a trajectory of change to qualify as socially embedded flexibilization, the socially embeddedness must not only be confined to the existing *context*. Instead, the *change* itself must contain embedding components, and not just entail the introduction of liberalising moves within a context that offers strong enough embeddedness of market relations so that equality levels can (temporarily) be maintained (cf. Thelen 2014: 14-15). This definitional decision naturally has the consequence of making the threshold for identifying this outcome in empirical cases stricter, as flexibilization taking place in a context of strong social protection is a more reoccurring empirical phenomenon than the introduction of flexibility combined with strengthened social protection.

¹⁴ While socially embedded flexibility is an analytical construct developed in the academic literature, the concept bears family resemblance with the policy concept of flexicurity. Defining of flexicurity is mobility-oriented activation policies and high levels of social protection for all workers, in combination with low employment protection for all (Obinger et al. 2012: 179). Similarly to socially embedded flexibilization, flexicurity involves policies that are distinctly market-promoting (Thelen 2014: 12), and the essence of the flexibilization is to create high mobility of workers in the labour market on the basis of offering employers

deregulatory liberalization, the institutions are in this variety of liberalization actively adapted and redirected to serve new purposes in the context of increased use of migrant labour in the open market. As such, this outcome has in some ways more in common with the resilience creation contributing to institutional continuity in the first outcome outlined above, although the pressure for change is here – instead of being countered to ensure continuity – embraced or at least channelled in a way that employers seize the opportunity to achieve transformation in the practical functioning of the employment relations institutions that offers them more institutional flexibility in the area of wage-setting, and greater external flexibility by increasing their use of temporary forms of employment. The major change in this outcome has to do with a decline in the coverage of job security regulations; while migrant labour, as other workers, is incorporated within the scope of the institutions, the access to job security is reduced for all workers. Accordingly, socially embedded flexibilization involves significant liberalization of the employment relations institutions, although its effects on distributive outcomes and the level of employer discretion are cushioned by the collectivization of risk that distributes the effects across the whole sectoral workforce, primarily by ensuring maintained coverage of collective bargaining and workplace representation.

While socially embedded flexibilization as a theoretical construct defined as change that simultaneously contains embeddedness and flexibilization (and not just flexibilization taking place in a socially embedded context) may have its weaknesses in terms of corresponding to empirical cases in the current empirical reality, the mode of change that Thelen (2014: 13) associates with it – institutional *conversion* (Thelen 2004) – has been widely applied to describe contemporary changes in employment relations (e.g. Höpner and Jackson 2002; Kinderman 2005; Jackson 2005; Baccaro and Howell 2011, 2017; Howell and Kolins Givan 2011). Characteristic of this mode of transformation is a functional conversion of the institutions taking place through a reinterpretation of their rules and practices, which may be masked by continuity on the surface as the old institutions remain but are changed from within (Streeck and Thelen 2005: 29). Such reinterpretation or redirection comes about as a result of the actors' responses to opportunities and challenges that arise due to changes in the environment – here, to the free labour and service mobility in the EU open market which provides new space for political contestation over how rules should be interpreted and applied, enabling institutional challengers (employers) to exploit inherent ambiguities in the properties of the institutions in ways that allow them to convert the functioning of the institutions (Streeck and Thelen 2005: 26-27; Mahoney and Thelen 2010: 18). Moreover, space to redirect the institutions is opened up through changes in the power relations between the class actors; when employers gain free access to foreign labour supplies and choose

greater flexibility in adapting to variation in demand, legitimized by the aim to offer workers access to employment opportunities.

to respond by opting out of dominant employment relations rules and practices in their use of migrant labour, employers are able to alter the way in which the institutions are practiced, and deploy a more strategic use of the institutions, either by completely *circumventing* or by *subverting* the rules (see Streeck and Thelen 2005: 27; Jackson 2005).

The typological theory presented above has provided a repertoire of the possible combinations of responses to labour migration, and introduced the four causal mechanisms linking the responses to the effects of these processes, resulting in either contribution to institutional continuity in collective employment relations or different forms of liberalization thereof. While taking note that the three varieties of liberalization are theoretical abstractions that may or may not in their purest form exist in the empirical reality of any specific case, these analytical tools are meant to serve the purpose of assessing the direction of change, and doing so in a more fine-tuned way. The following two sections build upon the typological theory and make explicit the conditions under which the casual processes are expected to play out, and outline the four causal mechanisms that detail how employers' and trade unions' responses to labour migration lead to divergent effects on the employment relations institutions.

3.3 Contextual conditions under which the causal processes are expected to occur

As in any research with causal ambitions, the conditions under which the hypothesized causal relationships are expected to hold need to be specified.¹⁵ While the general context in which all four processes are taking place is one of high pressure for change originating from the free labour and service mobility in the EU open market, and the increased marketization associated with it (Greer and Doellgast 2017), the contextual conditions that are requisite for the respective causal processes to play out as theorized pertain to the presence or absence of a coalition of institutional challengers or institutional supporters, high or low levels of enforcement of the institutions, and absence or presence of inherent ambiguities in institutional properties.

Coalition formation, whether implicit or explicit, underpin the processes of both institutional continuity and change, and is a precondition for mobilizing the support required for institutional maintenance as well as for change to be achieved (Thelen 2004; Mahoney and Thelen 2010: 9, 29; Hall 2010: 212, 214). Coalitions as understood here do not require any degree of formalization, and there does not need to be any clear-cut efforts to mobilize around a coalition for institutional change to emerge. Instead, ad hoc adjustments in the way the actors behave,

¹⁵ Contextual conditions are here understood as conditions that need to be present for a causal process to take place (see e.g. Falletti and Lynch 2009: 1152; Beach and Pedersen 2016a: 10). Contextual conditions are distinct from causal conditions in that they – unlike the causal conditions – do not have causal powers. While contextual and causal conditions are not necessarily easily distinctive empirically, they are theoretically distinguishable within the frame of a specific theory; a causal condition is what is theorized to *cause* something, while the presence of the contextual conditions are theorized to be requisite for the process to take place and enable the mechanism to function (and their absence prevents it from functioning).

including passivity from the side of an actor, can provide the basis for a coalition underpinning a process of change (Hall 2010: 216-2018).¹⁶ What is causally relevant in terms of institutional development is whether the coalition makes for a coalition of what Mahoney and Thelen (2010) have termed institutional challengers or supporters; institutional continuity requires a coalition of institutional supporters, and all of the three varieties of liberalization require some form of a coalition of institutional challengers. Coalitional support can in this way be understood as a form of power resource that is requisite to become a successful change agent – or a successful defendant of the existing institutions. As the relative power of the class actors is decisive in affecting their ability to assemble the coalition they need to defend or change existing arrangements (Hall 2010: 209, 215), the state plays a central role – either passively or actively – in underwriting coalitions of institutional supporters or challengers (Mahoney and Thelen 2010: 9; Thelen 2014: 154; Dølvik et al. 2014a: 5). Consequently, while the causal theory proposed here identifies the actors using the institutions as having the causal power to ensure contribution to institutional continuity, or, conversely, to trigger change, the processes are contingent upon the actions of the state in fulfilling its enforcement responsibilities and offering coalitional support for resilience creation measures, or in providing only low levels of enforcement and offering coalitional support for institutional challengers. As the broader developments in which these processes are taking place are defined by the shift in class power against trade unions (Baccaro and Howell 2017: 21), the state plays a key role in setting the context in which the power relations between employers and workers, and their representatives, play out. For a process of contribution to institutional continuity in the employment relations to take place, the state is thus required to intervene in the power relations and reshape the context by establishing conditions that enables institutional maintenance, principally by honing its enforcement and legislative capacities, that is, by contributing to enforcement, and – if the context of high pressure for change requires so – strengthening enforcement and re-regulating the legal framework. Ultimately, the state is the only actor in a position to put in place regulations that prevent or discourage employers from opting out and to strengthen enforcement that limits space to opt out; even in cases where trade unions are protective, the state needs to establish the requisite contextual conditions for a trajectory towards contribution to institutional continuity, as well as for a trajectory towards socially embedded flexibilization to take place (see Thelen 2014: 31; Dølvik et al. 2014a: 4-5). If the state, in contrast, abstains from intervening in a context of imbalanced distribution of power between employers and organized labour and of high pressure for change, created by politics, the state

¹⁶ The contextual condition pertaining to a coalition of institutional challengers or a coalition of institutional supporters can be understood as a theoretical construct by which we can describe one of the conditions that is requisite in the respective processes. By detecting patterns of coalitions based on the actions of the actors, we can reveal whether a coalition of institutional challengers or supporters have been present in a case, and who has actively or passively taken part in it.

consequently plays a role in enabling processes of liberalization as dualization or deregulation to take place.

In conceiving of the employment relations institutions as the product of conflicts and compromises, including when it comes to their actual enactment, space for gradual transformation of the institutions is proportional to the level of enforcement present (Streeck and Thelen 2005; Streeck 2009). High levels of enforcement is a prerequisite for employers to comply with the institutions, and to limit actions that would trigger change; if the institutions are not enforced, their competitors will chose to opt out, and others will eventually follow suite (Dølvik and Eldring 2006: 215; Bernaciak 2015: 232). As explained in the section outlining employers' responses, employers are understood as having the primary responsibility to enforce labour standards in the employment relationships in which they engage – and, employers are ultimately the only ones that can ensure enforcement. High levels of enforcement do, however, in practice require that also trade unions (primarily through workplace representatives), individual workers, and state agencies (including labour inspectorates, tax authorities, and other agencies tasked to monitor enforcement of declared work and statutory minimum wages, if applicable) contribute to enforcement. By having direct insight into the employment and working conditions of employment relationships in their workplaces, individual workers fill an invaluable function in contributing to enforcement of labour standards, and the ability of trade unions and state agencies to contribute to enforcement is highly dependent on individual workers upholding this function, as their possibilities of having insight into every single workplace and employment relationship are limited. Put differently, all four actors (employers, workers, trade unions, and the state) have enforcement responsibilities, although the responsibility to *ensure* – and not only *contribute* to – enforcement lies with employers.

As the employment relations institutions have been built through political negotiation, they involve a range of compromises (Pierson 2004) that often result in inherent ambiguities in the rules that define institutionalized behaviour (Streeck and Thelen 2005: 26). Consequently, depending on absence or presence of such inherent ambiguities, the properties of the institutions limit or contain possibilities for change (Mahoney and Thelen 2010: 14) by providing smaller or greater space for political contestation over how rules should be interpreted and applied (Streeck and Thelen 2005: 26). Aside from having created a context of high pressure for change, free labour and service mobility in the EU open market has created a context in which space has been opened up to circumvent the institutions, which can lead to institutional drift and displacement, and a context that offers potential to undermine the coherence of sectoral employment relations institutions due to inconsistencies and legal tensions between laws and regulations at EU and national levels that create institutional ambiguities that can be exploited and used to pursue change

through conversion. The creation or exposure of inherent institutional ambiguities, is, in turn, inter-related with the level of enforcement, as ambiguities impedes efficient rule enforcement.¹⁷

The next section outlines the four causal mechanisms linking the class actors' responses with the respective outcomes, and elaborates in more detail the constellations of contextual conditions that are requisite for the different processes to occur.

3.4 Four causal pathways: Toward continuity through institutional resilience creation, and toward liberalization through institutional neglect, redirection or defection

To truly understand the impact of increased labour and service mobility, one not only needs to conceptualize the causes of these causal processes, and the causal properties thereof. One also needs to theorize how the respective causes are linked to the different outcomes of the processes. In this dissertation, this is done by unpacking the causal mechanisms in-between the identified causes and hypothesized outcomes. I here adopt a systems understanding of causal mechanisms, in which mechanisms are understood as being comprised of different parts, all required for the process to reach the outcome, with no abundant parts and without any logical gaps (Beach and Pedersen 2013: 30-31, 2016b). The conceptualization of the causal mechanisms serves to flesh out the causal story that links the class actors' responses with the institutional impact by describing how the causes trigger the first part of the mechanisms, and making explicit what it is about one part that transfers causal forces to the next part that result in productive continuity between the parts of the mechanisms, and ultimately between the respective causes and outcomes (Beach and Pedersen 2016b: 19, 421). Conceptualising each step of the respective causal processes in this manner enables us to turn our attention to what transmits the causal powers, improving our understanding of these causal processes as they operate in actual empirical cases. The mechanisms serve the purpose of enabling us to analyse how the causes produce the outcomes, thereby offering a plausible explanation of how and why the employment relations institutions are affected by employers' and trade unions' responses to labour migration.

Based on the insights of how institutional continuity can be achieved and how change can occur, it becomes clear that the outcomes of the causal processes in focus here depend on how the class actors respond to each other; they act through the institutions and through their activities they contribute to institutional maintenance, or they change the institutions. The causal mechanisms outlined here are thus initiated by the class actors' responses combined. I argue that neither of the actors' responses can alone lead to contribution to institutional continuity or change; only in combination with one another do they trigger the respective mechanisms that lead to the distinct outcomes. The below sections outline four causal pathways contributing to maintenance

¹⁷ Cremers (2015: 186-187) has, for example, demonstrated how the existing ambiguity in the EU laws related to posting of workers impedes efficient rule enforcement at local levels.

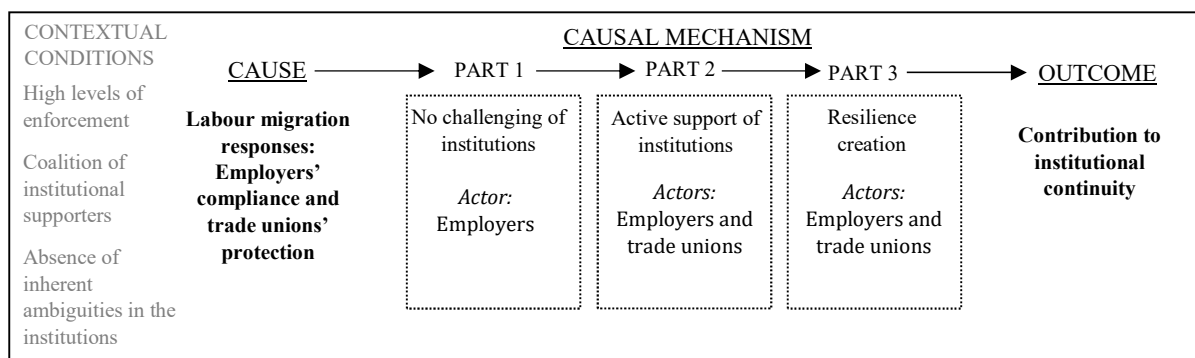
of the collective employment relations institutions or to liberalization thereof, and unpacks the logic of how employers' and trade unions' responses are linked to the different trajectories of continuity and change. The first and fourth causal mechanisms represent two opposite causal pathways; one which theorizes the contextual conditions, cause, and causal mechanism leading to contribution to institutional continuity, and the other one which theorizes the contextual conditions, cause, and causal mechanism leading to the most drastic form of institutional change, namely institutional displacement resulting in deregulatory liberalization of the employment relations institutions. The second and third causal mechanisms proposed represent the two intermediate pathways in which the interaction of employers' and trade unions' responses trigger processes that indeed lead to liberalization, but that are less straightforward (institutional neglect mechanism) and contains countervailing forces (institutional redirection mechanism), resulting in dualization and socially embedded flexibilization. While all of the three modes of transformation (displacement, drift, and conversion) are likely to evolve through slow and gradual change as the institutions are undermined or transformed in the course of their practical application by the actors (Streeck and Thelen 2005), the institutional impact varies due to the interaction of the responses, and due to absence or presence of contextual conditions under which the processes play out.

In sum, the components of the four causal processes presented below can be described as follows: the cause captures how the actors deal with the employment of migrant labour, the causal mechanism how they respond to the pressure for change originating from increased use of migrant labour, and the outcome of the causal processes capture the institutional impact as contribution to institutional continuity or institutional change.

Institutional Resilience Creation Mechanism

The first causal mechanism that I propose as a means to understand how institutional continuity of employment relations can be achieved in the open market is pictured in Figure 3.2.

Figure 3.2 Resilience Creation Mechanism contributing to institutional continuity



Under the changed conditions and the associated pressure for change originating from the labour and service mobility in the EU open market, achieving contribution to institutional continuity

requires *institutional resilience creation*. The argument that I derive from institutional theory (Streeck and Thelen 2005; Mahoney and Thelen 2010), and conceptualize as a causal mechanism, is the following:

The Resilience Creation Mechanism, hypothesized to contribute to institutional continuity, is triggered by employers' full compliance with dominant employment relations rules and practices in their use of migrant labour, and trade unions' protection of migrant labour; by complying with the dominant employment relations rules and practices in the use of migrant labour, employers, being the dominant change agent, chose to uphold the rules and practices and thereby do not challenge (*causal force*) the institutions for collective regulation of employment (Part 1). Through their protective response, trade unions make themselves counterpart in the employment of migrant labour and prevent the leveraging of groups of workers against one another, thereby avoiding that employers alter the power relations by gaining bargaining power through their use of foreign labour supplies. Through presence of high levels of enforcement, to which the state and the trade unions' protective response contributes, potential space for market actors to pursue change and introduce a new logic of action based on opt out is closed down. Potential institutional challengers are thus blocked from pursuing change strategies through their employment of migrant labour, or in the pretext of labour or service mobility, as the required coalitional support (active or passive) is not present, neither from the side of the trade unions, nor from the state.¹⁸ As employers are not substantively challenging the institutions, and the trade unions are not offering space to do so, the way is paved for the next part of the mechanism; in recognizing that the institutions need adaptation and maintenance to cope with the changed context related to increased labour and service mobility, both actors demonstrate their active support (*causal force*) for the institutions by pushing for re-regulatory measures and/or strengthened enforcement (Part 2). The political capacity to transform the demonstrated active support into actual resilience creation measures is contingent upon the presence of a coalition of institutional supporters, including employers, trade unions, and the state. As the state is unlikely to act without pressure from one or both of the class actors (Howell 2012, 2016), their push for re-regulation or strengthened enforcement is required in mobilizing active support that can be transformed into actual measures. In the presence of such a coalition, the active support from the actors transmits causal forces that in turn is transformed into resilience creation (*causal force*) in the institutions by the actual realization of the measures pushed for in their active support (Part 3). This part of the argument is based on the assumption that creating institutional resilience in the changed context may require not only re-regulation (affecting the formal structures of

¹⁸ Aside from high levels of enforcement as a requisite contextual condition, the process requires absence of inherent ambiguities in the institutions that can be exploited.

institutions) but also strengthened enforcement (affecting the functioning of the institutions).¹⁹ In the context of the open market, market actors need re-regulation and strengthened enforcement in order not to succumb to a disruptive logic of action (cf. Bernaciak 2015: 234). This is crucial to avoid breakdown of the mechanism, and continuation of the process in the direction of continuity, as ensuring a process of continuity requires keeping compliance as dominant practice. This part of the theorized mechanism draws upon the theoretical assumption that regulation serves to politically modify the economic process to constrain the potentially contesting elements from the side of employers (Neilson 2012: 161; Howell 2016; Baccaro and Howell 2017: 42), thereby enabling compliance to be maintained as dominant practice. In this way, the institutional supporters are able to address potential gaps in compliance, and in doing so maintain the institutions (Mahoney and Thelen 2010: 24). The introduced resilience creation consequently leads to the outcome as it contributes to institutional continuity in the formal structures *and* functioning of collective bargaining, labour legislation, and workplace representation – and in the outcomes delivered by the institutions – by ensuring institutional maintenance in the context of change pressures created by the EU open market. In this sense, this process can be described as a process of incremental adaptive change leading to *reproduction*, in turn leading to institutional continuity (Streeck and Thelen 2005: 9).

This process bears resemblance with what Doellgast et al. (2018) have recently conceptualised as the ‘virtuous circle’ of reconstructing solidarity and sustaining low levels of precarity and inequality (10-13). While their sophisticated and encompassing process focuses on how to reduce precarious work and how regulation of precarious work can be sustained over time, similar forces are set in play in the resilience creation mechanism proposed here. Doellgast et al. (2018) describe how a series of conditions – similar to those defined as causal and contextual conditions in the causal process outlined above – contribute to low levels of precarious work through a “mutually reinforcing feedback loop” (12). The authors propose that inclusive institutions, inclusive union strategies, and inclusive worker solidarity (achieved through presence of high union institutional and associational powers), along with voice-oriented employer strategies (achieved in presence of weak employer power to exploit workforce divisions and exit options), will lead to sustaining low levels of precarious work (ibid. 12-13). While the causal theory proposed here specifically identifies employers’ and trade unions’ actions as the causal condition that triggers the process leading to contribution to institutional continuity, mine as well as Doellgast et al. (2018)’s propositions emphasize the requisite role of trade unions in protecting migrant and precarious workers as a means to limit employers’ power to exploit workforce divisions and exit (here termed opt out) options. Although ‘positive feedback loops’ and self-

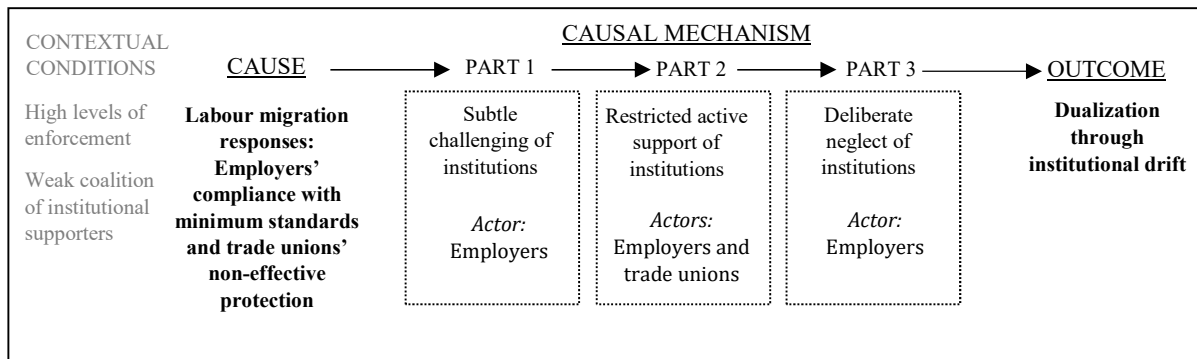
¹⁹ Re-regulation does not necessarily entail more labour legislation over collective bargaining as the main regulatory tool. Re-regulatory measures can also be introduced through collective agreements.

reinforcing effects are less central to the operations of my proposed mechanism, it does also contain a self-reinforcing element in that employers' most frequently used logic – that is, compliance, as long as it is maintained as dominant practice – may benefit from (less pronounced) self-reinforcing effects from the established path of action with which employers are familiar and have organized their production around (Crouch and Keune 2005: 86).

Institutional Neglect Mechanism

The first of the three causal mechanism that I propose as a means to understand how institutional change in the employment relations occurs in the open market is pictured in Figure 3.3. This mechanism involves employers' deliberate and strategic neglect of the institutions, reinforced by trade unions' lack of push for institutional maintenance in the changed context of labour and service mobility. The argument draws upon Streeck and Thelen (2005: 31).

Figure 3.3 Deliberate Neglect Mechanism contributing to liberalization as dualization



The Deliberate Neglect Mechanism is triggered by employers' compliance with minimum standards in their use of migrant labour, and trade unions' non-effective protection of migrant labour; by exploiting a gap between average conditions offered to regular native workers and minimum conditions offered to and accepted by migrant labour, employers have been permitted, and even invited, to use migrant labour as a secondary labour supply, whereby a route to dualization is opened up. In presence of high levels of enforcement (which does not come from the trade unions' non-effective protection, but from the overall sectoral context), employers' are directed towards complying with minimum standards, and consequently – instead of opting out – exploit the gap between minimum and average levels of protection and compensation, and, in doing so, subtly and indirectly challenge (*causal force*) the employment relations institutions (Part 1). To close down space for change, the trade union would have needed to ensure equal treatment of migrant labour. Instead, the use of migrant labour as a secondary labour supply to which only minimum conditions, and thereby sub-standards, are applied allows employers to leverage groups of workers against one another, transmitting causal forces that serve as the driving force underlying this process by altering the power relations in favour of employers and placing trade unions in a position of retreat. The actions by the class actors consequently trigger a process in

which they provide only restricted active institutional support (*causal force*) by continuing to use collective labour regulations as the dominant logic of action in the employment of native labour while abstaining from actively attempting to extend the scope of the institutions to cover migrant labour (Part 2). The restricted active support entails that the overall institutional framework is upheld, but there is no demonstration of active support to adapt the institutions to the changed context. From the side of employers, this can be understood as a strategic choice in striving for competitiveness by gaining cost reduction and/or increased flexibility through the use of migrant labour, whereas the restricted support from the side of the trade union is due to its failure to play an active role in supporting the institutions under the changed circumstances, retreating to the areas under which the institutions still hold, and not in the new context of free labour and service mobility and the forms of work organization associated with it. The restricted active support in this process is thus based on what can be described as a weak coalition of institutional supporters, underwritten by the state which passively enables or actively facilitates the process.²⁰ The restricted active support from both actors in turn drives the process toward deliberate neglect (*causal force*) of the institutions (Part 3) as it fails to generate the institutional resilience creation that would have been required for institutional maintenance in the context of change pressures created in the EU open market, and for a process towards institutional drift to be discontinued. In

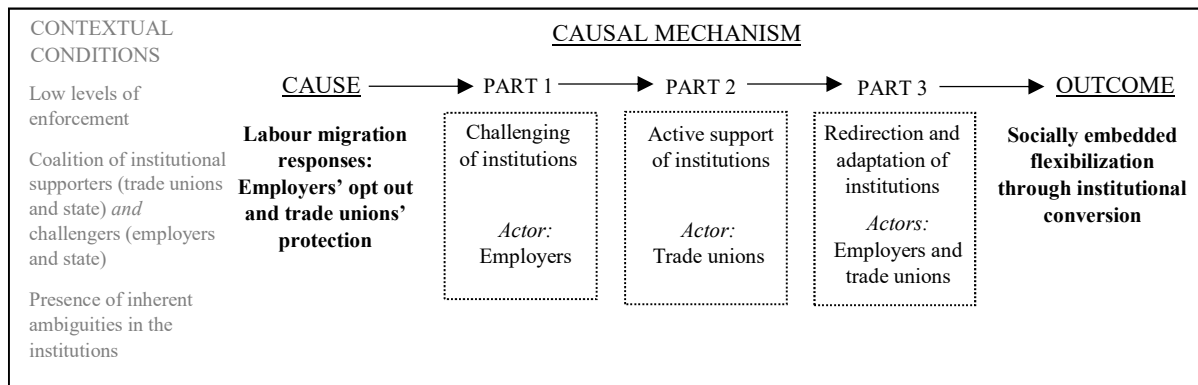
²⁰ In breaking with much of the existing literature on dualization, where the dualism thesis has been applied in continuity with the VoC framework, I do not assume that a cross-class coalition of core firms, core workers, and unions serves as the basis of the coalition driving this process forward. Instead of resting upon a cross-class *coalition* (see e.g. Swenson 2002; Rueda 2007; Thelen 2014: 14), I see the process as being better understood as a bargaining outcome that reflects a cross-class *compromise* in which employers successfully have achieved concessions from their counterpart. The outcome of the compromise is a reflection of the weakened power of workers and trade unions in relation to employers, and a result of trade unions focusing their limited resources in *reaction to* employers who exploit workforce divisions (Doellgast et al. 2018: 19-20; see also Frege and Kelly 2004). In making concessions that involve the protection of core workers at the expense of outsiders and thereby hoping to influence the direction of change, trade unions contribute to dualization (Rueda 2007, 2014; Palier and Thelen 2010; Thelen 2012; Davidsson and Emmenegger 2012: 343; Hassel 2014) – but in understanding dualization as a bargaining outcome that reflects the increased power of employers (cf. Grimshaw and Rubery 1998), the role of trade unions in the process is explained by their weakened power resources and inability to discontinue the process. Without rejecting that there is a *potential* for cross-class coalitions between labour market insiders and employers as employers exploit the differences between groups of workers and in doing so place conflicting interests between workers up-front, and that not only employers but also labour market insiders may derive (short-term) benefits from such compromises, a recognition of the power relations between employers and trade unions, and the increased power imbalance in favour of employers, prompts us to distinguish between cross-class coalitions and cross-class compromises. This enables us to perceive dualisation as the outcome of a series of cross-class compromises that has emerged largely as unintended consequences of exchange and conflict (cf. Korpi 2006: 205), in which employers have had the upper hand – and, where employers' power is further reinforced as dualization allows employers to leverage different groups of workers against one another, further undermining labour's power. This position does not relieve trade unions from agency in the process nor from responsibility over the outcome. Instead, the outlined mechanism clarifies how the trade unions' non-effective protection of migrant labour contributes to the outcome of dualization, and makes explicit that the institutional development rests on a weak coalition of institutional supporters. Indeed, trade unions can contribute to reinforce segmentation between different groups of workers, particularly when failing to protect groups of workers, such as migrant labour, thereby enabling employers to employ them under inferior conditions as secondary labour supplies (Davidsson and Naczyk 2009; Doellgast et al. 2018).

absence of institutional resilience creation, employers pursue a dual logic of action that involves a turn towards minimum standards, thus partwise neglecting the institutions and incrementally causing drift. Consequently, the deliberate neglect contributes to the outcome of dualization through institutional drift of collective bargaining, workplace representation, and labour legislation, as the institutions for collective labour regulation are becoming less encompassing and differential treatment of workers takes place either within or outside of the scope of the institutions, resulting in increased employer discretion over the employment and working conditions of certain groups of workers, and widened wage dispersion.

Institutional Redirection Mechanism

The second causal mechanism that I propose as a means to understand how institutional change in the employment relations occurs in the open market is pictured in Figure 3.4. This process, which results in the intermediate variety of liberalization described as socially embedded flexibilization, is theorized to occur through an Institutional Redirection Mechanism that captures how politically creative processes taking place in workplaces and in negotiations lead to institutional conversion of the practical functioning of collective bargaining and labour legislation (Streeck and Thelen 2005: 31; see also Crouch 2005; Mahoney and Thelen 2010; Herrigel 2010).

Figure 3.4 Redirection Mechanism contributing to liberalization as socially embedded flexibilization



The Institutional Redirection Mechanism is hypothesized to be the result of the combination of responses where employers opt out of dominant employment relations rules and practices in their use of migrant labour, and where trade unions are protective of migrant labour. This contradicting combination of responses triggers a process containing countervailing forces; in presence of low levels of enforcement, employers opt out and challenge the institutions (*causal force*) by attempting to introduce a new logic of action (*causal force*) (Part 1) in response to the changed conditions of free labour and service mobility, seizing opportunities to gain competitiveness in the open market – but in interaction with the trade unions' protective response, the introduction of a competing logic of action that deviates from the dominant employment relations rules and

practices is contained (*causal force*), transmitting causal forces that direct employers to pursue their contestation within the frames of the dominant institutions. As the trade unions' protective response does not offer the (passive) coalitional support needed to successfully abandon and replace the institutions by shifting the dominant logic of action from compliance towards opt out, employers' challenging of the institutions and attempted introduction of a new logic of action is directed towards changing the institutions from within. In parallel, the trade unions' protective response generates active institutional support (*causal force*), demonstrated by a push for re-regulatory measures, potentially in combination with strengthened enforcement (Part 2). In this way, the trade unions' active institutional support generates a countervailing force towards employers' active contestation of the institutions, which influences the dynamic of the process and obstructs the shift to a logic of action based on opt out of dominant employment relations rules and practices, redirecting employers deviant practices towards pursuing their new behaviour inside of the institutions (Streeck and Thelen 2005: 21). As there are competitive gains to be made, other employers are encouraged to behave correspondingly (ibid. 18) – setting in motion a process towards altering the way in which the institutions are practiced (Jackson 2005). While the spread of opt out as logic of action among employers is contained in interaction with the countervailing forces generated by trade unions' protective response, employers are, nevertheless, through the forces generated by opting out of dominant employment relations rules and practices in their use of migrant labour able to deploy a more strategic use of the institutions and redirect the functioning of the institutions (Streeck and Thelen 2005: 27). The trade unions' active support, on the other hand, transmits causal forces that generates institutional adaptation, by pushing the state to re-regulate employers' liberalising moves. The trade unions' active support is requisite in generating this adaptation, as the state needs pressure to take action that countervails the forces of change. For trade unions and workers, this can be described as a defensive struggle to maintain collective labour regulations and avoid that the process turns to sheer flexibilization and deregulation. Yet, as trade unions alone provide active support for the institutions, and the institutions can only remain maintained if both class actors support them (Thelen 2014: 25), the subsequent step in the process consequently contains two countervailing forces in which the institutions are indeed changed – redirected (*causal force*) by employers in their pursuit of increased flexibility in the regulation of employment – and, in parallel, adapted (*causal force*) as a consequence of trade unions' active support, backed up by the state (Part 3). This in turn, leads to the outcome of institutional conversion – but which through the adaptive component re-embeds employers' liberalising moves, resulting in the outcome of socially embedded flexibilization in which the institutions for collective labour regulation are adapted to incorporate migrant labour within the scope of the institutions, while more flexibility in the area of wage-setting, and in the use of temporary forms of employment is introduced in parallel, resulting in increased employer discretion over employment and working conditions combined with maintained equality levels.

This process contains elements of both embracing (through redirecting or reinterpreting institutional functions in practice), but also countering – or at least coping with (through re-regulatory adaptation) – the pressure for change originating from increased labour and service mobility in the open market; the institutions come to serve new purposes by offering employers increased flexibility, reflected in declined coverage of job security regulations, while the overall framework of collective labour regulations is upheld through maintained coverage of collective bargaining and workplace representation, under which migrant labour is incorporated – thereby addressing the risks faced by migrant labour by collectivizing and distributing risks across the workforce (cf. Thelen 2014: 36-37).

This is an inherently contradicting process, where political contestation is placed up front (cf. Streeck and Thelen 2005: 26; Streeck 2009: 14), with a push for liberalising change and attempted resilience creation going on in parallel, generating countervailing forces that leads to the outcome of socially embedded flexibilization. In presence of a coalition of institutional supporters *and* a coalition of institutional challengers, countervailing forces drive the process towards what, abstractly, can be described as a compromise between institutional maintenance and profound change. In this process, the state is revealed as simultaneously partaking in the two coalitions underlying the process; it is inevitably part of the coalition of institutional challengers by providing employers with sufficient manoeuvre to pursue the change, passively or actively allowing increased flexibilization to occur – however, as it also supports re-regulation that re-embeds the changes, it is also part of the coalition of institutional supporters with trade unions (see Mahoney and Thelen 2010: 30). Crucially, the state bears responsibility for the low levels of enforcement that allow employers to opt out in the first place; while trade unions’ protective response contribute to enforce labour standards, this is insufficient as employers’ are not fulfilling their enforcement responsibilities in their employment of migrant labour. The role of the state in the coalition of institutional challengers may also involve space provision through incoherencies in the existing legislative landscape, not the least in relation to potential inconsistencies created by the EU legal framework, which employers are able to exploit in their use of migrant labour (Streeck and Thelen 2005: 31; Mahoney and Thelen 2010: 17). On the other hand, the key role of the state in the coalition of institutional supporters cannot be overemphasized, as this variety of liberalization is dependent on state involvement (Thelen 2014: 31, 205), concretely through re-regulation to balance up the increased flexibilization and to constrain employers from pursuing more far-reaching liberalization.²¹ In sum, this path rests heavily on the ability of organized labour

²¹ While Thelen (2014) in her theorization emphasized that socially embedded flexibilization rests upon an encompassing coalition that is sustained by the state, and in which both trade unions and employer organizations partake (31, 199), the propositions made here distinctly differ from Thelen (2014)’s account in that I emphasize the contestation and countervailing forces involved in the process, based on presence of both institutional supporters and challengers, rather than a joint encompassing coalition.

to serve as counterweight to employers, and the willingness of the state to create conditions that enables unions to be protective and ensure that the flexibility is socially embedded (ibid. 12).

Institutional Defection Mechanism

The fourth causal mechanism that is theorized in this dissertation similarly draws upon existing theorization of institutional change and is conceptualized as a process of institutional defection (Streeck and Thelen 2005: 20, 31).

Figure 3.5 Defection Mechanism contributing to liberalization as deregulation

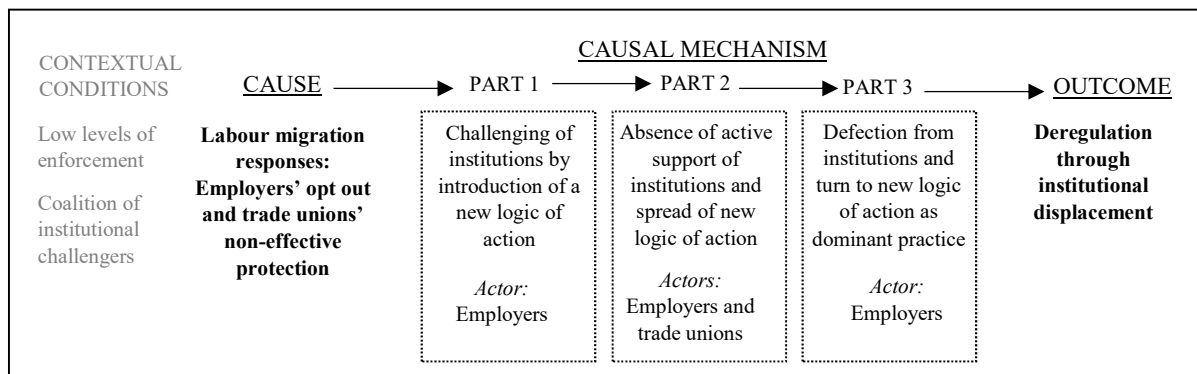


Figure 3.5 pictures the mechanism that is hypothesized to be the result of the combination of responses where employers opt out of dominant employment relations rules and practices in their use of migrant labour, and where trade unions' responses result in non-effective protection of migrant labour. These responses combined trigger the first part of the mechanism; employers' expanded recruitment base in the EU open market in combination with trade unions' non-effective protection of migrant labour opens up space for employers to challenge the institutions for collective labour regulation. In presence of low levels of enforcement, employers, as self-interested market actors, consequently make use of the space that has been provided to them and challenge the institutions (*causal force*) by introducing a new logic of action (*causal force*) that deviates from the dominant employment relations rules and practices and is based on competition where firms seek to outcompete their rivals by lowering expenditure on wages and reducing the quality of the working and employment conditions (Part 1). The introduction of a new logic of action sets off a process that transmits causal forces that in turn directs more employers towards this logic of action, as they are gaining a competitive advantage in doing so. Initially pursued as a deviant practice to gain a competitive advantage, employers 'opt out' logic of action subsequently spreads as other employers attempt to remain competitive. By their non-effective protection of migrant labour, trade unions are not providing the necessary active support (*causal force*) needed to contribute to institutional maintenance and they also passively provide employers as institutional challengers with the coalition needed to pursue change. Similar to the process of dualization, the state is here passively enabling or actively facilitating the process to take place,

but rather than underwriting the weak coalition of institutional supporters as in the process of dualization, it partakes in the coalition of institutional challengers – either by allowing employers to opt out or by actively taking the opportunity to dismantle institutions that it for political reasons is not committed to (Mahoney and Thelen 2010: 30). The absence of a countervailing force from the side of the trade unions along with absence of high levels of enforcement which would direct employers’ logic of action towards compliance, in turn, transmit causal forces that allow for an “active cultivation of a new ‘logic’ of action inside an existing institutional setting” (Streeck and Thelen 2005: 31), resulting in the new logic of action spreading (*causal force*) and gaining ground (Part 2). In the coexistence of the competing logics of action – one which complies and one which opts out – one logic of action is eventually bound to become dominant (ibid. 21). As no active institutional support is provided, and nothing blocks the new logic of action, the causal force initiated reaches a point where the previously deviant practice and new logic of action (based on opt out) is replacing the old logic of action (based on compliance) and becomes dominant practice (Part 3). At this point in the causal process, the market actors are no longer following the new logic of action to gain a competitive advantage, but simply to have a chance at survival in the market (see Streeck 2009: 5-6); when continued compliance becomes a competitive disadvantage, employers will be pushed to “follow suit and compromise on their own compliance” (Bernaciak 2015: 232; see also Lillie 2012: 151). In this way, fundamental change ensues through the accumulation of the actions of individual employers as a multitude of employers switch logic of action (Streeck and Thelen 2005: 18) – most plausibly without any formal agreement to do so (Thelen 2004) – by gradually abstaining from adhering to the practices constitutive of, and essential to the continuity of, the employment relations institutions (Hall 2010: 218; see also Thelen and Mahoney 2010). By their turn to the new logic of action as dominant practice, employers effectively defect from the institutions for collective labour regulation (Streeck and Thelen 2005: 20). This leads to the outcome of liberalization as deregulation through institutional displacement, as institutions for collective labour regulation are set aside – displaced – in favour of arrangements based on individualization of rights, resulting in increased employer discretion and redistribution of income from labour to capital.

Similarly to how the first process presented above bares resemblance with what Doellgast et al. (2018) have conceptualised as a ‘virtuous circle’ of reconstructing solidarity, this process can be compared with the ‘vicious circle’ of expanding precarity, capturing how trade unions fail to reconstruct solidarity in a “negative feedback loop” as “expanding precarity undermines the institutions and union strategies necessary to combat it, [and] as employer power to exploit differences expands and union power to re-collectivize risk declines” (20). While the first process outlined above, based on an institutional resilience creation mechanism, has less emphasis on self-reinforcing elements, this latter process in some way has more in common with the dynamics of the ‘vicious cycle’, as it also contains what can be described as a generation of a self-reinforcing

process where more employers turn to opt out as their logic of action as it gradually shifts to dominant practice. More broadly, this process can also be compared with institutional change toward disorganization, driven by employers as individual market actors and resulting in declining collective power and influence of workers over employment and working conditions (cf. Streeck 2009; Doellgast and Greer 2007; Greer and Doellgast 2017: 202). Moreover, Doellgast et al. (2018) make the analytically useful distinction between employers' ability to exploit workforce divisions and ability to exploit exit options (18). In relation to the theorization proposed here, the three last mechanisms that I have outlined – capturing distinct change processes – reveal how employers' exploitation of exit options play a prominent role in the change processes leading to socially embedded flexibilization and deregulation, while exploitation of workforce divisions is a driving force in the process leading to dualization.

In theorizing these causal mechanisms that detail how institutional continuity and change occur as a result of the class actors' responses to labour migration, I have drawn upon Streeck and Thelen (2005) and Mahoney and Thelen (2010) who offer insights about how institutional continuity can be achieved, how different modes of change proceed, and what conditions enable or disable change processes from taking place.²² Additionally, Thelen (2014: 13)'s proposition that the three trajectories of liberalization typically proceed through different modes of change has served to link the mechanisms with the respective modes of change that the last three processes result in. The theorization of these causal processes has been done in an iterative fashion in that the identified causes, the parts of the mechanisms, and the properties of the institutions that are potentially affected, have been informed also by my own empirical research and refined throughout the research process. Similarly, the contextual conditions that I propose as requisite for the functioning of the mechanisms have been informed by propositions in existing theoretical literature (particularly Mahoney and Thelen 2010), as well as by my own empirical research. In linking the insights of my own empirical research with the theoretical insights offered by existing literature, a higher level of abstraction of the causal mechanisms could be achieved, and a causal meaning could be linked to the actions that can be described as institutional challenging, support, resilience creation, neglect, conversion, or defection. This is important, as causal mechanisms are theoretical constructs, and not empirical narratives.²³

²² In building upon Streeck and Thelen (2005)'s three mechanisms 'deliberate neglect', 'redirection', and 'defection', which were conceptualized as minimalist mechanisms in which the causal chains were not made explicit, I have through an iterative research process transformed them into mechanisms as systems constituted by multiple parts that uncover the workings of the mechanisms in greater detail. The works by Thelen (1999, 2004) and Mahoney and Thelen (2010) in which institutional continuity has been recognized to require active maintenance and adaptation has served to inspire the proposed Resilience Creation Mechanism.

²³ Linked to the discussion of how existing theoretical and empirical literature has offered insights that, in combination with some probing in my empirical cases, enabled me to flesh out four plausible causal mechanisms is the assessment of the prior confidence in the hypothesized causal relationships, that is, our confidence in the existence of a causal relationship based on what we know from existing literature. As

Endogenous change

The last three proposed mechanisms demonstrate how *endogenous* change can come about, and how actors can change core features of the surrounding institutional setting (Crouch and Keune 2005: 83) by a shift in the pattern of their actions, pushed forward progressively by a growing group of employers, until the old pattern of behaviour (compliance) is replaced by a new one (opt out, or compliance with minimum standards only) (cf. Hall 2010: 216-217), driving processes that result in institutional change with intended or unintended consequences (Streeck 2005b; Streeck 2009: 121). With the insight that “change [...] occurs when a previously subordinate or minor set of practices successfully supplants a dominant one” so that a shift in the dominant practice occurs, we are able to perceive of endogenous, and far-reaching, change that results from the actions of employers who have turned to the new logic of action, either with a motive to pursue change, or without any pre-defined motive for change linked to their change in logic of action (Crouch and Keune 2005: 85; see also Streeck and Thelen 2005: 33; Herrigel 2010: 2). As revealed in the mechanisms, the type and scope of change is shaped in interaction with the response of their counterpart – trade unions – and by the constraining or enabling conditions established by the state under which the processes play out. While the change is introduced and shaped by endogenous actors (Crouch and Keune 2005: 83), the processes are, however, triggered due to the *exogenously* changed context, namely free labour and service mobility in the EU open market. As employers adapt their behaviour and shift their logic of action to gain competitiveness, or remain competitive in the open market, they change the institutions by a shift in their logic of action, from compliance as the dominant logic of action to a previously minor logic of action based on opt out of the collective employment relations rules and practices. In the course of the shift in logic of action of individual market actors, that is, individual employers as drivers of these processes, institutional change subsequently follows from their accumulated actions. Aside from capturing the source of endogenous change, the proposed mechanisms thus also reveal the malleable nature of employers’ logics of action that are not bound to rigid continuity of behaviour, explaining how new and previously subordinate logics of actions can become dominant and change the path of institutional development.

elaborated in the review of the literature on our current knowledge about the effects of labour migration on employment relations institutions (Chapter 2), empirical research on labour migration had identified clear pressure for change, but not made the causal relationships explicit, thereby disabling any stronger causal inferences to be made, and leaving us with generally low prior confidence in the hypothesized causal relationships. The implication of a low prior confidence in the causal mechanisms is that even relatively weak evidence can allow us to update the confidence in the existence of the causal relationships. Detailed discussions of the prior confidence in the parts of the causal mechanisms in the respective cases in which they will be tested are offered in the empirical case chapters (chapter 5 through 8).

Non-linear causal processes

Some theoretical claims are more difficult to translate into causal processes than others, particularly – as in the case of the empirical processes investigated here – those which constitute a form of non-linear process. The mechanisms understanding of causality (Beach and Pedersen 2016b) adopted in this research implies that a causal process is not simply a sequence of empirical events (54-55). Instead, it is a theoretical process in which the causal powers driving the process forward are identified. Understanding the constitution of causal processes in these terms forces us to tackle head-on theoretical inconsistencies in our causal theories as we unpack each step of the causal process to offer a theoretical explanation that makes explicit the causal logic as to why the identified cause is the cause that triggers the mechanism, and explains why the respective outcomes are expected to be produced (ibid. 8). The causal mechanisms have here been conceptualized as having three requisite components; 1) challenging or not challenging the institutions, 2) providing or not providing active support, and 3) creating resilience, neglecting, redirecting, or defecting from the institutions. These theorized causal processes can be understood as non-linear in that the parts of the mechanisms are not a series of events following a chronological order, but may instead both theoretically and empirically be going on in parallel. This particularly concerns the theoretical constructs representing part 1 and part 2; both are triggered by and follow from the combination of the class actors' responses (i.e., the cause) and are thus plausibly going on in parallel, and together subsequently lead to part 3 of the mechanisms. As the causes of the investigated processes are ongoing in that employers continuously employ migrant labour and trade unions continuously respond to employers' use of migrant labour, and the outcomes represent continuous and open-ended processes of institutional continuity and change, it is only logical that also the parts of the causal mechanisms are dynamic and going on in parallel – and, consequently, that the empirical evidence of the mechanisms does not necessarily follow a chronological order. In other words, in the empirical reality, all of the components of the causal process, that is, the cause, the parts of the mechanism, and the outcome, are going on in parallel, constituting ongoing causal processes. The theoretical propositions made here do, however, allow us to identify the different components of the investigated causal processes and to theoretically distinguish between the cause, the mechanism, and the outcome, thereby enabling us to make sense of the evidence actually produced by the causal processes within the empirical cases. In this way, the parts of the mechanisms may be understood as theoretically following a *logical* order.

While the causal mechanisms presented in this chapter inevitably represent deliberate simplifications of complex causal processes in the empirical reality, I have attempted to focus on the core functions of the causal mechanisms and highlight the properties of the class actors' responses that transmit causal forces that have direct implications for continuity and change in

the employment relations institutions. In this vein, the aim is that the proposed mechanisms should be parsimonious yet detailed enough to be subject to empirical testing, thereby refining our theoretical understanding of these processes and enabling us to make stronger causal inferences about the effects of free labour and service mobility in the EU open market. While all three parts of the respective causal mechanisms are theorized as requisite for the mechanisms to produce the outcomes, most action is going on and most causal force is transmitted in part 3 in each of the mechanisms. This third part of each mechanism is unique and ultimately leads to the distinct outcomes, whereas the first two parts of the mechanisms reveal how the four causal processes are in fact intimately linked, and demonstrate how – in the absence of one part – another causal process may be triggered.

Now that the causal hypotheses captured in the typological theory and the causal mechanisms linking the causes and outcomes have been thoroughly brought into light, a brief clarification is warranted on what explains employers' and trade union's responses to migrant labour, that is, what explains the causes of these causal processes.

4. What explains employers' and trade unions' responses to migrant labour?

4.1 Explaining employers' responses

As revealed in the outlines of the four causal mechanisms, employers' opt out response is linked to institutional contestation, and employers' compliance response is linked to institutional support. In seeking to understand the conditions under which employers' comply with or opt out of the dominant employment relations institutions in their use of migrant labour, and, in turn, whether and when employers can be expected to pursue institutional contestation or, in contrast, support the employment relations institutions, I continue to draw upon insights offered by the power resources approach. In contrast to widespread views of employers' preferences and behaviour associated with VoC-based explanations, which hold that employers in non-liberal market economies have vested interests in maintaining and little incentive to dismantle the existing institutions, an institutional perspective with a power resource basis expects employers, as self-interested market actors, to look for ways to circumvent the employment relations institutions, to the extent that the rules associated with the institutions impose uncomfortable and costly obligations (Streeck and Thelen 2005: 15).²⁴ The general preference for minimizing

²⁴ Over the last two decades, considerable effort has been placed on advancing theoretical explanations of employer preferences and strategies within the field of comparative political economy. Existing explanations can be divided into two main sides; on the one side, those ascribing employers' behaviour to their strategic strife for an institutionalised comparative advantage offered by the existing institutional environment (Hall and Soskice 2001), and, on the other side, those assuming employers' basic desire to liberate themselves from the restraints of the institutional environment (Streeck 2009; Baccaro and Howell 2011, 2017; Doellgast and Greer 2017). The former, associated with explanations grounded in a VoC

constraints imposed by collective labour regulation originates from the fact that employers, as actors holding major economic resources, “are likely to prefer to situate distributive processes in the context of markets, where economic assets constitute strategic resources and, because of their concentration, tend to outflank labour power” (Korpi 2006: 173).²⁵ From this follows that employers are expected to seize the opportunities offered in the EU open market and – unless something constrains them from doing so – make use of the growing availability of exit options associated with the free access to migrant labour (Lillie and Greer 2007: 551; Lillie 2012). The logic behind an opt out response can be understood by considering the context of increased marketization generated by European integration. By intensifying competition between firms, the increased marketization of transactions in the EU open market has changed the basis for employers’ decision-making and fuelled employers motivation to act according to a short-term logic in striving for market survival (Greer and Doellgast 2017: 198). As marginal costs become increasingly important and employers are pushed to act according to a short-term logic of profit maximization (ibid.; see also Howell 2003: 106; Bernaciak 2015), increased marketization inhibits long-term commitments associated with a compliance response. This makes employers’ behaviour, under conditions of marketization, biased toward exit options rather than compliance as firms seek to enhance control over production to maximize short-term returns (Greer and Doellgast 2017). At the same time as the increased marketization has made employers more motivated to act according to a short term-logic that inhibits long-term commitments, the decline in the strength of organized labour over the last decades has made employers less constrained by the need to compromise, permitting changes in employer strategies, for example, in relation to their use of migrant labour (Korpi 2006: 190; Baccaro and Howell 2017: 41). Under such conditions, opt out rather than compliance becomes a plausible strategy as employers respond to the opportunities and challenges that they face in the open market. A final important part of the explanation for why employers opt out of the dominant employment relations rules and practices

framework, conceives of employers as efficiency-seeking actors striving to improve their economic performance and with a benevolent approach to the institutions through which they seek efficient solutions to coordination problems. The latter side, in contrast, draws upon a power resources approach and does not assume efficiency seeking actors, but instead view employers across capitalist economies as self-interested market actors who not only strive for survival in the market but who also continuously seek to extend their reach of the market, and to maximize profitability and control over production. In this view, capitalist actors are more realistically viewed as “endowed with an ethos of unruliness that makes them routinely subvert extant social order in rational-egoistic pursuit of economic gain” (Streeck 2009: 4-5).

²⁵ In contrast to assumptions about divergent employer preferences rooted in pre-existing institutional configurations, variation in employer preferences is, from a power resource perspective, largely a matter of degree between more control over production, including control over employment relationships, versus more profitability, and the preferences may settle a malleable ranking between maximizing control versus maximizing profitability (Baccaro and Howell 2017). In explicitly abstaining from mistaking employers’ consent towards existing institutions as evidence of a first-order preference for institutional maintenance (Korpi 2006: 171), abandonment of earlier institutional support and a turn to institutional contestation reflects changes in the power relations (Baccaro and Howell 2017: 40), in turn leading to a shift in the underlying coalition of institutional challengers versus institutional supporters, rather than a change in employers’ preferences.

in their use of migrant labour relates to a decline in the costs associated with avoiding the institutions. Complex modes of work organization associated with the use of migrant labour has made for a situation in which labour standards are more difficult to enforce, or even “unenforceable” (Greer and Doellgast 2017: 200), resulting in low levels of enforcement that reduce the risks associated with opting out (Berntsen and Lillie 2015: 58). This reinforces a process in which more employers turn to the logic of action that is based on opt out of the collective labour regulations, whereby the costs associated with avoiding them are further declined (see Eichhorst and Marx 2011; Doellgast and Berg 2017). Conversely, the costs associated with compliance increases as the share of employers opting out grows, and complying employers are at risk of becoming competitively disadvantaged, in which case their motivation to opt out and challenge the institutions is fuelled. Accordingly, I propose that employers’ compliance, and thereby support for the institutions, is not explained by a preference for maintenance of the collective employment relations institutions, but is instead a matter of presence of high levels of enforcement of existing institutions that encourage compliance and limit provision of space to opt out by creating a situation where the risks and potential costs of not complying are higher than continued compliance, and – importantly – where compliance is maintained as dominant logic of action, contributing to a lack of motivation to pursue change as a level-playing field is upheld by the institutions and employers are not competitively disadvantaged by complying.²⁶ While individual employers are here considered as ‘natural’ institutional challengers, I propose that a situation in which they would be *consenters* (although rarely *protagonists*) (Korpi 2006), that is, not actively and continuously through their actions challenge the institutions, is achieved when compliance with the institutions is maintained as *dominant practice*, and where the pursuit of non-compliance as a means to achieve a competitive advantage is limited. As long as compliance with the institutions is maintained as dominant practice and competition remains within the scope of the institutions, employers are not pushed

²⁶ In line with the power resources approach and its insights about class relations, ongoing contestation, and compromises that lie behind institutional construction and reconstruction, the understanding underlying this explanation is thus one in which employers are logically thought to challenge the institutions, unless something constrains them from doing so. In contrast to the assumption that employers have a basic interest in the maintenance of the institutions because they benefit from them, and thus have little incentive to dismantle them (Hall and Soskice 2001), the explanation advanced here flips the argument around by focusing on *incentives to support* the institutions versus *motivation to challenge* and pursue change. The key distinction here pertains to the understanding that it is less about a competitive advantage offered by the institutions as much as a matter of the gains of opting out not outweighing the gains of complying. Consequently, it is a matter of not being competitively *disadvantaged* by complying, rather than having a competitive *advantage* by doing so – that is, the ‘incentive’ pertains to an environment in which firms stand little to lose by complying. While complying employers who perceive disruptive or ‘unfair’ competition from employers who opt out from the employment relations institutions in their use of migrant labour may plausibly recognize an interest in maintaining the institutions to protect a level-playing field, an emphasis on the level of motivation to pursue change enables a more dynamic explanation of employers’ responses that is less dependent on intricate assumptions of employers’ pre-defined interests, and ranking of preferences.

to conform to opt out as a competing logic of action in order to be successful in the market. At the core of this explanation lies an understanding of *individual* employers' logics of action, and the argument that employers' overall preferences are fairly homogenous across the investigated sectors (and countries) as they all operate as self-interested market actors in capitalist economies; what differ is the structural constraints that they face, or the space to opt out that is provided to them, along with the motivation that they have – based on the competitive situation – to pursue change versus incentive to settle for status quo.²⁷ Recognizing the role of individual employers' logic of action, and the scope for change in their responses to “new challenges for which they may experience that the practices encouraged by the existing institutions do not equip them” (Crouch and Keune 2005: 83) unveils the malleable balance of maintaining compliance as the dominant logic of action whilst an alternative logic, based on opt out, is continuously present. Yet, the most frequently used logic – that is, compliance, as long as it is maintained as dominant practice – benefit from self-reinforcing effects from the established path of actions with which employers are familiar and have organized their production around (ibid. 86).²⁸ To this end, the state's and trade unions' role in conditioning the pattern of actions by contributing to high levels of enforcement is vital to elicit employers' compliance (Thelen 2014: 22-23).²⁹

4.2 Explaining trade unions' responses

In contrast to employers who are considered to be (potential) institutional challengers, trade unions are here conceived as supporters of the collective employment relations institutions. Yet, it is an empirical question to what extent union strategies and actions achieve protective responses

²⁷ In avoiding conflation of “immediate rule-conforming behaviour with the overall goal of institutional maintenance,” and in disentangling individual employers' behaviour from their potential long-run strategies (Mahoney and Thelen 2010: 22), we gain the insight that compliance, that is, immediate rule-conforming behaviour, does not need to imply an overall goal of institutional maintenance from the side of employers. The insight that actors tend to have *multidimensional interests* (Hall 2010: 211), implying that employers may have a basic preference for increased discretion, and at the same time value the stability offered by status quo, has limited bearing in the case of employers' responses to migrant labour as it assumes that individual employers strategically calculate their actions based on the insight that their compliance (or opt out) contributes to continuity (or change).

²⁸ More generally, actors may also voluntarily comply with the demands of an institutionalized order not necessarily because they believe in its value but simply because they find compliance convenient (Streeck and Thelen 2005: 10), which in the case of (the largely voluntary) employment relations institutions may be applicable as long as compliance does not involve a competitive disadvantage.

²⁹ The role of employers' organization is here not identified as a requisite contextual condition shaping employers' responses to migrant labour. In short, assuming that the employer organization plays an active role in promoting and contributing to compliance, a high organizational rate among employers can contribute to overall compliance (*if* organized firms are bound by collective agreement, and *if* such an agreement is actually enforced (i.e. due to presence of high levels of enforcement)). However, the level of employer organization remains indecisive in terms of explaining employers' responses, as it might as well contribute to sustain opt out practices in situations where employer organizations contribute to create space for employers to opt out in their use of migrant labour. As noted by Thelen (2014), high capacity for coordination among employers has different consequences depending on the purposes to which the capacity is directed (9, 11). From an empirical point of view, opt out responses have in this study been identified among organized as well as unorganized employers.

that serve to generate active support that makes them institutional supporters in practice. In drawing upon the power resources approach, I propose that trade unions' protection of migrant labour is foremost explained by their *ability* to achieve effective protection, with the institutional environment in which they operate conferring more or less power resources to enable or inhibit effective protection (cf. Doellgast et al. 2018: 25; see also Davidsson and Emmenegger 2012).³⁰ Furthermore, given the "iterative feedback relationship between power and strategy" (Doellgast et al. 2018: 9), a protective response requires that union representatives deploy appropriate strategies in making use of the resources at their disposal (Lévesque and Murray 2013; Fairbrother et al. 2013; Pulignano and Signoretti 2016; Benassi and Vlandas 2016). More specifically, strategies play a central role in dealing with challenges related to protecting migrant labour, and in building and accessing the power resources upon which the unions' ability to be protective is contingent (cf. Doellgast et al. 2018: 25, 28).³¹ The challenges of protecting migrant workers are partly grounded in the temporary nature of employment that is prevalent among migrant workers, which makes it difficult to build long-term relationships and poorly matches the foundations required for collective action (see Fitzgerald and Hardy 2010).³² Conversely, I propose that non-effective protection primarily is due to a lack of capacity to achieve effective protection in practice, in combination with a failure to deploy appropriate strategies and adequate efforts, resulting in an inability to overcome the obstacles associated with protecting migrant labour, despite that certain protective efforts may be made. Moreover, as the class actors' responses are

³⁰ While existing literature on trade unions' responses to migrant and marginal groups of workers largely has focused on explaining union strategies and preferences (e.g. Greer 2008; Meardi 2012; Pulignano and Doerfing 2013; Hardy 2015), rather than the actual result of their actions, the explanation offered here seeks to account for the actual achievements of their responses; why trade union responses in certain contexts result in non-effective protection of migrant labour, and, conversely, why their responses under other conditions result in effective protection.

³¹ While strategies matter in terms of explaining the extent to which trade unions succeed in being effectively protective, a certain caution is warranted in overemphasizing the extent to which unions' responses to migrant labour are based on strategic choices; rather than being based on deliberated strategic choices, the responses appear in many cases to be composed of ad hoc reactions to more or less urgently arisen situations in which trade unions have been pushed to act.

³² While trade unions by now share the values that migrant workers should have the same rights as non-migrant workers, unions have – at least in the past – largely abstained from systematically and actively recruiting them due to the difficulties and resources involved in doing so (Bernaciak et al. 2014: 20; Marino et al. 2015: 8). While being a strategy that holds great potential to generate effective protection, organizing tends to be resource demanding, and although language barriers can be overcome by employing organizers with the required language skills, other obstacles to recruitment are more difficult to overcome, including high turnover and the often transient attachment of migrant workers to the host labour market, cultural obstacles related to migrant workers' negative perception of trade unions, migrant workers social isolation and physical separation from the domestic workforce in workplaces, and potentially also obstacles, or even threats, to organizing imposed by employers (e.g. Rosewarne 2013: 282; Marino et al. 2015: 3). Scholars have also pointed to characteristics of migrant workers themselves that influence their ability and willingness to organize, including a weak interest in organizing linked to a temporary attitude to work (Marino et al. 2015: 3). Moreover, while sensitive to wage levels due to the primary interest in "earning good money" while in a job, migrant workers are – to the extent that they are content with the agreed rates of remuneration – unlikely to build or join collective protest as individual exit options better fit their mobility strategies. The fact that their employment conditions may already be set before arrival in the host country labour market adds to the experienced lack of incentive to organize (Rosewarne 2013: 282).

shaped in interaction with one another, trade unions' non-effective protection is also explained by attempted protective efforts being undermined by employers' opt out responses (cf. Dorigatti 2017: 920).

While the success of the trade unions' responses is contingent on the power resources at their disposal, unions' protective efforts can be explained either by an underlying solidarity with migrant workers or a recognition that a protective response is in line with the organizational interests of the union, and – at least in the longer run – with its members' interests (cf. Pulignano and Doerfinger 2013: 4150; Marino et al. 2015: 3; Benassi and Vlandas 2016: 6). Although solidarity is likely an important fundament of a protective response, unions have clear motivations and interests in protecting migrant labour beyond solidarity. Empirical research has demonstrated that a basis for trade unions' efforts to engage with migrant workers has been the realisation that defending the interests of the new entrants is critical in order to protect the employment and working conditions for all workers, including union members (Lillie 2012: 154; Rosewarne 2013: 284; Wagner and Hassel 2015a: 205). Along with the overall interest in improving, or at least maintaining labour standards, trade unions have with time also come to recognize organizational interests in halting the loss of union members by expanding towards the growing constituency of migrant workers (Frege and Kelly 2004; Fitzgerald and Hardy 2010: 145; Rosewarne 2013: 284-285; Marino et al. 2015: 8). As most unions have come to adopt the approach to embed migrant workers under the umbrella of vulnerable workers – moving beyond workers' origin and instead focusing on the employment status that they have in common (Hardy 2015: 195) – protecting migrant workers becomes part of broader strategies based on organizational and member interests, whereby a protective response can be justified to the existing constituencies by reference to the goals of maintaining labour standards and avoiding further decline in union density with which union power resources are associated. While a protective response can draw upon a broad basis of motives grounded either in solidarity, organizational interests or members' interests, theoretical explanations holding that union strategies are primarily shaped by representational interests (e.g. Rueda 2007) suggest that trade unions' non-effective protection of migrant labour would – aside from an inability to achieve effective protection – be explained by a defence of narrowly defined members' interests. The presence of constraints and limited resources inevitably require priorities to be made, whereby trade unions may resort to second-best solutions that in practice protects their members at the expense of other groups of workers (Palier and Thelen 2010; Davidsson and Emmenegger 2012; Hassel 2014; Benassi and Vlandas 2016). However, as noted by Bernaciak et al. (2014), earlier concerns that resources spent on marginal workers reduced “attention to ‘traditional’ members” have at least partially been overcome, and organizing new constituencies have become a priority for many unions as “most unions have come to understand that the increase in atypical forms of work will undermine their power resources and weaken their capacity to act, unless precarious workers become members” (Bernaciak et al. 2014: 20; see also Dorigatti 2017:

938). Aside from ideological factors that help overcome the potentially fine line between competition and solidarity – that is, avoiding the trap of protecting the interests of members or certain groups of workers over others, and strategies that lead to a decline in inclusiveness – trade unions consequently have a recognized interest in protecting migrant labour, as not doing so would weaken labour power, undermine their organizational interests, and threaten their members’ interests (see MacKenzie 2009: 543; Dorigatti 2017: 921). What is left to explain their non-effective protection is thus inadequate strategies and efforts, grounded in a lack of power resources to achieve effective protection in practice (see Korpi 1983).³³

Similar to how the weakening of organized labour plays a central role in explaining the conditions under which employers opt out, it also explains trade unions’ non-effective protection of migrant labour. The drastic decline in unions’ organizational rates over the last decades has hampered their ability to achieve effective protection, despite undertaking certain activities related to migrant labour. Furthermore, the lack of adequate efforts to protect migrant workers in the past, particularly in the early years following the EU market expansions, have inescapably created enduring conditions that inhibit effective protection later on. The absence of required actions at an earlier point in time when the context was set for employers’ use of migrant labour has entailed that employers were provided space to pursue opt out responses – a logic of action which is difficult to reverse, even as unions with time have come to increase their protective activities. The lack of ability to ensure effective protection is part of the broader context of the open market in which trade unions are in various ways, and to different extent, attempting to prevent rule circumvention and abuse of labour rights for migrant workers, but where their abilities to do so have been limited (see e.g. Bernaciak (ed.) 2015). As will be seen in the empirical chapters, the trade unions’ responses in the cases investigated in this dissertation follow national and not sectoral lines. This is primarily due to the power resources of the trade unions, which determine their ability to be protective, and which are stronger in the Nordic countries than in Germany, but partly also due to the strategies deployed, which in the Nordic countries to a greater extent have involved organising migrant labour and ensuring use of collective agreements to regulate their employment relationships.

5. Conclusion

The aim of the typological theory that I have sketched in this chapter, and organized the remainder of this dissertation around, is to serve as the basis for answering the dissertation’s research

³³ While union responses that result in non-effective protection of migrants, and marginal workers more broadly, here is seen chiefly as a consequence of their lack of capacity to achieve full protection, and not as the result of explicit strategies to protect their members at the expense of other groups of workers, it cannot be excluded that non-effective protection in certain cases better is explained as the result of prioritizations made in favour of protecting their current members against employer demands, along with limitations in the extent to which the union has actually attempted to be protective.

question of how the class actors' responses to labour migration affect the employment relations institutions. Since none of the four hypotheses developed here can alone offer a satisfying answer to this question, the four hypotheses have been integrated into one single theoretical synthesis covering all logical possibilities and current ways that the actors respond to migrant labour. The typology identifies what it is about their responses that is causally relevant for the institutional development of the employment relations, distinguishing between the responses that contribute to continuity and those that trigger institutional change. The causal concepts – that is, employers' compliance and opt out, and trade unions' effective and non-effective protection – forming the basis of this theory are understood as constituting difference-of-kinds in that they carry distinct causal properties leading to different outcomes. The advantage of this typological theory includes its ability to clarify similarities and differences among cases, to provide a logical structure of possibilities, and – once empirical cases are categorized based on the different types – to draw attention to types that are more or less common in the current empirical reality (George and Bennett 2005: 233). Moreover, while the logic of inference used in the empirical part of this dissertation is based on within-case analyses of typical cases representing the respective types, the typology also allows for an element of cross-case comparison in clarifying similarities and differences between sectors within and across national political economies.

In responding to the under-theorization in existing literature on the effects of increased labour migration, the theoretical propositions made in this chapter have made explicit *how* increased labour and service mobility can lead to institutional change, and what type of change it can cause. With insights offered by action-based institutionalism, and with the power resources approach drawing our attention to the asymmetrical power relations between employers and workers, the proposed causal theory has identified the causes of these causal processes, namely how employers and trade unions deal with the employment of migrant labour, and outlined plausible causal links between the actors' responses and their contribution to the development of the employment relations institutions. Importantly, the causal theory has revealed that, in the chain of actions that make up the causal mechanisms that capture how the actors respond to the pressure for change originating from increased use of migrant labour, employers are the dominant actor in setting the direction of these processes; trade unions react to the actions by employers – and while the outcomes are dependent on the interaction of the responses, employers are exposed as the drivers of change (see Offe and Wiesenthal 1980). In making explicit the role of individual employers as drivers of these processes, and drawing our attention to their ability to generate what may analytically be perceived as a coalition of institutional challengers, the theoretical propositions put forward here enable us to grasp endogenous – and potentially far-reaching – changes that largely may be the unintended consequences resulting from the accumulation of actions of employers in their “individual pursuit of economic advantage” (Streeck 2009: 4). The chapter has also offered an explanation of why employers opt out or comply with the dominant

employment relations institutions in their use of migrant labour, and why trade unions' responses are protective or not of migrant labour. In explaining employers' compliance, I proposed that conditions of high levels of enforcement of existing institutions that encourage compliance and limit provision of space to opt out are central to maintain compliance as dominant logic of action. Conversely, I proposed that employers' opt out response is explained by the provision of space generated by the weakening of organized labour, the increased marketization in the EU open market that has pushed employers to act according to a short-term logic that inhibits long-term commitments, and, the declined costs associated with avoiding the institutions, which in turn generate a self-reinforcing process where more employers turn to opt out. In drawing upon the power resources approach, I have proposed that the trade unions' responses are primarily explained by their ability to achieve effective protection in practice.

The test of the typology and the causal mechanisms that have been theorized in this chapter is ultimately a practical one, which will reveal how useful it is to think about employers' and trade unions' responses in these terms when aiming to empirically assess and theoretically explain the potential impact of increased labour and service mobility – the impact, which I argue, depends on the actors' responses towards it. As the analytical tools that have been introduced in this chapter are meant to serve the purpose of assessing the directions of change in a more fine-tuned way, the empirical analyses carried out in this dissertation will also reveal how useful the outcome-categories are in terms of differentiating between the three varieties of liberalization, building upon recent theoretical advancements (Thelen 2014), and contributing to advancing a topical debate within political economy research. Through the practical application of these refined conceptual definitions, associated with refined and robust measures that are introduced in the next chapter, the argument and propositions put forward here will be evaluated through the analysis of actual episodes of institutional change in typical cases – ultimately with the goal of enabling stronger causal inferences than what has yet been possible based on existing theoretical and empirical research investigating the effects of increased labour migration. The empirical tests of the theorized causal processes are the task of the remainder of this dissertation; the four causal mechanisms in-between the four combinations of responses and the associated outcomes are tested empirically in chapter 5 through 8, to assess to what extent upgraded or downgraded confidence in either one of them is warranted. Before moving on to the empirical analyses, the next chapter introduces the methodology and research design of this project, including the measurements of the causes, the causal mechanisms, and the outcomes.

Chapter 4

Methodology and research design

1. Introduction

Triggered by empirical developments and prompted by a gap in the existing literature, the research question that this dissertation sets out to answer is *How do employers' and trade unions' responses to labour migration affect the employment relations institutions?* By now, there is a vast empirical literature that has engaged with the topic of EU internal labour migration, primarily with emphasis on describing the employment and working conditions of migrant labour and how employers have changed their strategies in organizing work as a response to labour and service mobility. While identifying clear pressures for change and pointing to potential implications of the free labour and service mobility in the EU open market, it has remained unclear *how* the changed context of free labour and service mobility, and the increased labour migration associated with it, can theoretically contribute to some form of institutional change in host labour markets. As the causal process of this potential causal relationship has not been made explicit, existing literature has been unable to move beyond 'potential implications' and draw any stronger causal inferences about the extent to which the pressure for change has led to actual change.

In setting out to investigate the hypothesized causal relationship between increased use of mobile and migrant labour and the evolution of employment relations institutions, I apply a process-tracing method (Beach and Pedersen 2016b) in which causal mechanisms linking the causes and outcomes are theorized and tested empirically. This causal case study method allows us to uncover how increased labour and service mobility, based on how the actors respond to it, is linked to the development of employment relations institutions. Based on within-case analyses, this process-tracing method offers analytical tools to investigate actual causal processes at the level at which they occur, that is, the case-level. In doing so, this method enables stronger causal inferences, and allows us to advance the debate by upgrading or downgrading our confidence in a causal relationship between the class actors' responses to labour migration and the institutional development of the employment relations. More concretely, I propose and test predictions of what we should see in the empirical record of what can be referred to as typical cases if the four

theorized causal processes have played out. Typical cases implies cases where the cause, the outcome, and the requisite contextual conditions are present, whereby the causal mechanism theoretically may be present (Beach and Pedersen 2016a: 22). In sum, six empirical cases of economic sectors serving as destinations for labour migrants in advanced capitalist economies are investigated, allowing us to uncover sectoral similarities that cut across countries, while in the same time revealing that differences in the actions of key actors – that is, trade unions, employers, and nation states – lead to distinct outcomes in either contributing to institutional continuity or achieving change.

The chapter is organized as follows. I first introduce the causal case study method applied and explicate the procedure of the method. I then present the measurements of the causes, outcomes, and causal mechanisms. The sections on measurement represent the core of this chapter, and are central to the argument of the dissertation as they specify the causal properties of employers' and trade unions' responses, explain why the formal structures and functioning of the employment relations institutions can be affected by their responses, and couple the causal and outcome concepts with concrete observable manifestations of what we should see in the empirical record if the respective causes and outcomes are present. Similarly, the observable manifestations of the parts of the causal mechanisms are specified, linking the theoretical levels of the mechanisms introduced in the previous chapter with their empirical levels, thereby making the theoretical propositions fit for empirical analysis. As the overall aim of this dissertation is to advance existing literature by enabling stronger causal inferences to be made, one of the contributions of this dissertation is inescapably to improve our measurements of these causal processes, which inevitably results in a heavy emphasis on measurement development that is indispensable to the causal claims made in the empirical chapters. For this reason, Appendix I through III offers extended information about the measurements of the causal conditions and outcomes, the empirical tests of the causal mechanisms and the logic of inference applied. In Appendix IV, the measurement validity and reliability is discussed. Following sections 3-4., the case selection strategy is subsequently introduced, in turn followed by a discussion about the empirical material serving as basis for the empirical investigation. I conclude by making explicit the types of inferences that are enabled by this research design.

2. Process-tracing based on logical Bayesianism

In facing a research situation in which the causal process of how increased labour migration affect the institutions governing employment relationships in host labour markets had not been made explicit, I turned to process-tracing (Beach and Pedersen 2013, 2016b) as a means to investigate

the potential causal relationship.¹ Based on a mechanistic understanding of causation, this method places the analytical focus on the actual causal process in-between the identified causal conditions and the outcomes to which they are theorized to contribute, and seeks to explain why something has occurred by unpacking the causal mechanism through which an outcome is produced (Beach and Pedersen 2016b: 31; Waskan 2011; Gross 2009a). A defining feature of process-tracing is that causality is understood in terms of mechanisms as systems that are comprised of integral parts of a productive continuity that transfer causal forces from a cause (or a set of causes) to an outcome (Glennan 1996: 52; Beach and Pedersen 2013: 29, 2016b: 79-81, 305-306; see also Bunge 1997, 2004).² This results in the analytical attention being directed towards what really matters: the transmission of causal forces through the mechanism (Beach and Pedersen 2013: 6). Accordingly, one of the main analytical advantages of process-tracing relative to other causal case study methods is that by explicitly conceptualizing the activities that produce change, we are able to identify the causal forces that drive a process forward, which permits us to develop better causal theories. A second main advantage of this method is that it enables the production of mechanistic within-case evidence, which is required to be able to make confirming causal inferences in case-based research; by tracing the causal chain and generating evidence of a disaggregated mechanism

¹ While following Beach and Pedersen (2016b)'s approach to process-tracing and their guidelines for how to conduct it, the application of the method in this dissertation acknowledges Fairfield and Charman (2019)'s insight about the Bayesian foundations of iterative research. In contrast to Beach and Pedersen (2013, 2016b) who distinguish between theory-building and theory-testing process-tracing (see also Mahoney 2015: 201-202; Bennett and Checkel 2014: 268) and describe how the research processes of the two variants differ, Fairfield and Charman (2019) argue against such a separation (see also McKeown 1999). While it may make sense to separate the two if the research objective only pertains to theory building *or* testing, a strict differentiation between exploratory (theory-building) and confirmatory (theory-testing) research is grounded in the frequentist inferential framework forming the basis of large-N analyses, and is according to Fairfield and Charman inapplicable to and unnecessary for within-case analyses based on Bayesian logic of inference (2019: 155). The reason why a distinction between exploratory from confirmatory stages of analysis are unnecessary is "because new evidence has no special status relative to old evidence for testing hypotheses" within the inferential framework offered by logical Bayesianism (ibid. 154). As explained by Fairfield and Charman, the inferential underpinnings of process-tracing based on logical Bayesianism provide a firm methodological foundation that matches how iterative research moves back and forth between theory development, data collection and analysis – as opposed to following a linear and stepwise research process from theorizing to testing (ibid. 154-156). In view of this recent methodological advancement that clarifies that a separation of theory-building and theory-testing process-tracing is based on "false dichotomies between old versus new evidence and inductive versus deductive reasoning" (ibid. 155), I choose to describe the method applied in this dissertation as process-tracing tout court. In facing a research situation where causal claims had been made but the causal logic behind such claims had not been uncovered, answering the dissertation's research question required theory-building to meet the aim of testing the theoretical propositions empirically.

² The systems understanding of causal mechanisms can be contrasted with the more widespread minimalist view of mechanisms, in which the constituting parts of a mechanism are not made explicit, thereby grey- or black-boxing the actual causal process (Beach and Pedersen 2016b: 34). While many studies use the term 'causal mechanism', most of them have up-to-date adopted a minimalist view of mechanisms in which they do not explicitly theorize the transmission of causal forces, nor uncover the causal link between a cause and an outcome, thus only enabling weak causal inferences. The systems understanding of mechanisms, in contrast, forces us to specify and uncover how a cause produces an outcome. For more literature on the systems understanding of causal mechanisms, see Bunge (1997, 2004), Hedström and Swedberg (1998), Hedström and Ylikoski (2010), Machamer et al. (2000), Machamer (2004), Waldner (2012), Waskan (2011).

linking the causes and outcomes, we are able to make stronger causal inferences as the mechanism itself is traced empirically (Beach and Pedersen 2016b: 160, 302, 319). Concretely, conducting process-tracing involves conceptualizing a causal theory and assessing whether the hypothesized causal mechanism at the core of the theory exists by exploring whether the predicted evidence of the parts of the mechanism is present in a selected case (ibid. 319). The research focuses both on whether a causal relationship exists, and if present, how the causal mechanism functions, aiming to provide evidence of the actual process. The research process plays out in a highly iterative fashion, moving back and forth between theory construction and evaluation (Beach and Pedersen 2016b: 171; Fairfield and Charman 2019: 156).³ This iteration enabled by the method is one of its core strengths, as it allows us to continuously refine our causal theories, create better measurements, and ultimately make stronger causal inferences (Fairfield and Charman 2019: 156). The research process involves conceptualizing and operationalizing the cause(s) and outcome(s), identifying the causally relevant contextual conditions under which the causal relationship is expected to hold, and selecting typical cases for within-case analysis in which empirical tests of the presence of the causal mechanisms are conducted. When conceptualizing and operationalizing the causes and outcomes as difference-of-kind concepts, the qualitative threshold for case-membership also needs to be defined. In identifying the causally relevant contextual conditions, emphasis is placed on causal homogeneity as the contextual conditions serve to define the bounds of causally similar cases (i.e., defining the population) in which the causal relationship could theoretically also be present (Falleti and Lynch 2009). At the core of the research is the conceptualization and operationalization of the causal mechanisms. The operationalizations of the parts of the causal mechanisms, where theoretical expectations are translated into clear propositions about what empirical fingerprints each of the parts should have left in the empirical record if the mechanism has been present in a case, form the basis for the empirical testing using a Bayesian inspired inferential framework (see Beach and Pedersen 2016b: 323-324, 366). Logical Bayesianism offers analytical tools for transparently evaluating empirical material and converting it into evidence based upon which we more confidently can make confirming or disconfirming causal inferences by justifying why something is evidence of the investigated causal relationship and explicitly reasoning around the inferential weight of the evidence (Beach and Pedersen 2016b: 155; Fairfield and Charman 2019). A more thorough account of the logic of inference used as basis for the empirical tests of the four causal

³ The theoretical parts of the causal mechanisms and the empirical manifestations the respective mechanisms are expected to leave in the specific cases have continuously been refined throughout the research process, as have the conceptualizations and operationalizations of the causes and outcomes – as theorizing the causal mechanisms has also led me to better specify what is causally relevant about employers' and trade unions' responses to migrant labour, and identify what properties of the institutions that can actually be affected. Similarly, the identification of the contextual conditions under which the respective causal processes are expected to play out has also been refined as I learned more about the empirical reality.

mechanisms theorized in this dissertation, along with the measurements of the parts of the causal mechanisms, are offered in Appendix III. As the mechanistic and deterministic understanding of causation, coupled with a probabilistic epistemology, guides the formulation of predictions about the causal mechanisms and is crucial to grasping the potential held by this research design, Appendix III also provides a few clarifying points related to the logical foundations underlying process-tracing, as a means to avoid misunderstandings originating from dominant methodological assumptions and to facilitate evaluations of the causal inferences made based on the empirical analyses.

As all methods, process-tracing naturally also has its disadvantages and limitations. While the limitation of this method primarily pertains to the inability to infer beyond the single cases investigated, the main drawbacks pertain to the extensive analytical resources required to conduct it properly, as well as the fact that the testing procedure is very time consuming and requires a rich empirical record (Beach and Pedersen 2016b: 302). While theorizing and empirically testing the causal mechanisms is a challenging task, the value of this effort is that it contributes to considerably improving our causal theories and inferences. Further challenges that I have encountered include identifying typical cases (elaborated under section 6. below), and defining and measuring the qualitative thresholds for the set-membership of cases.⁴ Challenges aside, process-tracing is arguably the only way to answer the *how* research question at the centre of this dissertation – that is, how the class actors' responses to labour migration contribute to institutional continuity or change – by investigating the causal mechanism linking the cause with the outcome and by producing mechanistic evidence based on which causal inferences can be made (Beach and Pedersen 2013: 2).⁵ The way that we are able to make causal inferences about the potential causal relationship that existing literature has postulated is by demonstrating a causal link that uncovers how the causal processes have played out.⁶ Without an understanding of how

⁴ A potential challenge also pertains to the fact that process-tracing as applied in this dissertation does not (yet) belong to mainstream practices. There continues to be little agreement in the methodological literature about how to properly conduct process-tracing, and about what is actually being traced (for a good discussion about the reasons behind this disagreement and confusion about the nature of process-tracing, see Beach and Pedersen (2016b: 303-305) and Beach (2016: 463)). This means that there is scope for contention, potentially with the risk of blurring the substantive findings of the research.

⁵ In view of the established consensus in the methodological debate that a plausible causal mechanism should be part of any theory that seeks to make a causal argument (although the understandings of what causal mechanisms are continue to differ) (e.g. George and Bennett 2005; Falleti and Lynch 2009; Brady and Collier 2010; Gerring 2008; Mayntz 2004; Beach and Pedersen 2013, 2016b), and given that strong causal inferences are only possible when we have either mechanistic within-case evidence or manipulated experimental evidence of difference-making (Jackson 2011; Morton and Williams 2010; George and Bennett 2005; Beach and Pedersen 2013; Rohlfing 2012; Bennett and Checkel 2014), empirically testing causal mechanisms at the level at which the causal process occurs through process-tracing is in most instances the only way that we can make strong causal inferences in social sciences, as the research questions we are interested in can rarely be answered by manipulated experiments (Beach and Pedersen 2016b: 159-160).

⁶ Different methods naturally provide distinct comparative advantages when used in appropriate research situations. Variance-based studies would, however, not achieve the goal set out in this study where the aim has been to assess whether a causal relationship exists by uncovering how that causal relationship – if

the class actors' responses to the changed conditions of free labour and service mobility in the EU open market contribute to institutional continuity or change, we will not be able to assess the extent to which the pressure for change has translated into actual change, or make any causal inferences about the impact of these developments on the institutions regulating employment relationships.

3. Conceptualizing and measuring differences-of-kind concepts

3.1 Conceptualizing differences-of-kind concepts

The asymmetry of causal claims about mechanisms made in process-tracing entails that one needs to operate with categorical, difference-of-kind distinctions when conceptualizing causal concepts (Beach and Pedersen 2016a: 11). It is in the use of process-tracing not variation and degree of causal effects that are in focus, but instead the presence or absence of causal powers. As a cause is either present or not in any individual case, differences-of-degrees are causally irrelevant at the case level; cases are either in the set of a concept where a causal relationship is possible – or they are not (ibid. 11-12).⁷ In this study, I therefore operate with categorical in/out distinctions, and the focus is on capturing the causally relevant differences-of-kind in the respective concepts (ibid. 12).

present – plays out. Correlational analysis alone is clearly unable to tell whether and how the responses to labour migration have any impact on collective bargaining, labour legislation, and workplace representation. Comparative case-based methods would also not serve the purpose, as they do not provide the tools to study causal mechanisms but instead serve to enable *disconfirming* (i.e. negative) inferences about necessary or sufficient conditions (Beach and Pedersen 2016b: 10). This type of disconfirming inference, based on evidence of difference-making, will not allow me to answer my research question. Process-tracing, on the other hand, enables confirming *and* disconfirming causal inferences to be made, allowing for an upgrading or downgrading of the confidence in the presence of a causal relationship (ibid. 160, 185). Comparative case-based methods, on their side, serve the purposes of identifying causes and mapping populations of cases into causally similar bounded populations (ibid. 3). In the context of this study, a comparative case-based method would be an appropriate method in a follow-up study to map causally homogenous populations to which the causal relationship may travel. Finally, the reason why a congruence case-study method was not applied was due to the theoretical and empirical aims of this dissertation. While congruence and process-tracing case studies both produce mechanistic evidence, there is a difference in the depth of the mechanistic evidence produced because congruence studies do not explicitly theorize nor empirically trace causal mechanisms, the result of which is that weaker evidence is produced in congruence studies – because the mechanism producing the evidence is not made explicit (ibid. 3). Congruence case studies thus serve the purpose of offering a plausibility probe of a potential causal relationship when we do not need to flesh out a mechanism in detail (ibid. 10) – but ‘fleshing out’ the mechanisms was exactly what was needed in order to advance the debate on the institutional impact of labour migration. By tracing each part of the mechanism empirically, process-tracing permits much stronger causal inferences than congruence studies (ibid. 72).

⁷ Concepts and measurements incorporating differences-of-degrees may at worst lead to serious measurement errors by “conflat[ing] degree and kind differences, resulting in a causally heterogeneous population where different values have different causal properties instead of mere degree differences in the magnitude of the causal relationship” (Beach and Pedersen 2016a: 12; see also Michell 2011).

It follows from the mechanistic understanding of causality that when attributes of causal concepts are present, they are expected to have causal effects on the outcome (Beach and Pedersen 2016b: 129).⁸ The core task of this conceptualization is thus to capture the attributes of the concepts that are theorized to be causally important, explicitly identifying the aspects of the causes that can actually produce something (ibid. 111). When it comes to the causal conditions, my goal has been to capture what it is about the employers' and trade unions' responses that can be a cause of the theorized causal relationship, that is, capturing the aspects of the responses that carry causal powers to trigger institutional change or contribute to continuity in the formal structures and functioning of collective bargaining, workplace representation, and labour legislation, including *only* the attributes of the causes that are productive in relation to the four theorized mechanisms (ibid. 103, 117-118). When it comes to the outcomes, the goal has been to define what it is about the outcomes ranging from institutional continuity to varieties of institutional changes in the employment relations that can actually be the product of the theorized causal relationships (ibid. 118). By drawing upon existing theoretical debates on institutional change, thinking creatively – and, importantly – by focusing on attributes that are causally relevant in the respective causal relationships under investigation, I have responded to the under-theorized concepts and lack of systematic measurements in existing literature on the effects about labour migration by seeking to offer better conceptual and operational definitions that make clear what it is about the concepts that makes them a cause or an outcome of the processes.

3.2 Measuring difference-of-kind concepts

The process of developing measures that represent the causally relevant aspects of concepts, in turn, involves careful consideration about the observable manifestations that the concepts may have if they are present in empirical cases (Beach and Pedersen 2016b: 121).⁹ Developing measures is essentially about choosing what observable manifestations define the set membership of a concept. A consequence of the set-theoretical structure underlying these measures is that they need to “capture qualitative differences-of-kind that enable us to differentiate between causally similar and dissimilar cases” (ibid. 124; see also Sartori 1970). The below operationalizations thus focus on capturing empirically the causally relevant differences-of-kind and qualitative thresholds that distinguish between empirical cases in which the causal processes are theorized to be possible and not possible (Beach and Pedersen 2016b: 9), aiming to achieve operational definitions that capture the causally relevant attributes of the concepts empirically and that offer clear guidance that can enable me to identify cases that are members of the sets of the respective

⁸ The term attribute is used to refer to the causally relevant dimensions of a concept (Beach and Pedersen 2016b: 102).

⁹ I use the term *observable manifestations* for measures of the concepts, as a means to signal that I with these measures attempt to get as close as possible to capturing the concepts themselves.

concepts in my practical research (ibid. 134). The operationalizations of the concepts have in this study been an iterative process between empirical research and theoretical revision (see e.g. Ragin 2008: 78-81; Beach and Pedersen 2016b: 186; Fairfield and Charman 2019: 154-155; Bennett, 2 Sep 2017), where both the concept definitions and the measurements have been refined throughout the project.

3.3 Defining and measuring the qualitative thresholds of concepts

Defining the observable manifestations of concepts also involves setting appropriate qualitative thresholds for set membership that enable us to categorize empirical cases as members of a certain set (Beach and Pedersen 2016b: 129). In defining the qualitative thresholds, theoretical and empirical knowledge has been used, and the aim has been that the thresholds should capture the causally relevant similarities and differences between the cases, and be clear enough to enable me to differentiate between the cases that belongs to the respective sets of mutually exclusive categories of presence or absence of the attributes of the concepts, resulting in the categorization of my empirical cases into the same kind categories (see Beach and Pedersen 2016b: 128-129). When it comes to the causal conditions, these definitional decisions make explicit the empirical thresholds at which the respective causal relationships are theorized to be triggered (ibid. 128). In other words, setting these thresholds define the level at which the causal powers of employers' and trade unions' responses are present. The goal of the below presented concept attributes, and their associated measures, is thus to capture cases that are above the threshold at which the causal effects kick in (see Beach and Pedersen 2016b: 140). In serving to demarcate causally relevant differences-of-kind, the qualitative thresholds function as a causal distinction; there is a qualitative difference between the sets of the causal conditions because there are different causal processes following from the different combinations of employers' and trade unions' responses to migrant labour, leading to different outcomes.¹⁰ Setting a clear empirical threshold at which causal relationships are theorized to be triggered is probably the most important, but also the most challenging aspect of defining observable manifestations of a causal condition (Sartori 1970: 1038; Ragin 2008: 80-81; Beach and Pedersen 2016b: 125-126). In view of this, the end of each of the below sections are dedicated to discussing the qualitative thresholds between the different concepts, offering justifications as to how and why I have defined the thresholds of set membership in the respective concepts the way I have.

¹⁰ This understanding of qualitative thresholds as the point at which causal relationships kick in reflects a 'crisp-set' (as opposed to 'fuzzy-set') understanding of sets and the causal theories linking sets (Beach and Pedersen 2016b: 129).

3.4 Measuring the causes: Employers' and trade unions' responses to migrant labour

Employers' responses to migrant labour

The broad conceptual definition of employers' responses are defined as compliance with *dominant* employment relations rules and practices based on collective employment regulation in the use of migrant labour, or opt out of such rules and practices. The three causal concepts of employers' responses – full compliance, compliance with minimum standards, and opt out – are based on a few carefully selected concept attributes that have causal properties that are requisite in contributing to institutional maintenance – and, if absent may lead to either institutional neglect, conversion, or displacement. The first component of the concepts captures whether employers use collective agreements to regulate their employment of migrant labour, the second, which pertains to the compliance responses only, captures whether the content of collective agreements applied to migrant labour is equal to that of native labour, and the third captures the extent to which employers enforce labour standards (including dominant wage levels, average working time, access to written employment contracts and declared work, and access to job security) for migrant labour. Below, I present the concept attributes and measures used to assess empirically whether the responses by employers can be considered as full compliance, compliance with minimum standards, or straight-off non-compliant. In describing transparently the observable manifestations of the respective concept attributes, I also offer justifications for why I believe that these observable manifestations best capture empirically the respective attributes, and make explicit the causal properties that are linked to them.

Concept attribute 1: (No) Use of collective agreement to regulate employment of migrant labour

In a context where collective bargaining is the dominant way to regulate employment relationships, as in the cases investigated here, applying a collective agreement is a prerequisite in following the dominant employment relations rules and practices, and not doing so is considered as opt out. The use of a collective agreement in the employment of migrant labour is pivotal for the continued collective regulation of employment relationships. Regardless of the fact that collective agreements are voluntary (and the objection thus may be raised that not using a collective agreement should not be considered as opt out), what matters in terms of causal implications is that by not following the dominant rules and practices, an alternative and competing logic of action is inevitably introduced. By abstaining from using a collective agreement, the necessary active support for the institution is not provided by the employer, and the action of not using a collective agreement holds the causal power to trigger defection from collective bargaining as an institution. This attribute, and its associated measures, thus capture the

causal power that can affect the formal structures of collective bargaining as an institution, namely its coverage. More generally, no use of collective agreement, implying use of individual agreements only, holds the causal power to increase employers' power over employment relationships as individual migrant workers stand in a weak bargaining position as counterparts to employers – as opposed to organized labour as counterpart in collective bargaining. Furthermore, abstaining from collective bargaining also holds the causal power to affect the formal structure and functioning of workplace representation as a collective institution, as the establishment of workplace representation is strongly associated with the use of a collective agreement (i.e. potential to affect the coverage of workplace representation), and absence of a collective agreement affects (weakens) the negotiation capacity of workplace representatives as use of individual agreements in general increases employers' bargaining power. Moreover, if the coverage of workplace representation is negatively affected, workplace representatives' enforcement capacity is naturally also removed.

The attribute is measured by migrant workers' collective bargaining coverage, which – if the attribute *Use of collective agreement to regulate employment of migrant labour* is present – should be at least 50 percent, and thereby follow the dominant practice of use of collective bargaining in the sector. At the starting point of the investigated time period, collective bargaining coverage remained above the 50 percent threshold and thereby qualified as dominant practice in all the investigated cases. As it in many cases is difficult to obtain data capturing migrant workers' collective bargaining coverage, the following proxies are used as complements to assess whether the attribute is present. Firstly, by assessing the extent to which migrant workers are employed in firms covered by collective agreement (for compliance to be present, at least 50 percent of the firms using migrant labour should have a collective agreement). Here the ways that firms organize work via sub-contracting and temporary agency work plays a major role, as we know that these modes of work organization serve as ways to circumvent use of the applicable sectoral collective agreement. Secondly, migrant workers' organizational rates can serve as an indication of their collective bargaining coverage; if they are members of a trade union, it is more likely that they are also covered by a collective agreement.

Concept attribute 2: Content of collective agreement applied to migrant labour is (not) equal to native labour

The second concept attribute seeks to capture whether equal treatment or minimum standards only are applied in the use of migrant labour. The concept attribute allows for distinction between full compliance and compliance with minimum standards, by distinguishing between employers who use collective agreements in their employment of migrant labour and where the full content of the agreement is applied to migrant workers (requisite for full compliance), versus employers who use a collective agreement but where the content applied to migrant labour does not entail equal

treatment. The situation when the content of the collective agreement applied to migrant labour is not equal to that of native labour occurs either when a different collective agreement, with inferior conditions, is used to cover migrant workers, or where the same collective agreement is used but it contains institutional flexibility – for example through negotiated opening clauses or special arrangements – that employers exploit as a means to apply conditions that do not entail equal treatment. When it comes to use of a different collective agreement, a prominent example is the use of a separate agreement that covers temporary agency workers – a mode of employment which is common in the use of migrant labour – with conditions that are inferior to the content of the collective agreement covering in-house workers. Regardless of whether the unequal treatment originates from use of a different collective agreement, or from institutional flexibility within the one and same collective agreement, employers are able to exploit the difference between minimum and standard levels of protection and compensation. The concept attribute is measured by comparing the content of collective agreements to capture whether the full content is applicable to migrant workers, or if the content of the collective agreement entails differentiation, and minimum levels only are applied to migrant workers.

The causal power of this concept attribute lies in the fact that if the conditions applied to migrant labour is not equal to native labour, a formal route to dualization is provided. Applying equal treatment based on the full content of the collective agreement or minimum standards carry different causal properties; equal treatment carries the causal power to uphold institutional maintenance and is required for the provision of active support for collective bargaining as an institution, while minimum standards opens up space to change the institution by inviting differential treatment of migrant and native labour (most likely by differentiating between in-house and external labour), or different labour segments more generally, which would alter the function of collective bargaining as an institution meant to secure equal treatment and establish norm-setting standards. This attribute thus captures the causal power to affect the functioning of collective bargaining by causing erosion from within. Moreover, use of a collective agreement with content that is not equal holds the causal power to affect the functioning of workplace representation by weakening workplace representatives' negotiation capacity as employers gain bargaining power by being able to pursue differential treatment of workers, enabling leveraging of different groups of workers against one another and serving as a means for employers to push workplace representatives into concessions.

Concept attribute 3: (Insufficient) Enforcement of labour standards in the employment of migrant labour

This concept attribute captures the extent to which employers enforce labour standards in their employment of migrant labour. As noted in the theoretical chapter, an assumption underlying this analysis is that complying employers logically have a responsibility to enforce labour standards

in the employment relationships in which they engage; if they do not take on such a responsibility, they do per definition not comply. No or insufficient enforcement of labour standards in the employment of migrant labour is thus associated with employers' opt out response. The concept attribute naturally also covers employers who have not signed a collective agreement, but who are still bound by the enforcement responsibility and obliged to comply with the labour standards established by the labour regulations within the sphere of employment relations in which they operate. The observable manifestations of the level of enforcement of labour standards in the employment of migrant labour is reflected in the employment and working conditions of migrant workers relative to the conditions of native workers.¹¹ This attribute is thus measured by the following four components; (non-)compliance with dominant wage levels, (non-)compliance with average working time, (non-)compliance with the requirement of a written employment contract and declared work, and (non-)compliance with dominant levels of job security.¹² Insufficient

¹¹ When it comes the validity of these measures, meant to capture the level of enforcement of labour standards in the employment of migrant labour, an obvious question is whether migrant workers' inferior working and employment conditions (such as lower wages and longer working hours) are a manifestation of discrimination, rather than employers' opt out. I claim that there is no inherent contradiction between the two phenomena, which share similar observable manifestations – and, employers' opt out may indeed result in and be linked to discrimination. The relevant distinction instead pertains to the lens through which one looks at the observable manifestation; from an individual rights perspective one may focus on the inferior conditions as manifestations of discrimination, and from an institutional perspective – where the focus is on detecting what is causally relevant in terms of institutional development – one may consider the same inferior conditions as manifestations of employers' opt out, i.e. non-compliance with the conditions that are standard and otherwise complied with in the employment of non-migrant labour. A related point in this regard is also whether migrant labour's preparedness to accept inferior conditions makes employers' responses any less opt out. Existing research has pointed to the preparedness of labour migrants to accept wages that are lower than the standard in their host labour market as they have a different point of reference and their alternatives are unemployment or worse pay back home (Friberg and Eldring 2013: 89). Similarly, migrant workers also have an alleged willingness to work longer hours in order to maximize their working time and wage during their periods of work in the host labour market. While their 'preparedness' or 'willingness' may serve as conditions facilitating employers' opt out in their employment of migrant labour, this does, however, not make it any less opt out in relation to the dominant employment relations rules and practices in the host labour market – and the causal properties to trigger institutional change remain present.

¹² Wages are a central part of workers' working conditions, and migrant workers' wages have been at the forefront in political debates about the effects of labour migration in receiving countries (Friberg and Eldring 2013: 89). The measure capturing (non-)compliance with dominant wage levels assesses migrant workers' hourly wages, compared to native workers' hourly wages in the respective sectors and for the specific occupations and skill levels, based on either register or survey data. As dominant wage levels naturally are influenced by the norm-setting function of collectively agreed wages, collectively agreed wages are also, aside from hourly wages among native workers, used as benchmark for what constitutes *dominant wage levels*. As noted above, employers' full compliance response requires compliance with dominant wage levels, whereas compliance with minimum standards is based on compliance with established minimum wage levels. When it comes to employers' opt out response, there are multiple ways that non-compliance with dominant wage levels may occur (some of which may be more or less reoccurring in certain economic sectors). Aside from simply setting migrant workers' wages below dominant wage levels, specific strategies to reduce wage costs include applying inaccurate wage categories where skilled migrant workers are not paid according to their skill level but instead according to the minimum wage for unskilled workers, which means that appropriate wage levels are not applied, and thereby not enforced. Further strategies include deducting costs for accommodation, travel or work equipment from the wage, or abstaining from paying overtime compensation – both of which result in a situation where the wage that is actually received is considerably lower than the agreed hourly wage. There are also other ways through which workers are cheated out of pay, with the most extreme one being when employers withhold the

enforcement is defined as either non-compliance with working time regulations *or* non-compliance with the requirement of written employment contracts and declared work, or a minimum combination of non-compliance with dominant wage levels *or* non-compliance with dominant levels of job security *and* non-compliance with working time regulations *or* non-compliance with the requirement of written employment contracts and declared work.¹³

payment altogether. By maximizing the working time, employers can, in turn, increase the internal flexibility and productivity. The points of references here are average weekly working hours, collectively agreed working time, and the absolute upper limit of what is allowed based on labour legislation. Irrespective of whether the provision of a written employment contract is a legal requirement or not in specific cases, compliance with this requirement is a central component of the enforcement of labour standards. It is fundamental to have a written employment contract as it establishes the rights and duties between the two parties in the employment relationship. If the basic precondition of having a written employment contract is not in place, the possibility to enforce any of the other labour standards related to wages, working time, or job security is small. In viewing access to labour rights as a step-wise process, a first step in accessing labour rights is thus to have a written and accurate employment contract. The implication for the workers who lack a written employment contract is that they have no legal protection from arbitrary treatment. Importantly, this measurement also captures the situation in which employers' use undeclared work. Undeclared work naturally constitutes illegal opt out as it is an employer obligation to withhold tax from workers' wages, thereby making sure that the work is declared and taxes and social security contributions are paid. A reoccurring example of this type of opt out is when migrant labour is used through bogus self-employment, and does thus not hold the legal status of a worker and thereby does not have any access to labour rights. When either of these basic labour standards (that is, the requirement of a written employment contract and declared work) are not enforced, the migrant worker is naturally in a very weak position in the employment relationship – and employers, in contrast, gain considerable power over the employment relationship. The last component of this concept attribute, in turn, aims to capture whether employers comply with the level of job security offered to the native workforce also in their employment of migrant labour. Access to job security is associated with the type of employment workers have. As permanent employment still represented the dominant levels of job security in the investigated cases at the starting point of the investigated time period, permanent employment in the use of migrant labour is required for compliance to be present. When the forms of employment through which migrant labour is used is associated with low levels of job security, it is considered as non-compliance with dominant levels of job security. The types of employment that are associated with no or limited access to job security are temporary agency work, employment in a foreign sub-contracted firm, and bogus self-employment (Friberg 2011: 8). Workers in temporary work agencies or sub-contracted firms may have either temporary or permanent employment contracts. Regardless of which, their employment can in practice be considered as temporary as they typically only provide temporary assignments (whether on a posting assignment or as an agency worker) and the employer assumes no financial obligation to the workers in-between assignments, even if the worker has a permanent contract (Friberg and Eldring 2013: 69). Similarly to how the other components of this concept attribute are related to one another – for example, how having a written employment contract is a precondition for enforcing other labour standards, and how working time and wages are closely related – a lack of access to job security also feeds into issues related to remuneration; the insecurity associated with these forms of employment means that there is no guarantee for receiving a wage, as payment is dependent on assignments and they receive nothing in-between, regardless if their employment contract formally is permanent. The important causal implication of not complying with dominant levels of job security is that workers who do not have a permanent contract are in a very weak position in relation to their employer (ibid. 114). Consequently, the absence of job security also effects the chances of enforcing labour standards more generally, as workers are in a weak position and easily pushed toward employment deals that include acquiescence of their labour rights.

¹³ The definition of *insufficient enforcement* of labour standards is based on the benchmark of dominant levels of compensation and protection. The way that this definition of insufficient enforcement captures *how much inferior* migrant workers' conditions are, is thus by the minimum presence of either component 2 or 3 or the minimum combination of components 1 or 4 and 2 or 3. The opt out and compliance with minimum standards responses are in this way also distinguished by the fact that the threshold for non-compliance with wage levels in an opt response is based on dominant (as opposed to minimum) wage levels. While it might appear counter-intuitive that there is a stricter threshold for enforcement of wages in an opt out response than in a response complying with minimum standards only, the threshold based on *dominant*

This attribute captures the causal power to affect the functioning of both collective bargaining and labour legislation; if the institutions are not enforced in practice, different modes of change can be pursued. Signing a collective agreement but without enforcing it in practice implies directly challenging the institution of collective bargaining. Moreover, the attribute also captures causal powers that can affect distributive outcomes and the level of employer discretion over working and employment conditions. Non-compliance with dominant wage levels, working time, and declared work holds the causal power to affect distributive outcomes by functioning as means to reduce costs and increase profits, thereby redistributing income from labour to capital. Non-compliance with dominant levels of job security and with the requirement of written employment contracts and declared work hold causal powers to increase employers' discretion and power over employment relationships – and, extendedly, as employers gain more power over employment relationships, increase the power imbalance in the employment relations more generally. By non-compliance with dominant levels of job security, employers withhold workers' access to job security and thereby gain power over the employment relationship. By abstaining from providing written employment contracts or by using undeclared work, workers are placed in a weak position and employers gain considerable power over the employment relationships. To this end, the negotiation capacity of workplace representatives is also affected, as employers' bargaining power increases.

The qualitative thresholds between full compliance, compliance with minimum standards, and opt out

The goal of the thresholds between the three possible employer responses is to capture the causal distinctions between operating based on a logic of action that follows the dominant employment relations rules and practices, thereby not challenging the institutions and through continued compliance subsequently generating active institutional support, or, conversely, pursue a logic of action that holds the power to generate institutional contestation. The question defining the qualitative threshold between employers' opt out and compliance responses has been to estimate whether there is widespread and systematic use of migrant labour outside of the scope of the dominant employment relations institutions or not.¹⁴ The threshold is thus not based on whether

wage levels is used as a means to mirror the full compliance response, and is required to capture the causal power to drive down wages held by non-compliance with dominant wage levels.

¹⁴ Considering the sectoral structure may be helpful when assessing whether a majority of employers opt out or comply in their use of migrant labour. If the sectoral structure is composed of few major firms, and there is compliance among those firms, this contributes to overall compliance. Conversely, if the same few firms that dominate the sector are opting out, for example by extensive use of sub-contracting, this would indicate widespread opt out. A sectoral structure made up of many small firms, on the other hand, may create conditions under which high levels of enforcement are difficult to achieve and trade union access to the many workplaces in the sector remain limited, employers may face different competing logics of action and opt out may be more likely. That being said, a sectoral structure composed of many small firms or few big firms does not per definition mean that widespread opt out or overall compliance is present. Taking the sectoral structure into account can, however, serve as complement and add valuable case-specific insights

all employers in a specific sector are opting out or complying in their use of migrant labour, even though the whole sector is categorized under the same concept. What qualifies as *widespread* and *systematic* use of migrant labour outside of the scope of the dominant employment relations institutions is defined by the concept attributes of employers' opt out response; a majority of employers do not use a collective agreement and/or insufficiently contribute to enforcement of labour standards in their employment of migrant labour. While the key distinction between employers' opt out and compliance responses is that a majority of employers do not use a collective agreement in their employment of migrant labour, or insufficiently contribute to enforcement of labour standards, the threshold between full compliance and compliance with minimum standards only is defined by the difference between applying dominant or minimum levels of protection and compensation. For a case to belong to the *Full compliance* set, all three concept attributes need to be present; employers' use collective agreement in their employment of migrant labour, with content applied to migrant workers being equal to that of native workers, and, importantly, they enforce labour standards by complying with dominant wage levels, working time regulations, the requirement of written employment contracts and declared work, and dominant job security levels. The distinction between full compliance and compliance with minimum standards only is captured by non-compliance with dominant levels of job security and compliance with minimum as opposed to dominant wage levels, and with the content of the applied collective agreement not entailing equal treatment for migrant workers. At the core of both compliance responses is thus the use of collective agreements in the employment of migrant labour, as collective bargaining is the main institution to regulate employment relationships in the investigated cases, and thereby required for compliance with dominant employment relations rules and practice. A visualisation of the concept structures of the three concepts, which specify

when assessing the qualitative thresholds between employer responses. Similarly, considering employers' organizational rates in conjunction with the strategic positions taken by employer organizations may also offer some complementing insights when attempting to assess whether a majority of employers opt out in their use of migrant labour. Assuming that the employer organization plays an active role in promoting and contributing to compliance, a high organizational rate (above 50 percent) among employers can possibly serve as an indication of overall compliance, *if* organized firms are bound by a collective agreement, and *if* such an agreement is actually enforced. High employer organizational rates might, however, also contribute to sustain opt out practices in situations where employer organizations contribute to create space for employers to opt out in their use of migrant labour. Fundamentally, employer organizations do not hold the capacity to ensure overall compliance, even if organized firms are bound by collective agreements and organizational rates are higher than 50 percent. Based on the understanding that individual employers, regardless of whether they are organized or not, act as self-interested market actors, it cannot be assumed that membership in an employer organization per definition entails that the employer will comply. Empirically, opt out responses have been identified among organized as well as unorganized employers. While assessing the strength of employer organizations and the extent to which employers in a sector are organized may offer some insight into the case-specific context, the degree of employer organization thus remains indecisive as a means to measure the threshold between employers' opt out and compliance responses.

how the different concept attributes relate to one another and define the presence of full compliance, compliance with minimum standards only, and opt out, is offered in Appendix I.

Trade unions' responses to migrant labour

The broad conceptual definition of trade unions' responses are based on trade unions' protective response as ensuring *equal treatment* for migrant labour, while not doing so – including only ensuring *minimum standards* – is considered as non-effective protection. Similarly to how the concept structures and measurements of employers' responses focus on capturing what it is about the responses that is causally relevant for the institutional development of the employment relations, the two causal concepts of trade unions' responses to migrant labour are based on a few carefully selected concept attributes that have causal properties that are requisite in contributing to institutional maintenance, and if absent will fail to generate the required active support and institutional resilience creation, and instead open up space for employers to pursue change strategies through their use of migrant labour. In largely matching the structure of the concepts of employers' responses, the first component of trade unions' responses captures whether trade unions ensure use of collective agreements to regulate the employment of migrant labour, the second whether the content of collective agreements applied to migrant labour is equal to that of native labour, and the third the extent to which they contribute to enforcement of labour standards for migrant labour through presence of trade union workplace representation in migrant workers' workplaces, by organizing migrant labour, by pursuing legal cases as a means to enforce labour standards, and/or by building the capacity of migrant workers to enable them to protect their rights and contribute to enforcement. Below, I present the measurements used to assess empirically whether the respective concept attributes are present in a case, and make explicit the causal properties linked to them.

Concept attribute 1: (Not) Ensuring use of collective agreement to regulate employment of migrant labour

The use of a collective agreement in the employment of migrant labour is pivotal for the continued collective regulation of employment relationships, and trade unions as counterpart to employers play a crucial role in ensuring use of collective agreements. This attribute captures the causal powers that can affect the formal structures of collective bargaining as an institution, namely its coverage. The attribute is necessary for a protective response, as collective agreements is the main institution to regulate employment relationships in the cases investigated here. Not ensuring use of collective agreements means that equal treatment cannot be achieved, and carries causal properties that would trigger change, either as neglect of the institution, or – more radically, and with time – displacement of collective bargaining as the main institution for regulation of employment relationships, in turn replacing it with individual agreements and individual rights

based on labour legislation. The attribute is measured by assessing the extent to which trade unions actively try to conclude collective agreement in migrant workers' workplaces. Ensuring use of collective agreement in migrant workers' workplaces is considered as present if the trade unions make systematic and targeted efforts to conclude collective agreements with employers using migrant labour. As complements in the assessment, migrant workers' collective bargaining coverage and organizational rates are taken into account. While migrant workers' organizational rates are a rough proxy, they can serve as an indication of their collective bargaining coverage; if they are members of a trade union, it is more likely that they are also covered by a collective agreement.

Concept attribute 2: Content of collective agreement applied to migrant labour is (not) equal to native labour

This concept attribute aims to capture whether the content of collective agreements applied to migrant labour is equal or not to the full content of the applicable agreement, thereby capturing the difference between ensuring equal treatment and accepting minimum or inferior standards. While it is employers and not trade unions who apply collective agreements in their employment of migrant labour, trade unions are nevertheless counterpart to employers in collective bargaining and thus co-responsible for the content of collective agreements. In the negotiations, they can approve – or abstain from approving – exceptions or clauses that allow employers to apply different content to different groups of workers. For a protective response to be achieved, it is not only required from the trade union to ensure use of collective agreement, and contribute to enforcement of labour standards – they also need to ensure that the collectively agreed provisions applied to migrant labour is equal to that of native labour. Crucially, it does not suffice that the trade union *demand*s equal treatment – the causal power of a protective response lies in *ensuring* equal treatment. In contrast, accepting the use of exceptions or approving minimum or sub-standards so that the content of collective agreement applied to migrant labour is not equal to that of native labour is associated with presence of a non-effective protection response. This attribute captures the causal power that can affect the functioning of collective bargaining through differential – as opposed to equal – treatment of different groups of workers, thereby causing erosion of the content of collective agreements. The concept attribute is measured by comparing the content of collective agreements to capture whether trade unions have ensured that the full content with equal conditions apply to migrant workers, or whether they have approved that the content applied to migrant labour is different from that of native labour by only ensuring minimum standards or accepting specific clauses that enable differential treatment.

Concept attribute 3: (Insufficiently) Contributing to enforcement of labour standards for migrant labour

Presence of contribution to enforcement of labour standards for migrant labour is required for trade unions to achieve a protective response, as it is not enough to ensure that migrant labour is formally covered by a collective agreement and that the content of collective agreements applied to migrant labour is equal to that of native labour; protection can only be achieved in combination with also contributing to enforcement of the agreement, and enforcement of labour standards more generally. Insufficient, weak or limited contribution to enforcement, in contrast entails non-effective protection as migrant labour under such circumstances will not access their rights in practice. While employers bear the primary enforcement responsibility, trade unions are understood as having a responsibility to contribute to enforcement. This attribute, which aims to capture the extent to which trade unions contribute to enforcement, is measured by the following four observable manifestations: (absence) presence of trade union workplace representation in migrant workers' workplaces, (not) organizing migrant labour, (not) pursuing legal cases as a means to enforce labour standards, and (not) building the capacity of migrant workers to enable them to protect their rights and contribute to enforcement. As a means to assess the extent to which trade unions organize migrant labour, the following complementary measurements are used to capture organizing efforts: share of migrant workers in the trade union, presence of earmarked positions for trade union officials with language skills or employment of translators to deal with labour migrants, and use of an organizing strategy, including, for example, placing organizing at the core of trade union activities in responding to labour migration, and/or carrying out organizing campaigns targeted at labour migrants. As a general complement to assess the presence of these manifestations, resources spent on organizing (including earmarked positions for staff with language skills or translators), pursuit of legal cases, and capacity building (such as establishment of resource/support centres or outreach campaigns) are also taken into account.

This attribute has the causal power to affect the functioning of both collective bargaining and labour legislation; if the institutions are not enforced in practice, change through institutional defection can be pursued by employers. Moreover, the attribute also captures causal powers that can affect both the formal structure of workplace representation, namely its coverage, as well as the functioning of workplace representation as regards to negotiation and enforcement capacities. The main way through which trade unions uphold their monitoring and enforcement in workplaces is – aside from individual members as guardians of labour standards – primarily through workplace representatives. Research has indicated that trade union members view the performance of their union as superior when there is a workplace representative present (Waddington 2014: 6). This has to do with the negotiation and enforcement capacities held by workplace representatives. By upholding its representational function in workplaces where migrants are employed, the trade union strengthens its position as counterpart to employers in

negotiations and substantively increases its ability to enforce collective agreements. To the extent that the use of migrant labour increases, and trade unions do not have presence of workplace representation in migrant workers' workplaces, the coverage of workplace representation is negatively affected, which in turn affect the enforcement and negotiation capacities in a negative way. Additionally, failing to or abstaining from organizing migrant labour has the causal power to affect the coverage of workplace representation as organizing is a prerequisite to subsequently being able to establish workplace representation in a workplace.

The qualitative threshold between a protective and a non-protective response

The guiding question which has served to capture the qualitative threshold between the two responses is whether the trade unions' response in the specific sector largely results in protection or not. A protective response requires the presence of all three components; ensuring use of a collective agreement, where the content applied to migrant labour equals the full collective agreement and not only minimum standards, and that the union contributes to enforcement of labour standards.¹⁵ The different concept attributes are partly inter-connected, in that if workplace representation is present and migrant workers are organized, the trade union has a greater chance of ensuring use of collective agreement. Conversely, having members in a workplace is also a requirement to be able to conclude a collective agreement. Trade unions non-effective protection, in contrast, can be described as a situation where the defining attributes – and thus causal powers – of a protective response are absent. It suffices that any of the three concept attributes are absent for non-effective protection to be considered as present.¹⁶ The key causal distinction between the two trade union responses thus lies in either closing down space for institutional challenging to take place or offering employers room to pursue change. By ensuring use of collective agreement, trade unions contribute to ensuring that employers do not defect from collective bargaining through their use of migrant labour, and by ensuring that the content of the collective agreement

¹⁵ While this definitional decision regarding the relationship between the concept attributes, which define the population of cases that is part of a protective response, inevitably create what may be considered as a narrow conceptualization of trade unions' protective response (at least in the current empirical landscape), the argument underlying this concept structure is that the presence of all of the concept attributes are required to create the causal power that would trigger a process in which active support and resilience creation can be generated, contributing to institutional continuity. As ensuring equal treatment versus accepting minimum (and inferior) standards carry distinct causal properties, broadening the concept of a protective response by including both equal treatment and minimum standards would increase measurement error by decreasing measurement validity. I thus opt for a narrower, but more valid, concept structure.

¹⁶ The most challenging aspect in this regard is to assess when concept attribute 3 can be considered as present, that is, when contribution to enforcement ought to be considered as insufficient. For contribution to enforcement of labour standards to be considered as present, a minimum combination of ensuring presence of workplace representation, pursuing legal cases, and building migrant workers' capacity (components 1, 3 and 4) is required, but it might also – depending on the context and the extent to which employers voluntary comply versus how strong their tendencies to opt out are – suffice that trade unions successfully organize migrant labour (presence of component 2). Case-specific assessments here need to be made to take into account the conditions that trade unions face as a result of employers' responses.

applied is equal for migrant labour, they make sure that migrant labour cannot be used as a secondary labour supply that contribute to dualization. Finally, by contributing to enforcement of labour standards, the trade union contributes to high levels of enforcement that are requisite for employers' compliance and for limiting space to pursue change. A visualisation of the concept structures of the two concepts, which specify how the concept attributes relate to one another and define the presence of trade unions' effective and non-effective protection of migrant labour, is offered in Appendix I.

3.5 Measuring the outcomes: Continuity and change in employment relations institutions

The outcomes of the four investigated causal processes capture the institutional impact of the class actors' responses to labour migration as contribution to institutional continuity or change. Through an iterative process, I have operationalized the four concepts of contribution to institutional continuity, dualization, socially embedded flexibilization, and deregulatory liberalization by identifying the institutional features that are exposed to effects originating from the class actors' responses. As scholars studying institutional change have pointed out, encompassing concepts that capture not only the formal structures of institutions, but also their functions and outcomes, are needed to be able to capture continuity and change (Kinderman 2005: 432; Streeck and Thelen 2005: 18; Baccaro and Howell 2011, 2017; Hassel 2014). The distinction between formal structures and functions of the institutions is also crucial in defining the configurations of changes associated with the different outcomes, as different types of institutional change are characteristic of different modes of transformation associated with the varieties of liberalization. Similarly, taking formal structures and functions into account also improve measurement validity in assessing institutional continuity by ensuring that no change is overlooked. Accordingly, the operational definitions of the outcomes capture continuity and change in the formal structures of the institutions through coverage of collective bargaining and workplace representation, formal change to wage-setting systems in collective agreements, as well as re- or deregulation of labour legislation, while the institutional functions are captured through continuity or change in negotiation dynamics in collective bargaining, in the practical functioning of wage-setting systems, in the coverage of job security regulations, and in the enforcement and negotiation capacities of workplace representatives. Table 4.1 maps the instrumental changes associated with the three varieties of liberalization, as well as the effects on the level of employer discretion and distributive outcomes associated with the changes.¹⁷ In the

¹⁷ While some aspects of the outcomes presented here are more or less directly observable (and the challenging task is rather of an empirical nature in accessing data), other aspects are more difficult to measure. This is particularly the case for negotiation dynamics, aiming to capture a critical function of collective bargaining, as well as assessing the enforcement and negotiation capacities of workplace representatives. These attributes are, rather than direct observables, analytical constructs whose existence

below section, I explain how effects on these institutional features can be the outcome of the class actors' responses to labour migration. A more detailed account of the operational definitions of the four outcomes, including a presentation of the expected effects on the level of employer discretion and the distributive outcomes associated with the changes, is offered in Appendix II.

we can infer from the specified empirical manifestations (see Beach and Pedersen 2016b: 137). The measurement procedure of these attributes is thus crucially about developing empirical fingerprints of the implications of their presence; their measurement validity should be judged based on the justifications that I offer as to why these measures can be considered empirical fingerprints of continuity and change in the formal structures and functioning of the respective institutions.

Table 4.1 THREE VARIETIES OF LIBERALIZATION: Instrumental changes, effects on the level of employer discretion and distributive outcomes

	INSTRUMENTAL CHANGE: effects on the formal structures and/or functions of the employment relations institutions			EFFECTS ON THE LEVEL OF EMPLOYER DISCRETION over employment and working conditions	DISTRIBUTIVE OUTCOMES associated with the change
	COLLECTIVE BARGAINING	LABOUR LEGISLATION	WORKPLACE REP		
DUALIZATION (Institutional drift)	<p>Declined CB coverage, remaining above 50% threshold (form)</p> <p><i>Wage setting system (form)</i></p> <p><i>Wage setting system, increased use of institutional flexibility (function)</i></p> <p>Negotiation dynamics, shift in power from workers to employers (function)</p>	<p><i>Deregulation (form)</i></p> <p>Declined coverage of job security regulations, remaining above 50% threshold (function)</p>	<p>Declined coverage, remaining above 50% threshold (form)</p> <p>Enforcement capacity weakened (function)</p> <p>Negotiation capacity weakened (function)</p>	<p>Medium increase in discretion over wage determination, hiring and firing, and organization of work (increased discretion over certain groups but not over others)</p>	<p>Intermediate level of redistribution from labour to capital:</p> <p>Disproportionate growth in firms' profits relative to wages</p> <p>Increased inequality by widened wage dispersion following a dual pattern</p>
SOCIALLY EMBEDDED FLEXIBILIZATION (Institutional conversion)	<p><i>Declined CB coverage (form)</i></p> <p><i>Wage setting system (form)</i></p> <p>Wage-setting system, increased use of institutional flexibility (function)</p> <p>Negotiation dynamics, shift in power from workers to employers (function)</p>	<p>Re-regulation (form)</p> <p>Declined coverage of job security regulations (function)</p>	<p><i>Declined coverage (form)</i></p> <p><i>Enforcement capacity weakened (function)</i></p> <p><i>Negotiation capacity weakened (function)</i></p>	<p>Lowest increase in discretion, primarily over hiring and firing, and organization of work, less directly over wage determination (increase equally distributed across all workers)</p>	<p>Smallest relative redistribution from labour to capital:</p> <p>Somewhat disproportionate growth in firms' profits relative to wages</p> <p>No increased wage dispersion, equality levels maintained</p>
DEREGULATORY LIBERALIZATION (Institutional displacement)	<p>Declined CB coverage, below 50% threshold (form)</p> <p>Wage-setting system deregulated (form)</p> <p><i>Wage setting system, increased use of institutional flexibility (function)</i></p> <p>Negotiation dynamics, shift in power from workers to employers (function)</p>	<p>Deregulation (form)</p> <p>Declined coverage of job security regulations, below 50% threshold (function)</p>	<p>Declined coverage, below 50% threshold (form)</p> <p>Enforcement capacity weakened (function)</p> <p>Negotiation capacity weakened (function)</p>	<p>Highest relative increase in discretion over wage determination, hiring and firing, and organization of work (increased employer discretion over all workers)</p>	<p>Greatest redistribution from labour to capital:</p> <p>Strongly disproportionate growth in firms' profits relative to wages</p> <p>Strongly biased wage dispersion between the top and the rest, resulting in greatest relative increase in inequality</p>

Starting with effects on collective bargaining, changes in the formal structures of collective bargaining are captured by an increase or decrease in collective bargaining coverage and by re- or deregulation of the wage-setting system. The reason why these institutional features can be affected by employers' responses to labour migration is because systematic and widespread placement of production outside of the scope of collective bargaining has the effect of decreasing collective bargaining coverage, and formal change in the wage-setting systems of collective agreements occur either as a result of employers taking advantage of the pressure for change originating from increased labour migration, using it as a means to deregulate the wage-setting system, or as a result of adaptation through re-regulation of the wage-setting system in responding to the changed conditions from increased labour migration, which may have exposed or created institutional ambiguities that need to be dealt with as a means to close down space for change.¹⁸ Change in the functioning of the wage-setting system can, similarly – but more subtly – occur as employers change the practical application of the wage-setting system through their employment of migrant labour; while avoiding a contractual violation, employers pursue an unintended application of the wage scale in the collective agreement that, when introduced, was intended for other purposes.¹⁹ Negotiation dynamics, which is the final institutional feature of collective bargaining investigated here, capture the core of its practical functioning; the dynamics of the bargaining process, assessed as an increased or decreased shift in power from workers and organized labour to employers. Negotiation dynamics can be affected as employers gain free access to foreign labour supplies and thereby decrease their dependence on local labour, making employers less inclined to meet demands

¹⁸ In the context of changed negotiation dynamics where employers have gained bargaining power by opting out of the dominant employment relations rules and practices in their use of migrant labour, deregulation of the wage-setting system is a likely outcome as employers seize the opportunity to negotiate formal change to the wage-setting system that may since long have been on their agenda, and can now be achieved within the pretext of responding to increased labour migration. A concrete example of this is when employers argue that there is a need to introduce a lower threshold in the wage-setting system in a collective agreement, with reference to migrant workers' inferior qualifications or skills that need to be met with lower wages than what the current wage-setting system allows for. The introduction of lower wage categories through multi-tier wage structuring, according to employers' reasoning meant to adapt the wage-setting system to accommodate for lower wages to apply to certain groups of workers – in this case migrant workers – may lead to a spread of the use of lower wage categories more generally; as this is done without linking the low wage to the nationality of the workers (which would be outright discrimination, and thus an invalid argument for employers to use), and instead linked to the level of (formal) qualifications and skills, it can in principle be extended beyond foreign workers, consequently leading to a decline in the wages of all workers found in the lower labour segments. Such formal change in the wage-setting system serves to orient levels of compensation toward minimum levels and in turn has the potential to lead to repercussions on wage bargaining more broadly, as a part of the labour supply formally becomes cheaper and the negotiated prices of labour from different segments are connected and not independent from one another (for a similar point see Dorigatti 2017: 939).

¹⁹ For example, a lower wage category that was intended to be applicable to apprentices only, is used for migrant labour under the pretext that they lack formal qualifications or validated skill certificates. Alternatively, the use of a wage category that was only meant to function as a '*basic*' guaranteed wage when production is low can be turned into a *minimum* wage level applied to migrant labour. These type of opportunistic actions from the side of employers in their employment of migrant labour result in increased use of institutional flexibility inherent in the collective agreements, leading to institutional conversion of the wage-setting system as it in practice is applied in unintended ways. Such conversion of the function of the wage-setting system in a collective agreement is, similar to a formal deregulation of the wage-setting system, exemplified above, most plausibly also linked to effects on negotiation dynamics in favour of employers, as they can re-direct the practical application of the wage-setting system so that it better meets their preferences.

from unions in negotiations (cf. Bernaciak 2015: 15). Negotiation dynamics are also affected in cases where employers leverage different groups of workers against one another; migrant labour, being more inclined to accept inferior conditions, serves this purpose well. Importantly, as noted by Greer and Doellgast (2017), the enhanced ability to threaten exit from employment relationships covered by certain conditions by reference to use of foreign labour or service provision accessible below those conditions suffices to affect the negotiation dynamics and achieve concessions (7).²⁰ While the actual use of threats as a means to exercise power in the bargaining process matters, equally important – and more universal, as it can be used by non-complying *and* complying employers – is the *enhanced ability* to threaten exit as a means to obtain worker concessions, and the fact that the threats – whether or not they are outspoken and executed – are made credible and real in the context of the EU open market in which employers have been offered increased availability of exit options through use of foreign labour (see Greer and Doellgast 2017: 198; Pontusson 1992). Moreover, employers’ bargaining position is further strengthened in cases where employers do not comply with dominant levels of job security, as withholding workers’ access to job security weakens workers’ positions in relation to their employers. Aside from non-compliance with dominant levels of job security, abstaining from providing workers written employment contracts and declared work – procedures that place workers in a very weak position – also serve as means to allocate power to employers.

Effects on labour legislation are, in turn, captured by changes in the formal structure of labour legislation by legal reforms entailing re-regulation or deregulation, and by changes in the practical functioning by an increase or decrease in the coverage of job security regulations. Re-regulation reflects adaptation to the high pressure for change, meant to create institutional maintenance by serving as a means to preserve the deliverables of labour legislation in the changed context of the open market and to maintain the functioning of the employment relations institutions as a complex in which labour legislation serves to set the overall framework. Deregulation, in contrast, is conceived as change in a liberalizing direction that takes place as a consequence of responses that channel the pressure for change by seizing the opportunity to transform it to actual change by using the space for change offered in the open market to reduce constraints that have been imposed by existing legislation. Change in the practical functioning of labour legislation, captured by an increase or decrease in the coverage of job security regulations, is determined by the types of employment that are used. By increasing the use of forms of employment that are not covered by dominant levels of job security, a negative effect on the coverage of job security regulations is achieved – and the functioning of labour legislation is thus changed in practice. Decline in job security is an important and characteristic element of liberalization of employment relations institutions (Rothstein 2018: 4).

²⁰ Pulignano and Signoretti (2016) have, similarly, demonstrated how managements’ ability to benchmark costs based on the prices of labour and services offered by foreign workers and foreign firms, and ability to threaten to expand the use of external labour, significantly weakens unions’ ability to oppose management demands for wage and working time concessions, thereby affecting negotiation dynamics by a shift in power from workers to employers.

Effects on the formal structure of workplace representation is captured by an increase or decrease in the coverage of workplace representation, and its functioning is captured by assessing the extent to which the enforcement and negotiation capacities of workplace representatives have been weakened or strengthened as a result of the class actors' responses to labour migration. Similar to how the coverage of collective bargaining is negatively affected by systematic and widespread placement of production outside of the scope of the institution, the coverage of workplace representation declines as a consequence of use of subcontracted firms and temporary work agencies, in which workplace representation is absent or where the representational authority of in-house workplace representatives is restricted. In addition, when migrant workers are employed in foreign firms, or their workplaces are separated from local labour's workplaces that are covered by the dominant employment relations rules and practices, their ability and right to establish (non-management governed) workplace representation is typically limited, and trade unions tend to have limited success in ensuring presence of workplace representation in migrant workers' workplaces, with which considerable challenges are associated. Consequently, to the extent that such workplaces or organization of work increase, the coverage of workplace representation is negatively affected. A key function of workplace representatives lay in their enforcement capacity, contributing to enforcement of labour standards in the workplaces. Moreover, they play a key role in local negotiations and in exercising co-determination at the firm level. The enforcement and negotiation capacities of workplace representatives are negatively affected in cases where external labour is used, where both the ability and formal competence to exercise their representational functions are impeded. As noted above, in relation to the effects on negotiation dynamics, employers' ability to use – or threaten to use – external labour significantly weakens workplace representatives' negotiation capacity, as their ability to oppose demands for concessions becomes restricted under the threat of outsourcing (Pulignano and Signoretti 2016). In cases where the representational functions are placed on migrant workers themselves, both the enforcement and negotiation capacities are also weakened as migrant workers tend to be unable to fulfil these functions. Local negotiations naturally collapse when the workplace representation does not have any negotiation capacity, creating a situation in which local negotiations are one-sidedly to the advantage of employers. Moreover, due to the inter-relatedness of the employment relations institutions, abstaining from collective bargaining also holds the potential to affect both the coverage and functions of workplace representation, as establishment of workplace representation is strongly associated with use of collective agreement; absence of a collective agreement, and with that a decline in collective bargaining coverage, is thus associated with a decline in the coverage of workplace representation, and absence of a collective agreement also negatively affects the negotiation function of workplace representatives by removing their possibility to collectively negotiate conditions locally. The next section clarifies the qualitative thresholds between continuity and change, and between the three varieties of liberalization.

Qualitative thresholds between contribution to continuity and the three varieties of liberalization

A first step in assessing the qualitative thresholds between continuity and change, and between the three varieties of liberalization, is to recognize that the employment relations institutions are closely inter-related. As the employment relations institutions are an institutional complex that functions as a dynamic process and not as a static structure, change occurring in one institutional area is likely to be associated with, trigger, or reinforce change in another institutional area (Streeck 2009: 1). Workplace representation, for instance, plays an important role in contributing to enforcement of collective agreements and labour legislation. Weakened enforcement capacity of workplace representatives thus affects the level of enforcement, and opens up space for further institutional changes. Similarly, re-regulation or deregulation of labour legislation is likely to affect the functioning of collective bargaining, either by affecting the negotiation dynamics and/or by shifting labour regulation away from collective bargaining to an individualization of rights based on labour legislation. If negotiation dynamics are altered in that a shift in power from workers to employers takes place, other properties of the institutions are subsequently also likely to be affected as employers gain leverage to pursue change by reconfiguring the institutions to better meet their preferences, or by defecting from them altogether. Collective bargaining and labour legislation are tightly inter-connected in shaping the regulatory framework, and as the scope of labour legislation increases through re-regulation, primarily targeting individual employment relationships rather than collective labour relations between employers and organized labour, the regulatory scope of collective bargaining is bound to be affected. The inter-relatedness of different institutional features is also revealed by the effects on negotiation dynamics following from changes in the formal structure or functioning of wage-setting systems. Taking the inter-relatedness of the employment relations institutions, and of different institutional features, into consideration is thus crucial when assessing the impact on them; change occurring in one institution is likely to affect the formal structures or functioning of the other institutions, and it is the combination of the different configurations of instrumental changes that allows us to distinguish between the three varieties of liberalization.

The qualitative threshold between continuity and change that allows us to assess whether contribution to institutional continuity is present is based on maintenance of institutional functions and outcomes; the formal structures and functions of all three institutions should be maintained in that the institutions continue to deliver similar results. For contribution to institutional continuity to be considered as present, coverage of collective bargaining, workplace representation, and job security regulations should be maintained, and no (major) shift in power from workers to employers should have taken place so that negotiation dynamics are altered. Neither should enforcement or negotiation capacities of workplace representatives have been weakened. As a means to distinguish between the declined coverage of the institutions associated with dualization and the maintained coverage associated

with institutional continuity, I propose that the coverage of the institutions should not decline more than roughly 5 percentage points for it to be considered as largely maintained, and the coverage in both outcomes should remain above the 50 percent threshold of dominant practice. Moreover, institutional maintenance may, but does not need to, involve adaptation and resilience creation through re-regulation of the formal wage setting-system in collective bargaining or re-regulation of labour legislation. Whether these type of institutional reconfigurations should be considered as adaptation and resilience creation – and not as institutional change in a liberalizing direction – depends on whether the institutions continue to deliver similar outcomes. The difference between continuity and change thus lies in the institutional outcomes; if the institutions continue to deliver similar outcomes, institutional continuity can justly be considered as present, as institutional maintenance in a context of high pressure for change has taken place. If continuity in institutional outcomes is present, we should see no deterioration in the working and employment conditions, measured as access to job security and developments of wages, working time, and work intensity, no shift in the distribution of income in favour of capital, nor any (major) increase in employer discretion over wage determination, hiring and firing, and work organization, entailing maintained institutional functions that continue to limit employer discretion and provide distributive outcomes that limit social and economic inequalities.

The qualitative thresholds between the three varieties of liberalization are defined by the different configurations of instrumental changes and changes in institutional outcomes that are characteristic of the respective outcomes. While it is primarily the specific configurations of changes that define and make the three varieties of liberalization distinct from one another, the scope of the changes in terms of declined coverage as well as the types of instrumental changes that are unique to certain outcomes play a role in enabling us to distinguish empirically between the three varieties of liberalization.²¹ Defining of dualization is a decline in the coverage of collective bargaining, and/or job security regulations, and/or workplace representation, but where the coverage remains above the 50 percent threshold of dominant practice. As a means to distinguish between institutional continuity (coverage maintained) and dualization (coverage declined), I propose that the decline should be greater than 5 percentage points in order to be associated with dualization.²² Dualization also involves changes in negotiation dynamics through a shift in power from workers to employers, and a weakening of the

²¹ When assessing the presence of the outcomes, the institutions are considered both in conjunction with one another, and separately; while the three institutions are considered as an institutional complex, it may also be the case that only one of the institutions is exposed to change. Dualization can, for example, take place in one institution, such as through drift in collective bargaining, and does not necessarily also need to take place in workplace representation or labour legislation for the outcome to be considered as present – although, as noted above, changes in one institution is highly likely to also affect continuity and change in the other two institutions.

²² It should be noted that this is a roughly set threshold, which might as well be set around 7 or 8 percentage points; measurements of concepts in social science rarely allows for such strict precision. Nevertheless, to keep the analysis transparent and to allow for inferences to be made, a threshold needs to be set between what we consider as continuity and different forms of change.

enforcement and negotiation dynamics of workplace representatives.²³ The institutional outcomes defining of dualization are widened wage dispersion, entailing increased inequality, and a moderate shift in income from workers to employers, reflected in a disproportionate growth in firms' profits relative to real wage developments. In contrast to the maintained institutional outcomes associated with institutional continuity, the institutions continue to deliver similar results for a part of the sectoral workforce only, whereas employment and working conditions deteriorate for the remaining part of the workforce, including migrant labour. Alternatively, the inferior conditions are not necessarily deteriorating further, but spread to more workers as a growing segment of the sectoral workforce are placed outside of the scope of the institutions following the declined coverage.

Defining of deregulatory liberalization, in contrast, is that not only the coverage of the institutions decline, but also formal deregulation of labour legislation and/or the wage-setting system in collective agreements take place. The declined coverage of the institutions taking place in dualising and deregulatory liberalization is distinguished by the 50 percent threshold that defines the dominant practice; deregulatory liberalization involves a more far-reaching decline where the coverage passes below 50 percent and thus no longer constitutes dominant practice. The institutional outcomes that are defining of deregulatory liberalization are redistribution from labour to capital and increases in levels of inequality that are considerably greater than those taking place in the other two varieties of liberalization, reflected in low real wage developments in relation to firms' profits and wage dispersion greatly biased between the top and the rest. This means that employment and working conditions deteriorate for all workers, and employers gain increased discretion over wage determination, hiring and firing, and work organization – and, more generally, increased power over the sectoral workforce.

Defining of socially embedded flexibilization, in turn, is a decline in the coverage of job security regulations.²⁴ This means that the practical functioning of labour legislation must be exposed to change for this third variety of liberalization to be considered as present, and it should be combined with re-regulatory measures that re-embeds the flexibilization. While dualization and deregulation share the same logic in that the changes in each institution can be treated independently, and still be characteristic of dualization or deregulation, for socially embedded flexibilization to be considered as present it is requisite that the practical application and formal structure of labour legislation is affected, as an

²³ Assessing shifts in negotiation dynamics and enforcement and negotiation capacities of workplace representatives share similar challenges. Theoretically there is a difference in how great a shift that takes place in the three varieties of liberalization, with the greatest shift in favour of employers occurring in deregulatory liberalization. In terms of empirically assessing the qualitative thresholds, however, it is, based on a set-theoretic logic, primarily a matter of assessing whether or not there has been a shift in negotiation dynamics, and whether enforcement and negotiation capacities have been weakened or not.

²⁴ The threshold for the declined coverage of job security regulations is, unlike in dualization and deregulatory liberalization, here not specified further. What matters is that a distinct decline in the coverage is present through which flexibility is increased, but it may either remain below or above the 50 percent threshold of what constitutes the dominant practice. It is the combination of flexibility-enhancing and socially embedding changes, and not the exact scope of the declined coverage, that defines socially embedded flexibilization; the scope of the decline can be extensive – but what matters is that also a counterweight is present through which the flexibilization is socially embedded.

increased flexibilization in employment along with a socially embedding component (which can only be achieved through re-regulation) is defining of this variety of liberalization. Moreover, unique to the outcome of socially embedded flexibilization is a conversion of the wage-setting system in collective agreements through which its practical functioning is redirected. Conversion of the wage-setting system does, however, not need to take place for the outcome to be considered as present. Characteristic of socially embedded flexibilization is also that the coverage of collective bargaining and workplace representation is maintained, as well as the enforcement and negotiation capacities of workplace representatives. The institutional outcomes defining of socially embedded flexibilization is that equality levels are maintained, and that only a minor redistribution from labour to capital takes place, reflected in moderate negative effects on wage developments and moderate positive effects on firms' profits. Common in all three varieties is that negotiation dynamics are affected, but the scope of the effects differ. In socially embedded flexibilization, negotiation dynamics are affected as a consequence of the increased use of flexible forms of employment through which workers' job security is withheld and power is shifted to employers, although due to the re-embedding measures, the effects on negotiation dynamics are expected to be smaller than in the other varieties of liberalization. However, to the extent that the wage-setting system is conversed, this further affects negotiation dynamics in favour of employers.

4. Measuring the causal mechanisms: The observable manifestations of the parts of the causal mechanisms

The operationalization of the causal mechanisms involves specifying what type of empirical fingerprints each part of the mechanism would leave, if it were present in an empirical case.²⁵ Each theoretical component of the four causal mechanisms is associated with observable empirical manifestations that I expect to find if the causal mechanisms are present and function as hypothesized. The four causal mechanisms proposed in this dissertation are composed of three parts. The first two parts of the respective mechanisms share commonalities in that they are based on either presence or absence of the institutions being challenged (part 1), and presence or absence of active institutional support (part 2). The third part of the mechanisms is unique in each causal process, involving either resilience creation, deliberate neglect, redirection, or institutional defection, each of which is associated with distinct observable manifestations. The tables visualizing both the theoretical and empirical levels of the causal mechanisms are included in Appendix III. Below, I present the observable manifestations, that is, the measurements, of the parts of the causal mechanisms. What makes the below manifestations theoretically unique is that they all relate directly to labour migration or take place in the pre-text of

²⁵ Empirical fingerprints, empirical manifestations, and observable manifestations are here used interchangeably to refer to the measurements of the parts of the causal mechanisms. In Bayesian terms, the observable manifestations are referred to as *predicted evidence* or *postulate*.

labour and service mobility, meaning that if evidence of the postulated manifestations is found, it can plausibly not be evidence of alternative explanations, as it relates directly to how employers and trade unions have responded to the pressure for change originating from increased labour and service mobility.

4.1 Measuring part 1: Observable manifestations of presence or absence of challenging of the institutions

What constitutes challenging of the employment relations institutions? Challenging is here manifested as the situation in which employers pursue change strategies through their employment of migrant labour, or in the pretext of labour or service mobility, and/or push for deregulatory measures and ways to avoid enforcement. In presence of challenging of the institutions, we can trace the introduction of a new logic of action that employers pursue through their employment of migrant labour specifically, which deviates from compliance with the dominant employment relations rules and practices. This definition is deliberately kept fairly broad, as challenging from the side of employers may take on a multitude of forms. What matters for it to be considered as an observable manifestation of presence of challenging of the institutions is that it takes place in relation to labour migration or in the pre-text of labour and service mobility. While challenging of the employment relations institutions is present in the Institutional Redirection Mechanism and in the Institutional Defection Mechanism, the first part of the Institutional Neglect Mechanism instead involves *subtle* challenging of the institutions. The observable manifestation of subtle challenging is that employers pursue change strategies through their employment of migrant labour specifically by exploiting a gap between average conditions offered to regular native workers and minimum conditions offered to migrant labour. The observable manifestation of absence of substantial (including subtle) challenging of the institutions, in contrast, is that employers do not pursue change strategies through their employment of migrant labour or in the pretext of labour migration, and they do not push for deregulatory measures and ways to avoid enforcement. There is a qualitative threshold between substantial and non-substantial challenging, and it needs to be assessed in each individual case whether the challenging is substantial and meaningful enough to have causal powers that can drive a change process forward.

4.2 Measuring part 2: Observable manifestations of presence or absence of active institutional support

The observable manifestation of active institutional support is specified as a push for re-regulation and/or strengthened enforcement in the context of labour or service mobility. The constellation of the actors demonstrating their active support may include both employers and trade unions, or trade unions only. For part 2 of the Institutional Resilience Creation Mechanism to be considered as present, both actors must demonstrate their active support for the institutions by pushing for resilience creation

measures, here defined as re-regulatory measures and/or strengthened enforcement.²⁶ Part 2 of the Institutional Redirection Mechanism, in contrast, involves trade unions' active support only, and is manifested as a push for re-regulation, potentially in combination with strengthened enforcement, from the side of the trade union(s). In contrast, the *restricted* active support from both employers and trade unions, present in the Institutional Neglect Mechanism, involves the continued use of collective labour regulations as the dominant logic of action in employment of native labour, but where the actors abstain from actively attempting to extend the scope of the institutions to cover migrant labour, manifested as no push for re-regulation or strengthened enforcement to adapt the institutions to the changed context, while the overall institutional framework is upheld. Finally, the absence of active institutional support, present in the Institutional Defection Mechanism, is manifested as no push for re-regulation and strengthened enforcement, along with the spread of a new logic of action through which more employers turn to opt out of dominant employment relations rules and practices.

4.3 Measuring part 3: Observable manifestations of institutional resilience creation, deliberate neglect, redirection, and defection

Institutional resilience creation

Whereas the observable manifestation of active support is defined as a push for resilience creation measures, the manifestation of resilience creation is defined as not only demonstrating support of the institutions, but actually carrying out resilience creation measures, here specified as re-regulation and/or strengthened enforcement. For resilience creation to be considered as present, enforcement should have been strengthened or re-regulatory measures should have been introduced. Moreover, as the causal mechanism captures how the class actors respond to the pressure for change stemming from increased labour migration, the strengthened enforcement or re-regulation should be directly related to, or take place in the pretext of, labour or service mobility.

Deliberate neglect of institutions

Deliberate neglect of the employment relations institutions is manifested as the situation in which employers pursue a dual logic of action by treating the migrant and native labour supplies differently, likely but not necessarily associated with the use of the migrant and native labour supplies to fill different functions, and in doing so, partwise neglecting the institutions and incrementally causing drift. More concretely, the neglect is manifested as declining coverage of collective bargaining, job security regulations, and workplace representation.

²⁶ Depending on the case-specific context, re-regulation may be required to stave off pressure for change and ensure that the process continuous towards resilience creation, and in the direction of institutional continuity. Strengthened enforcement may, however, suffice as a means to achieve resilience creation that contributes to continuity.

Institutional redirection and adaptation

Part 3 of the Institutional Redirection Mechanism contains two countervailing forces, namely redirection of institutional functions from the side of employers as they introduce increased flexibilization through the practical application of collective agreements or through increased use of temporary employment, and in parallel institutional adaptation achieved by trade unions, with the support of the state, to re-embed and confine employers' liberalising moves. Institutional redirection is manifested as the situation in which employers redirect or reinterpret the wage-setting system in collective agreements through their employment of migrant labour or in the pretext of labour and service mobility, and/or shift to temporary forms of employment through their use of migrant labour, manifested as declining coverage of job security regulations. Institutional adaptation is manifested as re-regulation of labour legislation, which specifically should involve the introduction of measures that collectivizes risk and supports the continued use of collective labour regulation, directly related to or in the pretext of increased labour and service mobility.

Defection from institutions and turn to new logic of action as dominant practice

The observable manifestation of defection from the institutions, involving a turn to opt out as the dominant practice, is specified as the situation in which employers, in their new logic of action associated with the use of migrant labour, abandon collective bargaining, and/or job security regulations, and/or workplace representation, reflected in declining coverage of collective bargaining, job security regulations, and workplace representation.

5. Case-selection in process-tracing

The logic of case selection in process-tracing is based on selecting typical cases, defined as cases where the cause that triggers the mechanism, the outcome that it leads to, and the contextual conditions under which the causal relationship is expected to occur are all present, whereby the theorized causal relationship is *possible* and the causal mechanism under investigation may theoretically be present (Beach and Pedersen 2016a: 22).²⁷ This research design, designed to trace four different causal

²⁷ The case selection strategy that is appropriate for process-tracing thus differs from dominant case selection strategies, such as selecting most/least-likely cases. The logic of most/least-likely cases is not compatible with the underlying ontological assumptions about the nature of causality in case-based research, conflating both theoretical (ontological) and empirical (epistemological) likelihood, as well as within-case and cross-case likelihoods (Beach and Pedersen 2016a: 19). As argued by Beach and Pedersen (2016a), the case selection strategy in process-tracing needs to be aligned with the assumptions about deterministic and asymmetric causation, from which it follows that we should not select analytically irrelevant cases, but instead focus on typical cases where the investigated causal relationship can in principle be present (19); “understood in deterministic and asymmetric causal terms, the relevant distinction is not most/least likely but simply possible and not possible” (21). While one will never know a priori if a mechanism is actually present in a case, it only makes sense to build and test a theory about a causal mechanism linking a cause and an outcome in a case where the cause and outcome are present (Beach and Pedersen 2016b: 314); there is no logic in selecting a case for in-depth analysis of a causal mechanism where we know that

mechanisms, thus demands a case selection where the respective combinations of employers' and trade unions' responses to migrant labour and the outcomes hypothesized to be associated with them are present, along with the contextual conditions that are theorized to enable the mechanisms to function.²⁸ The boundaries of the *four* populations of cases that define the conditions under which each of the causal processes are expected to occur pertain to the level of enforcement (high/low) of labour standards, characteristics of the political context capturing the coalitions between the class actors and the state (coalition of institutional challengers/supporters), and the properties of the employment relations institutions themselves (presence/absence of inherent ambiguities).²⁹ The typical cases that belong to each of the populations are meant to be causally similar in that they share the same causal and contextual conditions, and outcome – whereby the same mechanism may also be present (Beach and Pedersen 2016a: 2). As employment relations are organized sectorally and the type of labour migrants in focus here are concentrated in some sectors of the economy, with the implications that employers' use of migrant labour may differ across sectors, as does the ability of trade unions to protect migrant labour, economic sectors have been identified as the appropriate level of analysis to investigate these causal processes (see Bechter et al. 2012).³⁰ More generally, the relevant sectoral characteristics of the investigated cases are that migrants are extensively employed in the sectors, meaning that pressure for change is present, and that the sectors contain low- to medium-skilled labour segments that are in comparatively weak positions in relation to their employers, meaning that there is potential for employers to opt out of the dominant employment relations rules and practices in the use of migrant workers. Only private sectors are investigated, as the employment relations are very different in the public sector. Moreover, as the causal relationships can only be expected to hold under a causally homogenous time period, the populations also need to be defined in terms of their temporal scope. In

either the cause, outcome, or requisite contextual conditions are absent, because then we know already at the outset that the mechanism will also not be present (ibid. 319-320).

²⁸ While process-tracing requires this type of case selection, it is admittedly a highly challenging and not unproblematic case selection strategy as we almost never know enough about a case to fully be able to establish the presence of the cause, outcome, and contextual conditions before we have actually studied it. The expectation that one has identified what the contextual conditions are, and the presence of them, as well as the presence of the cause and outcome, which requires substantive case-specific knowledge and interpretation of what evidence means in the context of each case, already when selecting cases early in the research project overestimates not only the knowledge that was available at the point of case selection, but also the extent to which my causal theory was specified at that point in the research process. As noted by Fairfield (2015), “case-selection strategies for qualitative research often prove infeasible in practice because they require information that is not available at the outset of research” (297). This describes well the research situation faced in this study, where only limited information about the class actors' responses in the respective sectors were available, far from sufficient to robustly categorize their responses as compliance/opt out and protective/non-effectively protective, and assessments about the directions of continuity and change had focused on national rather than sectoral employment relations institutions. Consequently, actually assessing the set memberships of the cases involved extensive case analysis.

²⁹ Contextual conditions should per definition only include those conditions that are required for the mechanism to operate (Beach and Pedersen 2016a: 6-7).

³⁰ The group of labour migrants in focus is those who serve as a temporary foreign labour supply for employers, who have resided maximum five years in the host labour market, and belong to low- to semi-skilled labour segments. Both third country and EU internal labour migrants are included, although EU internal labour migrants is the main group in all cases except the Swedish hotel and restaurant sector.

specifying the theoretical time, defined as the time in which a causal theory is expected to play out (Rohlfing 2012: 129-133), the key thing is to capture the moment from which the causes and contextual conditions are present, so that the respective mechanisms are triggered, until the outcomes have occurred – whereby the time period can be considered as causally homogenous. The causally homogenous time period is here defined as post-2004, following the expansion of the EU open market, up until the late 2010s. While labour migration has a longer history and had been important in several of the sectors also prior to the market expansions of the 2000s, the increased marketization *changed the context* by introducing free labour and service mobility in an open market where labour markets with highly different wages and labour standards were integrated. The causally relevant aspect of this changed context is that it entailed an *increase in the pressure for change* in the employment relations institutions in the host labour markets by drastically expanding employers' recruitment base and leading to considerable increases in labour and service mobility.³¹

Following a strategic case selection that took place early on in the research process, the empirical process of assessing the set memberships of the cases were ongoing aspects of my research, which eventually allowed me to make a more confident categorization of the set memberships of six empirical cases of economic sectors serving as destinations for labour migrants in advanced capitalist economies.³² The set memberships of the cases are pictured in Figure 4.1, where the empirical cases are categorized based on the presence of the causal and contextual conditions. The four types in the typology represent four different causal processes, where the combinations of employers' and trade unions' responses are hypothesized to be linked to distinct outcomes through one of the four theorized causal mechanisms.

³¹ Without discounting the possibility of rapid and direct changes, it is plausible that the institutional impact of labour migration unfold through slow and long-term processes of adjustment (Friberg 2013: 79; Bengtsson 2014: 4), similar to how institutional changes more generally tend to evolve through processes of gradual incremental change (Streeck and Thelen 2005: 30-31; Mahoney and Thelen 2010: 16, 22). It is thus a difficult task to determine the time frame within which effects of employers' increased use of migrant labour, and with that the outcomes of the investigated processes, can be expected to occur. It does, however, seem reasonable to expect that the temporal dimensions of the mechanisms and the time horizon for the outcomes to become apparent would be within the 10 to 15 years captured in the investigated period, with the theorized mechanisms functioning in the longer rather than shorter term as change comes about when increasingly more employers turn to a new logic of action that gradually becomes dominant over time. Moreover, it is also plausible that incremental changes in some of the cases have been triggered by employers' use of migrant labour already in the early 1990s, when access to migrant labour was primarily offered via bilateral agreements and the foundations for both employers' and trade unions' responses were established. In striving for causal homogeneity I do, however, limit the bounds of the time period to post-2004 when the context changed.

³² Concretely, the assessment of the set memberships of the cases has been done by evaluating the content of the found empirical material that I claim to be evidence of the respective concepts, by evaluating the degree of confidence we can have in that the concept measures that I have proposed are actually accurate in that the operational definitions manage to capture the essence of the conceptual definitions of the causes and outcomes, and by evaluating the degree of accuracy of the evidence (Beach and Pedersen 2016b: 149-151). This evaluation has involved interpretation where I have made use of the case-specific knowledge that I have acquired throughout the research process, and it involved explicitly assessing the degree of empirical ambiguity of whether the respective cases are in the sets of the concepts or not (ibid. 119).

Figure 4.1 Typology of labour migration responses and categorization of empirical cases

		Trade unions' responses	
		Protection of migrant labour (equal treatment)	Non-effective protection of migrant labour
Employers' responses	Full compliance	<p>Outcome 1: Maintenance of employment relations rules and practices – Contribution to institutional continuity</p> <p>Causal mechanism: Resilience creation in institutions</p> <p>Empirical case: the Norwegian construction sector</p> <p style="text-align: right; font-size: 2em;">1</p>	<p>Outcome 2: Liberalization as dualization – Institutional change through drift</p> <p>Causal mechanism: Deliberate neglect of institutions</p> <p>Empirical case: the German manufacturing sector</p> <p style="text-align: right; font-size: 2em;">2</p>
	Opt out	<p>Outcome 3: Liberalization as socially embedded flexibilization – Institutional change through conversion</p> <p>Causal mechanism: Re-direction of institutions</p> <p>Empirical cases: the Swedish construction and hotel and restaurant sectors</p> <p style="text-align: right; font-size: 2em;">3</p>	<p>Outcome 4: Liberalization as deregulation – Institutional change through displacement</p> <p>Causal mechanism: Defection from institutions</p> <p>Empirical cases: the German construction and hotel and restaurant sectors</p> <p style="text-align: right; font-size: 2em;">4</p>

The Norwegian construction sector has been identified as a typical case where there is overall compliance with the employment relations rules and practices from the side of employers in their use of migrant labour, and where the trade unions are effectively protective, serving as a case in which the Resilience Creation Mechanism is investigated. This first causally homogenous population of cases in which only one typical case has been identified is defined by the presence of the contextual conditions of high levels of enforcement of labour standards, a coalition of institutional supporters, and absence of inherent ambiguities in the institutions. The German manufacturing sector has been identified as a typical case that represents the combination of responses where employers comply with minimum standards in their use of migrant labour and the trade union's response is not effectively protective of migrant labour, and is investigated as a case in which the Deliberate Neglect Mechanism is hypothesized to be present. The causally homogenous population of cases to which the German manufacturing sector belong is defined by the presence of high levels of enforcement of labour standards and a weak coalition of institutional supporters. In the cases of the Swedish construction and hotel and restaurant sectors, I argue for the categorization of employers' responses as opt out, and trade unions' responses as effective protection. These two cases are investigated as typical cases in which the Institutional Redirection Mechanism is hypothesized to be present and link the actors' responses with the outcome of socially embedded flexibilization. The causally homogenous population to which these case belong is defined by the presence of low levels of enforcement of labour standards, a coalition of institutional supporters

and challengers, and inherent ambiguities in the institutions.³³ The German construction and hotel and restaurant sectors have, in turn, been identified as typical cases that represent the combination of responses where there is widespread opt out of dominant employment relations rules in employers' use of migrant labour and the trade unions' responses result in non-effective protection, and where the Institutional Defection Mechanism leading to deregulation through institutional displacement is hypothesized to be present. This last causally homogenous population of cases is defined by the presence of low levels of enforcement of labour standards, and a coalition of institutional challengers. The confidence that we can have in the categorization of these cases, which has important implications for the type of inferences that are enabled, depends on the strength of the evidence upon which it is based, along with the arguments provided to justify the set memberships. This is a central part of the case analyses, which will be accounted for in the respective case chapters (ch. 5-8), where the class actors' responses are mapped through in greater detail, and where the evidence of the outcomes of the processes is presented. Suffice it here to recognize that the empirical uncertainty as to the set memberships of the German manufacturing, construction and hotel and restaurant sectors is fairly low, whereas the empirical uncertainty is higher in the set memberships of the Norwegian construction sector, and the Swedish construction and hotel and restaurant sectors.

While recognising the potential drawback associated with selecting so many cases for process-tracing case studies, which – in order to be conducted properly – require a large amount of time and a rich empirical record, the aim of this case selection process has been to strategically select typical cases that will enable strong within-case inferences, and to identify at least one typical case for each combination of responses, whereby I am able to investigate the four theorized causal processes. Together, these six within-case analyses allow me to uncover sectoral similarities and differences that cut across countries, and to test whether the differences in the actions of key actors – that is, trade unions, employers, and states – lead to distinct outcomes in either contributing to institutional continuity or achieving change, as theorized.

6. Empirical material

The empirical analyses in chapter 5 through 8 rely on a variety of data sources, including official government documents, legal documents including collective agreements, reports from employer

³³ The Norwegian hotel and restaurant sector was investigated as part of this population of cases but eventually, due to a high empirical uncertainty as to the set-membership of the employers' and trade union's responses and very weak evidence of the presence of the process, excluded from the analysis. The Norwegian hotel and restaurant sector had seen an impressive increase in employers' use of migrant labour following the EU market expansions. Between 2008 and 2017, the share of native workers in the sectoral workforce declined from 66.7 percent to 49.9 percent (Statistics Norway), entailing that slightly more than half of the sectoral workforce were foreign workers, and that the pressure for change stemming from employers' increased use of migrant labour without doubt was present. Yet, the inability to, with a reasonable degree of confidence, document that the case was a member of this specific set, made it unfit for testing the operation of the mechanism, as we could not even be sure that the causal condition triggering it was present.

organizations and trade unions, interviews with employer and trade union representatives, and state agencies that were carried out between April and July 2015, and descriptive statistics, as well as existing case studies as secondary sources. In taking advantage of the fact that process-tracing enables the use of non-comparable pieces of evidence when testing hypotheses, the data source selection has been based on casting the net broadly in terms of acquiring text-based sources and descriptive statistics, combined with strategically targeted interviews with key informants, that together can offer as a complete picture as possible of the investigated causal processes. The empirical investigation have required empirical observations that serve to establish the presence of the contextual conditions, causes, and outcomes in the respective cases, and observations that can be transformed into mechanistic evidence with which it is possible to test whether the causal mechanisms are present and function as theorized. The evidence needed for the parts of the causal mechanisms are primarily of a qualitative nature, including legal changes and policy papers that capture how the actors respond to the pressure for change stemming from increased labour migration, whereas the empirical material needed to establish the presence of the contextual conditions, causes and outcomes to a greater extent rely on a mixture of descriptive statistics, interview accounts, and documents. What constitutes relevant data sources is simply determined by whether it contributes to enable me to assess whether the theorized causal relationships have been present or not in the respective cases. Below, I map through the different data sources and the purposes to which they have been deployed. Appendix III (see *The production of mechanistic evidence*) offers a brief account as to how the raw empirical material is evaluated and turned into mechanistic evidence using informal Bayesian logic of inference.

I conducted face-to-face semi-structured interviews with key informants in confederal and sectoral employer organizations and trade unions, local workplace representatives, a trade union associated migrant workers' consultation office in Germany, and state agencies including the Swedish national mediation office and the labour inspectorates in Norway and Sweden, a cross-agency service centre for foreign workers in Norway, and the customs service tasked with the control of undeclared work (*Finanzkontrolle Schwarzarbeit (FKS)*) and the tax investigation authority in Germany. In Norway, I also consulted academic experts at the research institute Fafo.³⁴ As interviews in general are

³⁴ In total, 14 interviews were carried out in Germany, 16 in Norway, and 14 in Sweden. For a complete list of the interviews conducted, see *Appendix V*. In Norway and Sweden, interviews were only conducted in the capital regions, which can be justified by the concentration of EU internal and third country labour migrants in these regions, and the fact that the key informants also had an overview of the situations across the countries. In Germany, interviews were conducted in the capital and in the regions of Hesse (in Frankfurt) and Baden-Württemberg (in Stuttgart and Heidelberg), which were particularly important as a means to gain information about the situation in the German manufacturing and construction sectors. The interviews were conducted in the respective national languages without the involvement of translators. The interviews were recorded and transcribed, with the content systematically analysed in MAXQDA. The interviews lasted on average about one hour, with some taking two to three hours. While interviews with migrant workers would have contributed to corroborate the accounts given by employer and trade union representatives, such a data gathering strategy was, within the scope of this dissertation, too resource demanding and entailed too much of a risk in terms of data access and reliability. As a means to gain insights into workplace practices, I instead chose to interview representatives of local trade unions who had been in direct contact with migrant workers, and, in Germany, a migrant workers' consultation office as they had a better overview of the employment situations than individual migrant workers.

very unreliable measurement instruments, and empirical material from interviews generally cannot be considered as strong pieces of evidence, the interview data has primarily been used to improve my case-specific knowledge, enable me to identify the contextual conditions, and – in combination with text-based sources and descriptive statistics – contribute to establish the presence of the causes by offering insights into employers' use of migrant labour and trade unions' responses thereto. When it comes to establishing the presence of the outcomes, the interviews with trade union officials were particularly important as a means to assess the effects on the enforcement and negotiation capacities of workplace representatives. The interview data also served as the evidential base of the first round of building and probing the causal mechanisms, particularly in terms of refining the observable manifestations of the parts of the mechanisms. While the extent to which specific quotes from the interviews have been used as evidence to support theoretical claims is limited, the interviews have, aside from offering contextual knowledge, drawn my attention to important events such as legal or policy changes in the respective cases, and, importantly, pointed me to other, often text-based, data sources that I could subsequently use as evidence of the parts of the causal mechanisms. In some instances, the interviews also provided descriptive statistics, including the number of migrant workers organized in the trade unions, annual accounts of the number of labour inspections carried out, as well as reductions or increases in the staffing of the labour inspectorates following political decisions. When it comes to assessing potential bias in the content of the interviews conducted, it needs to be recognized that the key actors in this study are by definition interest organizations, and there was more often than not a discord between the accounts provided by the employer organizations and trade unions.³⁵ To this end, the interviews with the state agencies have also served to corroborate the accounts of the class actors.

An initial aim was to also interview individual employers who employ migrant labour. However, due to difficulties in accessing such interviewees and the limited time available for field research, I was only able to carry out one such interview, with a manager in a major construction firm operating as main contractor in Norway and Sweden. Without over-interpreting the meaning of this non-participation, be it safe to conclude that individual firms have little interest in revealing information about their ongoing activities, regardless if they are complying or opting out of the employment relations rules and practices in their use of migrant labour.

³⁵ When it comes to evaluating the content of the interviews with the trade unions, I have taken into account that they may have an interest in placing special emphasis on problems that they want to draw attention to, while possibly also being reluctant about revealing their own potential short-comings in terms being protective of migrant labour. As the assessments of the trade unions' responses rely heavily on interviews with trade union officials, evaluating potential bias originating from a motive on their side to picture themselves as doing more than what they do or being more successful than they are in terms of protecting the rights of migrant workers plays an important role in improving data reliability. When it comes to the interviews with the employer organizations, the purpose of participating in the interview from their point of view was chiefly to get their opinions across, and while the interviews with employer organizations may carry limited value in terms of information as to actual workplace practices involving migrant labour, the interviews were valuable in terms of gaining insights into the perspectives of employers in the respective sectors, whereby sectoral differences and similarities could be uncovered, and in establishing employers' preferences for changes that they were pushing for. When it comes to evaluating the content of the interviews with representatives of the state agencies, I have taken into account that they may have an interest in presenting the situation as if they have fulfilled their obligations, for example, when it comes to enforcement responsibilities, and/or whether they downplay certain problems that they for different reasons do not want to – or are unable to – deal with. In this regard, I have also taken into consideration the political contexts within which the interviews took place, as there are situations in which representatives of state agencies may be more frank and share sensitive information, particularly in a changed political landscape.

The document analysis has been based on primary sources, including official publications and statements by the employer organizations and trade unions, reports by the state agencies, legal and policy documents, and newspaper articles, and secondary sources, including case studies in existing literature.³⁶ The text-based sources have served as the main source of empirical material with which evidence of the parts of the causal mechanisms was generated, and have also been important in establishing the presence of the causes and outcomes by offering snapshots at different points in time throughout the time period. As much of the primary sources used have been produced by either the trade unions, employer organizations, or state agencies, they cannot be considered as independent sources in relation to the interviews. That being said, they do, nevertheless, offer strong evidence in terms of the positions taken by the actors when it comes to changes that they have been pushing for (used as evidence of part 2 of the respective mechanisms), and include important information about the employment and working conditions of migrant labour, as well as institutional changes that have taken place.

The descriptive statistics are based on data from national statistical offices, and data provided by the employer organizations, trade unions, and state agencies, including the labour inspectorates and the Swedish national mediation office. Descriptive statistics have served as relevant evidence in contributing to establish the presence of the contextual condition pertaining to the level of enforcement (measured as number of inspections carried out), the causes and the outcomes in the respective cases.³⁷ It also serves as evidence of part 3 of the Resilience Creation Mechanism that is manifested as strengthened enforcement, measured as increased staff or resources to enforcement agencies. When it comes to the outcome, descriptive statistics have played an important part in assessing the outcomes of the processes in terms of continuity or change in the coverage of collective bargaining, workplace representation, and job security (measured as share of temporary employment vis-à-vis permanent

³⁶ The large volume of primary documentation that has been accumulated throughout the research project has, similar to the interviews, been systematically analysed in the qualitative data analysis programme MAXQDA.

³⁷ Descriptive statistics from national statistical offices have been used to demonstrate trends in firms' annual turnover, trends in sectoral employment, and trends in the share of foreign workers employed in the sectors as a means to establish that pressure for change in the shape of extensive use of migrant labour is present across the cases (see ch. 2), and to inform the assessments of employers' responses in the empirical chapters by uncovering the sectoral structures in terms of firm sizes that are dominant in the respective sectors (ch. 5-8). Secondary descriptive statistics from existing literature are also used to demonstrate changes in the organizational rates of the class actors over the last two decades, as a means to give insight into the context in which the processes are taking place. Along with mapping labour migration trends, one of the main purposes of the use of descriptive statistics has been to assess the scope of employers' use of different types of migrant labour (e.g., posted workers, temporary agency workers, or regular labour migrants) in the respective sectors, as a basis for establishing the presence of the cause, namely whether employers opt out or comply with dominant employment relations rules and practices in their use of migrant labour. As there is limited data availability in terms of migrant workers' collective bargaining coverage, assessing whether employers' use collective agreements in their employment of migrant labour has been done with the help of proxies based on statistical estimates of the scope of the use of posted work, migrant workers used via temporary agency work, sub-contracting, and self-employment, coupled with case-specific knowledge from interviews and existing literature that offers insights about which types of migrant labour tend not to be covered by collective agreements. Where possible, this has also been combined with trade union provided data on the share of migrant workers organized in their union, from which it can be deduced that they are covered by collective agreements. In mapping the extent to which employers in the different sectors use the different types of labour migrants, the main limitation has been restricted data availability in Sweden and Germany, whereas Norway stands out in terms of offering the soundest statistical estimates via register data.

employment). In this regard, the data situation proved, in some aspects, to be more favourable in Norway and Sweden, whereas generating equivalent data for the German cases was more challenging.³⁸ Using sector, as opposed to national level aggregates, as the level of analysis also has had implications for the data availability when it comes to capturing the institutional outcomes associated with the development of the employment relations institutions. As it was outside of the scope of this dissertation to systematically assess trends in real wage developments, firms' profits, and wage dispersion, I have also here relied on existing literature. Despite that the descriptive statistical data on institutional outcomes is of a patch-work nature, it is in triangulation with interview and text-based data sources possible to assess the *direction* of continuity or change in the employment relations institutions of the respective cases.

As a consequence of designing highly robust measures that are challenging to apply in practical research, assessing the class actors' responses, i.e. establishing the presence of the cause in the respective cases, has been associated with the greatest data reliability and availability issues. While attempting to be creative as a response to the limited data availability as regards to migrant workers' employment and working conditions, the data generated for several of the measures, particularly when it comes to assessing the extent to which employers are enforcing labour standards in their employment of migrant labour, must be understood as rough estimates.³⁹ The data used to establish the presence of the responses is the weakest where interview data alone serves as the source. In general, I have, however, been able to combine different data sources, and thereby strengthen data reliability.⁴⁰

³⁸ While an initial idea was to use primary statistical data by processing panel data from the German Socio-Economic Panel and the IAB Establishment Panel, this data collection strategy had to be abandoned; after having invested a fair amount of time, I had to recognize that such a data processing task was outside of the capacity of this specific research project. Instead, I have had to rely on secondary statistical data published in existing literature, where other scholars have processed the data. While I am confident that this has not entailed a compromise with data reliability, it has entailed certain limitations, as the goals of those scholars naturally did not fully fit with the data needs of the analyses carried out in this dissertation.

³⁹ When it comes to measuring the component of employers' responses pertaining to enforcement of labour standards in the employment of migrant labour, statistical data from the national statistical offices and from the trade unions covering the national sectoral workforces has been used as a point of reference to establish what constitutes dominant wage levels, average working time, and dominant levels of job security in the respective sectors. Collective agreements and/or officially reported statutory minimum wages have been used as sources to establish what constitutes the applicable minimum wage levels. As statistical estimates of migrant workers' wages, working time, and access to job security are generally lacking, I have had to turn to other data sources, including reports by employer organizations and trade unions, and interview accounts, as a means to assess whether migrant workers' working and employment conditions correspond to dominant standards. When it comes to assessing the scope of undeclared work among migrant workers, I primarily have had to rely on interviews with trade union officials and state agencies, government reports, and assessments made in existing literature.

⁴⁰ Assessing whether the trade unions' responses are effectively protective or not relies on a mix of interview data and text-based sources, including reports from the trade unions themselves. This empirical material has then been corroborated with accounts in existing literature that has studied the respective trade unions. When it comes to ensuring use of collective agreements to regulate the employment of migrant labour, I have through the interviews attempted to find out whether the unions actively try to conclude collective agreements in migrant workers' workplaces. In assessing whether or not trade unions approve that the content of the collective agreement applied to migrant labour is different from that of native labour, I have, when possible, used the primary source of the respective collective agreements, and when not, I have relied upon the interview accounts in which statements about the content of the applied collective agreements were made. The assessments of the extent to which unions contribute to enforcement of labour standards for migrant labour are also based on a combination of interview, text-based and statistical data sources. Assessing the presence of trade union workplace representation in migrant

7. Conclusion

This chapter has presented the causal case study method applied in this dissertation, explained the logic of inference used as well as the case selection strategy, and detailed the empirical material serving as basis for the process-tracing analyses presented in the subsequent four empirical chapters. Building upon the refined conceptual definitions and theorized causal mechanisms presented in the previous chapter, this chapter has also offered refined and robust measures of employers' and trade unions' responses to migrant labour, of institutional continuity and change in the employment relations, and of the four causal mechanisms at the centre of analysis. In taking advantage of recent methodological developments (particularly Beach and Pedersen 2013, 2016b; Fairfield and Charman 2017, 2019), this chapter has outlined the novel analytical tools offered by process-tracing based on logical Bayesianism, which hold the potential to overcome the inability in existing literature on the impact of labour migration to draw any stronger causal inferences. The reason for the emphasis on methodological robustness is ultimately a logical consequence of the research question that the dissertation sets out to answer; namely to understand *how* the class actors' responses to migrant labour affect the employment relations institutions. Process-tracing is a strong analytical tool for detecting *how* a cause contributes to produce an outcome (Beach and Pedersen 2016b: 4). The systems understanding of causal mechanisms at the core of process-tracing allows me to trace the causal chains of the four investigated processes, whereby evidence of the disaggregated mechanisms that link the class actors' responses to institutional continuity or change can be generated. In doing so, we gain insight as to how the causes produce the outcomes, and stronger evidence-based causal inferences can be made as each step of the causal processes is traced empirically (ibid. 302, 319; Beach 2016: 463). In using process-tracing, this dissertation will advance the debate by providing insight into how the causal processes play out, enabling us to upgrade or downgrade our confidence in that there is a causal relationship between the class actors' responses to labour migration and the institutional development of the employment relations. The type of causal claims that are made in this dissertation are deterministic and asymmetric, and the causal inferences made are based on degrees of confidence in the causal relationships being valid, with both confirmatory and disconfirmatory inferences being enabled by the applied method. The degree of confidence that we can hold in the four causal relationships being valid depends on the quality of the evidence produced in the within-case analyses; the strength of the causal inferences made in the empirical chapters are based

workers' workplaces primarily relies on interview data, as does the extent to which the unions have pursued legal cases as a means to enforce labour standards. Assessing whether a trade union is actively organizing migrant labour is based on interview accounts with the unions, revealing whether they use an organizing strategy targeting migrant labour, as well as descriptive statistics of the number of migrant workers organized in the respective unions (where available), complemented by trade union reports revealing whether they have earmarked positions for trade union officials with language skills, including annual reports on resources spent on staff with language skills and/or translators. The unions' websites and outreach material provided in different languages have also been used as evidence of organizing campaigns targeting labour migrants. Whether the trade union has undertaken efforts to build the capacity of migrant workers to enable them to protect their rights is similarly based on interview data, complemented by annual reports on resources spent on activities related to migrant workers.

on the strength of my causal arguments and on empirically demonstrating the causal links between the class actors' responses to migrant labour and their impact on the institutions. As process-tracing is based on within-case analyses, it does not provide the methodological tools to determine how strong a causal relationship is in a case.⁴¹ Instead, the type of causal inferences made in chapter 5 through 8 is that the identified causes are *causally related to* the outcomes; that is, I am making inferences about how the actors' responses to migrant labour *contribute to* the trajectories of institutional continuity or change, based on demonstrating a causal link between the causes and outcomes, but not about *how much* the investigated causes have contributed to, for instance, declined collective bargaining coverage. In the subsequent four empirical chapters, I am thus investigating whether the identified causes have an influence or not on the institutional development of the employment relations institutions, and I am not making claims about the magnitude of the postulated causal relationships. Moreover, the types of inferences that cannot be made in this research design are claims about sufficiency or necessity, which cannot be empirically assessed within a single case, but would require a different logic of inference based on a counterfactual comparison (Beach and Pedersen 2016b: 308). Similarly, while I through theoretical and empirical assessments identify what I propose to be requisite contextual conditions under which the respective causal processes are expected to play out, a comparative method would be needed to determine that all the identified contextual conditions are indeed requisite – and to verify that no contextual conditions have been omitted. In view of the problem of equifinality at the level of mechanisms – that is, that the same cause and the same outcome may be linked through different mechanisms in different cases – it is, however, important to recognize that comparative methods do not enable us to test for causal homogeneity among cases; comparative methods only allows us to test for necessary or sufficient conditions, but tells us nothing about whether the same *process* is present in the different cases (Beach 2016b: 307-308). Causal homogeneity among cases can thus not simply be assumed, but needs to be tested empirically through within-case analyses of each of the cases in which one is interested in making inferences. While the causal mechanisms developed in this dissertation should be understood as systematic in that they offer insights into causal relationships that in principle may be generalizable to a bounded population of similar cases (Beach and Pedersen 2013: 12), process-tracing cannot be used to infer beyond the single cases investigated (Beach and Pedersen 2016b: 302). The within-case analyses carried out in the subsequent empirical chapters thus hold the potential to enable strong causal inferences to be made, but not beyond the six investigated cases.

⁴¹ To be able to estimate the strength of a causal relationship one would need to engage in a comparison.

Chapter 5

How trade unions' protection and employers' compliance contribute to institutional continuity: The case of resilience creation in the Norwegian construction sector

1. Introduction

The task of this first empirical chapter is to test empirically the theorized Institutional Resilience Creation Mechanism, assessing the extent to which updated or downgraded confidence in the operation of this mechanism is warranted and how well it accounts for the developments in the Norwegian construction sector. The Norwegian construction sector has been selected as a typical case based on the presence of employers' full compliance with dominant employment relations rules and practices in their use of migrant labour along with the trade unions' effective protection of migrant labour, and the presence of the requisite contextual conditions of high levels of enforcement, a coalition of institutional supporters, and absence of inherent ambiguities in the institutions. I start the empirical analysis by establishing the presence of the causal condition, justifying the categorization of the employers' and trade unions' responses to migrant labour. I then present the empirical tests of the parts of the Institutional Resilience Creation Mechanism, matching the predicted evidence of the parts of the mechanism with the evidence found in the empirical record of the Norwegian construction sector, and evaluating whether the found evidence allows us to infer that the respective parts have been present. The final part of the chapter demonstrates the outcome of the causal process and analyses how it relates to the general trajectory of the employment relations in the Norwegian construction sector.

2. A causal pathway toward continuity through institutional resilience creation

By unpacking the steps of the causal process, the below sections seek to reconstruct the causal process that has been triggered by the class actors' responses to labour and service mobility in the Norwegian construction sector, and demonstrate how the actors' responses contribute to

institutional continuity through resilience creation that generates institutional maintenance under conditions of high pressure for change.

2.1 Cause: Employer and trade union responses to migrant labour in the Norwegian construction sector

Employers' compliance with dominant employment relations rules and practices

The combination of data sources deployed here suggests that migrant labour in the Norwegian construction sector over the last 15 years primarily has been used through regular labour migration associated with in-house employment in Norwegian construction firms. Two further important components have been the use of migrant labour through temporary agency work, where migrant workers are employed in Norwegian temporary work agencies, and the use of posted workers through sub-contracting of foreign construction firms. In spite of the adoption of transitional restrictions by Norway in conjunction with the EU market expansions in the 2000s, firms operating in the Norwegian construction sector have not been directed towards primarily using employment channels associated with irregular forms of labour migration, such as posting of workers. In fact, the design of the Norwegian transitional restrictions, which entailed that the residence permits for EU internal labour migrants were conditioned upon full-time employment and a documented wage in accordance with the applicable collective agreement or equal to the average Norwegian wage in the applicable occupational area (Andersen and Ødegård 2017: 7; Dølvik, and Marginson 2018: 29), contributed to directing employers towards the use of migrant labour through regular employment at a critical point in time following the market expansions. While temporary agency work and subcontracting were established as important recruitment channels during the period of transitional restrictions, which ended in 2009 for the 2004-accession countries, including the main country of origin – Poland – and in 2012 for the 2007-accession countries, regular labour migration through free movement of labour, associated with in-house employment in Norwegian firms, represents the single most important way through which migrant labour has been used in this sector. While we are unable to fully establish the share of labour migrants employed in-house in Norwegian construction firms, almost half (45 percent) of the Polish labour migrants in the Norwegian capital responded in a representative survey that they, in 2010, were employed in-house in a Norwegian construction firm (Friberg and Eldring 2013: 71).¹ This finding is supported by results from surveys with construction managers, which suggest that a majority of the firms using migrant labour have been doing so via *permanent* in-house employment. Following an increase in the share of firms using migrant labour via permanent in-house employment between 2006 and 2009, the share has since been maintained

¹ Compared to a first survey round in 2006, the 2010 findings revealed a 14 percentage point increase in the share of Polish labour migrants employed in-house in Norwegian construction firms (Friberg and Eldring 2011: 40).

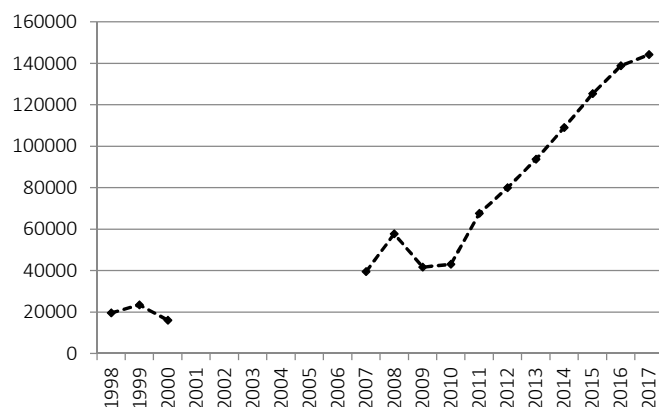
and increased slightly, from 64 percent in 2009 to 67 percent in 2017 (Andersen et al. 2009: 16; Andersen and Ødegård 2017: 10). In parallel, the share of firms only using migrant labour via permanent in-house employment, and not through subcontracting or agency work, has increased, whereas the share of firms only using migrant labour as external labour has declined significantly (Andersen and Ødegård 2017: 11). The move away from the use of migrant labour as external labour has entailed that migrant workers to a larger extent have become part of regular operations, as opposed to serving as a flexible buffer to meet peaks (ibid. 8, 20). Scholars have suggested that this regularisation is associated with the increasing share of CEE labour migrants choosing to settle in Norway, whereby it – in the context of the Norwegian construction sector – is “natural” that they access permanent in-house employment (ibid. 9). The share of EU internal migrant workers registered as settled has continuously increased over the last decade, and while non-settled workers also continue to be an important source of labour, register data suggests that settled EU internal labour migrants have been dominant to non-settled labour migrants throughout the investigated time period (Statistics Norway; also Bjørnstad 2015: 44; Ødegård and Nergaard 2020: 4).

While an important part of firms’ use of migrant labour has involved regular in-house employment, parallel changes in firms’ hiring strategies in conjunction with the market expansions resulted in more widespread use of temporary agency work and subcontracting involving posted work (Nergaard 2014b: 14). Temporary agency work was deregulated in Norway in 2000, when the prohibition on agency work was lifted. While the use of temporary agency work remained limited prior to the EU market expansion, temporary work agencies experienced a considerable growth in the Norwegian labour market after 2004, and gained a more prominent role in the construction sector in particular (Nergaard et al. 2011: 5). In this way, the deregulation of agency work was important in shaping construction firms’ use of migrant labour, and Norwegian temporary work agencies became important facilitators for labour migration by actively recruiting migrant workers to the construction sector (Friberg 2013: 28). The temporary agency workers active in the Norwegian construction sector are, according to earlier research, almost exclusively migrant workers (Marsdal 2015: 1; Elstad and Ullmann 2017: 6).² Norwegian construction firms’ increased use of temporary agency work has in the course of the last decade impelled several studies seeking to estimate its scope. Together, they suggest that agency workers have accounted for around or slightly less than one fifth of the construction workforce throughout the last decade and a half (Friberg and Eldring 2011: 40; Elstad and Ullman 2017: 11; Nergaard 2019: 13; Nergaard 2017). When it comes to posted work, early estimates suggested that the share of posted workers in the construction workforce remained at low levels in the first decade

² This corresponds to insights offered by a manager in a major construction firm as well as a trade union representative, according to whom almost all agency workers are migrant workers (Interview 17, 19).

following the market expansions, increasing from approximately 1 percent in 2000 to 2 percent in 2012 (Bjørnstad 2015: 44, based on data from Frischsentret/Bratsberg). Surveys with Polish construction workers in the Norwegian capital found that 23 percent were employed in a foreign sub-contracted firm in 2006, and 26 percent in 2010 (Friberg and Eldring 2011: 40; Friberg and Eldring 2013: 71), offering a rough estimate of the share of posted workers among labour migrants in the Norwegian construction sector at the end of the 2000s. These estimates do, however, account for the situation prior to a major increase in the use of sub-contracting that has taken place over the last decade, demonstrated by a drastic increase in payments by Norwegian construction firms to subcontractors (Figure 5.1). As it according to the sectoral employer organization to a large extent are foreign firms that are used as sub-contractors (Interview 20), this suggests a parallel increase in the use of posted workers in the sector. Yet, as the sectoral employment has grown in general terms – employment growth which primarily has been generated by the increased numbers of settled EU internal labour migrants – we are unable to firmly establish whether the share of posted workers among migrant workers has grown beyond one fourth, as suggested by early estimates.

Figure 5.1 What Norwegian construction firms have paid to subcontractors, 1998-2017, Million NOK



Source: Statistics Norway.

Note: Data for the years 2001-2006 is missing.

The main types of recruitment and employment channels through which employers in the Norwegian construction sector have been using migrant labour since the 2004 EU market expansion, along with empirical findings of migrant workers' employment and working conditions, reveal the extent to which employers have been using collective agreements and enforcing labour standards in their use of migrant labour.

Use of collective agreements in the employment of migrant labour

As available data demonstrates that a majority of the migrant workers in the Norwegian construction sector are either employed in-house in Norwegian construction firms or employed

as agency workers in Norwegian temporary work agencies, this suggests that there is overall use of collective agreements in the use of migrant labour in the Norwegian construction sector. In-house employment in a Norwegian construction firm would typically entail coverage of a collective agreement, at least for the majority of migrant workers who are employed in larger firms. When it comes to the use of migrant labour as agency workers, scholars have previously reported that agency workers in general tend not to be covered by a collective agreement (Nergaard 2019: 9), and that many new temporary work agencies are not organized in an employer organization, and thus not automatically bound by a collective agreement (Elstad and Ullmann 2017: 7).³ The main trade union has previously reported that the employer organization in the construction sector does not want to conclude collective agreements on behalf of the temporary work agencies, even though these work agencies are exclusively active in the construction sector (Arbetaren, 29 July 2008). Yet, the union has, in spite of these obstacles, and the generally low levels of collective bargaining coverage among agency workers, individually concluded collective agreements with temporary work agencies catering to the construction sector. Thus, many of these agencies, and the migrant workers employed by them, are covered by the applicable sectoral collective agreement, without being organized in an employer organization. Already in 2008, the main sectoral union reported that it had successfully concluded a collective agreement with one of the largest Norwegian temporary work agencies specialised on Polish migrant workers (ibid.). As the main sectoral trade union has concluded collective agreements with the Norwegian temporary work agencies catering to the construction sector, employment in a Norwegian temporary work agency is, similarly to in-house employment, largely associated with coverage of a collective agreement (Interview 19). The second trade union active in the sector has also reported that it has been active in concluding collective agreements with foreign subcontracted firms (Interview 18). Yet, existing literature suggests that the use of posted work often entails non-use of the applicable Norwegian collective agreement (Andersen et al. 2014a; Dølvik et al. 2014b).⁴ To the extent that posted work, representing between one fifth and one third of all construction firms' use of migrant labour, entails non-use of collective agreements, this still leaves us to conclude that there, based on the use of migrant labour via in-house employment and agency work, is overall use of collective agreements in the employment of migrant labour in this sector. Moreover, the unions' success in organizing migrant workers – in 2015, 37 percent of the members in the main sectoral trade union were foreign workers, defined as workers who do not

³ In their investigation, Elstad and Ullmann (2017) found that the employer density among the temporary work agencies included in the labour inspectorate's register for temporary work agencies was just below 50 percent (8).

⁴ When it comes to non-settled migrant workers, available data suggests that their collective bargaining coverage is considerably lower than the sectoral coverage; in 2013, 20 percent of the non-settled workers in the construction sector were covered by a Norwegian collective agreement (Nergaard 2018: 34), compared to approximately 40 percent among all construction workers (Bjørnstad 2015: 16).

speak Norwegian (Interview 19) – also suggests a high collective bargaining coverage among migrant workers; as trade union members, they are likely to also be covered by a collective agreement.

Content of collective agreement applied to migrant labour is equal to native labour

Among the majority of firms who use a collective agreement in their employment of migrant labour, much suggest that the content of the agreements covering migrant labour is equal to that of non-migrant workers. The migrant workers employed in-house in a Norwegian construction firm covered by the applicable sectoral collective agreement are, in principle, covered by the full collectively agreed content. When it comes to agency workers, scholars have claimed that the loopholes between using collective agreements signed by temporary work agencies and other sectoral agreements have been closed following the implementation of the EU temporary agency workers directive through the Equal Treatment Principle by Norway in 2013 (Andersen et al. 2014a: 78). The fact that migrant workers as agency workers are employed in *Norwegian* temporary work agencies thus also suggests that these workers are covered by a collective agreement based on equal treatment. As reported by the main sectoral trade union, the main temporary work agencies specialising on migrant workers had already by the mid-2000s signed the applicable sectoral collective agreement, with conditions equal to Norwegian construction workers (Arbetaren, 29 July 2008). The maintained attractiveness of using temporary agency work, even as previous loopholes have been closed through the equal treatment principle, pertains to cost-saving related to administrative costs, access to external flexibility, and liberation from employer responsibilities. To the extent that posted workers are covered by a Norwegian collective agreement, they would, given the absence of alternative, inferior agreements, also be covered by the applicable sectoral collective agreement.

Enforcement of labour standards in the employment of migrant labour

Employers' use of migrant labour in the Norwegian construction sector has taken place in a context of generally high levels of enforcement, to which the trade unions but above all the Norwegian state makes a critically important contribution. The Norwegian state has contributed to establish high levels of enforcement by strict registration requirements of posted work and of regular EU labour migrants, by strengthened monitoring and control efforts by the labour inspectorate, and by strong coordination between state agencies (police, labour inspectorate, tax authority, employment agency, and migration authority), which limit the use of undeclared work and facilitate enforcement of labour standards. Furthermore, the state and public agencies have abstained from sustaining opt out practices in publically financed construction projects by tightening public procurement procedures and ensuring their enforcement, thereby limiting non-compliance. Construction firms have facilitated high levels of enforcement by using migrant

labour via regular in-house employment, and a majority of the main contractors using subcontracting or temporary agency work have contributed to upholding dominant standards in their worksites by imposing demands about wages and working conditions for the external labour that they use (Andersen et al. 2009: 51).⁵

In spite of the high levels of enforcement, there is, nevertheless, a notable empirical uncertainty as to the extent to which Norwegian construction firms fully enforce dominant labour standards in their use of migrant labour. Based on evidence accumulated over the years in the empirical literature, scholars have tended to emphasize migrant workers' inferior conditions, especially those of posted workers (e.g. Friberg 2011, 2015; Friberg and Eldring 2011, 2013a; Dølvik, and Marginson 2018). The extent to which employers enforce (dominant) labour standards indeed vary depending on the type of employment through which migrant workers are used. Analyses based on the surveys with the biggest group of East European labour migrants – Polish citizens – in the capital of Norway found that the type of employment that the labour migrants were in have a much stronger impact on their wage levels than individual characteristics such as educational level or length of stay in the host labour market (Friberg and Eldring 2013: 104-105). One factor was identified as having the greatest negative effect on the wage levels of the Polish construction workers: working for a foreign subcontracting firm (ibid. 105). Based on the legal extensions of collectively agreed minimum conditions, applicable in Oslo since 2005 and nation-wide since 2007, the main rule is that foreign workers should at least be paid according to the minimum wage for unskilled work, unless a professional certificate or work experience can be documented (BNL and Fellesforbundet 2014: 8).⁶ Analyses of survey data as well official wage statistics have throughout the last decade found limited non-compliance with the minimum wage levels among migrant workers employed in-house in Norwegian construction firms as well as among agency workers, whereas it has been somewhat more widespread among posted workers (Eldring et al. 2011: 58, 126-127; Bjørnstad 2015: 46; Jordfald 2018: 19). The descriptive inference enabled by the available data is that a bit less than half of the use of migrant labour has been associated with compliance with wages close to or slightly above the minimum wages for skilled and unskilled work, and more than one third of the use has involved compliance with dominant wage levels (Bjørnstad 2015: 46; Jordfald 2018: 19). A part of the explanation for this, and the lower average hourly wage of migrant construction workers compared to the average hourly wage in firms bound by collective agreements (Eldring et al. 2011: 124-126), may,

⁵ Already in 2009, a majority (54 percent) of the firms using migrant labour via subcontracting or temporary agency work indicated that they always imposed demands about specific wages and working conditions for the external labour (Andersen et al. 2009: 51). 12 percent stated that they often did so, whereas 30 percent stated that they occasionally or never did so (ibid.).

⁶ When the workers can document that they have at least 1 year industry experience from abroad, the minimum wage for 1 year experience should be applied. The wage rate for skilled workers applies only to workers who have a skill certificate according to Norwegian regulations. Foreign skill certificates must be approved by the Norwegian authorities in each individual case (BNL and Fellesforbundet 2014: 8).

however, be accounted for by the fact that the migrant workers predominantly are employed in occupations without any formal qualification (Jordfald 2018). Earlier research has also found that a division of labour between migrant and non-migrant workers, where the migrant workers tended to do different kinds of work and hold different positions than their native co-workers, entail that they do not necessarily access the same levels of remuneration and benefits as Norwegian workers (Friberg 2011: 3). This division of labour was particularly pronounced in the use of migrant workers as external labour (ibid. 10-11; also Interview 19).⁷ Complementary to this overall picture, scholars and trade union representatives have also reported instances where migrant workers have been cheated out of pay, and where they do not receive their entitled overtime compensation (Arbetaren, 29 July 2008; Friberg and Eldring 2013: 114-115; Ødegård and Nergaard 2020: 32; Lindahl, 23 Nov 2017).⁸ In the 2010 survey of Polish labour migrants, 60 percent indicated that they, at some point during their stay, had not been compensated for working overtime (Friberg and Eldring 2013: 116). This is a very high share, which questions employers' compliance with dominant as well as minimum wage levels in their employment of migrant workers. When it comes to compliance with the average working time, scholars have previously reported that migrant workers work "quite long weeks," although exact weekly working hours are not possible to estimate (ibid. 115). Trade union representatives have reported that the union has come across cases where posted workers work between 10-12 hours a day, in comparison to Norwegian workers' average daily working time of 7.5 hours a day (Interview 19; also Elstad and Ullmann 2017: 8), and that workers in subcontracted firms tend to be particularly exposed to illegal working hours (Arbetaren, 29 July 2008). Internal flexibility is undoubtedly an important factor in the construction sector, where working hours are maximized as a means to maximize the means of production by making foreign workers carry out shift work that native workers do not agree to. Yet, the regularization of the use of migrant labour associated with the increasing shares of settled migrant workers, where the migrant workers are part of regular activities as opposed to serving as a flexible buffer to meet peaks (Andersen and Ødegård 2017: 8, 20), suggests a move towards compliance with average working time in recent years. In terms of compliance with dominant levels of job security, all forms of employment aside from permanent in-house

⁷ According to the trade union, employers' use of migrant labour has induced a trend where Norwegian workers, and migrant workers belonging to the in-house workforces, are concentrated in the most attractive and best paid jobs; the heaviest, toughest, and lowest paid work tends to be allocated to external labour, whereas Norwegian workers perform the work tasks that result in the highest wage based on a performance pay system (Interview 19).

⁸ Scholars have pointed to a concentration of illegal practices among firms operating in the grey zone between work agencies and subcontracted firms (Elstad and Ullmann 2017: 4), and the labour inspectorate has reported that cases of illegal working conditions, including illegally low wages, typically involve foreign firms lowest down in the subcontracting chains (Eldring and Andersen 2014). The employer organization representing master builders has, on its side, claimed that the growth in the market for publically financed construction projects has spurred a greater involvement of firms engaged in labour market crime in publically financed construction activities (Byggmesterforbundet 2013: 5).

employment in a Norwegian construction firm can, strictly speaking, be considered as ways to circumvent dominant levels of job security.⁹ Results from the survey with construction managers in 2017 found that 67 percent of the firms using migrant labour were doing so via permanent in-house employment, whereas 17 percent of the firms using migrant labour were doing so via temporary in-house employment, 45 percent via agency work, and 34 percent via subcontracting (Andersen and Ødegård 2017: 10).¹⁰ This reveals that the most common way to use migrant labour complies with dominant levels of job security. Yet, this does not per se entail that a majority of the migrant workers access dominant levels of job security. The survey with Polish construction workers in the capital region found that only 19 percent of the migrant workers employed in-house in a Norwegian construction had permanent employment in 2010, whereas 26 percent had temporary employment in a Norwegian construction firm, 23 percent were employed in a temporary work agency, 26 were employed in a foreign subcontracted firm, and 7 percent were self-employed (Friberg and Eldring 2013: 71). While these findings suggest that there may not have been overall compliance with dominant levels of job security in the use of migrant labour, and plausibly not even in the use of in-house employed migrant workers, the general restrictions on the use of temporary employment during most of the time period investigated here, up until a minor liberalisation in 2015, may, nonetheless, have contributed to more widespread use of permanent employment, unless firms have been pursuing illegal practices. As an important transition towards settled EU internal labour migrants has taken place over the last years, this has plausibly contributed to increase the share of migrant workers that have in-house employment in a Norwegian construction firm since the end of the 2000s, offering better access not only to job security, but also to average wages and working time.

Assessing the qualitative threshold for set-membership

The threshold defining the presence of employers' full compliance response is whether there is overall compliance with collective agreements and enforcement of labour standards in the use of

⁹ Nergaard (2019) has recently reported that most agency workers have temporary employment contracts (9). Other scholars have report that while agency workers often formally hold permanent employment contracts, they are typically not offered any guaranteed wage in-between assignments, and as they are only paid for specific assignments that the agency choses to offer to the worker, their employment is in practice temporary and lacks any period of dismissal during which they are guaranteed an income (Elstad and Ullmann 2017: 6). Accordingly, agency work entails non-compliance with dominant levels of job security. When it comes to employment in a subcontracted firm, employment in a Norwegian subcontracted firm would typically – given the legal restriction on the use of temporary employment – be associated with permanent employment. Yet, the available data suggests that most migrant workers employed in subcontracted firms are employed in foreign subcontracted firms. Posted work tends, similar to agency work, to be tightly linked to the length of the work assignments, whereby the employment in practice is short-term.

¹⁰ The share of firms using migrant labour via permanent in-house employment had remained stable since the end of the 2000s, whereas the share of firms using agency workers had declined by 9 percentage points, and the share of firms using migrant labour via subcontracting had increased by 6 percentage points (Andersen et al. 2009: 16; Andersen and Ødegård 2017: 10).

migrant labour. What qualifies as overall compliance is defined by whether *a majority* of the employers using migrant labour use a collective agreement, based on equal treatment, and sufficiently enforce labour standards in their employment of migrant labour. While it remains difficult to estimate the exact prevalence of different types of employment through which employers in the Norwegian construction sector have been using migrant labour since the 2004 EU market expansion, survey data that offered a snapshot of the situation six years after the market expansion suggested that 45 percent of the migrant workers in the Norwegian construction sector were employed in-house in a Norwegian construction firm already at the end of the 2000s. Since the end of the last decade, a majority of the firms using migrant labour have indicated that they are doing so via permanent in-house employment. Moreover, the increasing shares of EU internal labour migrants using formal labour migration routes and registering as settled labour migrants suggest a strengthened tendency towards regularization over the last decade. While this may not automatically translate into in-house employment in a compliant Norwegian construction firm, it most plausibly has a positive impact on the overall levels of compliance in the sector. Indeed, firms' use of migrant labour has increasingly become part of regular operations, and there has been a gradual move away from the use of migrant labour as external labour, further paving the way towards full compliance. As in-house employment in a Norwegian construction firm and employment in a Norwegian temporary work agency account for approximately two thirds of the use of migrant labour in this sector, this suggest overall use of collective agreements. While earlier research raised doubts about the extent to which firms in this sector have been compliant, the trade unions' active conclusion of collective agreements with firms using migrant labour, and their contribution to enforcement of labour standards for migrant workers, give us reason to believe that the move towards full compliance has been enhanced in recent years. Accordingly, I propose that the presence of high and strengthened levels of enforcement have enabled employers to largely be compliant with dominant employment relations rules and practices in their use of migrant labour. Yet, there is admittedly a high degree of empirical uncertainty as to this categorization. This uncertainty is primarily related to the extent to which migrant workers access more than minimum standards, but partly also as to how widespread opt out practices actually are, including non-use of collective agreements. In light of this empirical uncertainty, an extended empirical base seeking to transparently justify this set-membership is made available in Appendix VI. As employers' enforcement of dominant labour standards varies depending on the type of employment through which migrant workers are used, employers' responses in the Norwegian construction sector inevitably contain certain variation. The use of in-house employment and agency work is associated with higher wages, whereas the use of posted work to a larger extent is associated with non-compliance with dominant and partwise also minimum wage levels. As posted work, in relation to in-house employment and agency work, represents a small part of employers' use of migrant labour, opt out practices occurring in the use of posted work only

account for a minor part employers' use of migrant labour in the Norwegian construction sector. While available statistical data demonstrate that more than one third of the use of migrant labour involved compliance with dominant wage levels, and a bit less than half of the use of migrant labour had been associated with compliance with wages close to or slightly above the minimum wages, migrant workers' occupational concentration and the division of labour between migrant and non-migrant workers make comparisons with the dominant wage levels of Norwegian construction workers difficult. Aside from issues of remuneration, doubts as to the compliance with dominant levels of job security are, considering the apparent continued importance of temporary agency workers, and the growing importance of subcontracting, particularly evident. On the other hand, the fact that 37 percent of the trade union members are foreign workers mainly originating from Poland and the Baltic States (Fellesforbundet 2015) strongly suggests that a considerable share of the migrant workers may, through their union membership, access equal treatment.

Trade unions' protection of migrant labour

Trade unions' protective response is in this analysis defined based on ensuring equal treatment of migrant labour. The trade unions in the Norwegian construction sector started their protective efforts already in conjunction with the market expansions. They have achieved effective protection primarily by organising migrant workers, by ensuring that their employers conclude collective agreements, and by establishing workplace representatives in the workplaces of migrant workers.

Ensuring use of collective agreement to regulate employment of migrant labour, based on equal content

The core of the trade unions' response to migrant labour in the Norwegian construction sector has been to organise migrant workers and to ensure that their employers conclude collective agreements. The stepwise procedure of their protective response aiming to ensure the application of Norwegian labour standards for migrant workers has been to systematically identify where they work, then approach them to try to organize them, and when a sufficient number are organized, to demand a collective agreement with their employer, and subsequently establish workplace representation in their workplaces (Interview 21). In this way, the trade unions have actively sought to ensure that migrant workers are covered by the full and applicable sectoral collective agreement. The same strategy has been adopted towards migrant workers employed in Norwegian temporary work agencies catering to the construction sector, with which the union successfully has concluded collective agreements (Interview 19). When it comes to efforts to ensure the use of collective agreements by foreign subcontracted firms, the success has been the greatest in the part of the sector that covers large infrastructure and construction plant work.

According to the trade union in this part of the sector, it has been largely successful in concluding collective agreements with foreign firms, describing how they approach all foreign firms that enter the market, organise the workers in the firms and demand collective agreements (Interview 18). In contrast to these trade union accounts, scholars have previously claimed that the unions in the Norwegian construction sector have primarily placed their efforts on organizing migrant workers, while having been less aggressive in terms of demanding collective agreements with foreign firms due to the legal extension of collectively agreed conditions (Eldring and Hansen Arnholtz 2009). The discrepancy with earlier accounts may plausibly be explained by a gradual change in the unions' strategies towards stronger efforts to conclude collective agreements once a membership base had been secured among migrant workers.

Contribution to enforcement of labour standards for migrant labour

Organizing migrant workers serves the purpose of better ensuring enforcement of Norwegian labour standards in their employment relationships. Evidence of the active organization of migrant workers by the Norwegian building workers' trade union is demonstrated by the high share of migrant labour in the trade union, their explicit use of an organizing strategy directed towards migrant labour, and their earmarked positions for officials with language skills, which greatly facilitates organising foreign workers (Interview 19, 21). In 2015, the union reported that 37 percent of their members were foreign workers (Interview 19).¹¹ This entails that the organizational rates of migrant workers are plausibly even higher than among domestic workers (Fellesforbundet 2015).¹² Special efforts have also been placed on recruiting temporary agency workers active in the construction sector, among whom foreign workers are dominant (ibid. 2). Already in 2008, the union reported a success in organising agency workers in one of the main Norwegian temporary work agencies that had specialised on Polish workers, revealing that there were more organized construction workers in this Norwegian temporary work agency than in the traditional main contracting firms operating in the sector (Arbetaren, 29 July 2008). While essentially the same strategies are deployed when organizing foreign workers as native workers, the main difference is the difficulties and obstacles that need to be overcome when seeking to organize foreign workers. This has partly to do with their mobility and temporality, as well as with their employment situations, in which they often are exposed to threats and their employers may withhold their right to organise (Interview 26). To meet these challenges, the trade union has employed full-time multilingual staff to be able to recruit and assist the foreign workers in their native languages. Already in 2005, the sectoral union in the Oslo region employed its first Polish

¹¹ This corresponds to an earlier finding in the literature that approximately 40 percent of all members in the construction workers' union in Oslo originated from Poland and the Baltic States (Eldring and Hansen Arnholtz 2009).

¹² In 2017, it was estimated that 39 percent of the construction workers were organized (Neergard 2018: 22).

union official, and in the subsequent years union officials originating from most Central and Eastern European countries were employed as organisers (Arbetaren, 29 July 2008). By employing trade union officials with the relevant language skills, the organizing becomes more efficient and successful, as those who work as organizers speak the language and no external interpreter is needed. It also contributes to building trust among the foreign workers, when the trade union organizer is a compatriot of theirs (Interview 21). In meeting these challenges up front, the sectoral trade unions have through their efforts been successful in organizing migrant workers.¹³

Workplace representation plays a key role in enforcing labour standards, whether based on a collective agreement or labour legislation. By upholding their representational function in workplaces where migrants are employed, the trade unions strengthen their position as counterpart to employers in negotiations and substantively increase their ability to enforce collective agreements. In workplaces where no workplace representatives are present, trade union affiliated safety officers have played an important role in the enforcement of labour standards for foreign workers. The safety officers have come to fulfil a function of not only surveying the work environment, but also making main contractors aware of violations related to, for instance, wage levels and working conditions of the foreign workers in sub-contracted firms (Interview 17). Following the targeted efforts to organize foreign temporary agency workers, workplace representation had in 2015 been established in the three main temporary work agencies with which the trade union had signed collective agreements (Interview 21).¹⁴ According to a local trade union representative, the functioning of the workplace representation is not fully proficient, but it is present and the foreign workers employed in these agencies are trained to fulfil their functions as workplace representatives (*ibid.*). The greatest challenge hampering the functioning of workplace representation in these agencies relates to the temporality of the employment and the lack of job security, which makes it difficult for the foreign workers to take on representational functions (*ibid.*). Aside from actively seeking to ensure presence of workplace representation in migrant workers' workplaces, a subsequent step in the unions' response has involved building the capacity of the recruited foreign workers, to enable them to serve as workplace representatives and negotiate on their own, and to raise their awareness about their rights, so that they can identify when conditions are violated (*ibid.*).¹⁵ The main trade union in the Norwegian construction sector

¹³ According to the unions, their organising efforts quickly produced a positive self-reinforcing effect; while it initially was union officials who actively organized the migrant workers, this was swiftly supported by migrant workers themselves actively seeking to recruit their colleagues (Arbetaren, 29 July 2008).

¹⁴ In one of the main Norwegian temporary work agencies specialising on foreign workers, Polish agency workers had established workplace representation already by the mid-2000s (Arbetaren, 29 July 2008).

¹⁵ Further measures undertaken by the main sectoral union in building the capacity of migrant workers have included distributing outreach material in more than 10 languages informing the workers about their rights and urging them to organize, the offering Norwegian language courses to foreign construction workers (Arbetaren, 29 July 2008). In 2008, such courses had been offered to Polish, Latvian, Bosnian, and German union members. Moreover, union magazine has since the mid-2000s contained a section in Polish.

has also supported workplace representatives' ability to fulfil their function in contributing to enforcement of labour standards by building their capacity to do so in a challenging work landscape where multiple actors, including subcontracted foreign firms and agency workers are present (Fellesforbundet 2015: 2).¹⁶ Lastly, the trade unions have placed considerable efforts on contributing to enforcement of labour standards by pursuing legal cases on behalf of migrant workers who are either already their members or not (yet) members (Eldring and Hansen Arnholtz 2009). When the unions do not succeed in concluding a collective agreement with the employer of the migrant worker, the response of pursuing legal cases frequently occurs; the migrant workers become trade union members, and the trade union makes claims related to wages, holiday pay or overtime compensation by pursuing legal cases on their behalf (Interview 19). The trade unions recognise this as a very resource-demanding exercise that exhausts the unions' capacities – "it just wears us out" – and it would on its own be an unsustainable response (ibid.). Yet, it serves the purpose of contributing to enforcement of labour standards when all other possibilities are exempted.

Assessing the qualitative threshold for set-membership

As a protective response here is defined based on ensuring equal treatment of migrant labour, this sets a high threshold for claiming presence of effective protection. While a certain degree of empirical uncertainty as to the case categorization always remains, the unions' active conclusion of collective agreements, their successful organizing strategies, and active contribution to enforcement of labour standards, lead us to infer that the responses by the trade unions in the Norwegian construction sector have been largely protective. The empirical uncertainty that remains as to the set-membership of the unions' response in this sector is of the same origin as the empirical uncertainty of the set-membership of employers' responses, namely whether this is indeed a case of equal treatment of migrant labour, or rather protection of and compliance with minimum standards only. Ultimately, if employers' responses are erroneously categorized as pursuing a full compliance response, this also entails that the trade unions' response cannot be

¹⁶ While ensuring presence of workplace representation has been a central component of the unions' responses to migrant labour, findings from an empirical investigation of construction sites in Trondheim suggest that workplace representatives in main contractors rarely are able to monitor the wages and working conditions of agency workers (Nergaard 2019: 6-7). The investigation also found that the workplace representatives in main contracting firms had not played an active role in attempting to recruit agency workers as trade union members, and that the workplace representatives only had supported the agency workers in negotiations or in complaints related to wages and working conditions in very few cases (ibid. 21). While this suggests that the workplace representatives in main contractors may play a limited role in representing and contributing to enforcement of labour standards for external workers – here, agency workers specifically, this is also not a primary task of theirs. Instead, the workplace representation in the work agencies play a central role in doing so, which is also the reason why the main sectoral trade union has actively established workplace representation in the temporary work agencies. Moreover, it is plausible that the situation in Oslo, where the union and workplace representatives have longer and more extensive experience with migrant labour, differs from the situation in Trondheim.

considered as effectively protective. Scholars have previously claimed that the union approach in the Norwegian construction sector has been of a pragmatic nature; following some success in securing minimum standards for migrant workers, an acceptance of lower standards for migrant workers has emerged at the cost of striving for equal treatment (Arnholtz and Eldring 2015: 81). Yet, the trade unions in the Norwegian construction sector have had as their priority to conclude collective agreements with firms employing migrant workers, regardless of the legal extension of collectively agreed minimum conditions present since 2005. The fact that the trade unions actively try to conclude collective agreements in migrant workers' workplaces means that they do not settle for the minimum standards established through the legal extensions, but instead try to ensure that migrant workers are covered by a regular collective agreement through which they can access equal treatment.

2.2 Causal mechanism: Institutional resilience creation in the Norwegian construction sector

Part 1: No challenging of the institutions

The employers' and trade unions' responses presented in the preceding sections carry causal properties that in conjunction with one another serve as the cause that triggers the first part of the causal mechanism conceptualized as resilience creation in the employment relations institutions. By their overall compliance with the dominant employment relations rules and practice in their use of migrant labour, employers chose to uphold the rules and practices and thereby abstain from challenging collective bargaining, workplace representation, and job security regulations. The first part of the Institutional Resilience Creation Mechanism thus pertains to the actions of employers, underpinned by active coalitional support from the side of the state and the trade unions in maintaining high levels of enforcement and ensuring that migrant labour cannot be used as a secondary labour supply through which change strategies that would challenge the institutions can be pursued. The predicated evidence of what we should see in the empirical record of the Norwegian construction sector if there has been absence of institutional challenging is defined as the situation in which employers do not pursue change strategies through their employment of migrant labour or in the pretext of labour or service mobility, and do not push for deregulatory measures and ways to avoid enforcement. The prior confidence in the overall mechanism tested in this chapter, that is, our confidence in the existence of a causal relationship based on what we know from existing literature, starts at a fairly low level as no disaggregated causal mechanism that would uncover the potential causal relationship had previously been theorized, and as existing literature on labour migration had identified clear pressure for change, but not interpreted the process as one of resilience creation and institutional maintenance responding to the pressure for change. The prior confidence held in this first part of the mechanism is even lower as existing literature has emphasized migrant workers inferior conditions in the Norwegian construction

sector and the pressure for change associated with employers' use of migrant labour, which would lead us to expect that employers' use of migrant labour would lead to institutional challenging rather than absence thereof. The implication of this low prior confidence is, based on the Bayesian logic of inference, that even weak evidence could potentially allow us to update our confidence in the presence of this part of the mechanism in the Norwegian construction sector.

The main evidence of absence of challenging in the Norwegian construction sector pertains to the main channels of employment through which migrant labour is used, associated with in-house employment in Norwegian construction firms or employment in Norwegian temporary work agencies. As the use of migrant labour through these types of employment are associated with use of collective agreements and presence of workplace representation, absence of challenging the formal institutional structures logically ensues from employers' responses as they choose to uphold the main institutions for collective labour regulation.¹⁷ While the overall complying employers have not pursued institutional challenging through their employment of migrant labour, there is some evidence suggesting that the practical functioning of collective bargaining and workplace representation are potentially challenged by employers in the pretext of increased labour and service mobility, and in the use of migrant labour via agency and posted work. Employers have pursued three types of strategies potentially challenging the content of collective agreements. First, insights into the collective bargaining processes reveal that employers by referring to the new competitive situation, originating from the EU open market, have attempted to alter the negotiation dynamics and challenge the content of collective agreements (Interview 18, 19). The consequence for the trade unions in such negotiations is that they have to spend all their efforts in trying to maintain what has been achieved in the collective agreements, to try to prevent the content from being eroded or removed, instead of being able to push for new and improved conditions (Interview 18). The "changed competitive situation"-narrative and employers' emphasis on "unfair" or distorted competition in the Norwegian construction sector have in this way established a context in which employers gain momentum in calling for bargaining outcomes in their favour, and for potential liberalising changes. Second, and relatedly, the union in the area of infrastructure and construction plant work has reported that employers in this part of the sector have attempted to challenge the content of collective agreements by actively seeking inherent ambiguities that can be exploited, with the help of economists and lawyers tasked to look for ways to reduce costs and re-interpret the content (Interview 18). Aside from representing attempted challenging vis-à-vis collective bargaining, workplace representatives tend in such situations to be neglected, as employers use their discretion to re-interpret, or even violate, the content of the agreements, without that the

¹⁷ A weaker evidence of absence of employers challenging is manifested in the absence of Norwegian construction firms' push for the introduction of a statutory minimum wage as a way to displace collective bargaining as an institution and replace it with legislation based on an individualization of rights.

workplace representatives are able to fill the function of local negotiating partner or guardian of the accurate application of the collective agreement (ibid.). Third, the share of employers who only comply with minimum conditions and not the full scope of the collectively agreed conditions in their use of migrant labour subtly challenge the status of the full content of collective agreements by exploiting the gap between average and minimum conditions. Tightly intertwined with this challenging is the practical application of the legally extended minimum conditions. As the main rule based on the legal extensions is that foreign workers should at least be paid according to the minimum wage for unskilled work unless a professional certificate – approved by Norwegian authorities – can be documented (BNL and Fellesforbundet 2014: 8), employers have been offered room to opt for the lowest possible legal wage, while neglecting the legally extended wage-setting system that also includes a skilled wage category. It is difficult to assess the scope of this type of challenging, not the least as migrant workers (skilled and unskilled) are partly concentrated in unskilled occupations.¹⁸ Further evidence of attempted challenging of the practical functioning of the legal extensions of collectively agreed minimum standards also reveals that some firms try to reduce the scope of the conditions that are legally extended. This is done by reinterpretation and creative application of the rules related travel, board and lodging (TBL), in order to avoid reimbursing such expenses. The trade unions have demanded that the rules be clarified and the labour inspectorate has identified a need to reduce the room for divergent interpretations, whereas employer representatives, while supporting that the TBL should belong to the legally extended conditions as such expenses are an important part of total compensation, simultaneously have sought to maintain the room for reinterpretation by opposing any legal revision and requesting that the issue remain a matter of interpretation for the bargaining parties (Tariffnemnda 2018; BNL, 8 Sep 2016; see also Dølvik, and Marginson 2018: 29-31).

When it comes to job security regulations, employers using migrant labour via in-house employment have largely abstained from challenging this third institution central to regulating employment relations. Yet, subtle challenging of dominant levels of job security is pursued by the group of employers who choose to largely organize work based on the use of external labour, including agency work and subcontracting of foreign firms, which generate causal forces that initiates a process towards declined coverage of job security regulations in the sectoral workforce. To the extent that posted work entails non-compliance with dominant levels of job security, this use of migrant labour – which was estimated to account for approximately one fourth of all use of migrant labour – initiates a process of neglect of the institution. The use of agency work, which was estimated to account for about one fifth of employers' use of migrant labour, has, on its side, developed into a systematic and strategic way to circumvent the legal restriction on the use of

¹⁸ A less subtle, but also less widespread, way of challenging collective bargaining is evidenced by firm practices pursued by foreign subcontracted firms in simply not using any collective agreement, which holds the causal power to generate neglect of the institution.

temporary employment (cf. Elstad and Ullmann 2017: 6).¹⁹ While the main rule stipulated in the Norwegian employment protection legislation is that workers must be offered a permanent contract and that temporary employment may only be used to cover a temporary and limited need for labour as a complement to the permanent workforce (Svalund et al. 2019: 17-18), agency work offers considerable room for employers to waive these restrictions in practice.²⁰ In spite of the main rule being that workers should be offered a permanent contract, the legislation has been revealed to contain a high degree of discretion, primarily because it does not explicitly define permanent employment. Instead, this “main rule” is based on the long-standing practice and widely accepted norm that permanent employment means a fixed percentage of work that guarantees a wage, and that the worker enjoys access to dismissal rules (Elstad and Ullmann 2017: 6). As the legislation does not explicitly define permanent employment, the employment in temporary work agencies could be framed as permanent even though it in practice lacks any dismissal protection and only provides temporary work assignments without guaranteed continuity in the workload (and wage) in-between assignments. Consequently, firms have, by using temporary agency work in unintended ways, been able to violate the statutory provisions on permanent employment, and in doing so, subtly challenge the dominant practice that has been central to upholding the functioning of the job security regulations.²¹ Migrant construction

¹⁹ While Norway has comparatively strict legal restrictions on the use of temporary employment, the legislation does under certain conditions permit the use of temporary contracts and temporary agency work. Temporary contracts may be agreed upon a) when the work is of a temporary nature, b) for work as a temporary replacement for another person or persons, c) for work as a trainee, d) with participants in labour market schemes under the auspices of or in cooperation with the Labour and Welfare Service, e) with athletes, trainers, referees and other leaders within organised sports, f) for a maximum period of twelve months, applying to a maximum of 15 per cent of the workers in a firm (section 14-9 (2), Working Environment Act). The use of temporary agency work is, with the exception of condition (f), admissible under the same conditions as the use of temporary employment (Svalund et al. 2019: 17-18). In addition, where a collective agreement is in place, the employer and workplace representatives may conclude a written agreement permitting the use temporary agency workers beyond the provisions covered in points (a) to (e) (ibid. 18-19). Such a written agreement can also permit the employer to waive the requirement of only using temporary agency workers to cover a temporary need (ibid. 20).

²⁰ A precondition for the deregulation of temporary agency work in 2000 was that it should only function as an addition to the regular, permanently employed in-house workforces in situations when there was a real need for additional, temporary labour (Elstad and Ullmann 2017: 4). The legal change also specified that this employment type should not stand in conflict with the main principle of permanent employment (ibid.).

²¹ The practices resulting in challenging of the job security regulations through the use of agency work has been promoted by the main Norwegian employer confederation (NHO), which has argued that permanent employment without any guaranteed percentage of work (or a guaranteed wage) is a legal form of permanent employment, and thus that agency work does not represent an unlawful circumvention of the main rule of permanent employment (Marsdal 2015: 8-9). According to Marsdal (2015)’s findings, some firms have actively sought to maintain this room for interpretation by avoiding that the subject gets tried in court. While one of the sectoral unions has attempted to pursue cases against such employment practices, firms have made sure to settle agreements or fail for bankruptcy before the cases have gone to trial (ibid.). In contrast, the main sectoral employer organization as well as some main contracting firms have expressed support for maintaining permanent employment as the main form of employment (Interview 20; Byggeindustrien, 17 April 2015). One of the largest main contracting firms in the Norwegian construction sector has, for instance, made official statements against the use of temporary employment

workers have in a recent law suit attempted to counter firms' challenging of the job security regulations. The workers demanded permanent employment with a guaranteed percentage of employment and compensation from the temporary work agency in which they were employed, and the court judged in their favour, concluding that the workers had an employment relationship with the work agency that was lacking "the predictability with regard to work and income and job protection required to categorize an employment relationship as permanent within the meaning of section §14-9 of the Working Environment Act" (Bergen Tingrett, 24 March 2017, cited in Ellstad and Ullmann 2017: 6).²² It remains to be seen whether this ruling will serve to counter the ongoing challenging and halt the watering out of the meaning of permanent employment. Firms' challenging of the practical functioning of the job security regulations through their use of migrant workers as agency workers in the course of the last decade and a half has been enabled by the inherent ambiguities in the job security regulations, where the legal restriction on temporary employment and the simultaneous permission of agency work serve to undermine the main rule of permanent employment (cf. Elstad and Ullmann 2017: 4). In fact, while temporary employment must be limited to a maximum of 15 percent of the in-house workforce, and not be used for a period longer than 12 months, agency work can be used in a much more flexible way, particularly by firms bound by a collective agreement. These firms are offered the possibility to conclude a written agreement with workplace representatives permitting the use of temporary agency workers beyond the provisions regulating the use of temporary employment – and, such a written agreement can even permit the firms to waive the requirement of only using temporary agency workers to cover a temporary need (Svalund et al. 2019: 18-20).²³ However, instead of making use of the institutional flexibility inherent in the legislation in order to expand the use of temporary agency work with the consent of workplace representatives, firms have in practice made use of agency work in an unlimited way, without involving workplace representatives. While some scholars have found that most of the construction firms' use of temporary agency work has been unlawful (Elstad and Ullmann 2017: 6, 9, 11; Nergaard 2019: 6-8), others have suggested that this phenomenon is, on the whole, limited in scope (Svalund et al. 2019).²⁴ While most of the use

(Byggeindustrien, 17 April 2015). Regardless of official standpoints, absence of challenging is, however, only present to the extent that firms use migrant labour via permanent in-house employment.

²² The case referred to is the so-called Clockwork case, in which six Polish craftsmen filed Norway's first lawsuit on employment contracts without guaranteed income against the temporary work agency in which they were employed (Elstad and Ullmann 2017: 6).

²³ While this exception provided by the law was not intended for the type of economic activities pursued by construction firms, but for the area of essential public services, construction firms have made use of the discretion inherent in the law in relation to the assessment of whether a need is permanent or temporary (see Svalund et al. 2019).

²⁴ In the investigation of construction sites in Trondheim, Nergaard (2019) found that the agency workers had been performing the same type of work as in-house workers, and that they had not served as temporary replacements of absent in-house workers, or been used to meet unexpected production peaks or to compensate for competencies that do not exist in-house (19-20). Only around 20-25 percent of the use of agency workers was done on the basis of an agreement with workplace representatives, entailing that the remaining use of agency work stands in conflict with the law (ibid. 6-7). In the investigation of construction

of agency work in the Norwegian construction sector violates the legal restrictions on the use of temporary employment, and thus challenges the functioning of the job security regulations, the evidential picture as to the extent to which the firm practices have resulted in challenging of the codetermination function of workplace representatives is more mixed, with the latter plausibly being more limited in scope.

Given the low prior confidence held in this first part of the mechanism, with existing literature having led us to expect presence of institutional challenging in relation to the use of migrant labour in the Norwegian construction sector, the evidence provided here permits a modest updating of our confidence in the overall absence of employers' institutional challenging. The reason for this is that there is an important qualitative threshold between substantial and non-substantial challenging, and most of the above identified challenging is either non-substantial, *or* limited in scope. In presence of the relatively restricted space for employers to challenge the institutions due to high levels of enforcement and trade unions serving as counterparts in the employment of migrant labour, through which employers have been actively encouraged to maintain compliance as their dominant practice, the evidence provided suggest that while employers have largely abstained from directly challenging the role of collective bargaining as the main regulatory instrument through their use of migrant labour, they have attempted to subtly challenge the content of collective agreements through negotiations with reference to the changed competitive situation, and, in a part of the sector, by seeking to exploit ambiguities in the content. I consider this challenging to be fairly non-substantial; challenging the content of collective agreements through negotiations is inherent to the bargaining process, and interpretation of the content – or re-interpretation, to the extent that the agreements contain a level of discretion that permits for it – is inherent to the enforcement process. This evidence is above all a manifestation of the conflict of interest inherent in the employment relations and the institutions regulating them.²⁵ When it comes to workplace representation, the evidence suggested attempted challenging through neglect of workplace representatives in local negotiations, and potential challenging of the codetermination function of workplace representatives in relation to the use of agency work. Yet, such practices – and the challenging generating by them – were fairly limited in scope.

sites in Oslo, two thirds of the use of agency work in main contracting firms bound by a collective agreement violated the legal restrictions as they had not concluded an agreement with workplace representatives (Elstad and Ullmann 2017: 11). In main contracting firms not bound by a collective agreement almost all use of agency work was found to be unlawful (*ibid.*). According to Svalund et al. (2019), between 3 and 6 per cent of the construction firms were using temporary agency workers originating from Eastern Europe as part of their daily operations, without that workplace representatives had consented to this non-conformance in an agreement (21).

²⁵ Aside from this attempted, non-substantial, challenging of the content of the regular sectoral collective agreements, there was also some evidence suggesting that individual firms, backed up by their representative organizations, have challenged the practical functioning of the legal extensions of collective agreed minimum standards, in trying to reduce the conditions covered. Yet, this challenging was also of a limited nature, concerning a minor part of the legally extended conditions only.

Instead, the main evidence speaking against absence of institutional challenging by employers in the Norwegian construction sector pertains to the subtle challenging of job security regulations. To the extent that employers in this sector challenge dominant levels of protection through their use of temporary agency work and posted work, together representing close to half of all use of migrant labour in the sector, this subtle challenging has the potential to trigger a process of gradual neglect of the job security regulations, associated with liberalization as dualization. More generally, the challenging pursued by the group of employers exploiting the gap between minimum and average conditions potentially sets in motion a process in the same direction. Thus, while there has been overall absence of substantial challenging of the institutions for collective labour regulation, the somewhat mixed evidential picture uncovered here can partly be understood by distinguishing between the three institutions, with job security regulations being at the forefront of attempted challenging, but also in view of the somewhat divergent practices contained in employers' responses to migrant labour in the Norwegian construction sector, deriving from the empirical uncertainty as to whether a majority of the employers have indeed pursued a full compliance response. The investigation of the remaining steps of this causal process will reveal whether the challenging identified here is indeed non-substantial and limited, or whether it, instead, is substantial and meaningful enough to have causal powers to drive this process in a different direction than towards institutional continuity.

Part 2: Active support of the institutions

In parallel with the absence of overall challenging of collective bargaining and workplace representation as the main institutions for regulating employment relationships, and in spite of the subtle challenging of job security regulations associated with a part of employers' use of migrant labour, the employers and trade unions demonstrate their active support for the institutions as they recognize that the institutions need adaptation and maintenance to cope with the changed context related to increased labour and service mobility. The observable manifestation of this active support is defined as employers' and unions' push for re-regulatory measures and/or strengthened enforcement, with the intention of achieving institutional resilience creation. Defining of this active support is that it is demonstrated by both class actors. By demonstrating that the active support takes place in relation to labour migration, and thus follows from the investigated cause, I aim to achieve high theoretical uniqueness and exclude other plausible explanations for finding the evidence. The prior confidence held in this part of the mechanism is moderately high; while employers in the Norwegian construction sector have not been pictured as particularly supportive of the institutions in relation to labour and service mobility in existing literature (e.g. Friberg 2011; Andersen et al. 2014a; Dølvik and Marginson 2018), which downgrades our confidence in their active support, scholars have also highlighted that employers in this sector have supported certain re-regulation against the background of widespread concerns of distorted competition (e.g.

Andersen et al. 2009; Eldring et al. 2011). This entails that we need somewhat stronger evidence to permit updating to take place.

The active institutional support of both class actors in the Norwegian construction sector is demonstrated by the push for re-regulation through the request for legal extensions of collectively agreed minimum conditions. While the main sectoral trade union was the one to put forward the demand for a legal extension in the tripartite Collective Bargaining Committee following the market expansion in 2004, the sectoral employer organizations as well as a majority of the individual construction firms were also positive towards it and have continuously supported renewals of the legal extensions ever since (Andersen et al. 2009: 41-42; Bjørnstad 2015: 14; Andersen and Ødegård 2017: 20; Tariffnemnda 2018).²⁶ The push for this re-regulation was directly linked to increased labour and service mobility, as the proposal for a legal extension must be based on demonstrating that foreign workers face less favourable wages and working conditions than what is established in the collective agreement or what is common in the specific industry or occupation (Nergaard 2014b: 4). The extent to which such a situation is present is a potential point of disagreement between trade unions and employer organizations. In the building part of the construction sector, there has, however, been agreement from both sides about the “necessity” of the legal extensions, even in presence of minor disagreements about the documentation requirement serving as basis for the extensions and about the conditions to be legally extended, particularly in the early extension rounds (Andersen et al. 2009: 41; Bjørnstad 2015: 13; Andersen and Ødegård 2017: 20; Tariffnemnda 2018).²⁷ While this re-regulatory measure has been challenged in other economic sectors, most prominently by manufacturing employers, the main employer organization in the construction sector has continued to demonstrate its support, and in 2016 even stated that “preservation of the extension regime, including TBL [travel, board, and lodging], was of existential importance for [its] member firms” (Dølvik, and Marginson 2018: 30-31). The class actors’ active institutional support has further

²⁶ While the trade unions initially were sceptic towards opting for a statutory regulation, their assessment was that they had no better method to ensure that foreign workers would not be exploited (Arbetaren, 29 July 2008); with union density around 40 percent and collective bargaining coverage around 50 percent (Nergaard and Stokke 2011), the unions opted for legal extensions of collectively agreed minimum standards – not the least as enhanced state control measures would be dependent on a statutory regulation given that EU law only permits control measures in areas covered by statutory regulation (Dølvik, and Marginson 2018: 29). The one actor initially against the legal extension was the main Norwegian employer confederation (NHO). NHO subsequently conformed due to pressure from the sectoral employer organization, whose members faced harsh competition from foreign service providers and requested regulations to re-establish a level playing field in the competitive situation between firms using and not using collective agreements (Bjørnstad 2015: 13).

²⁷ Between 2009 and 2017, the share of firms recognizing a need for the legal extensions of minimum conditions increased, from 72 percent stating that there was a need in 2009 to 88 percent in 2017 (Andersen and Ødegård 2017: 20). It is not possible to determine whether this is a reflection of a worsened competitive situation, whereby more firms recognize a need for the legal extensions, or whether this support rather derives from an increased recognition from the side of firms vis-à-vis positive effects of the legal extensions, and a normalisation of the measure.

been demonstrated in their active participation in the development of the government action plans against social dumping (2006, 2008) and strategy against labour market crime (2015). The trade unions have specifically called for stricter limitations on the use of temporary agency work and increased ability of the labour inspectorate to sanction firms in case of violations, with the argument that extensive use of agency work challenges the functioning of the collective regulation of employment relations, undermines value creation and competence building in the workforce, and contributes to spreading labour market crime (Elstad and Ullmann 2017: 4; Nergaard 2019: 9).²⁸ From the side of employers, active support for the job security regulations has not been demonstrated in terms of calls for measures to reduce the room for circumvention of dominant levels of job security, with the exception of individual main contracting firms taking a stand for stricter requirements on subcontracted firms' use of temporary employment (Byggeindustrien 17 April 2015). Several large main contracting firms have also demanded a limitation on the number of firms permitted in contracting chains as a means to counter "social dumping" and "labour market crime" associated with the use of migrant labour and foreign firms (Eldring and Andersen 2014). Yet, while the trade unions have pushed for a central agreement that sets a fixed limitation on the permitted length of subcontracting chains, the sectoral employer organization has opposed any such agreement, instead opting for local agreements where main contractors can decide what limitations to impose in the projects that they manage (Eldring and Andersen 2014). Both actors have called for strengthened enforcement, including through joint calls for increased resources to monitoring agencies, an expansion of their competencies, and strengthened coordination between the agencies at different levels (Byggeindustrien 22 Aug 2014; BNL 10 Oct 2014; NHO 21 May 2015). A core component in organized employers' push for strengthened enforcement, supported by the trade unions, has been the establishment of a new and more extensive central approval scheme that introduces a "seriousness requirement" for all firms active in the construction sector, where firms are obliged to prove that they have paid taxes, complied with wages and working conditions, and have verified qualifications for the work to be undertaken (BNL 2014: 3).²⁹

²⁸ Given the circumvention of the codetermination rights of workplace representatives through the use of agency work, the unions have demanded a removal of the exceptions from the restrictions on temporary employment under the consent of workplace representatives, or alternatively that such unrestricted use can only be permitted based on a nation-wide, and not firm-level, agreement with the union (Elstad and Ullmann 2017: 10). In the capital region, where the use of agency work has been particularly widespread, the main construction union has even requested a prohibition of the use of agency work by construction firms (*ibid.*).

²⁹ The proposition to revise the central approval scheme was requested by the government following its decision to dissolve the old system as a response to the EEA surveillance authority (ESA)'s claim that it violated the EU Service Directive as foreign firms were competitively disadvantaged by the scheme (Byggeindustrien, 22 Aug 2014). This situation opened up room for a revision of the central approval scheme, and the employer organizations in the sector have proposed that such a revision should incorporate qualification requirements into the scheme, and make the scheme mandatory for all economic activities in the sector. Instead of using the EU regulatory framework as an excuse for not taking tightened control and re-regulatory measures, the employer organizations in the Norwegian construction sector have thus urged the government to push the limits for what can be done at the national level within the context of the EU

Relatedly, organized employers have also sought to facilitate enforcement by demanding improvements of the system of ID-cards for construction workers so that it also registers formal qualifications, which would make non-compliance with the appropriate wage level more difficult (Byggeindustrien 22 Aug 2014). On the whole, the evidential picture unambiguously suggests the presence of active institutional support from the side of employers and trade unions in the Norwegian construction sector, enabling us to update our confidence in the presence of this part of the mechanism. Calls for strengthened enforcement and re-regulation have come from both class actors, and even though the trade unions have made more expansive demands, employers have broadly stood behind the unions' calls for state measures to cope with the situation of extensive use of migrant labour and subcontracting of foreign firms (Arnholtz et al. 2018: 355).

Part 3: Institutional resilience creation

The active institutional support from the class actors in turn drives the process towards institutional resilience creation. Institutional resilience creation is manifested in the introduction of re-regulatory measures and/or strengthened enforcement as a response to the free labour and service mobility and employers' increased use of migrant labour. The prior confidence held in this part of the mechanism is moderately low; while a vast literature has been produced around the specific re-regulation related to the legal extensions of collectively agreed minimum conditions (e.g. Eldring et al. 2011; Dølvik et al. 2014a; Friberg et al. 2014), this has primarily been evaluated in terms of the extent to which it has served to improve the conditions of migrant workers, rather than in terms of its causal implication as an institutional resilience creation measure. Moreover, existing literature has interpreted the developments in the Norwegian construction sector as a move away from equal treatment through the strengthening of existing institutions, towards measures targeted at securing minimum standards only (Arnholtz and Eldring 2015: 81). This downgrades our confidence in the presence of institutional resilience creation.

Strong evidence of both re-regulation and strengthened enforcement is found in the Norwegian construction sector. Extensive measures were taken at an early and critical point in time, with employers, trade unions, and the state coming together to counter opt out practices and create resilience in the institutions, in direct response to the high pressure for change stemming from the increased use of migrant labour in this sector. The Norwegian Labour-led government (2005-2013) adopted three *Action Plans Against Social Dumping* (2006, 2008, and 2013), from which many of the resilience creation measures originate. The successive conservative government (2013-) subsequently launched measures largely building upon those initiated by the previous government, while placing particular emphasis on monitoring and enforcement, and

open market, arguing that there is national room for maneuver to establish qualification requirements and make registration mandatory (Byggmesterforbundet 2013:4-5).

framing them as measures to counter labour market crime rather than social dumping (*Strategy Against Labour Market Crime*, 2015).³⁰ By doing so, governments have played an active role in undertaking measures to encourage employers' compliance, continuously reducing room for firms to opt out of dominant rules and practices in their use of migrant labour, contributing to coalition-building between the class actors, and supporting resilience creation in collective bargaining, workplace representation, and job security regulations. As most of the potential for substantial challenging of the institutions in the case of the Norwegian construction sector is located in the unorganized part of the labour market, actions from organized employers and trade unions alone would not suffice to ensure resilience creation. In this way, the state's actions – notwithstanding shifts in governments – have been central to stave off pressure for change from unorganized actors. As scholars have pointed out, collective agreements tend to have a norm-setting effect on unregulated parts of the labour market, but only as long as access to labour remains restricted (Dølvik and Eldring 2008). When the EU enlargement provided Norwegian employers with access to a large untapped migrant labour supply, the class actors and the state considered it as necessary to create resilience in the institution of collective bargaining for it to prevail under the new circumstances (Friberg and Eldring 2013: 126). The re-regulatory measure of legal extensions of collectively agreed minimum standards for building work, first introduced in parts of the country in 2005 and then nation-wide in 2007, has been a central component in the path for resilience creation chosen by the Norwegian actors, and by scholars widely interpreted as the single most important tool in countering social dumping (e.g. Eldring et al. 2011).³¹ The purpose of the law that serves as the legal basis for these extensions is explicitly to ensure that foreign workers' wages and working conditions are *equivalent* to those of Norwegian workers, and to prevent distortion of competition detrimental to the Norwegian labour market (Section 1, Act of 4 June 1993/2009 No. 58).³² The fact that the Norwegian law on the extension of collectively agreed minimum standards is explicitly designed to target problems following from

³⁰ Given its focus on labour market crime, the measures following from the 2015 government strategy have had a stronger emphasis on increased tax controls, more active engagement of the police, and on introducing harsher repercussions for violations. Aside from countering labour market crime, an overall focus has, however, also been on fostering serious employment relationships and good working conditions through coordination between state agencies, employer organizations and trade unions (*Strategy Against Labour Market Crime* 2015), thereby supporting the maintenance of *collective* labour relations.

³¹ The conditions that have been made generally binding based on the collective agreement for building workers are minimum wage levels, distinguishing between four different wage categories (skilled workers, unskilled workers without experience in the sector, unskilled workers with at least one year of experience in the sector, and workers under the age of 18), expenses related to travel, board and lodging, and workwear (§ 6-7). Working time and overtime compensation is not regulated in the legally extended minimum conditions in the construction sector, but regulated through the work environment legislation (maximum 40 hours per week, over time compensation at least 40 percent of the hourly wage) (BNL and Fellesforbundet 2014: 9). Provisions on leave and holiday pay is, similarly, regulated in the work environment legislation, and universally applicable for workers active in the Norwegian construction sector (*ibid.* 40).

³² The government Action Plans Against Social Dumping (2006, 2008) set out to improve the legal basis of the extensions of collectively agreed minimum conditions. This resulted in a revision of the law in 2009.

the mobility of labour and firms in the open market – and that its approval can only be justified based on the demonstration of inferior wages and working conditions of foreign workers compared to Norwegian workers, *or* the threat thereof – distinguishes it from legal extensions of collectively agreed minimum standards in other European countries, including Germany, where the purposes generally are to ensure minimum standards for workers in the national labour market (Alsos and Eldring 2008). Yet, while the purpose of this re-regulatory measure has been, and continues to be, to ensure equivalent conditions for foreign workers, there is a notable discrepancy between its purpose and its actual provisions, establishing minimum standards as opposed to a legal obligation to comply with the full content of collective agreements that represents dominant standards.³³ This weakens the properties of this measure to generate resilience creation in collective bargaining by directing employers towards compliance with the institution. The legal basis for the extensions of minimum standards also contains a further set of important measures, including information and supervision duties entailing that main contractors shall oversee that the wages and working conditions in all parts of the sub-contracting chain are in compliance with the conditions that have been made generally binding. In the same time as employers and contractors were given an information and supervisory duty, workplace representatives in the main contracting firm were given the right to access information about the wages and working conditions of the workers employed in a sub-contracted firm or a temporary work agency, when the work is performed in an area covered by the legal extensions (Norwegian labour inspectorate, 2016). While problems with enforcing the information and supervisory duties have been reported (Eldring et al. 2011; Tariffnemnda 2018), these two measures have been important in strengthening enforcement by assigning main contractors an active role in contributing to enforcement of labour standards for the external labour that they use, and in creating resilience in workplace representation by strengthening the rights of workplace representatives. Moreover, in 2010, a joint liability was introduced, settling that workers that have not been paid the appropriate wage, including overtime compensation and holiday allowance, by their employer can demand firms higher up in the contracting chain to pay it (Eldring et al. 2011: 11; BNL and Fellesforbundet 2014: 40). Further important measures of resilience creation in the Norwegian construction sector have been the re-regulation of temporary agency work and public procurement procedures, and the introduction of a skill recognition scheme for qualifications obtained abroad. Temporary agency work was re-regulated through a mandatory registry scheme for temporary work agencies (2009) and a statutory provision on the principle of equal treatment for temporary agency workers

³³ The reason for the continued extensions ever since the mid-2000s is not necessarily that the use of migrant labour under inferior conditions has increased or remains prevalent, but that it by the tripartite actors has been conceived as necessary to maintain the limited room for non-compliance with minimum standards in the use of migrant labour, ensured by the legal extensions, and avoid a deterioration of the conditions in the construction labour market.

(2013).³⁴ As a means to ensure compliance with the equal treatment principle, the 2013 re-regulation also introduced a joint liability for user firms, entailing that a liability similar to the one in the use of subcontracted firms also apply to agency work, and workplace representatives in the user firms were given the right of access to information about the wages and working conditions of temporary agency workers (Løken et al. 2013: 56).³⁵ Construction firms' extensive use of temporary agency work also prompted a further re-regulation in 2019. Yet, while the government proposed to introduce a limit on the use of agency work permitted through agreements with workplace representatives – with potential to create resilience in the job security regulations by countering violation of the restrictions on the use of temporary employment, and in the functioning of workplace representation by countering circumvention of workplace representatives' codetermination rights in the use of temporary agency work – the parliament opposed the proposition, resulting in a minor re-regulation establishing that an agreement over the use of agency work beyond the legal restrictions on the use of temporary employment must be signed with a trade union with the right of nomination (Nergaard 2019: 9-10; Svalund et al. 2019: 19). While this latest re-regulation plausibly has modest properties as a resilience creation measure, it does – together with the previous re-regulations, along with the labour inspectorate being tasked to control the legality of the use of agency work by reviewing that firms making extensive use of agency work are bound by a collective agreement and that an agreement has been concluded with union representatives – demonstrate active efforts from the side of the state to reduce the room for firms to challenge the job security regulations and workplace representatives through the use of agency work.³⁶ Public procurement procedures have, in turn, been re-regulated through the introduction of limits on sub-contracting chains (2013 in state procurement, 2014 in the municipality of Oslo) and a requirement of mandatory apprenticeships in public construction work, applicable to Norwegian as well as foreign firms (2015).³⁷ The purpose of limiting the

³⁴ One of the targets in the first Action Plan Against Social Dumping (2006) was to improve the conditions of agency workers through a mandatory registry scheme for temporary work agencies, serving to obtain an overview of the firms active in the temporary work agency sector and thereby facilitate control of agency work activities. The registry scheme, introduced in 2009 and managed by the labour inspectorate, explicitly sought to counter social dumping and contribute to better and more orderly employment and working conditions for foreign workers (Eldring et al. 2011: 145). Following the establishment of the scheme, the use of agency workers is only legal if the work agency is registered with the labour inspectorate; if construction firms use agency workers from a work agency that is not registered, they get a warning or a fine for violating the law (ibid. 151).

³⁵ The joint liability entails that construction firms using temporary agency workers are responsible for the payment of wages, holiday pay and other types of remuneration in accordance with the principle of equal treatment in situations where this principle has been violated by a temporary work agency (Løken et al. 2013: 56).

³⁶ As migrant workers represent a majority of the temporary agency workers used in the Norwegian construction sector, these re-regulatory measures, which sought to counter substandard employment practices and violations of the restrictions on temporary employment associated with the use of agency workers, was directly related to the use of migrant labour.

³⁷ A weakness in the Norwegian public procurement regulations when it comes to contributing to maintenance of employers' compliance with *dominant* rules and practices – including the use of collective agreements – is that public procurers are only obliged to demand that collectively agreed *minimum* wages

length of subcontracting chains is to facilitate control and enforcement for the labour inspectorate as well as for main contractors, in turn also facilitating the enforcement of their supervisory duty. Aside from the regulation adopted by public agencies, several large main contractors have also taken the initiative to introduce various forms of chain limits in their operations (Eldring and Andersen 2014).³⁸ As a means to reduce the room for employers to circumvent the appropriate wage level in their use of migrant labour, a skill recognition scheme for qualifications obtained abroad was introduced in 2016.

Fundamental to the resilience creation efforts in the Norwegian construction sector has been the vastly strengthened enforcement of existing institutions and regulations. The Norwegian state has demonstrated its active role in the coalition of institutional supporters by contributing to strengthened enforcement by increased enforcement responsibilities of the labour inspectorate, accompanied by increased resources and means to deal with violations (2006, 2008), the deployment of new inspection strategies, including an increased focus on unannounced inspections and involvement of the media to enhance the deterring effect, and by reinforced coordination between state agencies (2006, 2015), including the police, labour inspectorate, employment agency, tax authority and the migration authority, to facilitate control and contribute to enforcement. Service centres for foreign workers have been established in seven cities, where migrant workers have direct access to the labour inspectorate, police, tax authority, and the migration authority under one roof, and where they are able to undertake all required registrations with all agencies at once.³⁹ These service centres greatly facilitate information exchange between the state agencies and helps to detect any irregularities. Aside from placing great emphasis on enhancing the coordination between public agencies at different levels, the Norwegian government has also set out to strengthen the cooperation with control agencies in the countries of origin of foreign firms and workers (2015).⁴⁰ Further measures facilitating control and

and working conditions are adhered to. The source of this weakness is the ESA, the control and monitoring body of the EEA, which prompted Norwegian legislators to ensure that the regulation did not violate EU/EEA law (Løken et al. 2013: 58-59). While the regulation obliging public procurers to demand that collectively agreed minimum wages and working conditions are adhered to in publically financed construction work was adopted in Norway already prior to the market expansions, it was only after the 2004 market expansion, and the increased use of labour and service mobility that followed from it, that it became necessary to take measures to ensure compliance with this regulation (ibid.).

³⁸ As the limit on the length of subcontracting chains has not been adopted by a central scheme, there is some variation between the regulations adopted by individual firms, and at the state and municipality levels. The most common is a limit of maximum two firms in the chain below the main contractor (Eldring and Andersen 2014).

³⁹ A core component of the strategies pursued by the labour-led as well as the conservative governments has been to enhance information services to foreign firms and workers to raise awareness about their rights and obligations in the Norwegian labour market (2008, 2015). The trade unions as well as individual firms have, on their side, offered language training to foreign workers as a means to facilitate their integration into the organized working life (Andersen and Ødegård 2017: 18).

⁴⁰ At the EU-level, the Norwegian government has even recently taken the lead in the work against work-related crime, urging – with reference to the EU Social Pillar – that the laws and regulations of the country in which the work is carried out must be followed (Lindahl, 23 Nov 2017).

enforcement have included the introduction of ID-cards for construction workers (2007), a subsequent improvement of the ID-cards system (2015), and the introduction and subsequent strengthening of a central approval scheme for firms (1997, 2016, 2018), seeking to exclude “unserious” firms from the market (Ministry of Labour press releases 1 May 2006 and 7 Oct 2008; Ministry of Labour and Social Affairs 2015; DIBK, 3 Dec 2018).⁴¹

As revealed by the above evidence, the Norwegian state has played an indispensable role in translating the active support demonstrated by the class actors into actual resilience creation measures. However, as the state is unlikely to act without pressure from one or both of the class actors (Howell 2012, 2016), the trade unions’ push for and employers’ support of re-regulation have been key to this process. In view of the coalition of institutional supporters in the Norwegian construction sector, the political capacity required to transform the demonstrated active support into actual resilience creation measures has been present throughout the investigated time period, in spite of shifts in government. Characteristic of the resilience creation efforts has been that they were initiated at an early point in time, which contributed to close down space for non-compliance at a critical point in conjunction with the market expansions, whereby the measures could be effective in creating resilience before opt out practices had the chance to take hold and spread, and that they were continuously tightened as new space for circumvention was uncovered. Taken together, the evidence provided here warrants updating in the presence of institutional resilience creation in this case. Whereas the weakest component in the evidential picture pertains to the re-regulatory measure targeted at securing minimum standards only, is the strongest evidence manifested in the strengthened enforcement of the existing institutions, and in the re-regulation of temporary agency work targeted at ensuring equal treatment. This leads us to conclude that the resilience creation, taken together, has been targeted at institutional maintenance and equal treatment, in spite of the partial emphasis on minimum standards. The next section evaluates whether the resilience creation introduced has contributed to continuity in the formal structures

⁴¹ Importantly, the latest adaptation of the central approval scheme tightened the requirement related to formal qualifications, obliging firms to demonstrate that the required skills for the activities that the firms register to carry out must exist in-house. At the same time, a requirement for permanent employment of workers holding the skills was specified as a means to prevent firms from using external labour for key activities (DIBK, 3 Dec 2018). This adaptation thus holds potential to simultaneously create resilience in job security regulations. A weakness in the adapted central approval scheme was, however, that the government – facing the requirement from the side of the EU not to introduce any measures that may make foreign firms competitively disadvantaged – opted for a non-mandatory scheme (*ibid.*), whereas the employer organizations and trade unions had demanded the scheme to be mandatory. The employer organization representing master builders voiced strong criticism against the decision to make it non-mandatory, whereas the main sectoral employer organization (BNL) and the trade unions, on the whole, were positive towards the revised scheme (Lotherington 11 Dec 2015). The employer organization representing master builders also criticised the government for only picking a selection of their proposed measures, most importantly that the requirement for formal qualifications only apply to main contractors and not to subcontracted firms, whereas all measures would have been needed as a package to fully close down space for circumvention (*ibid.*). According to BNL, this criticism was not representative of the organized employers taken together (*ibid.*).

and functioning of collective bargaining, workplace representation, and job security regulations – and in the outcomes delivered by the institutions – by ensuring institutional maintenance in the context of change pressures created by the EU open market.

2.3 Outcome: Contribution to institutional continuity in the Norwegian construction sector

In spite of the mixed evidential picture pertaining to the potential presence of certain subtle institutional challenging from the side of employers, the collective body of evidence points towards presence of the Institutional Resilience Creation Mechanism in the Norwegian construction sector. The final step in this analysis is to assess the outcome of this process. An overview of the chronological order of events, summarizing the regulatory changes related to labour migration and in the employment relations, is offered in Appendix VII. Below, I explore the institutional developments in collective bargaining, workplace representation, and labour legislation, and make explicit the institutional developments to which I argue that the employers' and trade unions' responses to labour migration have contributed. In sum, the findings only partly confirm that the responses by the actors in the Norwegian construction sector have triggered a causal process contributing to institutional continuity in collective bargaining, workplace representation and job security regulations. Notwithstanding employers' overall compliance and trade unions' effective protection, which have generated resilience creation contributing to institutional maintenance of all three institutions, causal forces originating from employers' use of migrant labour as external labour, along with the enhanced leverage obtained by employers in the pretext of labour and service mobility, have, in parallel, contributed to a decline in the coverage of collective bargaining and job security regulations, a formal change in the wage-setting system in what appears to be in favour of employers, a shift in negotiation dynamics in favour of employers, and a weakening of the negotiation capacities of workplace representatives. While compliance with dominant levels of job security maintains a strong position as dominant practice, collective bargaining is at the very least at the threshold of displacement. Employers' use of migrant labour has clearly been a driving force behind the former development, and most plausibly a contributing force behind the latter. Workplace representation has been the least exposed to liberalising changes, and the class actors' responses have contributed to maintaining the coverage and enforcement capacities of workplace representatives.

Collective bargaining: declined coverage, changed wage-setting system, and negotiation dynamics shifted in favour of employers

While collective bargaining coverage remains difficult to estimate at the sectoral level, available data suggests a decline in the share of workers covered by collective agreements in the Norwegian construction sector since the early 2000s. According to data from the Labour Force Survey (LFS),

where workers themselves state whether or not they are covered by a collective agreement, the coverage has gradually declined from 58 percent in 2004 to 54 percent in 2013 (Nergaard and Stokke 2006: 26, Nergaard 2014a: 23). In 2017, the coverage had declined to 50 percent (Nergaard 2018: 26). However, estimates based on registry-based employment statistics coupled with data from the private sector retirement fund suggest that the self-assessment data from the LFS results in overestimates of the coverage.⁴² According to this data, collective bargaining did not even hold the position of dominant practice at the time of the market expansion; in 2001, the coverage was as low as 51 percent, in 2004 49 percent, and in 2013 41 percent of the construction workers were estimated to be covered by a collective agreement (ibid. 32). A third source, based on data from the research institute Fafo, including non-settled workers, suggests a decline from approximately 56 percent of the workers being covered in 2001, to 52 percent in 2004 and 40 percent in 2013 (Bjørnstad 2015: 16). Thus, while the data based on the LFS suggests that collective bargaining was at the brink of being displaced as dominant practice in the Norwegian construction sector in 2017, these complementary estimates suggest that it had already been, or was close to being, displaced at the time of the market expansion. Taken together, the available data reveals a decline of about 10 percentage points since the time of the market expansion. The figures do, however, also reveal that the gradual decline in the coverage had been initiated already prior to the market expansion in 2004. This suggests a general trajectory of change towards institutional drift – and plausibly even institutional displacement of collective bargaining as the main institution regulating employment relationships, resulting from causes beyond the increased use of labour and service mobility post-2004. Yet, the data also suggests that the decline in the share of *Norwegian* construction workers covered has been somewhat more modest than in the sectoral workforce as a whole. In 2013, the coverage among construction workers, excluding non-settled workers was approximately 43 percent. If excluding all workers with foreign background, the coverage was approximately 47 percent (ibid.).⁴³ As the coverage was approximately 7 percentage points higher when excluding workers with foreign background, this suggests that a part of the declined collective bargaining coverage indeed originates from the lower coverage

⁴² Temporary and recently arrived migrant workers are in general not included in the LFS. To the extent that these workers are not covered by a collective agreement, the actual coverage in the sector is indeed plausibly lower than the LFS estimate. Temporary agency workers active in the construction sector are also excluded from the estimated coverage in the construction sector.

⁴³ The collective bargaining coverage by country of origin in the Norwegian private sector as a whole similarly suggests maintained coverage for Norwegian workers, and a decline in the share of settled Eastern European workers covered, many of whom are employed in the construction sector. In 2001, there was barely any difference between the share of Norwegian and Eastern European workers covered by collective bargaining in the Norwegian private sector; 52 percent of the former and 51 percent of the latter were covered (Nergaard 2018: 34). In 2013, the coverage of the workers originating from Eastern Europe had declined to 37 percent, whereas the coverage of Norwegian workers had been maintained at 50 percent (ibid.). While there continued to be no marked difference in coverage between Norwegian workers and workers from other parts of Europe, the Eastern European workers have, following the decline, the lowest collective bargaining coverage in the Norwegian construction sector (ibid.).

among these workers. While the overall complying employers have not contributed to this outcome, a parallel logic of action pursued by employers involving non-use of collective agreements, for instance but not exclusively, via posted work has evidently done so.⁴⁴ While extensive resilience creation has taken place in the Norwegian construction sector, the central measures in relation to collective bargaining – the legal extensions of collectively agreed minimum conditions – has, little surprising as the measure does not hold any properties that would direct employers towards the use of a collective agreement, not contributed to halting the decline.⁴⁵ The trade unions' effective protection of migrant labour – including efforts to ensure use of collective agreements – has, in contrast, been central in ensuring that a majority of the employers have continued to use collective agreements to regulate the employment of migrant labour, thereby generating a countervailing force in relation to the general ongoing decline.

Aside from the declined collective bargaining coverage, the practical functioning of the institution has been affected through changes in the wage-setting system and negotiation dynamics. In 2012, the wage-setting system in the collective agreement for building workers was changed. For craftwork, the main wage-setting system was, up until 2012, based on a chord system (Friberg and Haakestad 2015: 188). While the use of performance pay had been decreasing over time, the main sectoral employer organisation was in the 2012 bargaining round successful in formally achieving the removal of the chord system as main wage-setting system for the building trades (Byggeindustrien, 20 Feb 2012; Friberg and Haakestad 2015: 189). The new wage-setting system meant that firms and workplace representatives locally can agree on which wage-setting system to use, increasing the importance of local negotiations (Byggeindustrien, 20 Feb 2012). The long-term implication of this change in the wage-setting system will plausibly be a decline in wage levels, as being covered by the former wage-setting system was the most beneficial for craftsmen workers.⁴⁶ The link between this formal change in the wage-setting

⁴⁴ Scholars have previously noted that changes in the organization of work involving outsourcing to foreign firms has entailed that the reach of collective bargaining has plausibly declined more than what is reflected in the estimated coverage (Andersen et al. 2014a: 88-89; Dølvik et al. 2014b: 81). Moreover, scholars have, based on the finding that a bit less than half of all temporary work agencies are organized in an employer organization, recently argued that the use of agency work similarly contributes to placing a large part of the construction sector outside of organized labour relations (Elstad and Ullmann 2017: 7). However, as the main sectoral trade union has concluded collective agreements with individual temporary work agencies, this analysis proposed that the use of migrant workers as temporary agency workers has entailed overall use of collective agreements, whereby agency work would not contribute to a decline in coverage.

⁴⁵ Initial concerns from the trade unions that the legal extensions would weaken the position of collective agreements and contribute to a decline in coverage as employers would have less incentive to continue to uphold the institution have thus far been rejected in existing literature, as well as by the trade unions themselves (Arbetaren, 29 July 2008; Eldring et al. 2011; Bjørnstad 2015: 13). In view of the continuous decline in the coverage of collective bargaining since the use of legal extensions in the mid-2000s, it can, however, not based on the current evidential picture be excluded that it has, in fact, been a contributing factor.

⁴⁶ In 2012, the annual wage for chord work in the construction sector was 50 000 NOK higher than the average annual wage of Norwegian craftsmen, clearly demonstrating the positive impact of the chord system on wage levels (Friberg and Haakestad 2015: 191).

system in the collective agreement and labour migration is the changed competitive situation following from increased labour and service mobility. This gave employers a narrative within which they gained momentum in their demand for change in the wage-setting system, which they had already pursued over a number of years. Moreover, this outcome reflects the changed negotiation dynamics following from the increased use of labour and service mobility as the trade union was unable to resist the demand under the conditions of extensive use of migrant labour in the sector. Furthermore, evidence of the causal process provided in this chapter also documented that employers in a different part of the sector, covering infrastructure and plant work, had not only attempted to challenge the content of collective agreements through negotiations with reference to the changed competitive situation, but also by actively seeking to exploit inherent ambiguities reinterpret the content of the agreement. While it remains unclear to what extent this strategy has resulted in changes in the content of the collective agreement, and the practical application of it, the trade union has reported that once employers have pursued systematic cost calculations and reinterpretation as basis for making deviations, it quickly becomes the rule rather than the exception (Interview 18), exposing the strategy as a way of achieving potentially far-reaching changes in the content of collective agreements. Taken together, the consequence of these change strategies, taking place in the narrative of heightened competition associated with labour and service mobility, is that the negotiation dynamics are altered in favour of employers, and employers gain more control over the content of the collective agreements – with the result that the collectively agreed conditions are at risk of eroding over time (Interview 18; cf. Dølvik et al. 2014b: 81).

The effects resulting from declined collective bargaining coverage and changes in the wage-setting system is increased employer discretion over wage-determination. Multiple studies investigating the wage developments in the Norwegian construction sector have found that employers' increased use of migrant labour has been associated with lower wage growth, lower productivity levels, increased intra-sectoral wage dispersion, and a greater redistribution of income from labour to capital (Bjørnstad 2015: 7-8; Jordfald 2018: 10-11, 17; also Bratsberg and Raaum 2012; Gjelsvik et al. 2015).⁴⁷ These outcomes suggest that the ability of collective

⁴⁷ Between 2008 and 2014, the wage growth in the construction sector was lower than in the private sector as a whole (Jordfald 2018: 10). Only the higher wage categories kept pace with the average wage growth in the private sector, whereas the lowest wages in the construction sector had considerably lower growth than the lowest wages in the private sector as a whole (ibid.). Similarly, while wage dispersion has increased in the Norwegian private sector since the market expansion, this development has been particularly pronounced in the construction sector, in which most EU internal labour migrants have been employed (Bjørnstad 2015). Bjørnstad (2015) has also demonstrated that the use of migrant labour has been associated with a marked reduction in productivity. According to Bjørnstad, the reduced productivity has occurred as the access to cheap labour has reduced investments in capital, whereby the sector has become less capital intensive and more labour intensive. The use of migrant labour has also contributed to reduced productivity because migrant labour has lower productivity than the overall workforce, and because the increased use of foreign subcontractors and use of foreign agency workers has resulted in poor coordination, work organization and production flow in construction sites (ibid. 7).

bargaining to deliver wage growth, contribute to a compressed wage structure, and redistribute income from capital to labour may not be intact in the Norwegian construction sector. The wage growth has, however, differed between different occupations in the sector. Between 2008 and 2014, the greatest wage growth took place in the occupational areas in which Norwegian workers are dominant (Jordfald 2018: 32). At the same time, the greatest wage growth among the 30 percent with lowest wage took place in the occupations without any formal qualifications, where migrant workers are in majority (ibid.). Yet, the distance between the highest and lowest wages has increased – between 2004 and 2014, the gap between the lowest and highest wages doubled – leading to greater wage dispersion between the top and bottom, whereas the wage dispersion between the bottom and middle has been reduced (Bjørnstad 2015: 45; Jordfald 2018: 11). Scholars have claimed that the reason for this is that a majority of the CEE labour migrants are concentrated around the legally extended minimum wage levels, whereas Norwegian construction workers remain higher up on the wage distribution (Bjørnstad 2015: 8). Based on the claim that labour migrants have received lower wages than what domestic workers would have received for the same job, scholars have attributed the lower wage growth and increased wage dispersion to the increased use of migrant labour (Bjørnstad 2015: 7; also Friberg and Haakestad 2015: 183). The fact that this sector, with comparatively low union density rates and collective bargaining coverage compared to other parts of the Norwegian private sector, combined with the most extensive use of migrant labour, has had a stronger wage growth on the bottom of the wage distribution is explained by the legal extensions of collectively agreed minimum wages. Scholars have demonstrated that the legal extensions have had a positive effect on the lowest wages, and contributed to a reduction in the share of workers earning below the collectively agreed minimum wages (Eldring et al. 2011: 130-131; Bjørnstad 2015; Bratsberg and Holden 2015; Jordfald 2018: 18). However, while the legal extensions have contributed to a high wage growth among those who earn the least – that is, to a large extent CEE labour migrants – a further effect has also been identified: the wage growth for the group of workers who are placed above the minimum wage levels has been weaker, whereby this group of workers over time has been approaching the minimum wage level rather than moving beyond it (Jordfald 2018: 34). This suggests that the legal extensions simultaneously function as a wage ceiling and wage floor, and that the intention of the legal extensions to secure equal conditions for foreign and Norwegian workers has not been realized. Thus, while the legal extensions have dampened the wage reducing effects of employers' increased use of migrant labour, they have not served to counter the increased wage dispersion between migrant and non-migrant workers in the sector (Bjørnstad 2015: 8). In contrast, the gap between the highest and lowest wage earners in manual construction work has continued to increase even in presence of the legal extensions (ibid. 45).

Workplace representation: maintained coverage and enforcement capacities, weakened negotiation capacities

While the trade union density rates have remained relatively stable in the Norwegian construction sector over the last decade and a half, the main sectoral trade union has indicated that its representational coverage in the workplaces has declined, and that workplace representatives now represent fewer workers than before (Interview 19).⁴⁸ Due to absence of data on the coverage of workplace representation in Norway, the evidence in terms of continuity or change in the coverage of this institution is, however, not conclusive. To the extent that that the general trajectory of this institution has involved a decline in its coverage, the evidence provided of the causal process in this chapter suggests that the class actors' responses to migrant labour has not necessarily contributed to this decline. Instead, the unions' successful organization of migrant workers and their support of migrant workers' establishment of workplace representation in temporary work agencies has counteracted a decline in coverage. To this end, the resilience creation generated by the legal extension of collectively agreed minimum conditions has, according to earlier findings, made it easier for the unions to recruit migrant workers as members, as an immediate effect of the union membership was support in enforcing it (Eldring and Hansen Arnholtz 2009; Skjærvø 2011). Moreover, as available data suggests that the organizational rate of migrant workers is even higher than in the sectoral workforce as a whole, the union responses to migrant labour also seem to counter a trend towards declined organizational rates. In this way, the trade unions' protective response vis-à-vis migrant workers has been a central component of the unions' response to the low union density rates in the sector. While workplace representatives in cases where employers use external labour face a challenging environment in which they are tasked to contribute to enforcement, the statutory provision in the shape of legal extensions has also facilitated this task, and their enforcement capacities have, according to union representatives, largely been kept intact (Interview 19). At the same time, the substantively increased state contribution to enforcement of labour standards supports the maintenance of the enforcement function held by workplace representatives by offering a context of generally high levels of enforcement. Nonetheless, agency work does in many instances lead to a partial displacement of the function of workplace representatives; while the union has supported the establishment of workplace representation in temporary work agencies, these workplace representatives have no representational rights in the workplace where the work is actually carried out (Interview 19; Marsdal 2015: 10). At the same time, agency workers serving as workplace representatives in the work agency in which they are employed face a challenging task as they themselves are also

⁴⁸ The union organizational rates in the Norwegian construction sector have seen a minor decline since the market expansion in 2004, when 42 percent of the workers were organized, down to 39 percent in 2013 (Nergaard and Stokke 2006: 11; Nergaard 2014a: 17). Since then, the organizational rates have been maintained, and remained at 39 percent in 2017 (Nergaard 2018: 22).

placed to carry out work in workplaces other than in the firm in which they are supposed to uphold this function (Interview 19). Furthermore, as the codetermination rights of workplace representatives *in* construction firms has largely been circumvented in the use of agency work , and the minor re-regulation of agency work in 2019 holds limited properties to halt such circumvention, the negotiation capacities of workplace representatives are negatively affected in that they are withheld in the area of agency work. As in-house workplace representatives have no representational function vis-à-vis subcontracted workers, the use of external labour through subcontracting of foreign firms – to the extent that there is no workplace representation in the subcontracted firms – similarly reduces the reach of the institutional functions. While the trade unions’ protective response has involved active efforts to maintain the institutional coverage and functions through the establishment of workplace representation and by building the capacity of migrant workers to enable them to fulfil the enforcement function, migrant workers generally do not possess the skills or capacity to carry out local negotiations and thus remain unable to fulfil the negotiation function (ibid.). As a result, local negotiations do not function in firms where mainly foreign workers are employed, as the balance of power is too skewed for real negotiation to take place (ibid.). In such cases, union officials need to step in to support the negotiations. This is, however, highly resource demanding, and the union is struggling to compensate for the inability of these workplace representatives to fulfil their function (ibid.). More generally, workplace representatives have, due to the competitive situation, been exposed to increased pressure from management, negatively affecting their negotiation capacities. At the same time as the importance of local negotiations has increased following the change in the wage-setting system in one of the main sectoral agreements, the union organizing building workers has reported that the overall room for firm-level negotiations, which serve the purpose of improving the collectively agreed conditions in-between the periods of conclusion of the sectoral agreement, has been reduced due to the competitive situation (ibid.). To the extent that local negotiations continue to take place in this situation, the result coming out of them is, from workers’ perspective, weak (ibid.). The weakened negotiation capacities at the workplace level, to which employers’ increased use of migrant labour appears to have contributed, lead to increased employer discretion over wage determination and offer meagre prospects for improvements beyond the minimum conditions and gains achieved quadrennially through the sectoral agreement.

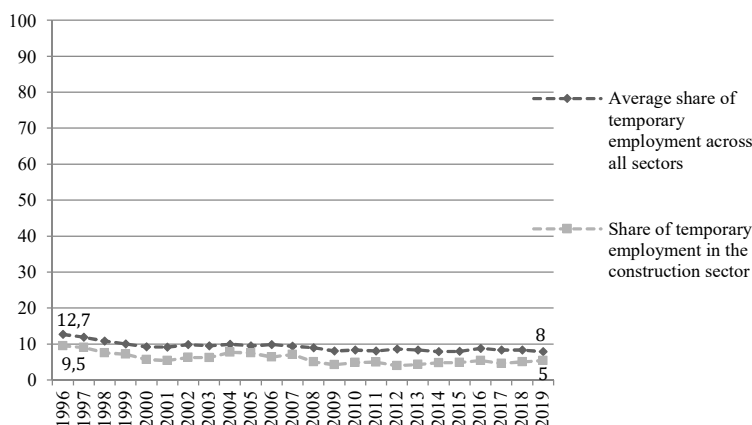
Labour legislation: declined coverage of job security regulations

While the shift in the organization of work that has taken place through the increased use of subcontracting and temporary agency work would suggest a defection from job security regulations in practice, this is not reflected in the share of temporary employment among the construction sector workforce as a whole, which, according to data from the LFS, has maintained very low levels, circulating between 4.5 and 5.5 percent throughout the last decade (Figure 5.2).

This even represents a minor decline since the market expansion in 2004, when 7.7 percent of the construction workers were in temporary employment. However, while there is evidence that the job security has not declined for construction workers in general, these figures do not reflect the actual levels of job security in the sector. As temporary and recently arrived migrant workers in general are not included in the LFS, the actual share of temporary employment is – to the extent that these workers do not have permanent employment – higher. Posted workers, whose employment tends to be associated with specific short-term assignments, belong to the category of workers who reduce the overall levels of job security in the sector. Moreover, the investigation of the causal process revealed that temporary agency work has served as a way to circumvent the legal restriction on the use of temporary employment. As most temporary agency workers in the Norwegian construction sector are migrant workers, this suggests that employers have unequally distributed the insecurity of temporary employment onto a part of the migrant workforce. As a considerable part of firms' use of migrant labour has involved posted work and agency work, employers' responses have in effect contributed to reduce the actual coverage of job security regulations in the sector, even as the construction workers included in the LFS, comprised of domestic workers as well as settled migrant workers, have enjoyed maintained levels of job security, and compliance with job security regulations maintains a strong position as dominant practice.⁴⁹ While it remains difficult to estimate the share of migrant agency workers and posted workers in the sectoral workforce, available estimates give us reason to believe that they may make up around 15 to 20 percent of the sectoral workforce. The situation in the Norwegian construction sector thus represents a case of drift in the coverage of job security regulations, where the decline in the levels of job security has led to increased employer discretion over hiring and firing vis-à-vis a part of the workforce, and more generally over the organization of work.

⁴⁹ While recent research has found that migrant workers increasingly are part of regular in-house operations (Andersen and Ødegård 2017: 8, 20), suggesting that compliance has strengthened its position as dominant practice in the use of migrant labour, it has simultaneously been suggested that permanent in-house workers have been replaced by agency workers (Marsdal 2015). An investigation of the use of agency work in the capital region, where the use of agency work has been particularly widespread, demonstrated a strong reduction in the number of skilled workers in permanent employment in the six traditionally largest contractors between 2007 and 2015, halving from 1103 to 507, whereas the use of agency workers increased in parallel (Marsdal 2015: 7). In 2015, the six largest temporary work agencies in the capital region employed six times as many construction workers as the six traditionally largest contractors (ibid. 1).

Figure 5.2 Share of temporary employment in the construction sector and in the Norwegian labour market, 1996-2019



Source: Statistics Norway, Labour Force Survey.

The main sectoral employer organization has stated that one of its main priorities is the investment in permanent employees in its member firms, considering it a precondition for maintaining and reproducing a skilled workforce (Interview 20). This is indeed reflected in the high levels of permanent employment in this sector. Yet, data suggests that the increased use of migrant labour in the sector over the last decade and a half has been accompanied by a decline in the number of new apprentices trained, a deskilling of the workforce, and that domestic workers have started to abandon the sector. Already between 2007 and 2012, the number of new apprentice contracts in construction occupations in the Norwegian construction sector decreased by 24 percentage points (Nyen and Hagen 2014). In parallel, applications to the vocational education in construction work decreased by 40 percent between 2007 and 2014, entailing a drastic decline in the recruitment base of domestic construction workers (Friberg and Haakestad 2015: 183). In combination with figures revealing that the average age of Norwegian construction workers is well above 50 years, this offers a strong indication that Norwegian workers have been abandoning the sector, whereas the substantial growth in employment over the last decade originates from employers' use of migrant labour (ibid.). It is very plausible that less investments in the training of new domestic construction workers are made because of the free access to foreign labour in the EU open market, in turn reinforcing the structural demand for migrant workers (cf. Friberg 2013). This development ties in with a deskilling of the sectoral workforce. Between 2001 and 2014, the number of skilled workers in the sector halved (Fellesforbundet 2015). The drastically increased annual turnover and added value for Norwegian construction firms during the same time period have thus not translated into investment in a skilled workforce. Instead, the development is the reversed, opening up for the possibility that a more substantive turn in employers' logic of action is under way in the Norwegian construction sector.

In sum, the outcome of contribution to institutional continuity is in the Norwegian construction sector plausibly better described as pressures temporarily and partially staved off, and an ongoing contestation between two logics of action – compliance and non-compliance – continues to take place, in which complying employers are losing majority, especially as regards to collective bargaining. As revealed in the Institutional Resilience Creation Mechanism leading up to this outcome, the process generated by employers’ and trade unions’ responses to migrant labour contained certain subtle challenging of all three institutions, paralleled by active institutional support, and the continuous introduction of extensive resilience creation measures countervailing the pressures for change. The gradual drift in the coverage of collective bargaining and job security regulations suggests that the causal powers generated by employers’ institutional challenging may have been more substantial than first recognized. At the same time, the evaluation of the institutional outcomes has left us with a question mark as to whether the resilience creation measures have been sufficient to ensure equal treatment, beyond minimum standards – and, extendedly, institutional maintenance. The resilience creation dedicated to strengthened enforcement of existing institutions has been indispensable in contributing to maintenance of employers’ compliance as dominant practice. The re-regulatory measure targeted at ensuring minimum standards, that is, the legal extensions of collectively agreed minimum standards, has, in turn, generated a high wage growth for migrant workers, dampened the overall wage reducing effects of employers’ increased use of migrant labour, and ensured a regulated market for the firms and workers operating outside of collective bargaining. The strength of this resilience creation measure in the Norwegian construction sector, which strongly distinguishes it from similar measures in other European countries, is that it was introduced with the specific purpose to ensure equivalent conditions for foreign workers. Yet, this re-regulatory measure is, on its own, unable to meet its stated purpose. Only in combination with other resilience creation measures, which together induce a regularization of the use of migrant labour within the scope of the institutions for collective labour regulation, are the prospects for a cohesive construction workforce improved, a division of labour along the lines of migrant and non-migrant workers countered, and a trajectory towards institutional continuity enabled.

3. Conclusion

This chapter has investigated empirically how the employers’ and trade unions’ responses to migrant labour in the Norwegian construction sector have affected the institutional development of collective bargaining, workplace representation and job security regulations. The first section concluded with a fair degree of empirical uncertainty that the overall response by employers constitute full compliance with dominant employment relations rules and practices, but with a fairly high degree of empirical certainty that the unions’ responses have resulted in effective

protection of migrant labour. Next, I tested empirically whether these responses have contributed to institutional continuity through an Institutional Resilience Creation Mechanism. The evidence provided for the presence of the first part of the mechanism permitted a modest updating of our confidence in the overall absence of substantial institutional challenging from the side of employers, whereas the evidence of the second and third parts of the mechanism, conceptualized as active institutional support and resilience creation, was considered as strong, whereby the overall evidential picture warranted updating in the presence of an Institutional Resilience Creation Mechanism in the Norwegian construction sector. Having demonstrated the causal pathway triggered by the actors' responses, the chapter ended by linking the last step of the mechanism to the institutional development of the employment relations. It was inferred that the institutional resilience creation generated by the coalition of institutional supporters comprised of trade unions, employers, and the Norwegian state, had staved off pressure for change, but that contribution to institutional continuity had by no means been achieved across the board. A partial neglect of dominant levels of job security, signalling dualising tendencies, was revealed, and in relation to collective bargaining, the analysis uncovered a general ongoing trajectory beyond institutional neglect towards institutional displacement of the institution central to the collective regulation of labour relations. It was concluded that a part of employers' use of migrant labour had contributed to this end, in spite of the countervailing forces generated by the trade unions, organized employers, and the state to maintain compliance as dominant practice. The reason behind the incomplete contribution to institutional continuity, in spite of the evidenced operation of an Institutional Resilience Creation Mechanism in the Norwegian construction sector, most plausibly derives from the empirical uncertainty as to employers' full compliance with dominant rules and practices in their employment of migrant labour. Additionally, the analysis also revealed the presence of minor inherent ambiguities in collective agreements and in the job security regulations, whereby one of the contextual conditions requisite for a trajectory towards continuity is omitted. The construction sectors in many European countries have, following the EU market expansions, come to be associated with low wages, insecure employment, and high shares of unskilled workers. The Norwegian construction sector has, in contrast, been characterized by solid wage levels, safe working conditions, high levels of job security, and strong craftsmanship (Friberg and Hakkestad 2015; Elstad and Ullmann 2017). While the Norwegian construction sector continues to stand strong in a comparative perspective, the maintenance of these conditions is likely dependent on further institutional resilience creation measures, with causal powers to ensure that the institutions deliver equally for the migrant and non-migrant workers and that employers' full compliance is maintained as dominant practice.

Chapter 6

How trade unions' non-effective protection and employers' compliance with minimum standards contribute to dualization: The case of institutional neglect in the German manufacturing sector

1. Introduction

The task of this chapter is to test empirically the theorized Institutional Neglect Mechanism, assessing the extent to which updated or downgraded confidence in the operation of this mechanism is warranted and how well it accounts for the developments in the case of the German manufacturing sector. The German manufacturing sector has been selected as a typical case based on the presence of employers' compliance with minimum standards in their employment of migrant labour and the trade union's non-effective protection of migrant labour, and based on the presence of the requisite contextual conditions of high levels of enforcement and a weak coalition of institutional supporters.¹ I start the empirical analysis by establishing the presence of the causal condition, justifying the categorization of employers' and the trade union's responses to migrant labour. I then present the empirical tests of the three parts of the Institutional Neglect Mechanism, evaluating whether the predicted evidence match what is actually found in the empirical record, and assess whether the collective body of evidence allows us to update our confidence in that the mechanism has been present and functioned as theorized. The final part of the chapter analyses the outcome of the process and how it relates to the general trajectory of the employment relations in the German manufacturing sector.

¹ The focus of this chapter is on the metal, machinery and transport equipment industries, henceforth referred to as the metal and electrical industry (in German, the *Metall- und Elektroindustrie*), wherein the automotive industry plays a central role in firms' use of migrant labour.

2. A causal pathway toward liberalization through institutional neglect

The below sections reconstruct the causal process that is triggered by the class actors' responses to labour and service mobility in the German manufacturing sector. By unpacking the steps of the causal process, I seek to demonstrate how the actors' responses are linked to the institutional development of the employment relations by contributing to dualization through institutional drift.

2.1 Cause: Employer and trade union responses to migrant labour in the German manufacturing sector

Employers' compliance with minimum standards in their use of migrant labour

Migrant labour in the German manufacturing sector has mainly been used through temporary agency work and sub-contracting (Interview 1, 2, 3). As the type of migrant labour in focus here – recent (<5 years) and temporary migrant labour – tend to be overrepresented among agency workers (Interview 3; Pulignano et al. 2015: 12), and employed in subcontracted firms rather than in-house in larger manufacturing firms (Interview 2, 10), manufacturing firms' increased use of temporary agency work and subcontracting over the last two decades (Interview 2; Doellgast and Greer 2007; Helfen 2011) is linked to their use of migrant labour. As the deregulation of the use of temporary agency work through the Hartz I reform in 2003 coincided with the market expansion in 2004, the German state effectively established the context shaping manufacturing employers' response to migrant labour. Aside from deregulating the use of temporary agency work by lifting the limitation on the maximum length of temporary work assignments, abolishing the restrictions on repeated assignments with the same company, and allowing work agencies to hire workers only for the duration of their placement in a user company, the Hartz I reform most importantly established the conditions under which the use of agency work could take place; allowing for derogations from the equal pay principle of temporary agency workers by means of collective agreements (Emmenegger 2014: 233; Carlin et al. 2014: 67; Baccaro and Howell 2017: 111). While the legally intended use of agency work was initially to cover production peaks, agency workers have over the last 15 years become a permanent component in production processes of many automobile firms (Holst 2009, 2014; Holst et al. 2009; Bispinck and Schulten 2011: 10; Schulten and Schulze Buschoff 2015: 42; Benassi and Dorigatti 2015: 11). More recently, however, findings suggest that firms have turned away from use of agency workers towards use of subcontracted workers as a response to the re-regulation of temporary agency work in 2012 onwards, when minimum wages were made generally binding for agency workers, and when collective agreements including sectoral supplements for agency workers active in the manufacturing sector were concluded (Interview 2, 4; Pulignano et al. 2015: 4-5; Dribbusch et al.

2017: 214). While it remains difficult to assess the scope of agency work and the use of subcontracting, and the proportions of the two variants of external labour may differ from firm to firm, available estimates suggest that between one and two thirds of the workers in production are external labour (Interview 2; Mitlacher 2007: 591-592; Eichhorst and Marx 2012; Lill 2014; Holst 2017).² The use of external labour via agency work and subcontracting does not per se reveal the scope of employers' use of migrant labour via different employment channels, but it substantiates the indications that the organization of work in these firms are increasingly based on external labour, among which migrant labour is mainly located.³ While we are unable to firmly estimate the use of migrant labour as agency workers, and it therefore remains somewhat difficult to estimate the scope of German manufacturing firms' use of migrant labour, register data reveals that EU migrant workers in employment liable to social insurance in 2017 accounted for approximately 10 percent of the sectoral workforce (German Federal Employment Agency). When it comes to assessing the use of posted work in this sector, a recent study found that 93 500 workers were posted in the German industry in 2015 (Hassel and Wagner 2018), suggesting that posted workers might make up around 10 percent of the sectoral workforce.⁴ According to trade union officials, the temporary work agencies active in the manufacturing sector are almost exclusively German firms, suggesting that use of agency work in this sector is not associated with the use of posted work (Interview 2, 3, 4, 10). Instead, the use of posted work occurs through subcontracting of foreign firms. This leaves us with a minimum estimate that migrant workers – excluding migrant workers used as agency workers – make up around 20 percent of the sectoral workforce.

Use of collective agreement to regulate the employment of migrant labour

A central component of employers' responses is whether or not they use a collective agreement to regulate their employment of migrant labour. In absence of data on migrant workers' collective

² Existing literature has found that the share of temporary agency workers in the workforce of certain automobile plants is as high as between 30 to 50 percent, whereas it remains around 10 to 15 percent in other plants (Mitlacher 2007: 591-592; Eichhorst and Marx 2012; Lill 2014). In 2013, the sectoral union estimated that agency workers made up 13 percent of the sectoral workforce (IG Metall 2013), whereas the employer organization offered a considerably more moderate estimate of 5.3 percent of the sectoral workforce (Gesamtmittel 2012). More recently, the sectoral trade union has estimated that approximately 22 percent of the workers in the German automotive industry is employed in a subcontracted firm, and that 9 percent are temporary agency workers (Interview 2; Holst 2017). In a major automotive firm, the share of subcontracted workers was as high as 45 percent, and the share of temporary agency workers was 12 percent (Interview 2). In this specific firm, then, most workers in production were used as external labour.

³ According to register data, agency work is more widespread among foreign workers than among German workers, and it is particularly widespread among CEE workers; in 2017, 5.3 percent of all German workers in employment liable to social insurance were temporary agency workers, compared to 9.5 percent of all EU citizens and 12.7 percent of CEE citizens in employment liable to social insurance (German Federal Employment Agency 2017).

⁴ The trade union run migrant workers' consultation office, Fair Mobility, has reported that it regularly encounters posted workers working in the metal and electrical industry, but is unable to estimate the scope of posted work (Interview 10).

bargaining coverage, the extent to which migrant workers are covered by collective agreements is here assessed by taking the organization of work through sub-contracting and temporary agency work into account.⁵ While agency workers are covered by temporary work agency agreements, and not the applicable sectoral agreement for the metal and electrical industry, there are indications that the organization of work through subcontracting is either associated with a similar circumvention of the applicable sectoral collective agreement, or with non-use of collective agreements altogether (Interview 2, 4, 10; also Pulignano and Dörfinger 2013: 4154; Dribbusch et al. 2017: 214). While almost all large firms in this sector are covered by a collective agreement, many small and medium-sized firms operating as subcontractors or suppliers, in which migrant labour is mainly employed, do not use the sectoral collective agreement (Interview 2; Telljohann 2015: 157; Herrigel 2015). According to union representatives, subcontracted firms in general and particularly those using migrant labour are often not covered by any collective agreement (Interview 2, 4, 10). As German manufacturing firms' use of posted work occurs through subcontracting of foreign firms, and not through agency work, the use of posted work is plausibly also associated with non-use of collective agreements. In cases where collective agreements are used by subcontracted firms, scholars have reported how a similar circumvention of the applicable sectoral collective agreement is pursued as in the case of temporary agency work (Dribbusch et al. 2017: 214). In such cases, subcontracted firms use a collective agreement covering a bargaining area where the service union Ver.di is counterpart, as opposed to the manufacturing union IG Metall (ibid.). In view of the suggested shift from temporary agency work towards increased use of subcontracting, there is admittedly a certain degree of empirical uncertainty as to whether a majority of manufacturing firms using migrant labour is actually using a collective agreement, not the least in view of limited knowledge about the use of migrant labour via subcontracting in the sector. Yet, the overall picture suggests that the main way to regulate the employment of migrant labour as agency workers or subcontracted workers is associated with the use of a collective agreement, just not the appropriate one. The causal implication of mainly using migrant labour via subcontracting and temporary work agencies is thus that firms abstain from using the *applicable* sectoral collective agreement. Moreover, while works councils, based on the Works Constitution Act (BetrVG), are responsible for representing temporary agency workers, it is outside of their competencies to represent sub-contracted workers. In this way, the causal implication of using subcontracting is thus also that it serves as a way not only to opt out of using a collective agreement, but also to circumvent workplace representation.

⁵ The fact that employment liable to social insurance, as opposed to marginal employment, is dominant among migrant workers in the German manufacturing sector (German Federal Employment Agency) reveals little about employer responses in terms of their use of collective agreements and enforcement of labour standards. The organization of work through subcontracting and temporary agency work, on the other and, reveals the more.

Content of collective agreement applied to migrant labour is not equal to that of native labour

Despite the equal treatment principle for agency workers established by law, the principle has in the German manufacturing sector been subject to deviation by collective agreements as separate collective agreements with inferior conditions, including lower wages, have been applied to agency workers (German Federal Employment Agency 2011: 5; Bispinck and Schulten 2011: 22; Pulignano and Dörfinger 2013: 4154; Pulignano et al. 2015: 6). In this way, the state together with trade unions have offered an institutionalised way for employers not to pursue a full compliance response. While being covered by a collective agreement, exceptions from the equal treatment principle has meant that agency workers do not receive the same conditions as workers employed in-house in manufacturing firms carrying out the same work. Instead, they access minimum standards only (Interview 2, 3, 10). Sector-specific surcharges improving the conditions of agency workers were agreed in 2012 and onwards, but still do not entail that equal collectively agreed conditions are applied to agency workers.⁶ According to the migrant workers' consultation office and the FKS in the Stuttgart area, wage differences uncovered between in-house and agency workers in automobile firms generally ranged between 20 to 30 Euro per hour worked in 2015 (Interview 9, 10). Consequently, the fact that collective agreements have served to amend the equal pay principle set by law has institutionalized a way to opt out of equal pay for agency workers, while still complying with employment relations rules. The same findings apply to cases where subcontracted firms use a collective agreement covering a different bargaining area than the metal and electrical industry, whereby the workers in the subcontracted firms are covered by an agreement with inferior conditions (Dribbusch et al. 2017: 214).

Enforcement of labour standards in the employment of migrant labour

Over the last two decades, manufacturing firms have experienced a growing price-based competition and thinning of profit margins, and thus sought a multitude of solutions to maintain competitiveness – including making changes in the organization of work by using subcontracting and agency work, and with that migrant labour (Greer 2008; Greer and Hauptmeier 2015). However, the relatively highly organized and regulated context in which these firms operate has meant that while some cost-saving could take place in the use of migrant labour as agency workers or through sub-contracted firms, above all contributing to firms' external flexibility, their use of

⁶ The discrepancy between the wage levels of in-house workers covered by the sectoral collective agreement applicable in the metal and electrical industry and the agency agreements is vast (Interview 3, 10). Existing research has found that agency workers' wages on average are 15 to 30 percent lower than the wages of permanent in-house workers (Eichhorst and Marx 2012: 23; Jahn and Pozzoli 2013). In 2009, one of the separate collective agreements used in the employment of agency workers entailed that the pay differential between the collectively agreed wages of an agency worker and a regular worker in the metal sector was between 30 and 40 percent (Weinkopf 2009). Based on data from the German Federal Employment Agency, scholars have similarly found that the pay gap between agency workers and regular in-house workers was just above 40 percent in the manufacturing industry in 2013 (Schulten and Schulze Buschoff 2015: 45).

migrant labour has remained within the scope of existing institutions and can be categorized as compliance with minimum standards. In the case of the German manufacturing sector, organizing work through subcontracting and temporary agency work thus implies a selective enforcement of labour standards otherwise dominant in the sector. While large firms using the services of subcontracted firms and temporary work agencies tend to comply with sectoral or plant-level collective agreements in the employment of in-house workers, they place high pressure on service providers and suppliers to minimize costs, whereby these firms become reliant on the use of low-paid and precarious labour (Telljohann 2015: 157). The working and employment conditions associated with these practices have been inferior wages and more widespread temporary employment among migrant workers compared to domestic workers (Interview 4, 9). While minimum wage levels are generally applied, this compliance response is restricted to *minimum standards only*, and does not extend to compliance with dominant levels of job security.⁷ Employment in subcontracted firms and temporary work agencies is in general temporary in nature; there is a legal restriction on the length of temporary agency work, and subcontracted work is brought in for a specific time period, meaning that the employment of these workers is by definition temporary, and associated with a high degree of insecurity (Interview 2, 3; Bispinck and Schulten 2011: 23; German Federal Employment Agency 2014a; Haller and Jahn 2014). According to a works councillor in a major automobile firm, systematic strategies that restrict agency workers from accessing job security have been established. Despite an agreement that temporary agency workers who work for more than one year in this specific host firm should be offered employment in-house in the firm, the host firm and the work agency together make sure that the agency worker is not deployed in the same firm more than one year (Interview 4). This corresponds to the experiences of the migrant workers' consultation office (Interview 10), and with findings in existing literature (Vanselow 2009; Eichhorst and Marx 2012: 23). Employment associated with no or low levels of job security tend to be associated with low wage. When it comes to agency workers, scholars have demonstrated a considerably higher share of low wage work than among workers in permanent employment, and even compared to workers with a fixed-term contract (Schulten and Schulze Buschoff 2015: 2-3).⁸

Aside from compliance with minimum wage levels, the presence of high levels of enforcement in this sector has also meant overall compliance with average working time, with the requirement of providing workers with a written employment contract, and with declared work

⁷ While non-compliance with minimum wage levels also occur in this sector, such practices are much more limited than in the economy on average. According to recent estimates, between 3 to 7 percent of the workers in the metal and electrical industry did not receive the minimum wage they were entitled to in 2016, compared to 9 percent in the economy on average (Pusch 2018: 6-7).

⁸ In 2012, 67.7 percent of all temporary agency workers were in low wage work, defined as hourly wages below the threshold of two-thirds of median earnings (Schulten and Schulze Buschoff 2015: 2-3). Among workers on average, the share of low wage work was close to 25 percent, and among workers in fixed-term contracts the share of low wage work was 43.3 percent (ibid.).

(Interview 3, 9). The FKS has reported that non-compliance with average working time occurs in the employment of migrant labour in the metal and electrical industry, but that it is not widespread (Interview 9). Similarly, undeclared work may, according to trade union representatives, take place in the use of migrant labour in subcontracted firms or in automobile suppliers, but the occurrence of such practices are limited (Interview 2). While the employer and trade union representatives interviewed within the context of this study hold that undeclared work is a ‘non-issue’ in the metal and electrical industry, research has nonetheless suggested that manufacturing industries contribute to 17 percent of the total undeclared German economy (Vogler-Ludwig 2007: 3).

The trade union consultation office Fair Mobility has reported a major increase in the number of migrant workers working in the metal and electrical industry seeking consultation over the last years (Fair Mobility 2018: 6). Between 2012 and 2018, a ten-fold increase in the number of consulted migrant workers active in the metal and electrical industry took place (ibid.).⁹ While this information does not necessarily indicate any increase in the scope of non-enforcement of labour standards, but probably rather has to do with migrant workers having become aware of the services of the consultation offices, it does reveal that problems in their employment relationships exist also in this comparatively more well-organized sector.¹⁰ A trade union representative, however, claimed that these “problems [...] in the metal and electrical industry really pertains to firms at the periphery, not the big and prominent metal and electrical firms” (Interview 3).

Assessing the qualitative threshold for set-membership

Employers’ compliance with minimum standards is here defined as use of collective agreement in the employment of migrant labour, where the content applied to migrant labour is not equal to that of domestic labour, along with enforcement of labour standards restricted to compliance with minimum wage levels, compliance with average working time, compliance with the requirement of written employment contracts and declared work, but non-compliance with dominant levels of job security. The empirical uncertainty in the categorization of employers’ responses in the German manufacturing sector primarily pertains to the scope of the use of migrant workers via subcontracting and the extent to which this entails non-use of collective agreements. Moreover, input from the trade union consultation offices Fair mobility reveals the occurrence of non-enforcement of labour standards in the employment of migrant labour in this sector. Despite this empirical uncertainty, however, the empirical findings, corroborated by findings in existing

⁹ In the Stuttgart area, which is one of the hubs of the industry, 20 percent of all consulted migrant workers worked in the metal and electrical industry in 2014 (Fair Mobility, 30 Jun 2015).

¹⁰ In most cases, the consultations concerned migrant agency workers who had not received the wage they were entitled to (Fair Mobility 2018: 7; Interview 10).

literature, suggest that there is overall compliance with minimum standards in the employment of migrant workers, and that while they tend to be covered by collective agreements, they generally do not access equal treatment. Given the sectoral context, the cost-saving strategies of German manufacturing firms underlying their compliance with minimum as opposed to dominant labour standards have involved a gradual move away from using permanent in-house workers to instead use temporary agency workers, and – when agency work became re-regulated – employers turned towards the use of sub-contracted workers (Interview 2). While there is inevitably always a certain share of employers who chose to stand outside of the institutions, and seek new ways to avoid full compliance, the presence of generally high levels of enforcement in this sector has limited the scope of practices based on non-compliance. The threshold between full compliance and compliance with minimum standards is defined by the difference between applying dominant or minimum levels of protection and compensation. In the case of the German manufacturing sector, the evidence suggests that employers' responses do not reach above the threshold of full compliance.

The trade union's non-effective protection of migrant labour

As trade unions' protective response here is defined based on ensuring equal treatment of migrant labour, I argue for the categorization of the trade union's response in the German manufacturing sector as non-effective protection. The relative strength of the sectoral trade union, even though it has dwindled considerably in the course of the last two decades (Hassel 2014: 66), along with high presence of workplace representation, at least in major firms, have in effect contributed to employers' compliance with minimum standards by establishing a more organized and regulated context. Yet, the trade union in the German manufacturing sector has made little effort to systematically protect the rights of migrant labour, and in the past pursued exclusive rather than inclusive strategies towards external labour (Pulignano et al. 2015: 5; Benassi and Dorigatti 2015: 14, 19; Benassi and Vlandas 2016: 8). This response has been grounded in an approach based on protecting the rights of "the normal worker," in the literature conceptualized as core workers, without differentiating between different groups of workers based on nationality (Interview 2, 3), and thus without responding to the specific needs of weaker groups of workers, including migrant labour. The main reason why the union response in this sector is categorized as resulting in non-effective protection of migrant labour pertains to the fact that the union actively has agreed to and/or permitted conditions that do not result in equal treatment. The assessment of the union's response is based on whether they ensure the use of collective agreements based on equal treatment to regulate the employment of migrant labour and the extent to which they succeed in contributing to enforcement of labour standards for migrant labour.

Ensuring use of collective agreement to regulate employment of migrant labour

While the trade union in the German manufacturing sector has not pursued any specific measures to ensure the use of collective agreements to regulate the employment of migrant labour (Interview 2, 3), it has indirectly done so by regulating temporary agency work, wherein migrant labour is often employed. Following the deregulation of temporary agency work through the Hartz reforms in 2003, temporary work agencies were given an interest in concluding collective agreements, as deviations from equal treatment between agency workers and in-house workers could be collectively agreed (Schulten and Schulze Buschoff 2015: 47). This interest from the side of temporary work agencies to conclude collective agreements was a precondition for agency workers to be covered by collective agreements, as the unions had too few union members among agency workers to be able to push through a collective agreement through industrial action (Interview 3). Since 2003, the conclusion of collective agreements with the German Trade Union Confederation (DGB) as counterpart has achieved close to full collective bargaining coverage of agency workers (Schulten and Schulze Buschoff 2015: 48).¹¹ Due to the cross-sectoral nature of agency work, and due to fragmentation on the union side, union representatives have, however, reported that the issue of which union has responsibility over agency workers remains problematic, and that some unions are still trying to compete over the same organizational areas (Interview 3). This problem is particularly prevalent among low skilled agency workers, whose assignments move across different occupations and sectors (ibid.). Beyond the conclusion of collective agreements for agency workers with the DGB as counterpart, the IG Metall initiated efforts by the end of the 2000s to conclude workplace level collective agreements in the companies using agency work, in which they had strong representation (Bispinck and Schulten 2011: 43; Schulten and Schulze Buschoff 2015: 48). This effort was successful and resulted in at least 1 200 workplace agreements being concluded in the subsequent years (Meyer 2013: 294; Benassi and Dorigatti 2015: 547-548; Schulten and Schulze Buschoff 2015: 49). When it comes to ensuring the use of collective agreements in subcontracted firms and smaller supplier firms employing migrant labour, the union often face a more challenging situation as it is only able to demand and negotiate a collective agreement in firms where it has established a membership base covering at least 50 percent of the workers (Interview 3). To this end, the decline in union density

¹¹ The German trade union confederation DGB exceptionally became counterpart to two of the main collective agreements concluded with the two largest employer organizations in the temporary work agency sector in 2003 (Bispinck and Schulten 2011: 42; Schulten and Schulze Buschoff 2015: 48). A third collective agreement covering the agency sector was concluded between a smaller employer organization representing temporary work agencies and the Christian Federation of Trade Unions (CGZP), undermining the agreement with the DGB as counterpart (Bispinck and Schulten 2011: 32; Dribbusch and Birke 2012: 6; Pulignano and Dörfinger 2013: 4154). In 2011, the CGZP was, however, stripped of its bargaining rights (Schulten and Schulze Buschoff 2015: 48; Baccaro and Howell 2017: 113).

rates, occurring in parallel with the market expansions, has also made the prospects for IG Metall to actively conclude collective agreements with individual firms more bleak.¹²

Content of collective agreement applied to migrant labour is not equal to that of native labour

As a result of the conclusion of collective agreements covering agency workers, migrant workers employed as agency workers were indeed covered by collective agreements but with content that was not equal to that of native labour employed in-house in the large manufacturing firms (Bispinck and Schulten 2011: 42; Benassi and Dorigatti 2015: 19). Following the period during the 2000s, by Benassi and Dorigatti (2015) described as “subordinated bargaining” (19), through which inferior conditions for agency workers had been actively accepted, IG Metall’s efforts to conclude workplace agreements since the late 2000s, with important agreements being concluded in 2012 and 2013, brought improvements for agency workers in the manufacturing sector (Schulten and Schulze Buschoff 2015: 49). This included collectively agreed pay supplements for agency workers in addition to the minimum wage rates stipulated in the temporary agency work collective agreements (ibid. 49-50). However, even with these negotiated supplements, which increase top up payments from 15 to 50 percent of the collectively agreed wage in the temporary agency work agreement based on the length of the assignment in the user firm, a considerable gap remains between collectively agreed conditions for agency workers and manufacturing workers employed in-house (Interview 4; Schulten and Schulze Buschoff 2015: 49, 51). While IG Metall has emphasized that the agency worker can reach a wage level close to that of an equivalent regular in-house worker after 10 months in the user firm (Dribbusch et al. 2017: 213), most agency workers never reach this level, and if they do, only for a short period of time (Interview 4). The supplements do not achieve equal treatment of agency workers (Schulten and Schulze Buschoff 2015: 51). While the sectoral union in the metal and electrical industry cannot be held responsible for agreements with inferior conditions to which they are not a bargaining party, such as in the case of subcontracted firms using a collective agreement with inferior conditions covering a bargaining area where the service union Ver.di is counterpart (Dribbusch et al. 2017: 214), the inferior conditions for agency workers have prevailed also in the improved agreements concluded by IG Metall and its associated works councillors.

¹² Following the general trend of declined union density rates, IG Metall lost 15.1 percent of all their members between 2001 and 2008 (Dribbusch et al. 2017: 201). By the mid-2000s, the union density rate in the manufacturing sector was estimated to be between 46.1 percent (2005) and 68.4 percent (2006) (Hassel 2007: 184; Haipeter 2011: 188). Research has suggested that the loss of members has more recently been halted, with only a 1.2 percentage point loss recorded between 2008 and 2015 (Dribbusch et al. 2017: 201). In stark contrast, however, the union itself has estimated that its organizational rate was as low as 29 percent in 2015 (Interview 2).

Contribution to enforcement of labour standards for migrant labour

The main way by which the trade union in the German manufacturing sector has contributed to enforcement of labour standards for migrant labour is through its high presence of works councils in large manufacturing firms. While it has been questioned to what extent works councillors have taken up a representational function also for external labour (Pulignano and Doerflinger 2013; Pulignano et al. 2015: 10), particularly prior to the 2010s (Benassi and Dorigatti 2015: 13-14) but also more recently, their presence in the large firms contribute to establishing relatively high levels of enforcement also for external labour (Interview 3). This may, however, not always extend to subcontracted workers as the lack of codetermination rights over workers in subcontracted firms has meant that works councillors have less access to workers in subcontracted firms than to agency workers, and the legal barriers prevent them from representing workers in subcontracted firms (Interview 3, 4). While scholars have reported a growing awareness among works councillors to monitor the employment of agency workers (Benassi and Dorigatti 2015: 16), my findings suggest that union representatives and works councillors in general have limited insight into the working conditions also of agency workers, and that the interaction between union workplace representatives and agency workers is limited (Interview 3; also Telljohann 2015: 160). As put by a trade union representative, the main concern of works councillors is to act on behalf of in-house workers, “and they already have a lot to do there” (Interview 3). More generally, the main weakness in terms of ensuring presence of workplace representation in migrant workers’ workplaces follows the general pattern in the sector, where the coverage of works councils is considerably lower in smaller firms (Interview 4), including automotive suppliers and subcontracted firms (Telljohann 2015: 160).

When it comes to contributing to enforcement of labour standards by organising migrant workers, pursuing legal cases and/or by building the capacity of migrant workers, it is primarily contributions towards the latter that have been present. The IG Metall has not pursued any active strategy to organize migrant workers per se, but started a campaign in 2008 actively seeking to organize temporary agency workers in the user firms (e.g. Bispinck and Schulten 2011: 33-35; Benassi and Dorigatti 2015: 16-17). The campaign set out to build the capacity of works councillors to enhance their ability to enforce collective agreements in the workplaces (Bispinck and Schulten 2011: 43), and works councillors in large manufacturing firms were instructed to actively try to organize the agency workers during their assignments in the user firm (Benassi and Dorigatti 2015: 17). Scholars have described this campaign as successful, with tens of thousands of agency workers being recruited throughout the campaign (Bispinck and Schulten 2011: 43; Benassi and Dorigatti 2015: 18; Dorigatti 2017: 936-937).¹³ Despite this success, challenges in

¹³ Scholars have reported that more than 10 000 agency workers recruited as IG Metall members in the first year of the campaign (Bispinck and Schulten 2011: 43), and an estimated 35 000 agency workers were

relation to organizing temporary agency workers remain, particularly as the temporality of the agency workers in the user firms hampers organising efforts that have been concentrated *in* user firms (Interview 3, 4), and union density rates of agency workers have remained generally low.¹⁴ A similar campaign has more recently been launched to try to organize workers in subcontracted firms in the area of industrial services (Interview 3). Despite certain efforts to organize peripheral workers (Bispinck and Schulten 2011: 35; Dorigatti 2017: 938), scholars have previously argued that the trade union in the German manufacturing sector is badly positioned to organise new or expanding categories of workers (Hassel 2007, 2014), including migrant workers, and that the IG Metall has a “distinctive segmentation effect” (Pulignano et al. 2015: 12).¹⁵ This is reflected in a statement by a union representative; “most of what we do as a trade union is in the direction of our members, and our members are typically not the labour migrants who are only here short-term or recently arrived” (Interview 3). As concluded by Bengtsson (2013: 177), the German manufacturing trade union has on the whole done little to organise migrant workers (cf. Bispinck et al. 2010: 23; Bispinck and Schulten 2011: 34). When it comes to building the capacity of migrant workers to enable them to protect their rights, a number of outreach campaigns targeting the rights of temporary agency workers (e.g. Benassi and Dorigatti 2015; Telljohann 2015: 158), and not specifically migrant workers, have been carried out. A more direct contribution to building the capacity of migrant workers has been generated by the migrant workers’ consultation offices “Fair Mobility,” established in 2011 by the German Trade Union Confederation with financial support from the German Federal Ministry of Labour and Social Policy, and the European Social Fund (Schulten and Schulze Buschoff 2015: 15-16). Aside from offering individual consultations in a number of languages, the consultation offices have also organized information meetings, at least on an annual basis, in the metal and electrical industry (Fair Mobility 2018: 12). While the consultation offices have been instructed to refer the migrant workers to become trade union members when they want concrete help, beyond information, in enforcing labour standards in their employment relationships (Interview 6), the consultation offices reported that only a small share of the consulted migrant workers were recruited as trade union members; in 2014, 29 percent were recruited, whereas 71 percent declined membership (Fair Mobility 2014). This suggests that the protective effort offered through the consultation

recruited after about five years (Benassi and Dorigatti 2015: 18). Another estimate has suggested that as many as 90 000 new members were recruited throughout the campaign (Dorigatti 2017: 936-937).

¹⁴ In 2015, it was estimated that the union density rate of temporary agency workers was 10 percent (Benassi and Vlandas 2016: 8). Earlier estimates suggested that the union density rates of agency workers ranged between 5 and 16 percent (Vanselow 2009: 7).

¹⁵ While being a very rough proxy for the organizational rates of recent and temporary labour migrants in the manufacturing sector, approximately 8 percent of the members of the IG Metall were in 2015 foreign citizens, defined as workers without a German passport (Interview 2).

offices primarily remains restricted to support in cases where violations have already taken place, while playing a minor role in reinforcing a more sustained protective effort based on organizing.

Assessing the qualitative threshold for set-membership

While the non-effective protection by the manufacturing sector trade union is less a matter of lack of ability to achieve protection, the fact that they have accepted minimum standards as opposed to equal treatment of temporary agency workers, including migrant labour, places this response below the threshold of effective protection. The empirical uncertainty related to the set membership of the trade union in the German manufacturing sector is relatively low, with the above findings substantiating that the union has actively ensured the use of collective agreements for a large part of the external labour force, and effectively contributed to enforcement of minimum labour standards, at least in large manufacturing firms where many external workers are deployed. The uncertainty that exists pertains to changes in their response in more recent years, which have entailed a move towards regenerated demands for equal treatment. Yet, the union response in the course of the 2000s – prior to and during the first years of the market expansions – enabled employers' compliance with minimum standards, and laid the ground for what the union was subsequently able to achieve when employers' responses were already well-grounded, resulting in a response of non-effective protection in practice. Despite that ensuring minimum standards demands a considerable effort from the trade union, this response carries causal powers to trigger change as it invites the differential treatment of different groups of workers. The implication of the trade union's non-effective protection is that employers are, by complying with minimum standards only, able to exploit workforce divisions, generating causal forces that enable employers to subtly challenge the dominant employment relations institutions.

2.2 Causal mechanism: Institutional neglect in the German manufacturing sector

Part 1: Subtle challenging of the institutions

The employers' and trade union's responses presented in the preceding sections carry causal properties that in conjunction with one another serve as the cause that triggers the first part of the causal mechanism conceptualized as neglect of the employment relations institutions. By only complying with minimum standards in their employment of migrant labour, employers gain leverage to pursue a logic of action through which collective bargaining, workplace representation, and job security regulations can be subtly challenged. The first part of the Neglect Mechanism thus pertains to the actions of employers, underpinned by mostly active but occasionally passive coalitional support from the trade union, in subtly challenging the institutions by pursuing change strategies through their employment of migrant labour based on exploiting a gap between average conditions offered to regular domestic workers and minimum

conditions offered to migrant workers. The predicated evidence of what we should see in the empirical record of the German manufacturing sector, has subtle challenging of the institutions taken place, is defined as employers' pursuit of change strategies within the scope of the existing institutional framework through their employment of migrant labour. By demonstrating that the subtle challenging takes place in relation to labour migration, and thus follows from the investigated cause, I aim to achieve high theoretical uniqueness and exclude other plausible explanations for finding the evidence.¹⁶

As no disaggregated causal mechanism linking the class actors' responses to the institutional development of the employment relations had previously been theorized, the prior confidence in the overall mechanism tested in this chapter starts at a fairly low level. The prior confidence held in this first part of the mechanism, specifically, is low for the following reasons. General findings of German manufacturing employers' behaviour vis-à-vis the institutions have in existing literature been interpreted in two opposite directions, with some emphasizing the deregulatory preferences of German export-oriented firms and their strong motives to seek change by challenging existing institutions (e.g. Kinderman 2005, 2017; Streeck 2009: 49; Baccaro and Howell 2017; Mabbett 2016: 1246), and others emphasizing the same firms' commitment to existing institutions and absence of attacks that would challenge them (e.g. Thelen 2014: 50), leaving us with an indeterminate expectation as to the presence or absence of institutional challenging by German manufacturing employers. More importantly in terms of informing the prior confidence in this part of the mechanism, there is no evidence that has specifically connected German manufacturing employers' use of migrant labour to institutional challenging. The implication of this is that even weak evidence could potentially allow us to update our confidence in the presence of this part of the mechanism.

The evidence found in the empirical record of the German manufacturing sector suggests that all three institutions have been subtly challenged as a consequence of the employers' and union's responses to migrant labour. Starting with collective bargaining, subtle challenging is evidenced by employers' pursuit of concession bargaining eroding the content of the sectoral collective agreement, as well as by neglect of the applicable sectoral collective agreement. Employers' enhanced ability to exploit workforce divisions has enabled the pursuit of concession bargaining, entailing a subtle challenging of collective bargaining from within, concretely by actively shifting power away from workers and their representatives and by challenging the established content of collective agreements. The powerful leverage behind employers' enhanced ability is that agency workers, and external labour more generally, perform the same tasks as

¹⁶ In case of absence of subtle challenging, we should, strictly speaking, find no evidence of employers pursuing change strategies through their employment of migrant labour or in the pretext of labour migration.

permanent in-house workers (Holst 2009; Benassi and Dorigatti 2015: 11).¹⁷ By actively intensifying worker-to-worker competition *within* the same workplace (Anner et al. 2006: 11), employers have been able to (successfully) push for concessions. In this way, subtle challenging is manifested in renegotiations of collective agreements, as opposed to full evasion thereof. While this does not solely take place in relation to employers' use of migrant labour, but in the context of their use of external labour more broadly, the central point here is that it also takes place in their use of migrant labour – and migrant labour offers particularly prosperous means by which employers can push for extractions of labour concessions. From the part of the trade union and works councils, conceding to employers' compliance with minimum standards in the use of external labour was the solution to the threat of job displacement through firm exit or firm failure.¹⁸ As employers have actively been able to intensify the competition between groups of workers through their use of migrant labour, they have been able to erode worker power and make the union and workplace representatives implicated in their pursuit of a dual logic of action (see Doellgast et al. 2018: 3). The second key piece of evidence of employers' subtle challenging of collective bargaining in the German manufacturing sector pertains to the ways through which employers have exploited workforce divisions by concluding separate and inferior collective agreements for temporary agency workers and for subcontracted industrial services. In doing so, employers have subtly challenged the position of the main sectoral collective agreement, and paved the way for neglecting it as the central regulatory instrument. Neglecting the applicable sectoral collective agreement while simultaneously pursuing change strategies that erodes its content have allowed employers to generate subtle, but significant challenging of collective bargaining as an institution. Additionally, a third, and less subtle – and also less widespread – way of challenging collective bargaining is evidenced by firm practices pursued by subcontracted and supplier firms in simply not using any collective agreement, which feeds into the neglect of the sectoral collective agreement.

Employers' subtle challenging of collective bargaining is, in turn, tightly linked to the challenging of workplace representation. By leveraging in-house and external workers against one another, employers have been able to challenge the function of works councils in representing workers' interests at the workplace. As works councillors responded to this leveraging by concluding deals with management to protect the interests of in-house workers, rather than by

¹⁷ As demonstrated by Benassi and Dorigatti (2015), for instance, agency workers can be used to put pressure on in-house workers and their representatives through multiple ways; “agency workers are often used as benchmarks for measuring the performance of permanent ones, because they tend to work harder and quicker in order to be re-hired. [...] This pressure has a disciplining effect on core workers, which employers may use for obtaining concessions from unions and works councils” (15).

¹⁸ In facing management strategies based on replacing permanent workers with agency workers and using outsourcing to extract concessions, scholars have demonstrated how works councillors could be pushed to make pragmatic tradeoffs in favour of at least short-term gains for permanent in-house workers while allowing for employers' differential treatment of in-house and external labour (Trappmann 2015; Pulignano et al. 2015).

ensuring equal treatment of migrant labour as external workers, this opened up a process in which the function of works councils is transformed into an instrument of co-management following a firm-based logic, under the tacit consent of IG Metall (Benassi and Dorigatti 2015: 19; see also Höpner and Jackson 2002: 364; Jackson 2005; Streeck 2009: 152; Baccaro and Howell 2017: 173). As employment relations to a large degree are determined by micro-political negotiations at the workplace (Doellgast 2010), this challenging is subtle but substantial. Additionally, a less subtle challenging of workplace representation can also be linked to firms' use of migrant labour via subcontracting and outsourcing. In line with findings in existing literature (Telljohann 2015: 157; Behrens and Dribbusch 2018), trade union and workplace representatives have reported how employers actively obstruct the establishment of works councils in smaller manufacturing firms serving as suppliers and subcontractors to the larger firms (Interview 4). Lastly, subtle challenging of dominant levels of job security is evidenced by employers' exploitation of the gap between average and minimum conditions in their use of migrant labour. The organization of work centred on the use of external labour, whether agency work or subcontracting, where workers are offered no or limited access to job security sets the stage for a gradual neglect of job security regulations.

Taken together, the collective body of evidence provided here allows us to update our confidence in the presence of the first part of the Institutional Neglect Mechanism in the case of the German manufacturing sector. Employers' compliance with minimum standards in their use of migrant labour has offered concrete opportunities to gain leverage to subtly challenge all three core employment relations institutions, under the consent generated by the trade union's response to migrant labour.¹⁹ While the subtle institutional challenging in the German manufacturing sector comes from employers who are driving this process forward, the union and works councils play an indispensable role in the weak coalition of institutional supporters underpinning this change process (see Bernaciak 2015: 228; Streeck 2009: 53; Greer and Hauptmeier 2015: 135-136). The reason why the institutions are only subtly challenged, as opposed to challenged through direct frontal attacks, by German manufacturing employers is because they have been able to pursue change strategies catering to their needs for cost reduction and increased flexibility from within the institutional framework (see Hassel 2007). Because of relatively high levels of enforcement, to which the trade union and works councils contribute, the functioning of the institutions in generating a level playing field has largely been maintained, and a competitive situation in which

¹⁹ Employers' subtle challenging of the institutions through their use of migrant labour must here be understood within the broader sectoral context. Bargaining dynamics centred on concessions from workers is nothing new in manufacturing firms; works councillors have since long had to deal with threats of relocation and "management whipsawing," defined as "large corporations' staging of economic competition between several production units in a way that extracts labour concessions by pitting local workers against each other" (Greer and Hauptmeier 2015: 125), has over the last two decades been an important source of employer power and influence over collective bargaining in this comparatively well-organized sector (*ibid.* 129). To this end, the free access to labour and services in the EU open market has added a powerful leverage to employers' bargaining arsenal.

firms fear that their competitors will gain considerable competitive advantages by opting out of the employment relations institutions has been prevented. Instead, the large firms dominating the sector and determining the price levels of work agencies, subcontracted and supplier firms (Benassi and Dorigatti 2015) where migrant labour is mainly employed, have been able to place the cost-reductions at the lower levels of the value chain (Greer and Hauptmeier 2015), and thus through a mid-way benefitting from the institutions while in parallel having direct access to a labour supply that enables them to escape full compliance with the institutions. As a consequence of this situation, German manufacturing sector employers have not introduced a new logic of action based on disruptive competition through their use of migrant labour, but instead continue to operate within the framework of the institutions, although on the minimum standards side of the spectra.

Part 2: Restricted active support of the institutions

In parallel with the subtle challenging of the institutions in the German manufacturing sector, restricted active institutional support is generated as compliance with collective labour regulations continue to be used as the dominant logic of action in the employment of native labour, here largely a proxy for regular in-house workers, while the class actors simultaneously abstain from actively attempting to extend the scope of the institutions to cover migrant labour. The observable manifestation of this restricted active support is thus that the overall institutional framework is upheld, but there is no push for re-regulation or strengthened enforcement to adapt the institutions to the new context of labour and service mobility and the forms of work organization associated with it. From the side of employers, this can be understood as a strategic choice in striving for competitiveness by gaining cost reduction and increased flexibility through the use of migrant labour, whereas the restricted support from the side of the trade union is due to its failure to play an active role in supporting the institutions under the changed circumstances and the associated high pressure for change, retreating to the areas under which the institutions still hold. The causal forces generated by employers' subtle challenging of the institutions have altered the power relations in favour of employers and explains the trade union's position of retreat, whereby their active institutional support is restricted. What defines the presence of this second part of the mechanism is that, based on the theoretically well-founded assumption that institutional maintenance requires the active support of both class actors, the restricted active support is demonstrated not only by trade unions but also by employers.

The prior confidence in this part of the mechanism is arguably higher than the confidence warranted in the presence of the first part of the mechanism. The dominant longstanding interpretation in existing literature has been that German manufacturing employers are committed to and supportive of the existing employment relations institutions (Streeck 2009: 43; Thelen 2000, 2014: 36, 48, 50, 58). Yet, critics of this position claim that employers, and particularly

employer organizations' support of collective bargaining has dwindled (Hassel and Rehder 2001: 5) or is largely absent (Baccaro and Howell 2017: 107-109), and when it comes to the potential support from the sectoral union, existing literature has above all emphasized how the union supports the institutions at their best ability, but without actively attempting to extend their scope (see particularly Hassel 2014). Furthermore, as no distinction has been made between active support and *restricted* active support – which, as we will see, is a requisite distinction when studying the causal implication of institutional support in processes of continuity and change – this downgrades our prior confidence in the presence of this second part of the mechanism. It would thus be a stretch to claim that we can hold a high prior confidence in the presence of restricted active support in the German manufacturing sector, leaving us with moderately high prior confidence. The implication of this is that relatively strong evidence is needed in order to update the confidence in that restricted active institutional support has prevailed in this sector.

The main piece of evidence of the class actors' restricted support in the German manufacturing sector is manifested in firms' production strategies based on placing part of the production outside of the full scope of the dominant sectoral employment relations institutions, and the trade union's enabling of such practices, whereby the actors only partwise uphold the institutions. Yet, the evidential picture is not unambiguous, as there is certain evidence that the union has moved beyond restricted support only. The sectoral trade union has over the last decade demonstrated active support by pushing for re-regulation of temporary agency work, and more recently, of subcontracting. In the area of temporary agency work, the union primarily pursued a strategy based on pushing for re-regulation of temporary agency work by means of collective agreements and through a legal revisions of the Temporary Employment Act to strengthen the legal basis for equal treatment (Pulignano and Dörfinger 2013: 4155; Schulten and Schulze Buschoff 2015: 47-48; Benassi and Dorigatti 2015: 17). Scholars have identified a breaking point around 2008, when IG Metall started to frame the use of temporary agency workers as an employer strategy that threatens to weaken the labour standards of regular workers and launched a campaign on equal pay for equal work (Bispinck and Schulten 2011: 43; Benassi and Dorigatti 2015: 15; Dorigatti 2017: 936).²⁰ In relation to this, German unions' jointly pushed for a legal extension of collectively agreed minimum wages for temporary agency workers (Carlin et al. 2014: 68-69). In collective bargaining, IG Metall has pushed for strengthened rights of works councillors to oppose the use of temporary agency workers, and to collectively agree the scope, duration, and areas of employment of agency workers (Bispinck and Schulten 2011: 46). In subsequent years, the union has also continued to call on the government to re-regulate temporary agency work by introducing a maximum length of assignments in a user company, an equal pay

²⁰ Similar campaigns, although less extensive, had also been carried out in the preceding years, in 2004, 2006, and 2007, coinciding with the EU market expansions (Pulignano and Dörfinger 2013: 4155).

guarantee, and a strict prohibition to employ temporary agency workers as strike-breakers (Dribbusch et al. 2017: 213). In the area of subcontracting, the union has similarly pushed for re-regulations through collective agreements, as well as through legal revisions, including a re-regulation of the Works Constitution Act (BetrVG) to strengthen workplace representation by giving works councillors information and codetermination rights also for subcontracted workers (Interview 2; IG Metall, July 2015; Bispinck and Schulten 2011: 46; Dälken 2012: 1, 46-47; Dribbusch et al. 2017: 214). The union's push for re-regulation is also evidenced by a campaign initiated by IG Metall in 2015 to promote the introduction of a law against misuse of subcontracting (IG Metall, July 2015). Employers, on their side, have actively opposed the re-regulation proposed by the union, considering it to be superfluous (BDA, Oct 2014b; Südwestmetall 2014: 48-49; IG Metall, July 2015). This is consistent with employer associations' previous opposition of legislation to strengthen the works council system, which also serve to block the side-effect of facilitating union membership recruitment (Streeck 2009: 51). In fact, employers' restricted active support is demonstrated by partially upholding the institutional framework through their employment practices, and by their parallel push for maintaining the space provided to them by actively opposing re-regulation of temporary agency work and subcontracting (BDA, Oct 2014b; Südwestmetall 2014: 47-48). The sectoral employer organization, *Gesammetall*, has promoted that any re-regulation of temporary agency work be collectively agreed and not legislated, and that any potential re-regulation by statutory means would maintain the possibility to make deviations through workplace agreements (Gesammetall, June 2014).

Taken together, there is a certain discrepancy between the predicted and found evidence of this second part of the mechanism in the empirical record of the German manufacturing sector. While employers have demonstrated restricted active support through employment practices, and, as predicted, abstained from pushing for any re-regulation to adapt the institutions, the trade union has pushed for re-regulation to meet the pressure for change stemming from employers' use of temporary agency work and subcontracting. In view of the demonstrated support from the trade union, and given the moderately high prior confidence in the part of the mechanism – urging strong empirical evidence to be generated – a more modest updating of the presence of this part of the mechanism is warranted.

Part 3: Deliberate neglect of the institutions

The restricted active institutional support, chiefly from the side of manufacturing employers, in turn drives the process towards deliberate neglect of the employment relations institutions. As growing numbers of employers neglect the applicable sectoral collective agreement, workplace representation, and dominant job security regulations through their use of migrant labour, incremental change ensues through the accumulation of the actions of individual employers.

Employers' deliberate neglect is manifested in their pursuit of a dual logic of action based on differential treatment of migrant and native labour, thus partwise neglecting the institutions and causing institutional drift, reflected in declining coverage of the sectoral collective agreement, job security regulations, and works councils. The prior confidence held in this part of the mechanism is low. While existing literature has interpreted the institutional development of the employment relations in the German political economy as following a dualising trajectory, and described dynamics very similar to those depicted here, scholars have claimed that this is happening in the service sector, whereas institutional maintenance has prevailed in the manufacturing sector (see particularly Thelen 2014: 70). While important contributions have recently acknowledged institutional changes also in the manufacturing sector (Baccaro and Benassi 2016; Baccaro and Howell 2017), these accounts have not interpreted the developments as involving institutional neglect, but instead institutional conversion. Above all, no links have been made to the employers' and union's responses to migrant labour. This means that even weak evidence would allow us to update the confidence in this last and critical part of the causal mechanism in the case of the German manufacturing sector.

The strongest evidence of institutional neglect in the German manufacturing sector is found in the move away from the sectoral collective agreement, and in the neglect of job security regulations. By using migrant labour primarily through temporary agency work and subcontracting, employers neglect the otherwise applicable sectoral collective agreement, as workers in these firms are covered by inferior agreements. As this organization of work is associated with restricted access to job security for external workers, a gradual neglect of job security regulations is also generated by employers' compliance with minimum standards in their use of migrant labour. Similarly, works councils are neglected through the pursued employment practices, as there is a low presence of trade union members and works councils in work agencies and subcontracted firms. Manufacturing employers' deliberate neglect is further demonstrated by their turn away from the use of temporary agency workers towards subcontracting in conjunction with the gradual re-regulation of agency work over the last decade. This turn towards subcontracting has also implied a more direct neglect of workplace representation, as subcontracted workers have been outside of the competencies of works councils, with the exception of certain workplace agreements (Interview 2).

While employers have clearly generated institutional neglect by using migrant labour as an external secondary labour supply, the question is whether the union's demonstrated institutional support, manifested in its calls for re-regulation of temporary agency and subcontracted work, has translated into measures that would halt employers' neglect of the institutions. In the area of temporary agency work, important re-regulatory steps were taken in the early 2010s, when a collective agreement covering the temporary agency sector was agreed, improving the wage levels of agency workers by introducing supplements for agency workers

used in manufacturing firms (Benassi and Dorigatti 2015: 18; Schulten and Schulze Buschoff 2015: 49), and the German unions' joint push for legally extended collectively agreed minimum wages for temporary agency workers resulted in a legal extension that came into force in 2012 (Schulten and Schulze Buschoff 2015: 43-44).²¹ These re-regulatory measures did, however, not hinder employers' neglect of the applicable sectoral collective agreement. In parallel, new provisions related to temporary agency work were included in the sectoral collective agreement for the metal and electrical industry in 2012 (Pulignano and Dörfinger 2013: 4155; Benassi and Dorigatti 2015: 18), through which the codetermination rights of works councils were strengthened in the user firms, and a maximum period of 24 months of continuous assignments of agency workers in the same user firms was established, after which the user firm is obliged to offer the agency worker a permanent in-house position (*ibid.*). Yet, the main function of this provision was to set a limit to the period of use of the same agency worker, whereas its ability to generate access to permanent in-house employment of agency workers appears to have been limited in practice (Interview 4), whereby neglect of dominant job security regulations could proceed. Additionally, the campaign initiated by IG Metall in 2008 generated more than 1 200 workplace agreements improving the working conditions for temporary agency workers in the subsequent years (Benassi and Dorigatti 2015: 18). Such workplace agreements vary across different firms, but generally contain provisions to restrict the proportion of agency workers in firms' workforces and to limit the duration of assignments (Schulten and Schulze Buschoff 2015: 47). While scholars have interpreted these agreements as a manifestation of IG Metall's push for equal treatment of agency workers (Bispinck and Schulten 2011: 32), and they indeed did improve the conditions of agency workers, they did not achieve equal treatment (Schulten and Schulze Buschoff 2015: 51; Dribbusch et al. 2017: 212-213), nor halt employers' pursuit of a dual logic of action. The legal provision of the Temporary Employment Act (§ 9 Nr. 2, AÜG), establishing the possibility to deviate from the equal treatment principle by means of collective agreements, has since the time of the EU market expansions been the rule rather than exception, and the legal basis for equal treatment has continued to be weakened by collective agreements (Benassi and Vlandas 2016: 8). More recently, a re-regulation of the Temporary Employment Act was made in 2017, partially meeting the trade union's demands for re-regulation. The objective of the legal change was to "reorient temporary agency work towards its core function," that is, to meet production peaks rather than to be a permanent component of firms' staffing strategies, and to counter "bogus" subcontracting that in practice is a temporary work agency operating without permission (Bundesregierung 2017: 54). Yet, scholarly evaluations of this re-regulation have

²¹ Moreover, a legal revision of the Temporary Employment Act (*Arbeitnehmerüberlassungsgesetz*, AÜG) in 2012 also introduced a restriction on the hiring of former in-house staff through temporary work agencies, although this was not introduced as a consequence of the manufacturing union's push for re-regulation but instead related to developments in the retail sector (Schulten and Schulze Buschoff 2015: 47).

concluded that it has not led to any clear restrictions on the use of temporary agency work or of subcontracted work, and that the legal revisions contain many weaknesses (for a full account, please refer to Absenger 2017: 70-73). Most importantly, collectively agreed deviations from equal treatment continue to be permitted, but only during the first 9 months of assignment (ibid. 71). This entails that the legal framework continues to offer employers sufficient room to pursue differential treatment of different groups of workers, and that the assignments of agency workers in the same firm in practice most plausibly will be kept below 9 months. Consequently, re-regulation – primarily of temporary agency work, and less so of subcontracted work – has indeed been introduced *in parallel with* employers’ institutional neglect, and does not as such serve as contradicting evidence. Instead, the evidential picture allows to update our confidence in the presence of institutional neglect and employers’ pursuit of a dual logic of action in the German manufacturing sector.

2.3 Outcome: Liberalization as dualization through institutional drift in the German manufacturing sector

With the collective body of evidence pointing towards presence of the Institutional Neglect Mechanism in the German manufacturing sector, the final step in this analysis is to assess the outcome of this process. An overview of the chronological order of events, summarizing the regulatory changes related to labour migration and in the employment relations, is offered in Appendix VII. Below, I map through the institutional developments in collective bargaining, workplace representation, and labour legislation, and make explicit the institutional changes to which I argue that employers’ and the trade union’s responses to labour migration have contributed. The findings offer support for the claim that the responses by the actors in the German manufacturing sector have reinforced a causal process contributing to liberalization as dualization through the gradual drift in the coverage of collective bargaining, workplace representation, and job security regulations. While compliance with all three institutions has been maintained as dominant practice, the institutional neglect of collective bargaining is drifting in the direction of institutional defection, with the result that collective bargaining is dangerously close to the threshold of being displaced.

Collective bargaining: declined coverage and negotiation dynamics shifted in favour of employers

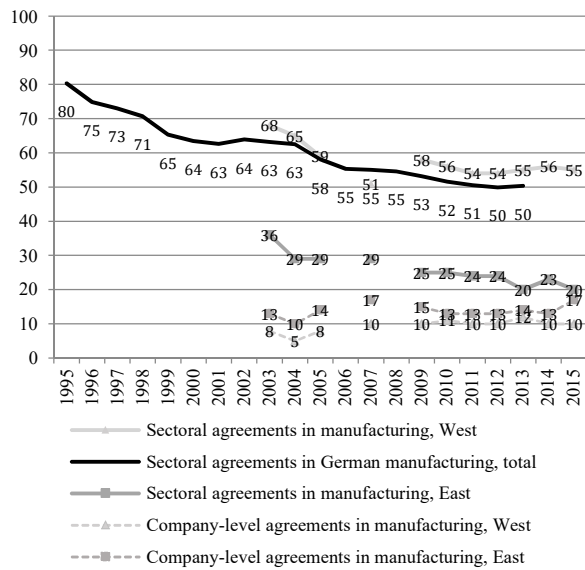
Strong evidence of institutional drift of collective bargaining is found in the German manufacturing sector, with workers covered by sectoral agreements declining by 30 percentage points, from 80 to 50 percent between 1995 and 2013, according to data based on the IAB Establishment Panel (Figure 6.1) (Baccaro and Benassi 2016: 21). At the time of the EU market expansion in 2004, collective bargaining coverage in the German manufacturing sector was still

well above 50 percent, constituting the dominant practice in regulating employment relationships. The continuous decline during the decade that followed has, however, entailed that the neglect of collective bargaining has advanced from a process of institutional drift towards the threshold of institutional displacement, defined as the situation in which collective bargaining no longer constitutes dominant practice; in 2012 and 2013, only 50 of the workers in the German manufacturing sector were covered by collective bargaining (ibid.).²² According to complementary figures from the Federal Statistical Office of Germany, the coverage of sectoral agreements in the German manufacturing sector was as low as 44 percent in 2010 (47 percent in the western parts, 20 percent in the eastern parts) (2013: 16-18), suggesting that collective bargaining already by then had been effectively displaced as dominant practice. According to both data sources, collective bargaining was never established as dominant practice in the manufacturing sector in the eastern parts of the country.²³ While collective bargaining still constitutes dominant practice in the western parts according to the IAB data – in 2015, 55 percent of the workers were covered – the process of institutional neglect of collective bargaining in the German manufacturing sector as a whole is clearly set to proceed in a direction beyond drift and, unless something disrupts the process, towards institutional displacement as more employers are defecting from collective bargaining.

²² While the proportion of workers employed in firms who do not use a collective agreement has increased as a consequence of the declined collective bargaining coverage, it may be noted that among the share of workers who are not covered by a collective agreement, the majority are – following an increase in the western parts of the German manufacturing sector recent years – employed in firms who (claim to) orient their wages and/or other conditions towards the sectoral agreement (Ellguth and Kohaut 2004: 451, 2015: 291). Not signing a collective agreement but orienting wages and/or other conditions towards an existing agreement does, however, mean that the firms are *not* using a collective agreement, and thus do not follow collective bargaining as a dominant practice. Instead, this should be understood as evidence of the norm-setting function of collective bargaining, a function which, according to this data – which has its limitations as it is based on firms' *own claims* that they are orienting towards standards set by collective agreements – appears to be maintained in the German manufacturing sector despite the drastic decline in collective bargaining coverage.

²³ Throughout the investigated time period, the gap in collective bargaining coverage between the western and eastern parts of the manufacturing sector has remained around 30 to 35 percentage points. While the scope of the declined coverage has almost been of the same magnitude in both parts over the last decade (-13 and -16 percentage points respectively between 2003 and 2015), the coverage in the west appears to have stabilized as of 2010, whereas it has continued to decline in the east. The decline in workers covered by sectoral collective bargaining has not been compensated by an increase in company-level bargaining (Figure 6.1). While the eastern parts of the sector tells a slightly different story in that the coverage of company-level agreements is higher than in the western parts, and an increase – although unstable – is detectable over the last decade, the coverage of company-level agreements has remained limited.

Figure 6.1 Coverage of collective bargaining (1995-2015) in the German manufacturing sector, sectoral and company-level agreements, workforce coverage, west and east, (percent)



Sources: Collective bargaining coverage disaggregated by east and west: Ellguth and Kohaut (2004: 451, 2005: 399, 2008: 1, 2010: 205, 2011: 243, 2012: 298, 2013: 282, 2014: 287, 2015: 291, 2016: 284), and Kohaut (2007: 95). Collective bargaining coverage in the German manufacturing sector taken together: Baccaro and Benassi (2016: 21). All sources based on data from the IAB Establishment Panel.

Notes: The data includes firms with at least five employees. There is some variation in the reported industrial classification that the estimates cover, which may compromise the comparability between the different years: estimates for 2003-2005 and 2007 cover production of consumer goods (*Verbrauchsgüter*), whereas the years 2009-2015 cover the manufacturing industry (*Verarbeitendes gewerbe*). The comparability of collective bargaining coverage in the German manufacturing sector taken together between 1995 and 1996 is affected by the inclusion of establishments from the new Federal States in the panel in 1996. Baccaro and Benassi (2016)'s industrial classification of manufacturing, i.e. the category of German manufacturing sector not disaggregated by east and west, is broader and includes: paper and pulp, printing and publishing; chemical, rubber, plastics and fuel; other non-metallic mineral products; basic metals and fabricated metal; machinery; electrical and optical equipment; transportation equipment; manufacturing NEC; recycling, food processing; and textile.

There are certainly multiple factors contributing to the declined coverage of collective bargaining in the German manufacturing sector, not the least the withdrawal of firms from the sectoral employer organization and the actions from the side of the employer organization in introducing membership *ohne Tarif* (Streeck 2009: 39, 47). Based on the evidence of the causal process provided in this chapter, demonstrating how the class actors' responses have generated a subtle challenging and neglect of the institution, I argue that one contributing cause to the declined coverage over the last 15 years has been the trade union's non-effective protection of migration labour, which has enabled employers' non-use of the applicable sectoral collective agreement in their use of migrant labour. To the extent that the organization of work through subcontracting entails placing parts of the production outside of the scope of collective bargaining, this also contributes to declined coverage. The result of the declined collective bargaining coverage is increased employer-discretion over wage-determination. Moreover, the functioning of collective bargaining is affected as a substantial shift in negotiation dynamics has followed from employers'

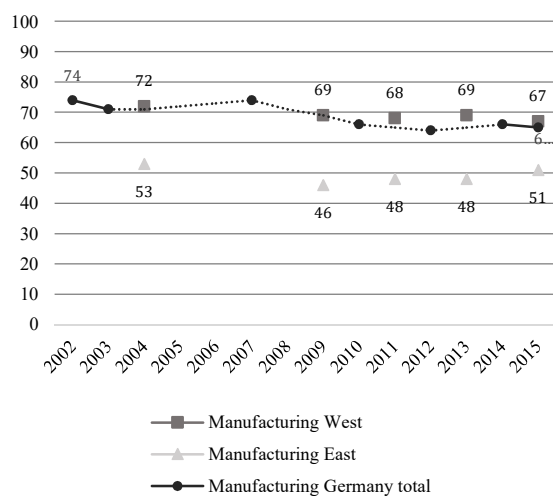
ability to leverage different groups of workers against one another. In the context of expanded availability of exit options offered to employers through the use of migrant labour, employers have – in interaction with the trade union’s non-effective protection of migrant labour – been able to intensify competition between workers within the same workplace by employing them under different conditions. In doing so, employers have improved their bargaining position as threats to the wages and higher standards of job security and working conditions of in-house workers are perceived as very real (Gumbrell-McCormick 2011: 300; Lillie 2012: 148; Greer and Doellgast 2017: 198). As emphasized in existing literature, the use of temporary migrant workers as external labour that serves to substitute rather than complement permanent in-house workers generates a downward pressure on wages and working conditions of in-house workers (e.g. Lillie 2012; Benassi and Dorigatti 2015). The causal logic behind this ‘downward pressure’ pertains to the increased leverage that employers have gained from their compliance with minimum standards only in their use of migrant labour, and the shift in power from workers to employers generated by it. By leveraging groups of workers against each other, employers can gain concession from both in-house and external workers; concessions from the former based on threats to exit employment relationships, and concessions from the latter as they are in an even weaker position to make claims on the firm’s profits than in-house workers. The changed negotiation dynamics to which the employers’ and union’s responses to migrant labour have contributed is closely related to what scholars have identified as a fundamental change in the function of collective agreements; instead of decommodifying labour, employers are now able to use collective agreements to enhance worker-to-worker competition within the workforce of the same company (Holst 2014). Furthermore, employers’ subtle challenging of the content of the sectoral agreement through concession bargaining feeds into one of the main institutional changes that collective bargaining in the German manufacturing sector has been exposed to over the last decades, namely increased derogation from the content of collective agreements through the use of opening clauses and increased space for workplace negotiations, resulting in collective agreements that are “full of holes” (Baccaro and Howell 2017: 115, 117; see also Streeck 2009). The erosion of the content of collective agreements has been enabled through a shift in negotiation dynamics in favour of employers, to which the class actors’ responses to migrant labour has further contributed. The shifted negotiation dynamics and employers’ increased discretion over wage-determination are reflected in 15 years of pronounced wage restraint and concession bargaining in the German manufacturing sector (Hassel 2014: 72; Dølvik et al. 2014a: 7). According to recent evaluations, wages have been trailing productivity in the manufacturing sector over the last decade, but core manufacturing workers have largely managed to avoid wage repression (Baccaro and Benassi 2016: 3; Baccaro and Howell 2017: 118). While data on developments in intra-sectoral wage dispersion is scarce, it is highly plausible that the ability of collective bargaining to redistribute wage growth between groups of workers has also been debilitated, both as a result of declined

collective bargaining coverage *and* as a result of the use of different collective agreements, causing greater wage dispersion between workers within the sector.

Workplace representation: declined coverage, enforcement and negotiation capacities weakened

In contrast to the coverage of collective bargaining – and in spite of the considerable decline in trade union density in the German manufacturing sector over the last decade – the proportion of workers covered by works councils has experienced a more modest decline, and workplace representation through works councils maintains a fairly strong position as dominant practice. At the time of the EU market expansion in 2004, the coverage was 72 and 53 percent respectively in the western and eastern parts of the German manufacturing sector; in 2015, the levels were 67 (-5) and 51 (-2) respectively (Figure 6.2). If considering the manufacturing sector as a whole, with the reservation that the industrial classification used for measuring it is wider than the categories measuring the west and east separately, the decline was somewhat greater; from 74 percent in 2002 to 65 in 2015 (-9), indeed suggesting institutional drift also in the coverage of workplace representation. Similar to how the organization of work through subcontracting and temporary agency work, through which migrant labour is used, has contributed to declined collective bargaining coverage, it is highly probable that the evidenced challenging and neglect of workplace representation has contributed to declined coverage, exposing it to gradual drift, while still maintaining its position as dominant practice with coverage remaining well above 50 percent. Despite that the trade union response involved a contribution to enforcement of labour standards of migrant workers through presence of works councils in large manufacturing firms, employers' active obstruction of the establishment of works councils in smaller manufacturing firms serving as suppliers and subcontractors (Interview 4; Telljohann 2015: 157; Behrens and Dribbusch 2018), negatively affects the coverage. Scholars have previously demonstrated how auto manufacturing firms' subcontracting strategies have involved replacing unionized workers with unorganized workers in firms without workplace representation, which contributes to a decline in the coverage of works councils, particularly at the lower levels of the supply chain (Telljohann 2015: 160). Moreover, the union's limited success in organising migrant workers has plausibly also contributed to growing proportions of workers in workplaces without a works council.

Figure 6.2 Coverage of works councils (2002-2015) in the German manufacturing sector, west and east, workforce coverage (percent)



Sources: Ellguth (2003: 195), Ellguth and Kohaut (2004: 453, 2005: 402, 2008: 3, 2010: 205, 2011: 246, 2012: 303, 2013: 286, 2014: 294, 2015: 294, 2016: 290), based on data from the IAB Establishment Panel. *Notes:* The data includes firms with at least five employees. Variation in the reported industrial classification may compromise the comparability between the following years: estimates for 2002-2004 and 2007 cover production goods (*Produktionsgüter*), whereas the years 2009-2015 cover the manufacturing industry (*Verarbeitendes Gewerbe*). Only the full lines and data points represent actual estimates, not the dotted lines in-between.

While the coverage of works councils has been drifting but is still largely intact, and remains well above the average coverage in the German economy as a whole (Baccaro and Howell 2017: 115, 117), there are strong indications that the functioning of this corner-stone institution has been the more affected. The negotiation and enforcement capacities of works councillors have been affected as employers' compliance with minimum standards in their increased use of external labour – which, as argued above, affects the negotiation dynamics between employers and their in-house workers – limits the negotiation capacity of works councils by making them more prone to acquiesce to concessions (see Pulignano et al. 2015), and their lack of formal competencies over subcontracted workers inhibits them from fully fulfilling their negotiation and enforcement functions. Recent empirical research has even found that widespread employer hostility and resistance to works councils prevents in-house regular workers from exercising their legal rights to workplace representation and codetermination in the German manufacturing sector (Behrens and Dribbusch 2018). More generally, the declined presence of works councils also negatively affects the ability of works councillors to contribute to enforcement of labour standards. In interplay with the increased employer discretion over wage-determination following from the declined collective bargaining coverage, employer discretion is further reinforced by the weakened capacities of works councils. The weakened negotiation and enforcement capacities of works councils, to which the class actors' responses to migrant labour have contributed, feed into the institutional change identified by scholars who have found that the role of works councils in

the German manufacturing sector has been transformed from serving to implement trade union goals in the workplace to an instrument to make derogations from sectoral collective agreements through concessions with management on the basis of a joint co-management of firms' economic viability as the first-order interest, whereby works councillors have been made co-responsible for firm competitiveness, placing their responsibility to represent and enforce labour rights on second-place (Höpner and Jackson 2002: 364; Jackson 2005; Streeck 2009; 152; Baccaro and Benassi 2016: 16; Baccaro and Howell 2017: 117). While recognizing that the asymmetrical dependency relationship between those who employ and those who are employed has as consequence that the interests of workers always tend to be subordinate to employers' interests in bargaining processes (Offe and Wiesensthal 1980: 76) – and, without disregarding compromises that have been achieved in the past, from which (in-house) workers as well as employers have benefited – the shift in power towards employers over the last decade, to which the class actors' responses have contributed, has led to a stronger impetus to make works councils responsible for the success of the firm, reinforcing the in capitalism built in dynamic of workers' interests being assumed as subordinate to firms' interests.²⁴ There are strong reasons to believe that the subtle challenging of works councils triggered by the employers' and trade union's responses to migrant labour as external labour has contributed to and reinforced this development.

Labour legislation: declined coverage of job security regulations

A defining feature of dualization is declining levels of job security. Between 1995 and 2013, the share of manufacturing workers on permanent contracts decreased from 87.5 percent to 78.7 (-8.8) percent (Figure 6.3) (Baccaro and Benassi 2016: 22).²⁵ In the decade following the 2004 market expansion, the share of workers on permanent contracts declined by 6 percentage points. This development has been accompanied by an increase in contingent forms of employment, including fixed-term employment and agency work.²⁶ The coverage of job security regulations has thus, similar to the other two institutions in the German manufacturing sector, also been exposed to institutional drift. While compliance with job security regulations is maintained as

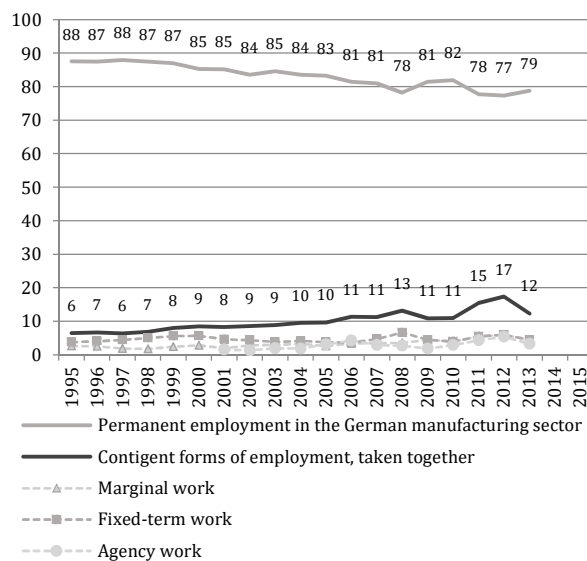
²⁴ In contrast to the conception of “works councils as powerful co-managers” (Thelen 2014: 49), the power resources approach at the basis of this analysis thus enables us to identify these developments as a change in the functioning of the institution for workplace representation, not mistaking concessions as evidence of labour-management cooperation based on a strong maintained position of works councils that rests upon a shared interest by employers and workers in firms' economic successes, but recognizing it as a manifestation of the shift in power relations, where the weakened position of labour in the German manufacturing sector has resulted in a change in the practical functioning of works councils.

²⁵ Compared to the survey data reported by Baccaro and Benassi (2016), the register data provided by the German Federal Statistical office indicates a considerably higher share of permanent employment in the manufacturing sector. According to this data, 86 percent of the German manufacturing workers continued to be in permanent employment in 2015, and 13 percent in employment with limited or no access to job security (fixed-term, mini-jobs, and agency workers) (Seifert 2017: 7).

²⁶ The precarious character of many workers in subcontracted firms, where the employment is often linked to the length of an assignment, is not reflected in this data, partly because those workers are categorized within other occupational areas, and must thus additionally be taken into consideration.

dominant practice, the neglect of dominant levels of job security for external, including migrant, labour has most plausibly contributed to this drift in coverage. Scholars have, for instance, previously demonstrated how auto manufacturing firms' subcontracting strategies have involved replacing in-house workers on permanent contracts with temporary external labour (Telljohann 2015: 160), whereby employers' non-compliance with dominant levels of job security in their use of migrant workers as external labour effectively results in reduced numbers of permanent contracts. Even though the coverage of job security regulations has only been drifting, and compliance with job security remains the dominant logic of action, the organization of work through temporary agency work and subcontracting has offered firms' increased employer discretion over the organization of work, and indirectly over hiring and firing as they increasingly use external labour, through which they also gain leverage in wage negotiations. There is broad scholarly agreement around the claim that the spread of contingent forms of employment, including agency work put pressure on wages, particularly in a sectoral context, such as the German manufacturing sector, where there is a substitutability between in-house workers and external labour (e.g. Baccaro and Benassi 2016: 24; Bernaciak 2015: 232).

Figure 6.3 Trends in regular and contingent forms of employment in the German manufacturing sector, 1995-2013 (percent)



Source: Baccaro and Benassi (2016: 22), based on the German Socio-Economic Panel (SOEP).

Note: Contingent forms of employment excludes part-time work, and includes marginal, fixed-term, and agency work.

As revealed in the Institutional Neglect Mechanism leading up to this outcome, all three institutions had not only been subtly challenged, but also received limited active support to cope with the pressure for change stemming from employers' increased use of migrant labour. While several re-regulatory measures in relation to temporary agency work were taken in the course of the 2010s, the institutional changes depicted here suggest that the extent to which these measures have served as institutional resilience creation holding the power to discontinue a process towards

institutional drift has been limited.²⁷ The measures have done little to strengthen the job security of temporary agency workers in practice, to compensate for the weakened capacities of works councillors, and to halt the ongoing neglect of the applicable sectoral collective agreement.

3. Conclusion

This chapter has investigated empirically how employers' and the trade union's responses in the German manufacturing have affected the institutional development of collective bargaining, workplace representation and job security regulations. The first section established with a fairly high degree of certainty that employers have largely been complying with minimum standards in their employment of migrant labour, whereas the union's response in permitting minimum, and thereby inferior, conditions has resulted in non-effective protection of migrant labour. Next, I tested empirically whether these responses can be linked to liberalization as dualization through an Institutional Neglect Mechanism. The evidence provided for the presence of the first part of the mechanism – that is, employers' subtle challenging of the institutions – was considered as fairly strong, whereas the evidence of the second part of the mechanism, conceptualized as restricted institutional support, was somewhat weaker in view of the demonstrated active support from the trade union, warranting a more modest updating of the presence of the second part of the mechanism. The evidence of the third part of the mechanism, capturing employers' institutional neglect in their use of external labour, was considered as strong, in spite of evidence of re-regulatory measures seeking to increase the costs of and partly restrict the use of temporary agency work. As the re-regulatory measures did little to discontinue employers' dual logic of action, the confidence in the presence of the Institutional Neglect Mechanism in the German manufacturing sector could be updated based on the collective body of evidence. Having demonstrated the causal pathway triggered by the actors' responses, the chapter ended by linking the last step of the mechanism to the outcome of institutional drift, revealing that all three institutions investigated have undergone institutional changes following a dualising trajectory. While the general trajectory of change in German employment relations has widely been described as dualization *between* the manufacturing sector and low-end service sectors, with institutional maintenance prevailing in the manufacturing core (e.g. Palier and Thelen 2010; Hassel 2014; Thelen 2014), recent contributions have demonstrated that the liberalization of German employment relations has also affected the institutions in the manufacturing sector (e.g. Baccaro and Benassi 2016; Baccaro and Howell 2017). The findings presented in this chapter

²⁷ The main re-regulatory measures, accounted for in the third part of the causal mechanism, include the legal extension of a collectively agreed minimum wage for temporary agency workers (2012), re-regulation by collective agreements to improve the conditions of agency workers, strengthening the co-determination rights in hiring companies (2012), revision of the Temporary Employment Act introducing a restriction on the hiring of former in-house staff through temporary work agencies (2012), and a recent statutory re-regulation of temporary agency work and subcontracting (2017).

adds to these analyses by demonstrating strong evidence of a specific variety of liberalization, namely dualization, as a trajectory of change proceeding in the manufacturing sector itself. Dualization through institutional drift is, in the German manufacturing sector, manifested in declined coverage of collective bargaining, workplace representation, and job security regulations, and in negotiation dynamics shifted in favour of employers, as well as weakened enforcement and negotiation capacities of works councillors. Consequently, the employers' and union's responses to labour migration have largely fed into and reinforced the ongoing process of intra-sectoral dualization in the German manufacturing sector, where the institutions continue to deliver (restrained) wage growth and high levels of job security to a shrinking core of workers, while a secondary labour segment, including migrant labour, is not covered by the institutions for collective labour regulation. Moreover, it was also proposed that the class actors' responses to migrant labour have contributed to and reinforced transformations of the functions of collective agreements and works councils. Instead of decommodifying labour, employers are now able to use collective agreements to intensify worker-to-worker competition within the workforce of the same company (Holst 2014), and instead of primarily serving as defenders of workers' interests at the workplace, the function of works councils have been directed towards co-management of firms' economic viability that allows firms to withdraw from sectoral employment relations and pursue a company-based logic (Baccaro and Howell 2017: 117, 173). The conversion of the functions these two institutions are outside of the scope of what we theoretically would expect to see in liberalization as dualization, but, nonetheless, represent institutional changes in a liberalizing direction.

This chapter has demonstrated how the free access to foreign labour supplies have added to previously existing exist options for employers in this export-oriented sector, offering another means to achieve concessions from workers and neglect the employment relations institutions. Migrant labour serves as the ultimate secondary labour supply (Piore 1979), offering employers ways to access external flexibility and keep costs down by complying with minimum standards only, while maintaining a primary labour supply among in-house workers, covered by the full scope of the employment relations institutions. While it remains difficult to estimate the share of migrant labour in this sector, a modest estimate is that foreign workers make up around 20 percent of the sectoral workforce. Importantly, the chapter has clearly demonstrated that manufacturing firms' use of migrant labour must be understood more broadly in the context of their use of external labour, and that the class actors' responses to migrant and external labour hold great causal powers to influence the direction of change.

Chapter 7

How trade unions' protection and employers' opt out contribute to socially embedded flexibilization: The cases of re-direction in the Swedish construction and hotel and restaurant sectors

1. Introduction

The task of this chapter is to test empirically the theorized Institutional Redirection Mechanism, assessing the extent to which updated or downgraded confidence in the operation of this mechanism is warranted and how well it accounts for the developments in the Swedish construction and hotel and restaurant sectors. These sectors have been selected as typical cases based on the presence of employers' opt out of dominant employment relations rules and practices in their use of migrant labour and trade unions' effective protection of migrant labour, and based on the presence of the requisite contextual conditions of low levels of enforcement, the simultaneous presence of a coalition of institutional challengers (employers and the state) and a coalition of institutional supporters (trade unions and the state), along with presence of exploitable inherent ambiguities in the institutions through which employers can pursue change strategies in their use of migrant labour. I start the empirical analyses by mapping the employers' and trade unions' responses to migrant labour in order to establish the presence of the causal condition and make the case for the categorization of their responses. I then present the empirical tests of the three parts of the Institutional Redirection Mechanism, evaluating whether the mechanistic evidence allows us to infer that the respective parts have been present in the respective cases. The final part of the chapter analyses the outcomes of the processes and how it relates to the general trajectories of the employment relations in the Swedish construction and hotel and restaurant sectors, ending with a conclusion about the implications of these findings.

2. A causal pathway toward liberalization through institutional redirection

The below sections reconstruct the causal process that is hypothesized to be triggered by the class actors' responses to labour and service mobility in the Swedish construction and hotel and

restaurant sectors. By unpacking the steps of the causal process, I seek to demonstrate how the actors' responses are linked to the institutional development of the employment relations, contributing to liberalization as socially embedded flexibilization through institutional redirection.

2.1 Cause: Employer and trade union responses to migrant labour in the Swedish construction and hotel and restaurant sectors

Employers' opt out of dominant employment relations rules and practices

The Swedish construction sector

Empirical findings suggest that the main way through which firms have been using migrant labour in the Swedish construction sector is via posting of workers, mainly through subcontracting of foreign construction firms, and to a more limited extent through the use of foreign temporary work agencies (Interview 31; Petersson 2012, 2013: 36; Jonsson and Larsson 2013: 15).¹ Assessments by the trade union confederation as well as the sectoral employer organization suggest that a majority of the migrant and posted workers are employed in smaller firms serving as subcontractors to large firms, or in small firms catering to private households (Swedish Construction Federation and TNS Sifo 2010: 6; Jonsson and Larsson 2013: 11). A minority of the migrant workers are employed in-house in Swedish construction firms serving as main contractors (Interview 31, 32). Aside from firms' use of foreign subcontracting and agency work, the sectoral trade union has also reported that the use of EU migrant workers as solo self-employed has increased since the market expansions, with a major increase taking place right after the market expansion in 2004 (Interview 31; Jonsson and Larsson 2013: 12).² While the data situation does not permit us to estimate the share of foreign construction workers in self-employment, the union has estimated that approximately 20 percent of all posted workers register as self-employed upon arrival in Sweden (Jonsson and Larsson 2013: 15). Similarly to how the use of agency work in this sector is interwoven with posted work, as the main temporary work agencies catering to the Swedish construction sector are foreign firms (Petersson 2013: 36), self-employment is thus also interwoven with posted work. In line with this, scholars have reported blurred lines between

¹ Due to the limited data availability on EU internal labour migration in Sweden, it has remained difficult to make firm statements about the scope of employers' use of migrant labour, and about the main employment channels through which migrant labour has been used. While unable to estimate the exact scope, insights from the interviews conducted in the context of this dissertation, along with reports from trade unions and findings in existing literature together make it possible to discern the main ways through which firms in the Swedish construction and hotel and restaurant sectors have been using migrant labour over the last 15 years.

² In a snapshot survey with local union representatives in April/May 2013, the union estimated that approximately 3 700 foreign workers were active as self-employed in the construction sector, noting that there is a large number of unknown self-employed as it is very difficult for the union representatives to detect and get an overview of these workers, particularly those who cater to private households (Jonsson and Larsson 2013: 15).

agency work and self-employment, where foreign temporary work agencies recruit and post workers to the Swedish construction sector, and register them as self-employed upon arrival (Thörnquist 2013: 7; Kjellberg 2019: 62). On the whole, this confirms that posting of workers has been the main employment channel for migrant labour in the Swedish construction sector. Yet, while union estimates suggest that the use of posted work is widespread, with posted workers making up approximately 19 percent of all workers in the Swedish construction sector (Jonsson and Larsson 2013: 4), ranging from 45 to 70 percent of the workers (Jonsson et al. 2010: 4; SVT 2, 5 June 2014), employer commissioned reports claim the contrary, proposing that posted workers make up between 1 to 2 percent of the sectoral workforce (Swedish Construction Federation 2013: 3; PA Consulting Group 2014), and that temporary foreign workers make up between 3 to 5 percent of the sectoral workforce, with a great overrepresentation in small firms in which 50 to 60 percent of the staff were found to be foreign workers (Swedish Construction Federation and TNS Sifo 2010: 2-3, 6).

Use of collective agreements in the employment of migrant labour

Despite the fact that most migrant workers in the Swedish construction sector are employed as posted workers, my empirical research and findings in existing literature suggest that there is overall use of collective agreements in the employment of migrant labour in this sector. The reasons for this are the high collective bargaining coverage in the sector, the fact that Swedish main contractors often include a contractual requirement obliging subcontracted firms to use a collective agreement, and the trade union's active and successful efforts to conclude collective agreements with individual foreign firms (Interview 31, 32, 33; also Petersson 2013: 38; Jonsson and Larsson 2013: 20). According to the trade union, collective bargaining coverage in the sector is around 90 percent (Interview 31). While the coverage is considerably lower among small firms (up to 40 employees), in 2017, estimated at 54 percent (Kjellberg 2019: 59), all large firms, serving as main contractors, are members of the sectoral employer organization and bound by a collective agreement (Interview 31, 33). Accordingly, the minority of migrant workers who are employed in-house in Swedish construction firms are in general covered by the applicable sectoral collective agreement. When it comes to the majority of migrant workers who are employed in smaller, often subcontracted foreign firms, the coverage is plausibly lower, but nonetheless high as a result of union efforts to conclude agreements with foreign firms, and due to the organization of these firms in the sectoral employer organization (Interview 33; Jonsson et al. 2010: 32; PA Consulting Group 2014: 20; Swedish Construction Federation 2016: 15).³ According to a survey

³ In 2013, the union had signed 33 collective agreements with individual foreign firms, and 5 foreign firms became bound to the sectoral collective agreement through membership in the employer organization (PA Consulting Group 2014: 20). In 2015, the sectoral employer organization indicated that they had about 50-60 foreign firms as members, out of a total of approximately 3 300 members (Interview 33; Swedish Construction Federation 2016: 15), contributing to increasing the coverage of collective agreements. In an

with local trade union representatives, four out of ten union representatives had faced resistance when attempting to sign a collective agreement with a foreign firm (Jonsson and Larsson 2013: 19-20). This suggests that a majority of the foreign firms approached by the trade union accept to sign a collective agreement without resistance. At first sight, this seems surprising, as the Laval conflict and judgement was in favour of foreign firms' right not to be bound by a Swedish collective agreement, while limiting trade unions' possibilities to take industrial action against foreign firms. Yet, foreign firms' resistance towards signing Swedish collective agreements does not seem to have been reinforced since the judgement. On the contrary, the trade union has reported that no union has, since the Laval conflict, been forced to pursue industrial action as a means to ensure that foreign firms conclude collective agreements (ibid. 20). An explanation for this seems to be a change in strategy from the side of foreign firms; before Laval, they refused to sign, now they sign the collective agreements "to get it over with and get the union off their back" (Interview 31), while abstaining from enforcing the agreements in practice. According to the sectoral union, "foreign firms do not object to signing a collective agreement, but they know that we do not have the possibility to fully control compliance with the agreement. [In this way,] they get a "drivers' licence" in the Swedish labour market by signing an agreement that they do not follow in practice" (Jonsson and Larsson 2013: 22). As a collective agreement offers firms industrial peace, main contracts as well as subcontracted firms have an interest in that the subcontractors sign a collective agreement to avoid industrial conflict.⁴ The occurrence of non-use of collective agreements to regulate the employment of migrant labour in this sector seems to primarily be related to the use of migrant workers as solo self-employed.⁵

Insufficient enforcement of labour standards in the employment of migrant labour

While available data suggests that there is overall use of collective agreements in the employment of migrant labour in the Swedish construction sector, the opt out procedure in this sector pertains to abstaining from enforcing the agreements in practice (Interview 31, 32; also Petersson 2013: 38). The organization of work in the Swedish construction sector is largely based on complex

investigation of three major publically financed infrastructure projects, the trade union found that a majority of the foreign firms active in the projects were covered by collective agreements, partwise through membership in an employer organization (Jonsson et al. 2010: 32).

⁴ Among the foreign firms who do not want to sign a Swedish collective agreement, the main argument has been that they already offer conditions in line with the collective agreement (Jonsson and Larsson 2013: 20). It is often difficult for union representatives to verify whether this is the case, and to gain sufficient leverage to continue to push for a collective agreement (ibid.).

⁵ While self-employment by definition is associated with non-use of a collective agreement, scholars have previously also reported that collective bargaining coverage is low in parts of the subcontracting chains where foreign temporary work agencies recruit and post workers to the Swedish construction sector, and register them as self-employed upon arrival (Thörnquist 2013:7; Kjellberg 2019: 62). To the extent that the temporary agency work is genuine, and does not involve bogus self-employment, agency workers are also likely to be covered by the applicable sectoral collective agreement as the construction sector union has concluded collective agreements with several temporary work agencies catering to the construction sector (Petersson 2012: 45-46).

modes of subcontracting. According to the sectoral trade union, between 50 and 70 percent of the workers in large construction projects are employed in subcontracted firms, and approximately 30 percent of the workforce is employed in the main contracting firm (Interview 31). With the exception of the minority of migrant workers employed in-house in Swedish construction firms, who tend to enforce the agreements in practice (Jonsson 2013: 38-39), these long and complex subcontracting chains have resulted in generally low levels of enforcement of labour standards in the employment of migrant labour.⁶ Aside from the fact that long and complex subcontracting chains seriously complicates the trade union's task to contribute to enforcement of collective agreements, the trade union has reported that it is generally challenging to ensure compliance with collective agreements signed by individual foreign firms; "it is not a problem to get the agreement signed, but then it is up to us alone to deal with the difficulties [of enforcement]" (Interview 31). An important reason for the low levels of enforcement in the employment of migrant labour in this sector is that the trade union often has few or no members in the foreign firms temporarily posting workers, whereby a central enforcement function – individual workers' contribution to enforcement of labour standards – is missing in these firms. The union has reported that posted workers are too scared to interact with the union, and if they do, they are replaced and sent back home (Jonsson and Larsson 2013: 22; Interview 31).⁷

The result of firms' insufficient enforcement of labour standards in their use of migrant labour in the Swedish construction sector is non-compliance with dominant wage levels, average working time, and dominant levels of job security. There are multiple ways through which firms' use of migrant labour in this sector is associated with non-compliance with dominant wage levels. First, the union has reported that one of the main ways is by paying skilled workers according to the wage level of unskilled workers, that is, by actively not applying the correct wage category (Interview 31; Petersson 2012: 49). This is enabled by the fact that most posted workers do not have a Swedish skill certificate, irrespective of their formal qualifications and work experience (Andersson and Dahlkvist 2018: 30), permitting employers to categorize them as unskilled under the wage category "other construction workers."⁸ Second, non-compliance with dominant wage

⁶ Early assessments by the trade union, based on documentation from the Swedish tax authority, revealed that the main Swedish contractors on average used between 10 and 40 subcontractors in each project (Jonsson et al. 2010: 16). Through workplace visits, the trade union has uncovered extremely long subcontracting chains, with up to 140 subcontracted firms involved, where several parts in the subcontracting chain are purely of an administrative nature (Interview 31). The employer organization has, in contrast, claimed that this is strongly exaggerated (Interview 33). According to a survey commissioned by the employer organization, sub-contracting chains are in general considerably shorter; on average 2 firms, and maximum 4 firms in the longest chain uncovered (PA Consulting Group 2014: 16).

⁷ According to the employer organization, a potential lack of enforcement of collective agreements is, instead, explained by the fact that it may be difficult for foreign firms to understand the Swedish collective agreements, which they experience as complex – and if errors are made, it may be related to a lack of understanding (PA Consulting Group 2014: 29).

⁸ The wage difference resulting from this procedure is 12 percent, as workers without a skill certificate only get 88 percent of the full wage (Interview 31; Andersson and Dahlkvist 2018: 30). The group of employers pursuing this practice thus comply with the collectively agreed wage, just not the correct one. From the

levels also occurs as migrant workers typically work extensive overtime, but without overtime compensation or compensation for unsocial hours (Petersson 2013: 38; Jonsson 2013: 42; Andersson and Dahlkvist 2018: 30, 59).⁹ Third, even in cases where foreign firms apply wages that are equivalent to collectively agreed conditions, the posted workers typically have to pay part of the statutory national insurance contribution in their country of origin, thereby lowering their net wage (Ahlberg, 12 Sep 2019). Aside from subcontracted firms registered in Poland and the Baltic states, a common way through which this strategy has been pursued in the Swedish construction sector over the last decade and a half has been via temporary work agencies registered in Ireland posting Polish workers to Sweden (Interview 31; Jonsson et al. 2010: 32; Petersson 2013: 3). In using foreign temporary work agencies that post workers to Sweden, these firms are able to circumvent the equal treatment principle that otherwise applies to temporary agency workers, as the official status of these workers are posted workers and not agency workers. When it comes to working time, the union as well as employers report that migrant workers often have a longer than average working time, and that they work a lot of overtime (Interview 31; PA Consulting Group 2014: 23; Jonsson 2013: 42; Petersson 2012: 47).¹⁰ Non-compliance with job security, in turn, follows from the extensive use of posted workers on short-term assignments, part of whom are agency workers, and the use of migrant workers as solo-self-employed. While self-employed workers by definition have no access to job security, posted work is in practice also associated with no or low levels of job security as foreign firms ensure that the length of the postings are no longer than 183 days (on paper), in order to circumvent regulations that require foreign firms to pay Swedish income taxes and social security contributions. Through workplace visits, the trade union has found that foreign firms have established a rotation system exchanging the posted workers each six months, moving them to different construction sites (Interview 32; Jonsson and Larsson 2013: 14).¹¹ The absence of job security affects the chances of enforcing

perspective of the trade union, there is no doubt that a majority of the workers should be categorized as skilled workers, as they come to perform complex work tasks in large construction and infrastructure projects (ibid.).

⁹ Aside from these procedures, the trade union's insights into the working conditions of migrant labour have revealed the occurrence of very low wages, way below 88 percent of the wage, as well as deductions for travel costs and accommodation made to the wages actually paid, and employers who abstain from paying any wage at all (Interview 31; Jonsson et al. 2010: 32, 37-38; Petersson 2012: 55, 2013: 38; Jonsson 2013: 42-51). The share of the migrant workers in bogus self-employment, which according to the experience of the union account for most migrant workers in self-employment, are also generally underpaid (Interview 31).

¹⁰ The trade union has found that posted workers typically work between 50 and 60 hours – and up to 80 hours – per week, including evening and weekend work, and that neither the collectively agreed working time nor the legislated maximum working hours and weekly and daily rest periods are respected (Interview 31; Jonsson et al. 2010: 32: 37-38; Jonsson 2013: 42-53; Petersson 2012: 47). As reported by Petersson (2012), a manager in a Swedish construction firm expressed that this was because the migrant workers want to make the most of their temporary stay and earn as much as possible (47). As the overtime is 'voluntary' and not ordered, the firm did not see a need to pay any overtime compensation (ibid. 49).

¹¹ This procedure has been documented to be widespread also in publically financed infrastructure projects, where foreign firms change their names and organisational numbers every six months, and their workers

labour standards more generally, as it places workers in a weak position in which they are easily pushed toward employment deals that include acquiescence of their labour rights.¹²

The Swedish state has enabled and supported these opt out practices in multiple ways, particularly by contributing to a context of low levels of enforcement. Prior to 2013, foreign firms and foreign workers that were temporarily active in Sweden were not obliged to register their presence. The lack of overview of the presence of foreign firms and posted workers created highly challenging conditions for the labour inspectorate and trade union to contribute to enforcement. In spite of the registration requirement, the trade union has continued to report that it on a daily basis encounters posted workers who are not officially registered in Sweden (Sveriges Radio Ekot, 2018.03.09). While foreign firms and posted workers are obliged to register their presence since 2013, the parallel removal of the registration requirement for regular internal EU labour migrants in 2014 served as a further means by which a control of the economic activities of migrant workers was hampered. Furthermore, the Swedish government contributed to boosting the market for solo self-employed construction workers by increasing the tax deductions for private households' use of construction services in 2008. While the employer organization embraced this reform and claimed that it contributed to reducing the share of undeclared work in the sector (PA Consulting Group 2014: 26), it led to a surge in the use of migrant workers as solo self-employed, with no access to job security or any guaranteed wage, in small-scale worksites that are very difficult for the trade union and state agencies to monitor (Woolfson et al. 2013: 6).¹³ Finally, the state has played an active role in supporting firms opt out practices and maintaining non-compliance with labour standards for migrant workers in publically financed construction and infrastructure projects (see Andersson and Dahlkvist 2018; Thörnqvist and Woolfson 2012). The trade union has uncovered that publically financed projects are no exception when it comes to systematic and widespread lack of enforcement of labour standards for migrant workers. On the contrary, the share of posted workers appear to be even higher in these large scale projects, where long subcontracting chains and inferior conditions prevail (Jonsson et al. 2010: 4).¹⁴

are offered six month contracts, even though the acquired projects run considerably longer (Andersson and Dahlkvist 2018: 59).

¹² Two further factors reflecting employers' insufficient enforcement of labour standards in their use of migrant labour in the Swedish construction sector relate to undeclared work and tricking with employment contracts. The construction sector belongs to the sectors targeted in the tax authority's controls of undeclared work (Skatteverket 24 Aug 2019), and insights from its work suggest that posted workers are more exposed to undeclared work than domestic construction workers (Jonsson and Larsson 2013: 24). The union has, similarly, reported that the criminal practices in this sector typically involve foreign firms posting workers (ibid.). While migrant workers often are provided written employment contracts, there are often two versions thereof; one in line with the Swedish collective agreement, and a second based on the actual conditions of employment (ibid. 5) – something which seriously hampers enforcement efforts by both the union and labour inspectorate.

¹³ Solo self-employment has been estimated to be high in the Swedish construction sector, with about one fifth of the sectoral workforce being self-employed (Thörnqvist 2013: 7; Bengtsson 2013: 175).

¹⁴ More generally, the choice by the Swedish government – supported by the trade union movement – not to impose any transitional restrictions in relation to the market expansions of the 2000's does not seem to

The Swedish hotel and restaurant sector

In contrast to employers in the Swedish construction sector, who have made extensive use of posted work through EU internal service provision, employers in the hotel and restaurant sector have instead primarily used third country labour migrants, defined as workers originating from outside the EU, as a means to access temporary migrant labour. While EU internal labour migrants are also (to an unknown extent due to the absence of a registration requirement) employed in the Swedish hotel and restaurant sector, employers in this sector have made great use of the unrestricted access to third country labour migrants offered to them by the Swedish government in 2008 (Swedish Migration Agency; OECD 2011; LO 2013; Frödin and Kjellberg 2018). Through this reform, which transferred the right to determine the need for migrant labour from the state to employers, the Swedish government actively constructed the basis for employers' opt out response in the Swedish hotel and restaurant sector.

Use of collective agreements in the employment of migrant labour

Existing research as well as fresh insights from the trade union and employer representatives suggest that a majority of the employers in this sector follow the dominant practice of using a collective agreement in their employment of migrant labour. There are three main explanations for this, which share similarities with the explanations for the overall use of collective agreements in the employment of migrant labour in the Swedish construction sector. First, the high and increasing employer organizational rate contributes to high levels of collective bargaining coverage, particularly but not only in the hotel part of the sector. According to the sectoral employer organization, approximately 90 percent of all firms in the hotel part of the sector were in 2015 members of the employer organization (Interview 37). In the restaurant part of the sector, the employer density was estimated to be just above 50 percent (*ibid.*)¹⁵ Second, the sectoral structure also contribute to a high coverage of collective bargaining, despite the high presence of many small firms; while a majority of the firms in this sector are small firms, the larger firms employ a majority of the workforce (Interview 34). Third, the sectoral trade union's efforts to actively ensure use of collective agreements also in workplaces where migrant workers are dominant, contributes to employers' use of collective agreements in their employment of migrant labour. In their investigation of firms' use of third country labour migrants in restaurants and cleaning services in the capital region, Frödin and Kjellberg (2018) estimated that 89 percent of the migrant workers in hotel cleaning were covered by a collective agreement, whereas the coverage of in the restaurants was 45 percent (77). Despite that migrant workers in hotel room

have resulted in a limited use of migrant labour via irregular employment channels, including posted work, agency work, and self-employment in the Swedish construction sector.

¹⁵ Added to the automatic coverage of collective bargaining linked to the membership with the employer organization is the coverage generated by the union in concluding collective agreements with individual firms.

cleaning often are employed in subcontracted firms, whereas migrant workers in the restaurants are typically employed in-house, the share of migrant workers covered by a collective agreement in the restaurants is thus considerably lower, entailing that in-house employment in Swedish firm does not necessarily equal use of a collective agreements in this sector.¹⁶ In larger restaurant and cleaning firms, the collective bargaining coverage of migrant workers was estimated to be as high as 91 percent (ibid.). On the whole, the authors estimated that about half of the third country labour migrants were recruited to companies without collective agreements (ibid.). While this introduces some empirical uncertainty as to whether a majority of hotel and restaurant firms are actually using a collective agreement in their employment of migrant workers, the union confederation has previously reported that most migrant workers in these occupational areas are covered by collective agreements (Jonsson and Larsson 2013: 10). Importantly, the findings by Frödin and Kjellberg (2018) suggest that the use of collective agreement in the employment of migrant labour follows the general pattern in the sector, with higher coverage in the hotels and lower coverage in the restaurants, almost full coverage in the larger firms and somewhat lower coverage in smaller firms, leading us to conclude that a majority of the employers in this sector follow the dominant practice of using a collective agreement in their employment of migrant labour.

Insufficient enforcement of labour standards in the employment of migrant labour

While empirical findings suggest that there is overall use of collective agreements in the employment of migrant labour in the Swedish hotel and restaurant sector, the main opt out procedure has here – similar to the situation described in the construction sector – been not to enforce the provisions of the collective agreement in practice. The 2008 deregulation of third country labour migration gave hotel and restaurant employers free access to a migrant labour supply in a very weak position to demand enforcement of its labour rights, and created a situation of generally low levels of enforcement.¹⁷ In introducing this reform, the Swedish government established highly imbalanced employment relationships between employers and third country labour migrants by linking the work permit to the employment with a specific employer (Woolfson et al. 2013: 8). The fact that a high share (more than 40 percent) of the labour migrants in this sector have switched track from asylum seekers, student visas, and attempted family reconciliation to prolong their stay in Sweden through a work permit (Frödin and Kjellberg 2018:

¹⁶ Existing research has also found an increase in the use of third country labour migrants as temporary agency workers used by cleaning companies in hotels (Pettersson 2013: 36). To the extent that the recruitment is done by a Swedish temporary work agency, this would entail that the workers in general are covered by a collective agreement. To the extent that the employment is in a foreign temporary work agency, this would, instead, be associated with non-use of a collective agreement.

¹⁷ The fact that third country labour migrants in the restaurants are often employed by a compatriot and do not speak any Swedish also contributes to create a situation in which there are small chances of enforcement of their labour rights (Interview 35; Frödin and Kjellberg 2018).

72-73) also contributes to their weak position vis-à-vis the employer that offers them a temporary right to reside in the country.

The result of these highly imbalanced employment relationships is widespread non-compliance with dominant wage levels, very long working hours, and no access to job security (Interview 34, 35). While it remains difficult to estimate the wage levels of these workers, the non-compliance with dominant wage levels range from incorrect application of the collectively agreed wages, where the lowest wage category by default is offered to the migrant workers, to extremely low and even unpaid wages (Interview 34, 35; Hotell- och Restaurangfacket 2011).¹⁸ The working time of these migrant workers is, similarly, difficult to estimate. Reports from the trade union do, however, reveal regular encounters with cases of extremely long working hours, well above the legally permitted working time (Interview 34). When it comes to the working time of the migrant workers in hotel room cleaning, their contracts generally follow the regular 8 hour working day, but their actual working time often end up being considerably longer as they are pushed to clean unreasonably high numbers of rooms during each work shift (Interview 35; LO 2013: 27-28). This demands an unfeasibly high work pace, which in practice results in long working hours (ibid.). Non-compliance with dominant levels of job security follows from the temporary employment associated with the work permit (maximum 2 years) of third country labour migrants, who fear for losing their jobs at any point, and with that their right to stay in Sweden, if they start claiming their rights. Finally, while the requirement of a written employment contract and declared work is often complied with during the period of the work permit, undeclared work in restaurants, cafés and cleaning services is widespread among those labour migrants who continue to stay and work for the same or a different employer as undocumented workers once their work permit has expired. In comparison to the wages of documented migrant workers in similar occupations, the wages of undocumented migrant workers have been reported to be extremely low, and they run an even greater risk of not receiving any wage at all (Interview 36; Khosravi 2008).

Assessing the qualitative threshold for set-membership

The threshold defining the presence of employers' opt out response is whether there is widespread and systematic employment of migrant labour without the use of a collective agreement and/or insufficient enforcement of labour standards. Based on the main types of recruitment and employment channels through which employers in the Swedish construction and hotel and

¹⁸ A major source of non-compliance with wage levels in the use of third country labour migrants is the trade with work permits. The 2008 deregulation not only facilitated this trade, but also increased the attractiveness of work permits as a product by establishing that temporary work permits can serve as the basis for permanent residence permits. Five years after the deregulation, the trade union estimated that approximately half of all new work permits in this sector had been sold by employers (LO 2013: 27-28). In cases where the labour migrants are unable to pay for the work permit upfront, the workers instead have to work off their debts, whereby they in practice do not receive any wage at all.

restaurant sectors use migrant labour, along with empirical findings of migrant workers' employment and working conditions, which strongly suggest the presence of insufficient enforcement of labour standards, I consider there to be little empirical uncertainty as to the set-memberships of the employer responses in these two cases. While there is strong evidence of insufficient enforcement of labour standards in both cases, including non-compliance with dominant wage levels, average working time, and dominant levels of job security, there is at the same time strong indications of overall use of collective agreements in the employment of migrant labour in both sectors. There remains a somewhat higher empirical uncertainty as to whether there is overall use of collective agreements in the employment of migrant labour in the restaurant part of the hotel and restaurant sector.

Trade unions' protection of migrant labour

Despite the high qualitative threshold that defines a protective response as ensuring use of a collective agreement based on equal treatment in the employment of migrant labour, and contributing to enforcement of labour standards for migrant labour, I argue for the categorization of the trade unions' responses in the Swedish construction and hotel and restaurant sectors as effective protection of migrant labour. Core components of their effective protection have been to actively seek to ensure use of the full and applicable sectoral collective agreement and presence of workplace representatives that can contribute to its enforcement, alternatively actively assigning monitoring functions to other trade union representatives, such as regional safety officers, in cases where the unions have no direct access to workplaces. Moreover, both unions have adopted organizing strategies to actively recruit migrant workers. The below assessment of the unions' responses briefly maps through their efforts to ensure the use of collective agreements based on equal treatment to regulate the employment of migrant labour, and assesses the extent to which they have succeeded in contributing to enforcement of labour standards for migrant labour.

Ensuring use of collective agreement to regulate employment of migrant labour, based on equal content

Active efforts to ensure the use of the full and applicable sectoral collective agreements by firms employing migrant labour have been central to the trade unions' responses in the Swedish construction and hotel and restaurant sectors. In both sectors, full-time local trade union officials actively seek up non-organized workplaces to organize migrant and non-migrant workers and push management into signing a collective agreement. While the unions in both sectors recognize that this is highly resource demanding, both unions have deemed it to be the only viable response to ensure regulation of the employment of migrant workers in the Swedish labour market (Interview 31, 32, 34, 35). Despite the formal obstacles placed on this union strategy by the ECJ

in its Laval ruling, and the Swedish governments' legal response to the ruling through Lex Laval (2010), which limited unions' rights to take industrial action against foreign firms for the purpose of concluding collective agreements, and despite considerable challenges in ensuring that foreign firms use the applicable Swedish collective agreement, including, for instance, difficulties in getting in touch with an authorized representative of the foreign firms, who is in a position to sign a collective agreement (Jonsson and Larsson 2013: 5, 18), the construction workers' union has reported that it has largely continued to be successful in concluding collective agreements with foreign firms posting workers (Interview 31, 32). The codetermination rights of workplace representatives, providing them the right to information when a main contractor uses a subcontracted firm, has facilitated the strategy as workplace representatives are able to notify the union section once a new firm enters the scene (Jonsson and Larsson 2013: 18-19). In the hotel and restaurant sector, the strategy has been more difficult to carry out in the smaller restaurants employing migrant workers, whereas it has been successful in larger workplaces and in the hotel and restaurant sector as a whole (Interview 34, 35).

Contribution to enforcement of labour standards for migrant labour

The main ways by which the unions in the Swedish construction and hotel and restaurant sectors have contributed to enforcement of labour standards for migrant labour are through organising migrant workers and actively monitoring their workplaces. The unions in both sectors have taken upon them to actively organize migrant workers for the purpose of contributing to enforcement, describing their responses to employers' increased use of migrant labour as a return to "traditional trade union work," and making historical references to union activities in the 1920s and 1930s in returning to unconventional and highly flexible methods to meet employers' resistance against unionization (Interview 31, 35; see also Jonsson et al. 2010: 32).¹⁹ Moreover, both unions have employed interpreters that accompany them to information meetings, workplace visits, and in their organizing activities (Interview 31, 35; see also Jonsson 2013: 58; Petersson 2012: 56; Bengtsson 2013: 182). The union in the hotel and restaurant sector has also employed special

¹⁹ A local union representative serving as regional safety officer in the hotel and restaurant sector described how the union has adapted its strategies to fit the situation of the migrant workers, and to allow for organising on their terms, for example, by arranging secret meetings with the migrant workers outside of their workplace, late at night on neutral ground, and being accessible around the clock to offer support; "When I help one worker to solve his problem, this creates a ripple effect and my phone number wanders on to other workers with problems. This is a continuous activity, and it is very stressful, but it is the only way that works. We have also tried to be present in the workplaces, and to organize them, as we would do when we organize in a normal situation – but it does not work with this group of workers, not initially – because they do not dare to talk to me when I enter their workplace, so I need to find another way of establishing contact and trust" (Interview 35). The union in the construction sector has also with time refined its methods, for example, by not asking the migrant workers invited to union meetings to sign any forms expressing their interest to become members directly in front of the whole meeting group, as it has been uncovered that there typically always is an undercover employer rapporteur tagging along (Interview 32).

organizers, and organizing has been integrated into all trade union activities including in the work of the occupational safety officials. A major challenge facing the two unions' efforts to organize migrant workers relate to the temporality of the presence of posted as well as third country labour migrants, and to employer threats to terminate their employment and expulse them from the country if they organize (Interview 31, 35; Jonsson and Larsson 2013: 22). While the construction workers' union has reported that it has few or no members in the foreign firms temporarily posting workers, and organising has been more successful among workers who stay longer or regularly return to work in the Swedish construction sector (Interview 31), the hotel and restaurant workers' union has reported that it has been successful in organising third country labour migrants in the hotels, including in hotel room cleaning, as well as in the restaurant part of the sector, with the exception of very small restaurants (Interview 35).²⁰ After years of organising, a local union representative serving as regional safety officer was convinced that "organising is the most efficient strategy. It is difficult to organize these workers, and it requires a lot of work, but it is possible" (ibid.).

Aside from organizing migrant workers, the presence of workplace representation, and active monitoring of workplaces where the unions have no members or workplace representation, have played a key role in contributing to enforcement of labour standards and controlling compliance with collective agreements. In the construction sector, this has primarily been done through workplace representatives present in all larger construction projects, but also through specific trade union groups that have been established and tasked to seek up workplaces and monitor the conditions where foreign firms operate and where migrant workers are used (Interview 31). As a response to the highly challenging situation of contributing to enforcement of collective agreements in foreign firms without union members, the construction workers' union has spent considerable resources on employing interpreters to communicate with the management of foreign firms and their workers (Jonsson and Larsson 2013: 23). In the hotel and restaurant sector, where the coverage of workplace representation is lower, the union has instead given regional safety officers a central role in actively monitoring workplaces. Once the union has organized the migrant workers, it builds their capacity so that they in the future will be able to establish workplace representation in their workplaces.²¹ However, as their capacity to do so is

²⁰ In absence of organizational rates of migrant workers, the share of foreign born workers in the unions give offers a very rough proxy. In 2006, the organizational rate of Swedish born construction workers was 82 percent. In 2016, this had declined – for reasons that will be discussed later in this chapter – to 68 percent (Kjellberg 2017: 95-96). The organizational rate of foreign born workers in the Swedish construction sector was 47 percent in 2016 (ibid.). In the Swedish hotel and restaurant sector, the organizational rate of Swedish born hotel and restaurant workers was 39 percent in 2008, compared to 41 percent among foreign born workers. In 2016, this had declined to 29 percent among the former, and 28 percent among the latter (ibid.).

²¹ Further union efforts to build the capacity of migrant workers to better enable them to enforce their rights include regular campaigns and outreach activities, where information about labour rights are offered in multiple languages. As a result of employers increased use of third country labour migrants in the Swedish

often limited due to their employment situation, the union's contribution to enforcement typically rely on the regular workplace visits by the regional safety officers (Interview 35). Moreover, both unions also contribute to enforcement by pursuing legal cases on behalf of migrant workers, and by offering legal support, including when the migrants were not trade union members before they were in need of such aid (Interview 22, 32, 35; Jonsson 2013: 43-44).²² Both unions also reported that when they uncover an employer who has abused a migrant worker, they have as strategy to make it as loud as possible to deter others from doing the same (Interview 31, 35). That being said, the construction workers' union does not only offer support to (non-unionised) migrant workers, but also actively support foreign firms who sign a collective agreement to help them to correctly interpret and apply its content (Interview 32).

Assessing the qualitative threshold for set-membership

Taken together, the available data suggests that the trade unions in these cases have pursued protective responses towards labour migrants over the last 15 years, both by ensuring use of collective agreements, and by contributing to enforcement of labour standards. Yet, while this evaluation clearly suggests that these trade unions have pursued responses containing effectively protective components, a puzzle remains as to whether they can really be considered as having been effectively protective when employers have simultaneously opted out of their obligation to enforce labour standards in their employment of migrant labour. While we are unable to discern whether this puzzle is of a theoretical nature, or derives from empirical uncertainty, it does – given that the empirical uncertainty as to the employers' opt out responses is low – shed some doubt on the union responses as being effectively protective. The migrant workers who, due to their employment status, largely stand outside of the protective response by the construction workers' union are those who are registered as self-employed. Beyond this group of workers, the empirical evidence does, however, strongly suggest that the two Swedish unions have actively concluded collective agreements based on equal treatment, and contributed to enforcement of labour standards. Accordingly, the fact that employers have been provided sufficient room to opt out by abstaining from enforcing the collective agreements in practice – in spite of the trade unions' contribution to enforcement – is explained by the state's limited contribution to enforcement, rather than the trade unions' responses.

hotel and restaurant sector, the union has continuously had to expand the number of languages in which information material is available. In 2015, they had reached 10 different languages (Interview 35).

²² Moreover, union representatives from several sectors, including the union organizing cleaning workers, have joined forces to establish a service centre for undocumented migrant workers, providing legal support and general help in very difficult employment situations (Interview 36). This effort is run on a voluntary basis from the side of individual trade union officials and members.

2.2 Causal mechanism: Institutional redirection in the Swedish construction sector and hotel and restaurant sectors

Part 1: Challenging of the institutions

The employers' and trade unions' responses presented in the preceding sections carry causal properties that in conjunction with one another serve as the cause that triggers the first part of the causal mechanism conceptualized as redirection of the employment relations institutions. This contradicting combination of responses triggers a process containing countervailing forces. Through their opt out responses, employers have generated causal forces that enable them to challenge the institutions for collective labour regulation. However, in interaction with the trade unions' protective responses, the introduction of a competing logic of action that deviates from the dominant employment relations rules and practices is contained, directing employers towards pursuing their contestation within the scope of the dominant institutions. While employers are opting out of the dominant employment relations rules and practices in their use of migrant labour, and in doing so attempt to introduce a new logic of action, the trade unions make themselves counterpart in the employment of migrant labour through their protective responses. The consequence of this is that the trade unions limit the space for employers to pursue change strategies through their employment of migrant labour, and their responses do not offer the coalitional support needed for employers to abandon or replace the institutions by shifting the dominant logic of action from compliance towards opt out. Thus, employers' challenging of the institutions and attempted introduction of a deviant logic of action is directed towards changing the institutions from within. The first part of the Redirection Mechanism thus pertains to the actions of employers, underpinned by coalitional support from the state, in challenging the institutions for collective labour regulation by pursuing change strategies through their employment of migrant labour, or more generally in the pretext of labour and service mobility, and/or by pushing for deregulatory measures and ways to avoid enforcement as a means to maintain space for their attempted new logic of action based on opt out of dominant employment relations. By directly linking employers' institutional challenging to labour migration and demonstrating that it follows from the investigated cause, I seek to exclude other plausible explanations for finding the evidence.

The prior confidence in the overall mechanism tested in this chapter starts at a fairly low level. No disaggregated causal mechanism linking the class actors' responses with the institutional development of the employment relations had previously been theorized, and our knowledge about processes of institutional changes at the sectoral levels in Sweden is, based on existing literature, limited. While the existing literature, similarly, offers us little basis for assessing the prior confidence that we can have in the presence of this first part of the mechanism in the Swedish construction and hotel and restaurant sector, it has, however, presented empirical

examples that can be interpreted as the introduction of a logic of action that involves a sort of institutional challenging – however, without conceptualizing or articulating it as such. In the construction sector, the literature has emphasized legal conflicts pursued by firms in relation to posted work (e.g. Bengtsson 2013), and in the hotel and restaurant sector, scholars have emphasized how employers’ use of third country labour migrants is associated with firms operating outside of the regulated labour market (Woolfson et al. 2013). The prior confidence across the two cases thus remains moderately low, but existing literature has led us to believe that it is *plausible* that employers in both sectors have been challenging the institutions for collective labour regulation through their use of migrant labour. The implication of the moderately low prior confidence held in this first part of the mechanism is that even relatively weak evidence would allow us to update our confidence in this first part of the mechanism.

The evidence found in the empirical record of the Swedish construction sector suggests that employers through their use of migrant labour *and* in the pretext of labour and survive mobility have pursued institutional challenging in multiple ways. Employers’ challenging of the collective regulation of labour relations in the Swedish construction sector is, for instance, evidenced by legal disputes that have arisen in relation to the use of migrant labour, and particularly posted workers. This includes conflicts related to situations when foreign firms do not want to sign a collective agreement, challenging the position of collective agreements as the main regulatory instrument in the Swedish construction sector, as well as conflicts challenging workplace representatives’ and trade unions’ codetermination rights, migrant workers’ right to organize, and the trade union’s possibilities to take industrial action against foreign firms (Bengtsson 2014).²³ According to the union, employers’ opt out practices in the use of migrant labour has induced the most conflictual relationship between the trade union and employer organization since more than 20 years (Interview 31). The institution at the frontline of employers’ challenging has been collective bargaining. The multiple ways through which collective bargaining has been challenged pertain to different change strategies pursued by different firms, comprised within the variation of employers’ insufficient enforcement of labour standards. First, when it comes to firms who chose to sign collective agreements but without enforcing the content in practice, the causal implication that follows is that they challenge collective agreements by depriving the institution from its function to regulate employment relationships. Second, there is an important group of employers who use collective agreements but are creative in their

²³ Aside from the famous Laval conflict over the proportionality of trade unions’ industrial actions (AD 111/04 and 49/05), challenging the trade unions’ possibilities to take industrial action in order to demand collective agreements with foreign firms, Bengtsson (2014) has found conflicts related to the duty to negotiate with workplace representatives when hiring subcontractors (AD 99/04 and AD 46/05), challenging workplace representatives’ and trade unions’ codetermination rights, a conflict challenging posted workers’ right to organize (AD 119/05), and a conflict over the determination of the wages of foreign temporary agency workers active in the construction sector (AD 54/09).

application of the wage-setting system, initiating a process towards institutional conversion. This is done in two interrelated ways. By paying skilled workers according to the wage category of unskilled workers, the functioning of the wage-setting system based on a wage scale with different categories for different skill groups is, in the case of migrant workers, reduced to one category, and that is the lowest one. As noted by a trade union representative, and confirmed by the sectoral employer organization, employers argue that they need to use migrant labour as a means to access skilled construction workers that they do not find in the domestic labour supply (Interview 31, 33). However, when it comes to paying the workers, they are no longer considered as skilled (Interview 31). This creative application is made possible because these workers do not have a Swedish skill certificate, and EU regulations have put a halt to placing any requirement on foreign firms to use Swedish certificates for their skilled workers. Justified by the argument that a requirement for a Swedish skill certificate would violate the principles of free movement of labour and services in the EU open market by constituting a competitive disadvantage for foreign firms and foreign workers, space has been left for employers to pursue change strategies by treating skilled workers as unskilled. While it is up to individual employers whether they demand a certificate or not, they also, in principle have a responsibility to prove that the workers they use do not have sufficient qualifications to receive the wage equivalent to the wage that a building worker with a Swedish skill certificate is entitled to (Pettersson 2012: 15). Yet, this principle is very difficult to enforce, and sufficient space has been left for employers to apply the incorrect and unintended wage level, and, in doing so, pursuing institutional conversion of the wage-setting system. A related way through which the functioning of the wage-setting system in the collective agreement is conversed in the Swedish construction sector is by firms' reinterpretation of the "basic wage" as a "minimum wage." The EU regulatory framework, particularly post the Laval judgement by the ECJ, provides the basis for this reinterpretation by firmly establishing posted workers' rights to minimum conditions. As the collective agreement in the Swedish construction sector contained no obvious minimum wage level, this gave room for employers and trade unions to interpret what constitutes the appropriate minimum wage. While the trade union has claimed that there is no fixed minimum wage level in the collective agreement, partly due to the different wage categories applicable to different skill categories, and due to the chord system and performance wages that adds onto the established wages and creates a complex variance of different wage levels that can be reached by the end of the month depending on variations in production and the geographical location in which the work is carried out, the employer organization has claimed that there indeed is a minimum wage, namely the basic wage (Interview 31; Jonson et al. 2010: 22). When initially introduced, the basic wage was agreed as a form of

compensation that workers would be entitled to when no work is carried out (Interview 31, 32).²⁴ The institutional properties of the wage-setting system in the construction collective agreement thus provided conditions that enabled a reinterpretation to take place (see also Bengtsson 2013: 182). While the wage-setting system, and the prerogative interpretation of it, has always been a contentious issue in the construction collective agreement (Interview 31), employers along with the sectoral employer organization have in the context of the EU open market been able to exploit this inherent ambiguity by assigning a new meaning to the basic wage, reinterpreting it as a minimum wage level that foreign firms can apply to their posted workers (Interview 32). This reinterpretation has plausibly not only been backed up but even conjured by the sectoral employer organization (PA Consulting Group 2014: 7, 23; Interview 33). In this way, employers attempt to take the interpretative prerogative, and as employers are the ones applying the collective agreement in practice, this change strategy is difficult for the union to counter. The consequence of this is, similarly to the application of unskilled wages for skilled workers, active attempts to construct a lower (minimum) wage category applicable to migrant workers, as Swedish workers would, in general, not agree to *work* for the basic wage that is meant to serve as compensation when no work is carried out. This has substantive impact on the wage formation in practice, as there is a considerable gap between the – by employers – interpreted lowest wage level and the wage that a worker would get would the wage scale and chord system be applied in the way that the union intended when negotiating the agreement.

While it is foreign firms posting workers in the Swedish construction sector who pursue these practices that result in institutional challenging, their practices are supported both by Swedish main contractors and the sectoral employer organization. Swedish main contractors not only tolerate but also maintain these practices by using foreign firms. The reason why they do so is because they benefit from the reduced production costs (Woolfson et al. 2013: 6), which offer better prospects of market survival and success in the context of intensified competition, where major international contractors have become increasingly active in the Swedish construction sector.²⁵ By setting the price ceilings for subcontractors, large construction firms induce opt out

²⁴ Specifically, the basic wage was intended to apply to the following situations: in periods of low production when workers are furloughed, during waiting time occurring in relation to chord work, and during travel time in relation to per diem assignments on a different location. The basic wage was thus not a (minimum) wage per se, but a compensation intended for these predefined situations.

²⁵ The main multi-national Swedish construction firms operating as main contractors have over the last 15 years relied heavily upon a business model based on subcontracting Polish and Baltic construction firms and on using temporary work agencies registered in Ireland posting Polish workers to Sweden (Interview 31; Jonsson et al. 2010: 32; Petersson 2013: 3). The reason for this is because they benefit from reduced production costs through lower labour costs and increased labour input generated by low wages and longer than average working hours without overtime compensation. As private business contracts between firms are covered by confidentiality, it is difficult to ascertain the distribution of the gains made by the increased labour input. Aside from the main contractors who benefit from reduced production costs, foreign firms reap benefits from the cost advantages that they enjoy vis-à-vis Swedish subcontractors (Jonsson 2013: 47). Moreover, even in cases where foreign firms apply wages and working conditions that are equivalent to collectively agreed conditions, these firms continue to harvest considerable competitive advantages through

practices at the lower levels of the production chain, which allow them to reduce costs while simultaneously avoiding responsibility for the rule avoidance occurring in the subcontracting chain (Bernaciak 2014: 25-26). In absence of an efficient main contractor liability, these large Swedish firms have been able to abstain from responsibility and, when confronted by the trade union, claim that “this is not our problem” (Interview 31). As the Swedish construction sector is dominated by few large firms serving as main contractors, these firms effectively challenge the collective agreement from within through their use of foreign firms.²⁶ Aside from the practices of individual firms in challenging the functioning of the wage-setting system in the collective agreement in the Swedish construction sector, the sectoral employer organization has played a central role in the coalition of institutional challengers. All the large Swedish firms operating as main contractors are members of the sectoral employer organization, and enjoy active support from the organization in maintaining room to sustain these practices.²⁷ While scholars have previously described it as a major dilemma for employer organizations that large companies benefit from this situation while smaller domestic contractors struggle to survive in the competition with foreign firms (Afonso 2012; Andersen et al. 2014a: 81), it has not been much of a dilemma to the employer organization in the Swedish construction sector. This is evidenced by how the sectoral employer confederation has actively worked against trade union efforts to maintain a competitive situation that is not based on reducing labour costs, that is, where firms complying with the collective agreement compete on equal terms. A prime example of this is when the Swedish employer confederation financed the lawyers of the foreign firm in the Laval conflict (Jonsson 2013: 52).²⁸ In the infrastructure part of the sector, the state has also played an

reduced labour costs by being registered in countries with considerably lower taxes and social security contributions than in Sweden. According to a Swedish subcontractor, their foreign competitors make offers that are between 15-20 percent below the costs that the Swedish firm is able to offer (ibid. 53).

²⁶ While the sectoral employer organization disagrees with this picture, and points to that a *majority* of the firms in the Swedish construction sector, and among its members, are small firms (Swedish Construction Federation 2014: 1), this does not change the fact that the large firms are *dominating* the employer organization and the sector. The powerful firms in the Swedish construction sector are not facing competition from the foreign firms, but benefit from using them. This is further evidenced by the fact that main contractors actively give their subcontractors advice on how to circumvent the collective agreement in practice (Interview 31). Local trade union representatives often witness the involvement of the main contractor, joining negotiations as representative of the foreign firms, when the union attempts to conclude collective agreements with foreign firms (ibid.).

²⁷ Part of the employer organization’s strategy to maintain scope for opt out practices has been to downplay the significance of the use of migrant labour in the Swedish construction sector. This is, for instance, exemplified in the contentious issue about the scope of posted workers and their employment and working conditions, where the employer organization has claimed that there is “nothing to substantiate the trade union’s description of reality” (PA Consulting Group 2014: 3).

²⁸ While the employer organization organizes some foreign firms (in 2015, between 50-60 of their 3300 members where foreign firms (Interview 33; Swedish Construction Federation 2016)), the trade union has suggested that “the employer organisation does not want them as their members, but it wants them in the market, and it is happy to provide assistance to them on how they can operate in the Swedish market by circumventing the collective agreement in practice,” noting how it remains an advantage of the employer organization that only a few of all foreign firms active in the Swedish construction sector are organized, because it enables the employer organization to continue to claim that “we only take in serious firms as our members” (Interview 31), thereby officially distancing itself from malpractices.

active role in the coalition of institutional challengers, not only by supporting employers' opt out practices, triggering institutional challenging, but also by actively creating a competitive situation in which employers' contestation is induced.²⁹

In the Swedish hotel and restaurant sector, institutional challenging very similar to that identified in the construction sector is present. First, by using a collective agreement but abstaining from enforcing it in practice, firms challenge the sectoral collective agreement by depriving the institution from its function to regulate employment relationships. Moreover, evidence that the sectoral collective agreement is challenged through attempts to converse the wage-setting system by giving a new function to the lowest wage category is also found in the hotel and restaurant sector. By interpreting the wage category referred to as "lowest wage" or "entry wage" as a minimum wage applicable to migrant workers, firms use wage categories initially intended for other purposes. While these wage categories were directed to inexperienced workers and serve as starting points for further negotiations, findings suggest that these wage categories are transformed into the norm in the employment of migrant workers (Interview 34; Andersson Joonas and Wadensjö 2010; LO 2013: 31). Aside from challenging the functioning of the wage-setting system through an unintended application of it in the employment of migrant labour, the employer organization considers the entry wages to be "problematically high" (Interview 37), and generate pressure even on these lowest wages. A different piece of evidence of employers' use of creative strategies to challenge the functioning of the wage-setting system in practice is found in hotel room cleaning. While the system, from the trade union's point of view is meant to generate a fixed hourly and monthly wage, employers in practice pay the migrant workers, dominant in this occupation, based on the numbers of rooms they clean (Interview 35). In this way, wage-setting is based on the workload and worker productivity, and not on the hours worked, whereby employers' converse the wage-setting system into a system based on performance pay. The systematization of the institutional challenging associated with the use of

²⁹ The public agency responsible for the infrastructure in Sweden, *Trafikverket*, has actively intensified the competition in this part of the sector. In parallel with the EU market expansions in the 2000s, several governmental reports identified a lack of competition in the area of infrastructure projects, whereby the public agency in charge of such tendering processes started to actively attract foreign firms, explicitly seeking to intensify competition (Andersson and Dahlkvist 2018: 3). The result of this strategy has been that large international contractors have won increasingly shares of publically financed infrastructure projects in Sweden (ibid. 7). The intensified price competition following from the public agency's active attraction of foreign firms has had dramatic consequences on labour costs; in the mid-2010s, the offers made by firms in public tendering processes for large infrastructure projects contained hourly wage costs that were 25 percent lower than the hourly wage costs of similar projects in the early 2000s (ibid.). While the depressed costs originated from offers made by foreign firms, some major Swedish construction firms have followed suit to stand a chance in the tendering processes, pushing down labour costs by using subsidiary firms registered in Eastern Europe as a means to access low wage labour (ibid.). Other Swedish main contractors have, in turn, started to abandon such public tendering processes, claiming that the prices are pushed down to a level at which it is not possible for them to compete (ibid. 5). Those most affected by the competitive situation induced by the state are, however, the small- and medium-sized Swedish firms, who as a result of the strategy has largely been excluded from the market of publically financed infrastructure projects (ibid. 7).

third country labour migrants in this sector is more generally evidenced by the rise of a business for lawyers to help employers' comply with the official requirements in the use of third country labour migrants in order to obtain work permits, with law firms helping employers to fill in work permit applications so that it corresponds to the requirement of offering conditions equal to that of the applicable sectoral agreement in the employment offer, while simultaneously enabling them to divert from the offered conditions and opt out in practice (Interview 40; also LO 2013: 29).

While the main challenging by employers in the Swedish construction and hotel and restaurant sectors has been directed towards collective bargaining, employers in both sectors also pursue non-compliance with dominant levels of job security in their use of migrant labour, and in doing so, generate causal forces that initiates a process towards declined coverage of job security regulations. The challenging of job security regulations through the practices of individual firms must here be understood in the context of the Swedish employer confederation's longstanding push for formal deregulation of the existing employment protection legislation (LAS) since its adoption in 1974 (Emmenegger 2014: 256), which recently has received powerful political support.³⁰ In fact, the Swedish state has, also in more general terms, actively participated in the coalition of institutional challengers along with employers. In parallel with the EU market expansions of the mid-2000s, the Swedish government contributed to establish low levels of enforcement by drastically cutting the resources to the Work Environment Authority, acting as equivalent to a labour inspectorate. Between 2007 and 2009, the budget of the labour inspectorate was reduced by approximately 20 percent. This resulted in a reduction of the staff of the labour inspectorate by more than one third, from 868 employees in 2006 to 554 employees in 2009 (Swedish Work Environment Authority 2015a). The levels have since not been restored, but instead slightly declined (*ibid.*). As a consequence, the number of workplace visits carried out by the labour inspectorate has declined, although not in proportion to its reduced staff. In 2006, 33 984 workplace visits were carried out. In 2014, it was down to 26 316 (*ibid.*). As a result of this government intervention, the trade unions' role in contributing to enforcement of labour standards was made even more critical. At the same time, however, the government launched an attack on the trade unions by reforming the unemployment insurance system and removing tax breaks on union dues, resulting in a drastic loss of union members (Kjellberg 2011b: 67), and thus eroding the basis for the unions' ability to contribute to monitoring labour standards in workplaces. By actively accelerating the longer-term decline in union density, the Swedish government intervened to shift power from trade unions towards employers (see Baccaro and Howell 2017: 173). Moreover, by liberalizing the third country labour migration regulations in

³⁰ Recent political developments has entailed great advancements from the perspective of employers; the deal for the social democratic government to stay in power following the 2018 elections included a clause pushed through by the centre-right party to deregulate the employment protection legislation for permanent employment. The class actors now have two years to negotiate a deal, or the state will unilaterally intervene to deregulate (Danielsson Öberg, 22 Feb 2019).

2008, and thereby giving employers unlimited access to workers also outside of the EU open market under conditions of highly imbalanced employment relationships, the Swedish government provided considerable room for employers to challenge the dominant employment relations institutions.³¹ Lastly, the Swedish government has introduced tax deductions that enhanced the incentives to use self-employment. This created enabling conditions for employers primarily in the construction sector to challenge the employment relations institutions by defection through the use of solo self-employed migrant workers. Together, these changes reveal the role of the Swedish state in the coalition of institutional challengers under the bourgeois government in power between 2006 and 2014 – years that were critical in setting the stage for employers’ responses to migrant labour, and permitting their institutional challenging. While scholars have previously interpreted developments in Swedish employment relations as being shaped by “the relative weakness of the Swedish state” (Thelen 2014: 154), the eight year period between 2006 and 2014 instead reveals the active role of the Swedish state in supporting employers’ contestation.

Given the moderately low prior confidence held in this part of the mechanism, the evidential picture allows us to update our confidence in the presence of institutional challenging in relation to the use of migrant labour and in the pretext of labour and service mobility in the Swedish construction and hotel and restaurant sectors. While employers in both sectors have largely abstained from challenging collective bargaining through defection, the functioning of collective agreements and the coverage of job security regulations have stood at the frontline of employers’ contestation.

Part 2: Active support of the institutions

In parallel with employers’ institutional challenging, the trade unions’ protective responses generate active institutional support that serves as countervailing forces towards employers’ active contestation. The observable manifestation of this active support is that the unions push for re-regulatory measures and/or strengthened enforcement, as they recognize that the institutions need adaptation and maintenance to cope with the changed context related to increased labour and service mobility. Defining of this active support is that it is demonstrated by the trade unions only, whereas employers abstain from demonstrating active institutional support. The prior confidence held in this part of the mechanism is moderately high; a general expectation based on existing literature is that the Swedish trade unions are well-positioned to serve as institutional supporters. On the employer side, existing literature leaves us with indeterminate expectations about the presence or absence of their institutional support. While collaborative cross-class

³¹ The campaign for this liberalization was initiated jointly by the Confederation of Swedish Employers (SN) and the bourgeois parties, along with the Greens, in 2002, ahead of the EU market expansions (Bucken-Knapp 2009). Once in power, the bourgeois parties quickly went along with the reform.

relations through which the institutions enjoy the active support of both class actors have long held a firm position in the literature on Swedish employment relations, more recent contributions have suggested that Swedish employers are less supportive of the institutions for collective labour regulation (Kinderman 2016; Baccaro and Howell 2017). This warrants a moderately high prior confidence in the presence of trade unions' active support and the absence of employers' active support, entailing that we need somewhat stronger evidence to permit updating to take place.

The trade unions in both sectors have actively demonstrated institutional support in seeking to create conditions under which the collective employment relations institutions can be maintained. In general, the positions taken by the Swedish trade unions have been based on the principle that Swedish collective agreements should apply to all workers – migrant and non-migrant alike – in the Swedish labour market (LO 2006: 20; LO 2013: 4); “our task as a trade union is to control the cost of labour, and we primarily do this through collective agreements” (Jonsson (LO) in Petersson 2013: 35). Consequently, the unions' demonstration of active support has been concentrated on creating conditions that can permit the unions to ensure coverage of the full and applicable collective agreements. In the Swedish construction sector, the union has, since the time of the market expansion in 2004, pushed for measures to establish such conditions by demanding the Social Democratic government to introduce a legal framework that imposes responsibility on main contractors for the practices of their subcontractors, including liability over payments of taxes and social security contributions, to regulate temporary work agencies by introducing a required authorization to operate in Sweden, and tighten the regulation and control of solo self-employment to counter bogus self-employment (LO 2004, 2006: 4; Bengtsson 2013: 180). As a means to strengthen controls, the union has also put forward demands that employers should be obliged to leave contact information so that the trade union can monitor that the applicable collective agreement is complied with, and that the labour inspectorate should be given increased resources to specifically monitor the work environment of foreign workers in foreign firms (LO 2006: 4). The union did not enjoy political support for their demands, and employers were strongly opposing them (Bengtsson 2013: 181). In the course of the last decade, the trade union has continued to push for the introduction of a main contractor liability that should make main contractors responsible for control of the conditions offered by the subcontractors, for strengthened resources to the labour inspectorate, and strengthened public procurement regulations to give public contractors an unambiguous right to demand conditions equivalent to the collectively agreed conditions in publically financed construction project, and establish a new agency tasked to monitor public procurement (Interview 31; Jonsson et al. 2010: 36; Jonsson 2013: 13). To enable enforcement of collective agreements in the use of posted workers, the trade union has called for uncountable re-regulatory measures over the last 15 years, including, amongst others, introducing legal requirements for foreign firms to register their presence, a legal requirement for foreign firms to have a legal representative present in Sweden, a legal requirement

that obliges foreign firms to provide documentation of working and employment conditions, and the removal of the rule that income tax does not need to be paid in Sweden up until 183 days of work in the country (Jonsson et al. 2010: 35; Jonsson and Larsson 2013: 6). Following the ECJ Laval judgment in 2009 and the Swedish government's adoption of Lex Laval in 2010, the Swedish trade unions were also prompted to push for legal changes that returns their right to take industrial action against foreign firms.

As the employment and working conditions of third country labour migrants are strongly shaped by how labour migration is regulated, and only secondary by monitoring and control of actual workplaces, the focus by the union in the Swedish hotel and restaurant sector has, since 2008, been to re-regulate procedures related to third country labour migration to better enable the union to control compliance with collective agreements. Already in the political discussions ahead of the deregulation, the Swedish trade union confederation demanded that job offers serving as the basis for work permits should be transformed into legally binding employment contracts, which would reduce the risk of a subsequent discrepancy between the job offer and the actually offered employment contract, and would make it possible for the trade union to take legal action against such discrepancies (LO 2006: 18). The unions have also proposed the introduction of routines to control workplaces and the proposed conditions *before* a work permit is granted, as well as follow-up controls and possibilities to sanctions in case of violations, including the possibility to withdraw work permits when the actual working conditions turn out to be inferior to those that were stated when the permit was granted (LO 2006: 4, 17-18). In the course of the last decade, the unions have maintained most of these demands, and particularly emphasized that the Migration Agency must be given increased authority to control employers who want to use third country labour migrants, and decline demands from employers who have been pursuing dubious practices in the past (LO 2013, 2016). Based on the insight that "migration is associated with great risks for the worker [...] to mitigate the risk, it should be shared with the state and employers" (LO 2006: 3), risk sharing has been central in the Swedish trade unions' push for institutional maintenance. This is, for example, manifested in the unions' call for the removal of temporary work permits, and the proposal to replace it with a system primarily based on permanent work permits, and removal of the rule that the work permit is linked to one specific employer (LO 2013: 18), to enable migrant worker to be in stronger position vis-à-vis their employers.

The active support for measures to cope with the pressure for change stemming from employers' use of EU internal and third country labour migrants in the Swedish construction and hotel and restaurant sectors has been met by absence of any similar calls from the side of employers. The employer organizations in both sectors do not share the unions' concerns, and have expressed no major concerns over potential distorted competition from employers who pursue employment practices deviant to dominant practices in their use of migrant labour

(Interview 33, 37; Swedish Construction Federation 2014: 5). Employer organizations in both sectors fully embraced the adoption of the 2008 reform and identify no problems with it (Interview 33, 37). The Swedish employer confederation, who was a strong proponent of the reform prior to its adoption, has continued to lobby for its maintenance, opposed any re-regulation, and accused the unions for pursuing protectionism (SN 26 Aug 2014; SN 1 Jul 2014). In the construction sector, the sectoral employer organization has strongly opposed the unions' proposed main contractor liability, re-regulation of temporary agency work and solo self-employment. In the area of enforcement, the employer organization has proposed measures to strengthen enforcement in relation to posted work, including a legal requirement for documentation that would oblige employers to present the wage, social security contributions and taxes that have been paid, that the tax authority should be given the possibility to make unannounced workplace visits, and that the trade union should focus their control efforts on the "right firms" by being pointed by the employer organization towards firms suspected of irregularities (PA Consulting Group 2014: 26). On the whole, these propositions involve limited measures to strengthen enforcement. The evidence provided here thus warrants us to update our confidence in the presence of one-sided active support from trade unions.

Part 3: Redirection and adaptation of the institutions

Employers' institutional challenging and the active institutional support from the side of the trade unions in turn drives the process towards institutional redirection and adaptation. The trade unions' protective responses influence the dynamics of the process by obstructing the shift to a logic of action based on opt out of dominant employment relations rules and practices. Yet, as this directs employers to pursue their new behaviour within the scope of the dominant institutional framework (Streeck and Thelen 2005: 21), this alters the way in which the institutions are practiced (Jackson 2005). With the trade unions' active support transmitting causal forces that generates institutional adaptation by pushing the state to re-regulate employers' liberalising moves, the institutions are changed through the two countervailing forces driving the process forward; redirected by employers in their pursuit of increased discretion over and flexibility in the regulation of employment – and, in parallel, adapted as a result of the trade unions' active support. The observable manifestations of this last part of the causal mechanism are thus defined as the situation in which employers redirect or reinterpret institutional functions related to wage-setting in collective agreements, and/or shift to temporary forms of employment, reflected in declining coverage of job security regulations, along with a parallel introduction of re-regulatory measures that collectivizes risk and adapt the institutions to the context of high pressure for change stemming from employers' use of migrant labour.

The prior confidence held in this part of the mechanism is low. This is partly due to the innovative conceptualization of this mechanism, specified as a combination of institutional

redirection and adaptation, and partly because existing literature tells us little about whether empirical developments in the investigated cases can plausibly be understood as such redirection and adaptation. Existing research does, however, offer some input that serve to inform our prior confidence in more general terms. While not referring specifically to developments in the Swedish construction or hotel and restaurant sectors, Baccaro and Howell (2017) have recently proposed that the liberalization pursued by Swedish employers has primarily taken the shape of institutional conversion, involving redirection of the function of coordinated bargaining through decentralization and individualization (169-170.). This does not match developments in the two sectors investigated here, but offers us an indication that it is plausible that Swedish employers also in these sectors, in meeting the responses by protective unions, attempt to redirect the functioning of the employment relations institutions.³² Yet, even in view of this expectation, our prior confidence in the presence of this part of the mechanism must be considered as low in these specific cases.

The strongest evidence of institutional redirection in the Swedish construction and hotel and restaurant sectors is found in the move away from job security regulations, and the redirection of the functioning of wage-setting systems in the sectoral collective agreements. First, employers' change of the practical functioning of job security regulations is evidenced by a shift towards forms of employment associated with no job security in their use of migrant labour, whereby the share of workers covered by the institution is reduced as their use of migrant labour increases. Second, the evidence presented in relation to employers' institutional challenging suggested that employers in the Swedish construction and hotel and restaurant sectors have sought to redirect the functioning of collective agreements by reinterpreting different wage categories as minimum wages applicable to posted workers, and migrant workers more generally. While it is not possible to offer evidence as to the extent to which this redirection has been completed in the hotel and restaurant sector, there is little suggesting that this attempted conversion has been halted; no re-regulating measure firmly closing down the space and preventing employers from inventing minimum wage levels has been adopted. In the construction sector, evidence suggests a formalisation of a minimum wage level, following employers' creative application of the wage-setting system. As a step in facilitating compliance by foreign firms, the union has been obliged to submit the sectoral collective agreement to the labour inspectorate in order to make the collectively agreed conditions easily accessible. Yet, as the labour inspectorate has set out to control minimum standards only, the union was pushed to clarify what constitutes the minimum wage. To this end, the union started to develop specific "posted worker agreements" in 2013,

³² The collective agreements in the two sectors investigated here have limited space for local negotiations and individual wage-setting, offering limited scope for decentralised and individualised bargaining. In the collective agreement in the hotel and restaurant sector, there is some space for local negotiations, although this is, according to the trade union, rarely utilized in practice. The sectoral agreement in the construction sector does not leave any space for local wage bargaining (Swedish Mediation Office 2019: 222).

representing a lean version of the full collective agreement, in line with the EU regulations establishing posted workers' right to minimum conditions (Jonsson and Larsson 2013: 23). In 2017, the union and employer organization subsequently concluded a collective agreement that firmly established what constitutes the minimum wage levels (Andersson and Dahlkvist 2018: 62). However, rather than halting the attempted conversion of the wage-setting system, this agreement was a success for employers, completing and formalising their reinterpretation. In parallel, the creative application of the wage-setting system whereby employers apply unskilled wages to skilled work when migrant workers have no Swedish skill certificate gained legal recognition in 2016, when the Swedish Labour Court ruled (AD 2016:55) that this interpretation was lawful (ibid. 30). The ruling placed organized employers in a strong position, with the result that the collective agreement signed in 2017 also revised the clause related to skill recognition. However, rather than reducing the room for the inaccurate application of unskilled wages, the agreement set a fairly high and vague threshold for posted workers to obtain a skill recognition, thereby providing a formal recognition of employers' practical application of the wage-setting system. The reason why this is evidence of institutional redirection, rather than adaptation, is because it institutionalized a substantively lower wage for posted workers, as opposed to adapting the institution to maintain its deliverables in the context of employers' use of migrant labour.³³

When it comes to institutional adaptation, the trade unions in both sectors have placed their efforts on fighting to maintain collective bargaining as the main institution for collective labour regulations, and that migrant workers should be covered by the full scope of this institution. In the construction sector, the focus has been on better enabling the union to deal with the complex organization of work related to long subcontracting chains and the use of posted workers. In 2019, the union's longstanding push for a main contractor liability finally resulted in the adoption of a legislated main contractor liability. While the sectoral employer organization had been against previous proposed versions of a statutory main contractor liability, fearing that it would "alter the division of responsibility and distort competition" (Ackordcentralen 1 2019), it embraced this final version as it maintained the precedence of collectively agreed main contractor liabilities. In the context of an increasing power imbalance between employers and the trade union, this legislation holds the potential to permit collectively agreed derogations in favour of main contractors. In relation to the union's call for a registration requirement for foreign firms, the Swedish parliament finally approved a law in May 2013 – almost a decade after the EU market expansion – that introduced a requirement for foreign firms posting workers in Sweden for more

³³ The agreement from 2017 established that foreign workers who can prove that they have six years work experience became entitled a skilled wage, irrespective if they have a skill certificate recognized in Sweden. The new agreement entailed that the gross wage that posted workers are entitled to can vary between 116.55 SEK per hour for those who have less than 12 months experience up to 166.50 SEK per hour for those who can prove 6 years work experience, resulting in approximately 50 percent of the average wage of Swedish construction workers (Andersson and Dahlkvist 2018: 31).

than five days to register with the Swedish Work Environment Authority. As the requirement also obliged firms to present a contact person during their presence in Sweden, this facilitates both monitoring, by having a register of posted workers, and enforcement, by having a contact person accessible to the trade union and the labour inspectorate (Swedish Work Environment Authority 2014: 1). Yet, a registration requirement only represents a very basic precondition for enabling control, and does little to generate a counterforce that would disrupt the practice of using collective agreements without enforcing them in practice.³⁴ In the hotel and restaurant sector, employers have been allowed to maintain their privileged position in recruiting third country labour migrants without much state interference. The union's demands for adaptation have largely fallen on the side, and the Swedish Migration Agency has, in absence of political initiatives, attempted to patch and fix flaws that the 2008 reform created, but without addressing its fundamental problems. These minor adaptations have done little to overcome the by now well-established employer response to third country labour migrants in the Swedish hotel and restaurant sector.³⁵

Among all union demands for re-regulation and strengthened enforcement only few have thus been realized, and the required participation of the state in the coalition of institutional supporters has largely been missing over the last decade and a half. One of the most important support offered by the Swedish government has been the removal of law Lex Laval in 2017, whereby the social democratic government gave back the right to trade unions to take industrial action against foreign firms in 2017. Furthermore, a recent manifestation of the Swedish government's participation in the coalition of institutional supporters is the reintroduction of tax

³⁴ The union had, on its side, started to developing a central system for registration of foreign subcontracted firms already in 2010, attempting to get an overview of the activities of foreign firms in the Swedish construction sector, and permit a more systematic monitoring of firms (Jonsson et al. 2010: 32). A further measure to facilitate enforcement was the introduction of construction ID-cards (*ID06*) by the trade union and employer organization in 2006, offering main contractors, union officials, and control agencies, including the labour inspectorate and tax authority, easier access to information.

³⁵ In 2012, a minor re-regulation took place when the Swedish Migration Agency introduced stricter rules for employers who want to hire a third country labour migrant, by demanding proof of the firms' financial status and, if the employer has employed a third country labour migrant before, proof of the salary that has been paid (Swedish Migration Agency). The trade union confederation has, however, identified unintended consequence of the stricter requirements. When the temporary work permits expire and the worker wants to apply for an extension, the employers have become more reluctant in doing so since that would entail that they have to account for the firms' financial situation, and prove that collectively agreed conditions have been complied with. Instead, employers prefer to kick out the worker after the first-time permit, in order to subsequently apply for a work permit with a new migrant (LO 2013: 18). In 2014, a legal basis was introduced that gave the Swedish Migration Agency the right to carry out follow-up controls of work permits, in order to control that the worker has actually started the work and that the employment conditions and wage stated in the job offer is complied with. If the employment has not been commenced within four months of the granting of the work permit, or if there are violations related to the conditions, the work permit should be withdrawn. The new rules also obliges employers to submit written information about the employment and working conditions that apply to the employment contract (Swedish Migration Agency, 2014.07.29). Prospects for a more far-reaching reform of the third country labour migration regulations are bleak. In 2019, the deal for the minority social democratic government to stay in power included a requirement from the side of the centre-right party to keep the 2008 reform in place, blocking any possibility for the social democratic government to respond to the calls from the unions to reform the system.

breaks for union membership fees in 2018. By revoking at least a part of the offensive that served to weaken the trade unions in the end of the 2000s, this measure serves the purpose of creating more favourable conditions for the maintenance of collective labour regulations. Yet, this measure alone does little to reverse the power imbalance between unions and employers induced by the previous governments. Importantly, the state has done little to strengthen enforcement to facilitate the unions' efforts to maintain the functioning of existing institutions. The great reduction in the budget, and consequently staff, of the labour inspectorate during 2007 and 2009, has not been restored.³⁶ Throughout the last decade, the labour inspectorate has called for more resources to be able to cope with challenges in specific parts of the labour market, including construction and hotel and restaurants, but without any success (Interview 39).³⁷ As late as in February 2020, the labour inspectorate continued to stress its lack of resources, observing a need for twice as many inspectors to fulfil its tasks (Persson, 13 Feb 2020).³⁸ Furthermore, as the political situation has prevented any significant re-regulation of public procurement procedures, despite that the topic has been on government agendas for more than fifteen years, the state has taken minimal measures to counter opt out practices in publically financed construction projects.³⁹

Given the low prior confidence in the presence of institutional redirection and adaptation, we are able to update our confidence in the presence of this part of the mechanism in the Swedish construction and hotel and restaurant sectors. However, the evidential picture offers more support for the presence of redirection, and less support for the presence of institutional adaptation. Thus,

³⁶ Following instructions from the newly appointed social democratic government, the Swedish labour inspectorate announced an action plan in 2015 that it would strengthen controls of firms circumventing the work environment legislation as a means to gain competitive advantages, including a targeted focus on the construction sector (Swedish Work Environment Authority 2015b). Yet, as late as in 2019, the social democratic government announced that it will give no additional resources to the labour inspectorate. As a consequence, another 15 out of the 275 remaining inspectors will disappear. This is taking place in context of a substantively increased workload, and even increasing numbers of fatal workplace accidents (SvT 18 Apr 2019).

³⁷ When it comes to countering undeclared work, certain efforts to strengthen control have recently been made. A recent government report acknowledged that it continuous to be easy to cheat based on the current system of documentation and controls, and that the requirement to document working time, introduced in 2007 as a measure to counter undeclared work, had not been sufficient to counter the use of undeclared work neither in the construction nor hotel and restaurant sectors (2018/19:RFR4). As a response, the government tasked eight authorities to jointly enhance their controls of undeclared work between 2018 and 2020, with a focus on the construction and hotel and restaurant sectors. This resulted in an increase in the number of workplace controls, and prompted the government to launch a high-level investigation of further measures that could be deployed to strengthen control and counter undeclared work (Dagens Arena 11.02.2020).

³⁸ As a result of the insufficient staff resources, the inspectorate is, for instance, unable to control large construction sites, even when receiving specific tips about irregularities. Instead, efforts are focused on small firms, leaving large groups of firms and workers outside of the radar of the inspectorate (Persson, 13 Feb 2020).

³⁹ Modest efforts to increase the control of compliance with *minimum standards* in publically financed infrastructure projects have recently been made. The public agency in charge of infrastructure projects has set out to better fulfil its responsibility as client by tasking auditing firms to review whether main contractors and subcontractors comply with the contractual rules. In 2017, the agency set out to do 100 audits of minimum conditions in publically financed infrastructure projects (Andersson and Dahlkvist 2018: 62).

while there is reason to believe that a process towards institutional conversion is proceeding in both cases, a question remains as to whether there have been sufficient adaptive components that re-embed employers' liberalising moves and support the continued use of collective labour regulations. This will be assessed in the next section.

2.3 Outcome: Liberalization as socially embedded flexibilization through institutional conversion in the Swedish construction and hotel and restaurant sectors

With the collective body of evidence suggesting that we cautiously can update our confidence in the presence of the Redirection Mechanism in the Swedish construction and hotel and restaurant sectors, the final step in this analysis is to assess the outcome of these processes in the two cases. An overview of the chronological order of events, summarizing the regulatory changes related to labour migration and in the employment relations, is offered in Appendix VII. Below, I map through the institutional developments in collective bargaining, workplace representation, and labour legislation, and make explicit the institutional changes to which I argue that the employers' and trade unions' responses to labour migration have contributed. On the whole, the findings support the claim that the responses by the actors in the Swedish construction and hotel and restaurant sectors have triggered a causal process contributing to liberalization as socially embedded flexibilization through institutional conversion. The class actors' responses have contributed to maintained coverage of collective bargaining, which continue to serve as the main socially embedding property of the institutional complex, whereas the functioning of the wage-setting systems has been conversed in parallel. Employers' responses to migrant labour in both sectors have also contributed to the defining feature of socially embedded flexibilization, namely declined levels of job security. The trade unions' responses to migrant labour have not contributed to a decline in the coverage of workplace representation, which also holds a key function in ensuring socially embeddedness. The findings do, however, depart from the theorized trajectory of socially embedded flexibilization in that employers' use of migrant labour has had a negative effect on the enforcement capacities of workplace representatives in the two sectors.

Collective bargaining: maintained coverage, functioning of wage-setting system conversed, negotiation dynamics shifted in favour of employers

While sectoral data on collective bargaining coverage is scarce, estimates of the coverage in the Swedish private sector as a whole suggest relative stability since the time of the market expansion in 2004 (Kjellberg 2019).⁴⁰ The maintained coverage in the private sector does not necessarily reveal much about the sector-specific developments in the construction and hotel and restaurant

⁴⁰ In 2005, 89 percent of all workers in the private sector were covered by a collective agreement. In 2013 and 2017 the figures were 84 and 88 percent respectively, and 88 percent in 2017 (Kjellberg 2019).

sectors. Yet, there are reasons to believe that the coverage has remained fairly stable also in these sectors, not the least as employers in both sectors have increased their organizational rates over the last decade (Interview 33, 37; Kjellberg 2019: 96). In 2015, the trade union in the Swedish construction sector reported that collective bargaining coverage was approximately 90 percent (Interview 31). Full coverage has remained among the large firms serving as main contractors, who are all members of the sectoral employer organization and bound by the collective agreement (Interview 31, 33). Estimates suggest that the share of small firms covered by collective agreements has declined slightly, from 58 percent in 2010 to 53.5 percent in 2015 (Kjellberg 2019: 59), with coverage thus drifting closer to the threshold that defines the dominant practice. While the collective bargaining coverage of posted workers employed in foreign firms is most plausibly excluded from these estimates, the findings in this chapter suggested that foreign firms posting workers in the Swedish construction have largely been using the applicable Swedish collective agreement, whereby firms' use of posted work in this sector would not have had a negative impact on the coverage of collective agreements. In the hotel and restaurant sector, the coverage has also remained high among the larger firms, and even increased among the smaller firms. In 2010, 61 percent of the small firms (up to 49 employees) in the hotel and restaurant sector were bound by a collective agreement, and in 2015 the share had increased to 66 percent (Kjellberg 2019: 59, 101). This substantiates that use of collective agreements still constitutes dominant practice even among small firms. In 2007, 83 percent of the workers in the Swedish hotel and restaurant sector were covered by collective bargaining (Kjellberg 2017: 72). Given the increased coverage in smaller firms, there is no reason to believe that this overall coverage has not been maintained. Taken together, use of collective agreements thus continue to constitute dominant practice in both sectors, with a clear majority of workers enjoying the coverage of collective agreements. The high and maintained coverage of collective bargaining in the Swedish construction and hotel and restaurant sectors is directly linked to employers' high organizational rates (*ibid.* 16), and to the trade unions' active efforts to ensure high coverage even as their member bases have been declining. The evidence of the causal processes provided in this chapter demonstrates how the trade unions through their protective responses towards migrant labour have contributed to maintain the coverage by ensuring the use of collective agreements in the employment of migrant labour, thereby preventing employers from defecting from the institution.

In spite of the largely maintained coverage of collective bargaining, the evidence of the operation of a Redirection Mechanism in the Swedish construction and hotel and restaurant sectors suggests that the class actors' responses have contributed to changing the institution from within. Through their responses to migrant labour, employers in these two sectors have exploited the institutional flexibility within the wage-setting system by using it in unintended ways in their practical application of collective agreements. As there is no statutory minimum wage in Sweden, employers and trade unions set minimum earnings through collective agreements. While this had

not been a contentious issue prior to the EU market expansions, employers' increased use of migrant labour has since made minimum wages a central topic in collective bargaining. Against the backdrop of a disagreement about what constitutes the minimum wage in the collective agreements, employers have through their use of migrant labour instituted a minimum wage level in practice. In the construction sector, employers reinterpreted the "basic wage" as a minimum wage, until they in negotiations pushed the union to formally recognize a minimum wage level drastically below the average collectively agreed wage levels. In the hotel and restaurant sector, "entry wages" have been transformed into minimum wages. While it remains difficult to assess the scope of this conversion of the wage-setting systems, it seems – for the time being – to be restricted to the employment of migrant labour. Moreover, the more fundamental institutional challenging pursued by firms who sign collective agreements without enforcing them in practice holds the potential to deprive the agreements from their function to regulate employment relationships. Along with the causal power generated by employers' insufficient enforcement of labour standards, a more comprehensive effect on the functioning of collective bargaining has occurred through a shift in negotiation dynamics in favour of employers. Employers' strengthened bargaining position is revealed in negotiations with the union, where the employer organization has explicitly referred to migrant labour to gain leverage in central negotiations of collective agreements (Interview 31).⁴¹ In the hotel and restaurant sector, where there is high competition for jobs, employers' increased use of third country labour migrants has further intensified the competition between workers and weakened the negotiation position of individual workers and of the trade union.

Workplace representation: maintained coverage, enforcement capacities weakened

Due to absence of data on the coverage of workplace representation in Sweden, the evidence in terms of continuity or change in the coverage of this institution is not conclusive. The drastic decline in union densities over the last decade has, however, eroded the basis for workplace representatives, and plausibly contributed to a decline in the share of workers covered by workplace representation (Andersen et al. 2014a: 11, 53; Kjellberg 2017).⁴² In the Swedish construction sector, the trade union density declined from 81 percent in 2006 to 66 percent in

⁴¹ In attempting to push the trade union to agree to lower wages, representatives of the employer organization have used explicit arguments such as "if you do not accept this offer, then we will use migrant labour who will easily agree to the conditions" (Interview 31; see also Petersson 2012: 56). While it is outside of the scope of this analysis to offer systematic empirical evidence of the developments of real wages, analyses of official wage statistics have thus far not revealed any negative effects on construction wages, suggesting that the union has succeeded in protecting the wages of domestic workers, including their members (Andersson and Dahlkvist 2018: 36). The official wage statistics do, however, leave out the wages of posted workers, whereby available data does not permit us to evaluate the real wage developments for the construction workforce as a whole (ibid.).

⁴² Kjellberg (2011a) has found that the total number of union representatives among blue-collar workers in Sweden declined by about a third between 1998 and 2006 (77).

2016 (-15 percentage points), following a targeted government attack on the unemployment insurance system, and thereby on the trade unions (Kjellberg 2017: 95). In the hotel and restaurant sector, union density rates declined from 52 percent in 2006 to 28 percent in 2016 (-24 percentage points) (Figure 7.1).⁴³ While union density rates are no direct reflection of the share of workers covered by workplace representatives, it would be surprising if the drastic declines in union members have not had a negative effect on the coverage, particularly in the hotel and restaurant sector, which has many small workplaces and where the loss of union members was very steep (ibid. 71).

Figure 7.1 Trends in union density rates in the Swedish construction and hotel and restaurant sectors, 2006-2018 (percent)



Source: Kjellberg (2017, 2019).

While it is plausible that the coverage of workplace representation has declined in the Swedish construction and hotel and restaurant sectors, the employer and union responses to migrant labour have not necessarily contributed to this. In the construction sector, the fact that many firms, including foreign ones, operate in the same workplace, contributes to maintain presence of workplace representation in the worksites, even if there are no workplace representatives present in all subcontracted firms. That being said, Kjellberg has argued that the basis for workplace representation has been further undermined by the increased division of labour through changes in the organization of work, including subcontracting and the use of temporary agency workers (Kjellberg 2013, 2017: 43), with which construction firms' use of migrant labour is associated.⁴⁴

⁴³ While all unions lost a considerable share of their member base following the reform, the union in the hotel and restaurant sector lost the most, closely followed by the union in the construction sector (Kjellberg 2017: 13). The reason for this was that the costs of joining a union and the associated unemployment insurance fees became the highest for those who earn the least and have the highest risk of unemployment, in effect hitting low-end service workers the most (Kjellberg 2009, 2017).

⁴⁴ According to an investigation of publically financed infrastructure projects, in which many foreign firms are involved, the union presence in the worksites has declined considerably since the early 2000s (Andersson and Dahlkvist 2018: 8). While union representatives used to have access to information and

Moreover, Kjellberg (2017: 43) has pointed to the tendency towards ever leaner staffing, which makes it more difficult for union members to take on and have time for representative tasks within the scope of their working time. This is generally applicable to both the construction and hotel and restaurant sectors, and to migrant workers in particular. In the hotel and restaurant sector, small workplaces in which employers primarily chose to employ third country labour migrants plausibly contribute more directly to a decline in workplace representation, as workplace representation is typically not established in such workplaces. Yet, the unions' protection of migrant labour has responded directly to this potential representational gap by assigning regional safety officers the role to monitor workplaces without workplace representation. When it comes to the functioning of workplace representation, the trade unions in both sectors have indicated that the enforcement capacities of workplace representatives have been negatively affected by employers' use of migrant labour, partly by complicating their task and by reinforcing a general trend of increased aggressiveness from the side of management towards workplace representatives who attempt to uphold their functions (Interview 31, 35, 36).⁴⁵ The weak power position of migrant labour facilitates such employer offensives. As workplace representatives, along with union members more generally, are the guardians of the enforcement of collective agreements, weakened enforcement capacities of workplace representatives have far-reaching implications for the maintenance also of collective agreements.

Labour legislation: declined coverage of job security regulations

A key feature of socially embedded flexibilization is an increase in firms' external flexibility, reflected in declined levels of job security. Developments in the coverage of job security regulations based on data from the Swedish Labour Force Survey (LFS) reveal a distinct decline in the hotel and restaurant sector; from 31 percent of the workers being in temporary employment prior to the market expansions, to a peak of 43 percent in 2014 (Figure 7.2) (Larsson 2017). Added to the roughly 40 percent of hotel and restaurant workers in temporary employment are the third country labour migrants who, due to their temporary stay in the country, typically would not be captured in the LFS, and who by definition only access temporary employment. The increase in the share of temporary employment in this sector was enabled by the liberalisation of temporary employment in 2007. As employers in the hotel and restaurant sector were offered free access to third country labour migrants at about the same time, in 2008, employers' non-compliance with dominant levels of job security in their use of third country labour migrants has fed right into the

control over the working conditions, their declined presence has, according to the findings, reduced their capacity to monitor and influence the working conditions in large scale infrastructure projects.

⁴⁵ As there is limited room for collective bargaining at the workplace level established through the sectoral collective agreements in the Swedish construction and hotel and restaurant sectors, effects on the negotiation capacity of workplace representatives largely falls outside of the potential institutional impact in these cases.

general trajectory towards decreased levels of job security in this sector (see also Woolfson et al. 2013: 15). Given the high share of temporary employment reflected in the LFS data, and the additional high share of migrant labour with no access to job security, it is highly plausible that job security regulations are at the brink of being displaced as dominant practice in the Swedish hotel and restaurant sector.

Figures 7.2-3 Share of temporary employment in the Swedish construction and hotel and restaurant sectors, 1995-2016

Figure 7.2 Swedish construction sector

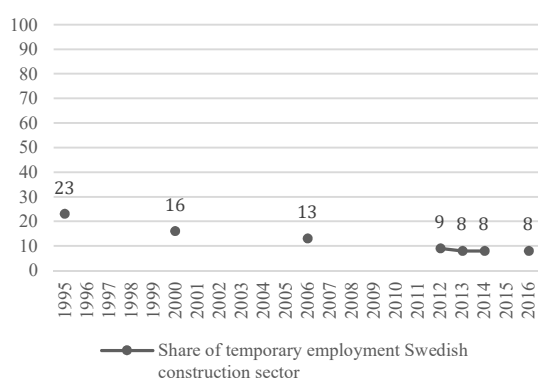
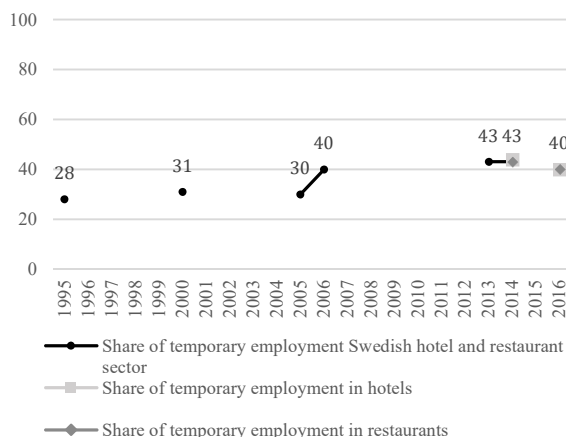


Figure 7.3 Swedish hotel and restaurant sector



Sources: 1990-2016: Larsson (2017); 2006: LO and SN (2016).

In the construction sector, data from the LFS instead reveals an increase in the level of job security, with the share of workers in temporary employment declining from 16 percent in 2000 to 8 percent in 2016 (Figure 7.2). However, while the job security has increased for (Swedish) workers included in the population sampled by the LFS, it is highly probable that this does not reflect the actual levels of job security accessible to workers in the Swedish construction sector as a whole. Whereas the domestic workforce has enjoyed increased levels of job security, and compliance with job security regulations maintains a strong position as dominant practice in the employment of domestic workers, the use of posted work and solo self-employment is associated with non-compliance with dominant levels of job security. Thus, to the extent that the decline in temporary employment among domestic construction workers is linked to increased use of posted workers who provide external flexibility, this suggests a tendency towards dualization rather than socially embedded flexibilization, as the risk of unemployment is unequally distributed to migrant workers. Accordingly, employers' use of migrant labour has contributed to a decline in the coverage of job security in both the Swedish construction and hotel and restaurant sectors. This decline has led to increased employer discretion over hiring and firing, and over the organization of work. The situation in the construction sector, where posted and solo self-employed migrant workers who do not access any job security may make up at least 20 percent of the sectoral workforce, represents a case of drift in the coverage of job security regulations, following a dual

pattern along the lines of migrant and non-migrant workers, which has offered firms' increased discretion over a growing part of the workforce. In the hotel and restaurant sector, the increased employer discretion is equally distributed across all workers, migrant and non-migrant alike.

3. Conclusion

This chapter has investigated how the employers' and trade unions' responses in the Swedish construction and hotel and restaurant sectors have affected the institutional development of collective bargaining, workplace representation and job security regulations. The first section established with a fairly high degree of certainty that there has been widespread and systematic opt out of dominant employment relations rules and practices in employers' use of migrant labour in both cases, and that the trade unions' responses have resulted in effective protection of migrant labour. Next, I tested empirically whether these responses can be linked to liberalization as socially embedded flexibilization through an Institutional Redirection Mechanism. The evidence provided for the presence of the first and second parts of the mechanism – that is, employers' challenging of the institutions and trade unions' unilateral active institutional support – was considered as fairly strong. The evidence of the third part of the mechanism, capturing institutional redirection *and* adaptation, was moderately strong in terms of substantiating the presence of redirection of wage-setting systems in the sectoral collective agreements, and weaker in terms of substantiating adaptation to cope with the pressure for change generated by employers' use of migrant labour and their associated change strategies. Taken together, the analysis enabled us to cautiously update our confidence in the presence of an Institutional Redirection in the Swedish construction and hotel and restaurant sector. Having demonstrated the causal pathway triggered by the actors' responses, the chapter ended by linking the last step of the mechanism to the outcome of institutional conversion, associated with liberalization as socially embedded flexibilization. Socially embedded flexibilization is, in these two cases, manifested in maintained coverage of collective bargaining, whereby migrant labour has been incorporated within the scope of the institution, and in a conversion of the wage-setting systems in collective agreements and declined coverage of job security regulations, whereby employers have enhanced their flexibility. However, while migrant labour has been incorporated within the scope of the collective agreement, the implication of the conversion of the wage-setting systems is that employers abstain from giving migrant labour full access to its content. Moreover, while the general trajectory of change in the employment relations of these two cases has plausibly involved a decline in the coverage of workplace representation, it was suggested that there is no direct, or at least not substantive, effect on the coverage following from the class actors' responses to migrant labour. At the same time, it was suggested that employers' use of migrant labour had contributed to weaken the enforcement capacities of workplace representatives, and that negotiation dynamics

had been shifted in favour of employers. While scholars have previously proposed that employers' use of migrant labour in Sweden, including in the sectors investigated here, may contribute to dualization (Woolfson et al. 2013; Bengtsson 2014; Andersson et al. 2014a; Dølvik et al. 2014b) the findings presented in this chapter do not refute such propositions; indeed, migrant labour is more exposed to the declined levels of job security and to the low wages following from employers' creative interpretation of the wage-systems. However, this chapter has also uncovered intriguing countervailing forces generated by the trade union, which sets the trajectory in the direction of socially embedded flexibilization rather than pure dualization. Risk is collectivized through the continued use of collective agreements, and by the representational functions, including at workplace level, upheld by the unions. Nonetheless, the weak evidence of institutional adaptation revealed by the absence of re-regulatory measures that would effectively disrupt employers' opt out practices and support the continued use of collective labour regulation raises doubt as to whether this is sufficient to maintain social embeddedness in a context of continuous pressure for change. As the trade unions' defensive struggle to maintain collective labour regulations and avoid that the process turns to sheer flexibilization is obstructed by the active state intervention shaping the context in which the employment relations take place, which in the course of the last decade has strongly shifted power away from workers towards employers, the prospects for the unions' ability to uphold meaningful socially embedded components in the trajectory of liberalization are bleak.

Chapter 8

How trade unions' non-effective protection and employers' opt out contribute to deregulatory liberalization: The cases of institutional defection in the German construction and hotel and restaurant sectors

1. Introduction

The task of this chapter is to test empirically the theorized Institutional Defection Mechanism, assessing how well it accounts for the developments in the German construction and hotel and restaurant sectors, and the extent to which updated or downgraded confidence in the operation of this mechanism is warranted in these cases. The German construction and hotel and restaurant sectors have been selected as typical cases based on the presence of employers' opt out of dominant employment relations rules and practices in their use of migrant labour and trade unions' non-effective protection of migrant labour, as well as based on the presence of the requisite contextual conditions of low levels of enforcement and a coalition of institutional challengers. I start the empirical analyses by establishing the presence of the causal condition; employers' and trade unions' responses to migrant labour. I then present the empirical tests of the parts of the Institutional Defection Mechanism, evaluating whether the collective body of evidence allows us to infer that the respective parts have been present. The final part of the chapter analyses the outcome of the process and how it relates to the general trajectories of the employment relations of the German construction and hotel and restaurant sectors.

2. A causal pathway toward liberalization through institutional defection

The below sections reconstruct the causal process that is triggered by the class actors' responses to labour and service mobility in the German construction and hotel and restaurant sectors. By unpacking the steps of the causal process, I seek to demonstrate how the actors' responses are linked to the institutional development of the employment relations.

2.1. Cause: Employer and trade union responses to migrant labour in the German construction and hotel and restaurant sectors

Employers' opt out of dominant employment relations rules and practices

The German construction sector

Over the last 15 years, migrant labour in the German construction sector has primarily been used via posting of workers through sub-contracting of foreign firms and through solo (and bogus) self-employment of EU citizens. Changes in the organization of work through increased use of sub-contracting started to gain importance in the German construction sector already in the decade prior to the market expansions. Between 1991 and 2000, German construction firms' costs for use of subcontracting as share of their total gross production costs increased with more than 10 percentage points, and with as much as 20 percentage points in major construction firms (Figure 8.1). Following a decline around the years of the economic downturn in the late 2000s, the costs of subcontracting have since stabilized, making up on average around a third of construction firms' gross production costs. As construction activity picked up after the economic downturn at the end of the 2000s, German construction firms increased their use of foreign subcontractors, and the share of domestic firms among the subcontractors declined (Federation of the German Construction Industry, March 2018c). A pattern emerged in which German firms serve as main contractors, and foreign firms operate as subcontractors (Wagner 2014: 697), whereby the use of posted work via foreign firms' service provision became one of the main ways through which migrant labour is used (Interview 14). The result of this development is that German construction firms have reduced their in-house workforces and carry out a smaller part of the productive building activities themselves, instead taking on the role as main contractors and construction project management firms (Federation of the German Construction Industry, March 2018c; see also Bosch et al. 2011).¹

¹ The use of subcontracting tends to be associated with a clear division of work, where managers and construction workers with higher skills, such as foremen, construction machinery and crane operators, continue to be employed in-house by main contractors, and all other activities are contracted via a chain of sub-contractors (Interview 13), implying that those working in the sub-contracted firms are the less skilled workers. The reduction in in-house workers is reflected in the decreased share of labour costs, measured as personnel costs, including social security contributions, out of the gross production value; in contrast to the increased costs for subcontracting, the labour costs have continuously declined since 1991, from approximately 37 percent of total costs in 1991, to around 26 percent of all costs in 2015 (Federation of the German Construction Industry, March 2018c, based on data from the German Federal Statistical Office).

Figure 8.1 German construction firms' costs for subcontractors as share of total gross production value, 1991-2015 (percent)

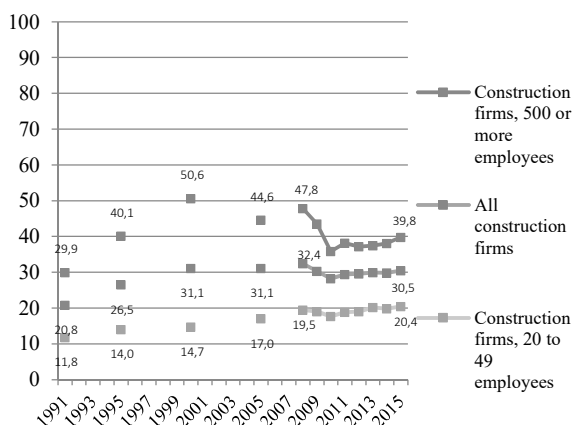
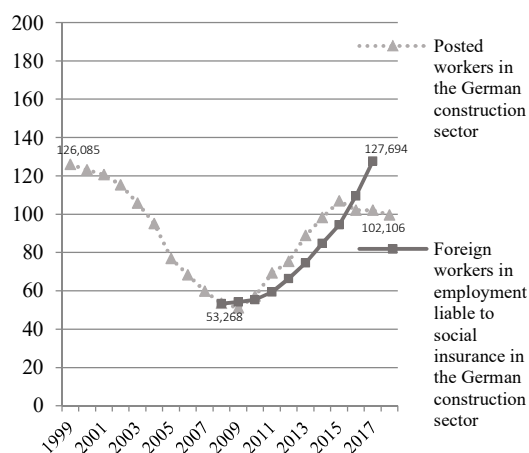


Figure 8.2 Trends in posted work and foreign workers in employment liable to social insurance in the German construction sector, 1999-2017 (number of workers employed, in thousands)



Sources: Figure 8.1: The Federation of the German Construction Industry (March 2018c), based on data from the German Federal Statistical Office. Figure 8.2: The Federation of the German Construction Industry (March 2018b), based on data from the German Federal Employment Agency (foreign workers in employment liable to social insurance), and the social insurance fund of the German construction sector (SOKA-Bau, 23 May 2016) (posted workers 2009-2015), and the Federation of the German Construction Industry (3 April 2019) (posted workers 2016-2018).

Notes: The number of posted workers are based on posted workers registered in the social insurance fund of the German construction sector (SOKA-Bau), calculated cumulatively throughout the year. Foreign workers in employment liable to social insurance include those registered by the German Federal Employment Agency in the month of June each year.

Employers' use of migrant labour in the German construction sector confirms what scholars have previously found in other cases, namely that the adoption of transitional restrictions directed firms towards using migrant labour via atypical forms of employment (see Dølvik and Eldring 2006: 228; Dølvik and Visser 2009: 499; Friberg 2013: 24; Wagner and Hassel 2016b: 21). In the German construction sector, this entailed extensive use of posted work and solo self-employment. These hiring practices have not been reversed even as the transitional restrictions came to an end in 2011; while a considerable increase in employers' use of foreign workers in employment liable to social insurance followed the end of the transitional restrictions, with the number of foreign workers in employment liable to social insurance more than doubling between 2011 and 2017, German construction firms have simultaneously continued to increase their use of posted work (Figure 8.2) and of solo self-employed migrant workers from the post-2004 accession states (Wagner and Hassel 2015b: 9, 49-50). The hours worked by posted workers relative to domestic workers offer an important complement to the registered number of posted workers, and substantiates an increase in the use of posted work. In 2017 alone, the hours worked by posted workers increased by 7 percentage points (around 45 million hours), whereas the hours worked by domestic workers only increased by 2.4 percentage points (around 837 million hours) (SOKA-

Bau, 22 May 2018).² The fact that the number of domestic construction workers has risen less than the number of posted workers over the last years has also contributed to enhance the importance of posted work in the German construction sector (SOKA-Bau, 23 May 2016, 22 May 2018).³ Scholars have previously identified extensive use of solo self-employment in the German construction sector, including extensive use of bogus self-employment (Hardy et al. 2012: 352; see also Wagner and Hassel 2015b: 49), and the sectoral trade union has indicated that the use of migrant labour through bogus self-employment is widespread (Interview 13, 14). While bogus self-employment by nature is difficult to estimate, the trade union has previously estimated that approximately 100 000 migrant workers were in bogus self-employment by the end of the 2000s (Cremers 2010: 24).⁴ This tells us that the transitional restrictions contributed to shape the ways through which migrant labour has been used in the German construction sector, by directing employers' use of migrant labour towards the channels that were not blocked by the transitional restrictions, whereby the tradition of use of solo self-employment and posted work in this sector was reinforced.⁵ Paradoxically, the trade unions contributed to create this enabling context, which established the use of migrant labour via posted work and bogus self-employment as the principal opt out procedures in the German construction sector (Interview 9). With reference to absence of sufficient means to prevent wage dumping and ensure maintained levels of employment protection under conditions of free movement of labour, the Confederation of German Trade Unions (Deutscher Gewerkschaftsbund, DGB) demanded that the government introduce temporary restrictions, and supported the extensions of them (Fellmer and Kolb 2009; Hardy et al. 2012: 5), thereby setting the context that not only shaped employers' responses early on but that also maintained these practices as standard ways to organize work up-to-date, as firms follow the established logic of action in seeking to remain competitive in their use of migrant labour (see also Wagner and Hassel 2016b: 21). Moreover, the state actively contributed to increased use of self-employment by introducing subsidies for self-employment right before the market expansion in 2004 (Hartz II, 2003) (Bispinck and Schulten 2011: 13-14). While regular labour migration measured as foreign workers in employment liable to social insurance has increased in importance

² The registered number of posted workers, and their registered labour input, offer modest estimates as an unknown number of employers do not comply with the requirement to register the workers they post in the German construction sector (Wagner 2015: 20), and a considerable proportion of the hours worked are not registered, including, for example, (unpaid) overtime.

³ Moreover, despite the sectoral prohibition against use of temporary agency work in the German construction sector, a grey-zone has emerged where posted work overlaps with agency work as foreign firms operating as construction 'personnel transferring firms' post workers, whereby German construction firms through posted work are able to circumvent the sectoral prohibition and use temporary agency workers (Interview 13, 14).

⁴ While workers in self-employment also have a registration requirement, an unknown number of migrant workers are expected to be in undeclared work.

⁵ This corresponds to earlier findings of Lillie and Greer (2007), who found that migrant labour was primarily used through posted work and undeclared work intertwined with bogus self-employment (572), indicating a relative stability in the ways through which firms have used migrant labour throughout the investigated time period.

in recent years, the share of foreign workers in employment liable to social insurance has been, and continues to be, in clear minority in relation to posted workers and solo self-employed migrant workers throughout most of the investigated time period. In 2017, foreign workers made up around 15-16 percent of all construction workers in employment liable to social insurance in 2017 (German Federal Statistical Office; Federation of the German Construction Industry, March 2018b). With the reservation that the estimates of the scope of posted work and solo self-employment inevitably are less reliable than the registered number of workers in employment liable to social insurance, the SOKA-Bau estimated that the ratio of posted workers to domestic construction workers was approximately 20 percent in 2015 (SOKA-Bau, 22 May 2018), and migrant workers in solo self-employment may amount to as much as roughly 15 percent of the sectoral workforce, whereby posted work and solo self-employment together represent the dominant ways through which migrant labour has been used in the German construction sector over the last decade and a half.

Non-use of collective agreements in the employment of migrant labour

By mainly using migrant labour through posted work and solo self-employment, firms place part of the production outside of the scope of collective bargaining and opt out from using collective agreements in the employment of migrant labour. Existing literature on the case of the German construction sector, as well as the empirical research carried out in this investigation, leaves little doubt as to the fact that the use of subcontracting in this sector tends to be associated with circumvention of the applicable collective agreement (Lillie and Greer 2007: 565; Cremers 2010: 21; Hardy et al. 2012: 358; Wagner 2014; Interview 13). Foreign firms operating in the German construction sector are rarely members of a German employer organization (Wagner 2014: 695; Interview 11) and thus not automatically bound by the applicable collective agreement, and the sectoral trade union has not been able to individually conclude collective agreements with the multitude of foreign firms present in the sector (Interview 13). The widespread use of solo self-employment, in turn, entails non-use of the collective agreement as a self-employed migrant worker is considered as a firm and not a worker, whereby the self-employed worker by definition cannot be covered by a collective agreement. While we are unable to estimate the extent to which foreign workers in employment liable to social insurance are covered by a collective agreement, these workers plausibly face better prospects of being covered by the full and applicable sectoral agreement. Yet, the access to regular employment liable to social insurance reveals little about whether the employer is organized and/or have concluded a collective agreement.

Insufficient enforcement of labour standards in the employment of migrant labour

Employers' use of migrant labour in the German construction sector has taken place in a context of generally low levels of enforcement, resulting from the absence of sufficient enforcement

capacities by the trade union and works councillors, along with limited state contribution to enforcement. The organization of work through subcontracting of foreign firms and the use of solo self-employed migrant workers present severe challenges when it comes to enforcing labour standards (SOKA-BAU, 23 May 2016; Interview 13).⁶ Specifically, organizing production processes in subcontracting chains and via external labour hampers three key enforcement functions: while the legal provision of a main contractor liability is enshrined in the Posted Workers Act (PWA), main contractors face severe challenges in ensuring compliance throughout the chain of involved actors (Interview 14), the enforcement function of workplace representatives tends to be absent as there in general are no works councils present in the subcontracted firms (Interview 14; Bosch et al. 2011: 11), and – to the extent that control efforts are undertaken by the state agency tasked to counter undeclared work (Finanzkontrolle Schwarzarbeit, FKS) – the inspectors face a highly challenging task in worksites where numerous firms are involved and an overview of the subcontracting hierarchy is difficult to obtain (Interview 9). In absence of enforcement by employers and the firms contracting the services of foreign firms (Interview 13, 14), the task of trade unions, works councillors, and the FKS to contribute to enforcement is seriously inhibited. Scholars have previously concluded that the trade union and the FKS are unable to control and counter non-enforcement of labour standards in the use of posted workers (Wagner 2014: 703-704), and identified an increasing control-deficit of compliance with collectively agreed as well as minimum standards in the German construction sector in the course of the 2000s (Bosch et al. 2011: 11).⁷ According to Bosch et al., the enforcement and control of minimum standards became ever more difficult due to the large number of firms involved in subcontracting, due to regularly changing worksites, and as a consequence of the sectoral structure dominated by small and medium-sized firms without works councils who hold the most important function in contributing to enforcement of legally established and collectively agreed standards at the workplace level (2011: 10-11, 13-14; also Interview 13, 14).⁸ Aside from the room for

⁶ As the migrant worker in solo self-employment are considered as a firm and not a worker, firms engaging the self-employed relieve themselves from any enforcement responsibility. Moreover, as these workers are treated as firms, the use of solo self-employed migrant workers also serve as a means to circumvent the entitlement to minimum conditions of employment that apply in the sector.

⁷ This is also in line with the findings of a parliamentary report, concluding that the scope and effectiveness of existing controls by the FKS is marginal and at the same time highly complicated and time consuming (Deutscher Bundestag 2013), as well as a trade union commissioned report specifying that enforcement is inhibited by the limited capacity of the FKS due to staff shortages as well as its limited mandate (Dälken 2012: 30; also Wagner 2014: 701-702; Falk and Riedel 2017; Interview 9).

⁸ The sectoral development in the crisis years of the 1990s and early 2000s did not only reduce the sectoral workforce to half its size, it also led to a reduction in the number of large and medium-sized firms. As a consequence, the number of small firms increased their importance in the German construction sector (Bosch et al. 2011: 29). By the end of the 2000s, more than 90 percent of the workers in the German construction sector were employed in small firms (up to 19 employees) (ibid. 31). According to more recent data from the Federation of the German Construction Industry, 80 percent of the workers were employed in small firms (up to 49 employees) in 2015, and 6 percent in large firms (more than 250 employees) (Federation of the German Construction Industry, 30 Aug 2017a), confirming that most workers in the German construction sector continue to be employed in small firms while also indicating that larger and

manoeuvre offered to firms due to low levels of enforcement, a key feature of this sector is the state's role in supporting opt out practices through public procurement procedures. The state and public agencies are major clients to construction firms in contracting various infrastructure projects and construction of public buildings. Through competitive tendering processes that primarily are guided by price comparisons in which the lowest bid wins, regardless of whether the firms commit to complying with dominant labour standards and the applicable collective agreement, public agencies contribute to – and even spur – opt out practices rather than compliance. The sectoral trade union has confirmed that violation of labour rights are no exception in public construction projects, and that enforcement is not even possible to ensure in construction sites where the state and public agencies are the client (Interview 13).

The combination of a sectoral structure based on small and medium-sized firms, a high share of solo self-employed, long subcontracting chains, and the high cost pressure in the sector not only hampers enforcement, but also makes wages and other employment and working conditions central in the competition between firms and workers (Bosch et al. 2011: 33; Cremers 2011: 8). The working and employment conditions resulting from firm practices in this context have been considerably lower wages, longer working hours, and more widespread undeclared work and temporary employment among migrant workers compared to domestic workers (Interview 13, 14).⁹ In the German construction sector, firms' insufficient enforcement of labour standards in the use of migrant labour is benchmarked towards minimum, rather than average, standards. Based on the PWA, first introduced in 1996, workers are entitled to the minimum conditions established through the legal extensions of collective agreements, and are covered by the provisions on leave and holiday pay regulated and monitored by the sectoral social insurance fund (see e.g. Kahmann 2006; Cremers 2010: 21-22; Bosch et al. 2011: 49-50).¹⁰ These generally binding minimum wages are significantly lower than the full wage scales contained in the sectoral collective agreements (Eichhorst 2000; Wagner 2014: 695). Thus, rather than being a matter of compliance with dominant labour standards, it is in the use of posted work a matter of whether firms' comply with the minimum conditions that they are legally obliged to, or whether the posted workers in practice do not even access the minimum standards that they are entitled to. While

medium-sized firms have increased in importance in recent years (Federation of the German Construction Industry, March 2018e). The structure of the construction sectors in Eastern Europe, from which most of the foreign firms active in the German construction sector originate, is also mainly based on small firms, with 48 percent of all construction workers being employed in firms with 1-9 employees, and 24 percent in firms with 10-49 employees (Federation of the German construction sector, 30 Aug 2017b).

⁹ As all actors in the subcontracting hierarchy by definition are engaged to make profit, the wages and employment conditions tend to be more inferior the further down the subcontracting chain (Bosch et al. 2011: 33).

¹⁰ In addition to the minimum wage levels, the legal extensions of collectively agreed minimum standards based on the PWA also mandates minimum rights related to pay levels for overtime, maximum working hours and minimum rest periods, as well as a designated vacation period, vacation pay, and additional vacation allowances.

Lillie and Greer (2007)'s early finding was that firms tended to adhere to the established minimum wages, but exploited the gap between the appropriate hourly pay rate and minimum pay rates, with the result that migrant and posted workers in the German construction sector did not receive average wages in accordance with the full applicable collective agreement (565), more recent findings suggest that a significant proportion of construction firms do not comply with the minimum wages, despite that they have been generally binding since the end of the 1990s (Interview 9, 13; Hardy et al. 2012: 358; Wagner 2014: 698; see also Deutscher Bundestag 2013).¹¹ The non-compliance with dominant and minimum wages is closely related to non-compliance with the average working time. According to insights from trade union and state agency controls, the average working time of migrant labour in the German construction sector is between 10 to 11 hours a day 6 days a week (Interview 9, 10, 12), well above the regular, collectively agreed, weekly working time of 40 hours (Bosch et al. 2011: 46).¹² Control and enforcement of labour standards is hampered by management practices that have been refined over the years, where firms using migrant labour have learnt what is formally required in terms of documentation, but nevertheless opt out in practice, through a mismatch between hours worked and documented working time, but also between the declared wage and the wage actually paid

¹¹ A widespread practice through which the minimum wage levels are not complied with is by abstaining from paying commissioned overtime (Interview 9, 10, 13, 14; also Hardy et al. 2012: 358), which entails a great scope for cost-saving vis-à-vis employers who comply with the applicable collective agreement and pay overtime compensation of an additional 25 percent of the hourly wage (Bosch et al. 2011: 46). Based on worksite visits of large construction projects over a two year period, Wagner (2014) found that German construction firms' use of posted work often involved the manipulation of working hours through a discord between the hours worked and the documented working time, resulting in non-compliance with the hourly minimum wage as the hours paid do not correspond to the hours actually worked (698). As the discord between the hours worked and the hours paid was considerable, on average estimated to 100 hours overtime per month, the absence of overtime compensation resulted in the posted workers in practice being paid about five to six Euro per hour (ibid. 698-699). This corresponds to the findings of widespread circumvention of the sectoral minimum wages through manipulation of working hours reported by the DGB, resulting in wage levels corresponding to what the migrant workers would have received in their home labour market as opposed to compliance with the wage levels in the host labour market (Siebenhüter 2013: 17-20; Dälken 2012). Non-compliance with minimum wage levels for posted workers also occurs by withholding annual leave pay (Wagner 2014: 698), and by making various deductions to the wages for accommodation, food and travel costs, 'administrative fees,' or deducting payments of 16-19 percent of the gross wage to the social insurance fund, or by withholding the payments of their wages altogether (Interview 9, 10, 13; Lillie and Greer 2007: 566; Bosch et al. 2011: 42; Wagner 2014: 689- 699).

¹² This corresponds to Wagner (2014)'s finding of a general tendency towards non-compliance with the maximum work period, where posted workers were found to work about 240 hours a month, while the documented – and paid – working time was within the collectively agreed limit of 160 hours a month (698-699), whereby the employer effectively pays about 66 percent of the actual (minimum) wage. According to the migrant workers' consultation offices, the documented working time is in general in compliance with the working time legislation, but consulted migrant workers have reported that two working time accounts are held; one official list in case of controls, and one list of actually worked hours (Interview 10). The discrepancy between the average weekly working time of migrant and domestic workers appears to be as great as 20 hours per week, with the hours worked per week by migrant workers running well beyond what is legally permitted, and with established daily as well as weekly rest periods not being respected.

(Interview 9, 10, 13; see also Wagner 2014: 698-701).¹³ Migrant workers themselves also play a role in inhibiting enforcement when they, due to strict management control, rather than voicing irregularities are acquiesced to confirm that they receive the minimum wages (Interview 10; Wagner 2014: 699). When it comes to undeclared work, migrant labour is, in general, more exposed than domestic workers, and it is common for migrant labour not to be provided with a written employment contract (Interview 9; Lillie and Greer 2007: 565, 572; Cremers 2010: 21).¹⁴ If the basic precondition of having a written employment contract, which is a legal requirement in Germany, is not adhered to, the possibility to enforce labour standards related to wages, working time, or job security is small. Furthermore, the main forms of employment through which migrant labour have been used reveal that non-compliance with dominant levels of job security is widespread in the German construction sector, as employment in a foreign sub-contracted firm as well as solo-self-employment is associated with limited or no access to job security.¹⁵

The German hotel and restaurant sector

Whereas the use of migrant labour in the German construction sector almost exclusively draws from the supply of foreign workers within the EU open market, is the hotel and restaurant sector characterized by a highly international workforce of foreign workers originating from within and outside of the EU, creating workplaces in which a multitude of different nationalities are employed, particularly in the larger hotels and fast-food chains, whereas smaller restaurants often

¹³ The trade union representatives as well as the FKS confirmed that firms have improved their compliance with the documentation requirements, but both actors claim that non-compliance in practice remains widespread – something which is notoriously difficult to prove, and thus to counter (Interview 9, 13).

¹⁴ While it by definition is difficult to assess the scope of undeclared work, scholars have previously identified undeclared work as widespread among migrant labour in the German construction sector, and in periods also among unemployed domestic workers (Lillie and Greer 2007: 565, 572; Cremers 2010: 21). As the use of migrant labour in undeclared work had become rampant during and following the construction boom of the early 1990s (Menz 2005), undeclared work was identified as a problem by employer organizations as well as trade unions (IG BAU et al. 2000) already prior to the market expansions. By the mid-2000s, one of the sectoral employer organizations estimated that undeclared work generated as much as 35 percent of the revenue in the sector (ZDB 2006), and the trade union estimated that between 300 000 and 500 000 workers were in undeclared work (Lillie and Greer 2007: 565). As noted by Lillie and Greer, employer organizations are naturally rhetorically against undeclared work, as it is not even in a grey zone but straight out illegal (ibid. 567), and the employer organizations officially distance themselves from “unserious” practices; while identifying that the problem exists, it does not origin from their own members (Interview 11; see also Lillie 2016: 52-53). However, as there are great cost advantages involved in using undeclared work for part of the labour input in a construction project where employers opt out from their obligation to withhold taxes from the workers’ wages and pay social security contributions, and the use of long subcontracting chains, posted workers, and self-employed migrant labour facilitates such practices, German construction firms have done little to transpose the rhetoric of the employer organization in practice, by being permissive and opting out of their role in monitoring undeclared work (Interview 9, 10; see also Lillie and Greer 2007: 567).

¹⁵ While the Posted Workers Directive (96/71/EC) stipulates that the worker must already be employed in the firm when the temporary posting takes place, and then return to work in the firm in the home country, insights into these processes in the German construction sector have revealed that it in practice often is a matter of workers being employed and posted for a specific project (Interview 12), which does not only make the posting period temporary (the legal limit of which is 12 months (Cremers 2010: 23)), but also the employment.

employ migrant workers who are compatriots of the owner or manager (Interview 5, 6, 7). In building upon the long tradition of use of migrant workers, hotel and restaurant firms did, however, substantively increase their use of EU migrant labour following the market expansions of the 2000s.¹⁶ Employment liable to social insurance has been the main type of employment through which these workers have been used, followed by marginal employment (German Federal Employment Agency 2017).¹⁷ Moreover, the use of seasonal workers from Eastern Europe, for whom the hotel and restaurant sector historically has been an important sector of employment, has increased in parallel (Interview 1, 7; Wagner and Hassel 2015b: 34).

Most migrant workers in the German hotel and restaurant sector tend to be employed in-house in the firms, with the exception of hotel room cleaning which to a large extent is organized based on subcontracting of cleaning services (Interview 5, 7; Jaehrling and Ménhaut 2013: 693; Deutscher Bundestag 2013; Wagner and Hassel 2015a: 207). In the hotels as well as restaurants, EU and non-EU migrant workers tend to be employed in the occupations with the lowest wages, including receptionists, hotel room cleaning, dish washing, and kitchen aids (Interview 6).¹⁸ According to the trade union, between 70 and 90 percent of hotel room cleaners are migrant workers (ibid.). In spite of shared features, such as recruitment difficulties, by employers occasionally conceived of as labour shortages, and a high labour turnover, in the hotel as well as restaurants (Interview 5, 7; Bosch et al. 2011: 44), intra-sectoral differences between the two parts of the sector need to be taken into account when mapping the ways by which migrant labour has been used in this low wage, low-end service sector. For instance, the labour turnover is especially high in the hotels, where labour is highly sought after and workers have small

¹⁶ As a result of employers' increased use of migrant labour following the EU market expansions, a bit more than half of all foreign workers in employment liable to social insurance in the hotel and restaurant sector were in 2017 EU labour migrants (German Federal Employment Agency 2018). Unlike in the construction sector where almost all EU internal labour migrants originate from the post-2004 accession states, a considerable share of the migrant workers in the hotels and restaurants originate from the Southern European countries that were hit hard by the economic crises of the late 2000s, including Greece, Italy, Portugal and Spain (GIPS). The employment of GIPS citizens in this sector has been supported by various programmes facilitating the recruitment of workers from these countries, with hotel and restaurant employers actively seeking to recruit GIPS citizens to meet recruitment problems (Interview 5, 6, 7). The number of migrant workers from the post-2004 accession states has, nevertheless, increased and surpassed the number of GIPS citizens employed in the German hotel and restaurant sector in recent years; in 2017, 55 percent of the EU internal labour migrants in employment liable to social insurance in the hotel and restaurant sector came from the post-2004 accession states and 40 percent were GIPS citizens (German Federal Employment Agency 2018).

¹⁷ While a defining feature of the German hotel and restaurant sector is the extensive use of marginal employment, defined as types of employment where the employer is relieved from the obligation to pay full social security contributions, including 'Minijobs' where the worker earns a maximum of 450 Eur/month and jobs that do not cover more than 50 days in one year (German Federal Employment Agency 2014b: 2), migrant workers is considerably less exposed to marginal employment than German workers, and marginal employment is, in turn, less widespread among EU labour migrants than among non-EU migrant workers (German Federal Employment Agency 2017).

¹⁸ According to insights from the sectoral trade union, the EU internal migrant workers from the GIPS countries tend to be more qualified and primarily employed in the larger hotels, whereas non-EU migrant workers often occupy the lowest skilled occupations in smaller restaurants, pubs, and fast-food chains (Interview 5).

opportunities to advance and improve the working conditions when staying in the same workplace, creating a situation in which migrant as well as non-migrant workers often change their jobs as a means to improve their position and working conditions (Interview 5). In the restaurants, the migrant workers represent a highly replaceable supply of labour with few opportunities to change job and no other possibility than to accept the employment situation they are in, in many instances due to being in undeclared work, whereby they often get trapped in the same firm (ibid.). This reveals that the labour migrants in the hotels – aside from hotel room cleaning – tend to be in a comparatively stronger position vis-à-vis their employer relative to the migrant workers in the restaurants.

Non-use of collective agreements in the employment of migrant labour

Despite being employed in-house, migrant labour in the restaurants is generally not covered by a collective agreement (Interview 5, 6).¹⁹ In contrast, migrant workers employed in-house in the bigger hotels and chains are in general covered by a collective agreement (Interview 5). The pattern of non-use of a collective agreement in the employment of migrant labour in restaurants and a greater use of a collective agreement in, at least the larger, hotels is tightly linked to the sectoral structure; the hotel part of the sector is primarily dominated by large firms and chains, with the exception of small and medium-sized hotels that continue to be important outside of the large urban areas, whereas the restaurant part of the sector is based on many small firms, with the exception of large international fast-food, coffee and restaurant chains (Interview 5, 7). As the sectoral union in general does not manage to conclude collective agreements with individual firms, there is a high correspondence between employers' organizational rates and the coverage of collective bargaining in this sector, both of which are comparatively low (Interview 6, 7).²⁰ As the coverage of collective agreements is dependent on the employers being members of an employer organization, and many migrant workers are employed in firms that are not members of an employer organization, they also tend not to be covered by a collective agreement (Interview 6).²¹ While scholars have noted that the content of collective agreements in this low-end service

¹⁹ In the catering industry, the trade union reported a common procedure by which firms compete by avoiding the use of a collective agreement; by continuously closing down and starting up new firms, no commitment to collective agreements covering a duration of 2 years can be made, and the trade union has no chance of organizing the workers or push for the use of a collective agreement, as the firm is already closed down before such a process has the chance being successful (Interview 5). Firms operating based on this procedure explicitly compete by lowering labour costs, and in general only employ very weak labour segments, including migrant labour, that enable full management discretion (ibid.).

²⁰ While the membership structure of the sectoral employer organization (Deutscher Hotel- und Gaststättenverband, Dehoga) reflects the sectoral structure, with about two thirds of all member firms being restaurants and one third hotels (Interview 7), the collective bargaining coverage in the many small restaurants is proportionately lower in the larger hotels, which are all organized in Dehoga (Interview 5, 7).

²¹ Moreover, there is according to the employer representative an underrepresentation of foreign firms in the employer organization relative to how many foreign firms are active in the market, with only few of the foreign firms being members (Interview 7). This entails that migrant workers employed in foreign firms, including international chains, also tend not to be covered by a collective agreement.

sector reflects the weakness of the union (Jaehrling and Ménhaut 2013: 696), non-use of collective agreements in the employment of migrant labour, nevertheless, has the implication that migrant labour at best will access minimum wages, in contrast to the higher collectively agreed wages.²²

While the hotel part of the sector demonstrates compliance in terms of using collective agreements in the employment of in-house migrant workers, the hotel firms' sub-contracting of cleaning services is in general associated with circumvention of collective agreements. Existing research has found that outsourcing has been a dominant procedure through which hotel firms opt out of collective agreements as a means to reduce costs in the area of room cleaning activities (Vanselow et al. 2010: 222, 231; Jaehrling and Ménhaut 2013: 700-701). Several large hotels and chains started outsourcing already in the 1980s (Vanselow et al. 2010: 222, 231), and insights from the trade union indicate that this practice spread in the early 2000s, in conjunction with the EU market expansion, when previously in-house workers were removed and replaced by workers in subcontracted firms (Interview 5).²³ Scholars have explained this change in the organization of work with reference to a concentration of hotel ownership that has enabled a spread of new management norms introduced by large international hotel chains, along with intensified competition and cost pressures resulting from overcapacities in hotels following from a considerable growth in the number of rooms, as well as the absence of any obstacle hindering such practices (Vanselow 2008: 217; Vanselow et al. 2010: 277; Jaehrling and Ménhaut 2013: 695, 701).²⁴ The trade union has also reported that the use of migrant workers via temporary agency work was an important alternative to subcontracting of cleaning and catering services in certain regions up until the legal extension of collectively agreed minimum conditions for temporary agency workers in 2011 (Interview 6).²⁵ The reduced use of agency work since the

²² The discrepancy between the statutory minimum wage (SMW) and collectively agreed wages is particularly pronounced in the southern and western parts of the country (Interview 5).

²³ Trade union and employer representatives in the capital region both indicate a recent, although so far fairly limited, tendency towards bringing cleaning services back in-house (Interview 6, 7). According to the trade union, this is done partly as a response to a public debate about wage dumping, with which the well-established hotel firms are reluctant to be associated with (Interview 6), whereas the employer representative considered it primarily to be a means gain better control over the quality of work (Interview 7). While such a change in the organization of work would entail a tendency towards use of collective agreements also in the employment of cleaning staff, it appears not to be more than a minor tendency at this point in time.

²⁴ Even in firms where workplace representation is present, works councillors face legal obstacles enshrined in the Works Council Constitution Act to limit the use of subcontracting (Jaehrling and Ménhaut 2013: 700).

²⁵ While the union representative in Berlin reported that the use of agency workers was part of employer strategies to reduce costs at the time of the market expansions in the mid-2000s and up until a turning point in 2011, when the use of agency work was reduced and, instead, primarily has taken place within the context of meeting order peaks (Interview 6), representatives of the sectoral employer organization and the trade union in Frankfurt reported that agency work had been very limited in the sector (Interview 5, 7). The representative of the sectoral employer organization explained the limited use of temporary agency work in the sector with reference to cost factors; the labour costs are already so low in-house in the firms in this sector that the deal of bringing in temporary agency workers is too expensive to be profitable (Interview 7).

presence of a collective agreement for agency workers in 2003 and the legal extension of minimum conditions in 2011 reveal hotel and restaurant firms' continued strategy to avoid collective agreements.

Insufficient enforcement of labour standards in the employment of migrant labour

While the more complex organization of work in the construction sector contributed to a context of low levels of enforcement, the hotel and restaurant sector, nonetheless, share the same condition of generally low levels of enforcement. The low union density rate and low coverage of works councils (Jaehrling and Ménhaut 2013: 696) – particularly so in migrant workers' workplaces – entail that the function of works councillors to contribute to enforcement of labour standards is largely absent. The sectoral structure, with mainly small firms operating in the restaurant part of the sector, does not only make it difficult for the sectoral trade union, Gewerkschaft Nahrung-Genuss-Gaststätten (NGG), to contribute to enforcement in all workplaces (Interview 6), but also poses considerable challenges to the state agency FKS, controlling undeclared work and, since 2015, compliance with the SMW. With the trade union as well as FKS officials shaping their control strategies to maximize the output relative to the input, larger workplaces tend to be targeted whereas smaller workplaces to a larger extent fall outside of the area of prioritization, resulting in generally lower levels of enforcement in the restaurants (Interview 5).²⁶ Despite that the hotel and restaurant sector, along with the construction sector, belong to the few economic sectors that are specifically targeted by the FKS (Bundesregierung 2017: 51), a tradition of lax rule enforcement has continued to prevail (Jaehrling and Ménhaut 2013: 694, 706), with firms in this sector having been provided considerable space to abstain from enforcing labour standards, and with little limiting them from doing so in their use of migrant labour. In this context, non-compliance with dominant wage levels, average working time, dominant levels of job security, declared work and the requirement of a written employment contract has become widespread in the employment of migrant labour (Interview 5, 6, 13).²⁷

²⁶ Union representatives have considered the selective and punctual controls by the FKS in the sector to be insufficient, particularly in relation to controlling working time records and ensuring compliance with the SMW (Interview 5, 6); the punctual controls have a deterrent effect and make firms more prone to comply with the documentation requirements and the SMW, but the effect does not last unless controls are carried out continuously and regularly (Interview 5).

²⁷ The trade union consultation office Fair Mobility has reported a major increase in the number of migrant labour working in cleaning services (not only in hotels) and in restaurants seeking consultation over the last years (Fair Mobility 2018: 6). Between 2012 and 2018, the number of consulted migrant workers active in cleaning services increased by 9 times between, and the number of consulted migrant restaurant workers multiplied by 20 (ibid. 6). While this does not necessarily indicate any increase in the scope of opt out practices, but rather that migrant workers have become aware of the services of the consultation offices, it confirms the existence of problems in their employment relationships; migrant workers in most cases sought consultation concerning issues of remuneration, where they had either not received the wage level that they are entitled to, including the minimum wage, or had not received any wage at all (ibid. 7). Other main issues were related to working time, social security contributions, dismissals, and problems with (non-enforcement of) employment contracts or collective agreements (ibid. 7, 10). Reports by the trade union consultation offices have also drawn attention to problems of absence of written employment contracts,

Although the hotel and restaurant sector is characterized by low wage work and low levels of job security, migrant labour – with the exception of those employed in-house in the large hotels – is in general more exposed to employment relationships in which labour standards are not enforced, including non-compliance with the minimum wage and the basic precondition of being in declared work (Interview 5, 6, 7). Even though most foreign workers, including EU labour migrants, in declared work are in employment liable to social insurance, as opposed to marginal work, there is no indication that this has provided migrant workers with access to job security. Non-compliance with job security is particularly widespread among hotel room cleaners and in the food service and catering industry, where migrant workers in general are in temporary employment, if they at all have a formal agreement in the shape of an employment contract (Interview 5). Case studies of room cleaning in German hotels have previously identified a high incidence of atypical employment used via outsourcing whereby the risks of fluctuating workloads are allocated to external labour (Jaehrling and Ménhaut 2013: 693).²⁸ As noted by Jaehrling and Ménhaut (2013), whether collectively agreed and minimum standards are adhered to in this sector “depends very much on the economic position of individual firms and on union strength at the establishment level” (696). When it comes to firms using migrant labour, there is a high plausibility that there is no union strength at the workplace level and that the rationale for using migrant labour is to reduce costs (Interview 5). Regardless of what this rationale reveals in terms of the firms’ economic position, it tends to result in low wages for migrant labour.

In absence of a statutory minimum wage, there was little restricting employers in this sector from paying very low wages; the reason for the union’s push for the SMW is in itself evidence of the widespread non-compliance with collectively agreed wage levels prior to 2015, with the union reporting wages of about 4 Euro per hour in the restaurants, and occasionally even lower in hotel room cleaning (Interview 6).²⁹ Recent evidence does, however, suggest that migrant

whereby the chances of pursuing a case on behalf of migrant workers who have not been correctly paid or in any other way incorrectly treated is limited (Dälken 2012: 31). While oral agreements are legally binding in Germany, the trade union has reported that migrant workers in the food service and catering industry often are withheld the right to a written employment contract (Interview 6) – something which facilitates undeclared work and makes it difficult for migrant workers to enforce their labour rights even in case of support from the trade union (Interview 5). According to the trade union representative from the region of Hesse, the EU labour migrants from Western and Southern Europe have been less prone to face inferior conditions (Interview 5). The trade union representative from the capital region instead reported that also GIPS citizens get recruited and exploited by their compatriots running restaurants; “they often work undeclared, they are not registered for social insurance, tax is not paid, no health insurance paid, they do not get their salary, or get too little paid, or are not granted holiday leave” (Interview 6).

²⁸ While the in-house employment of migrant labour in the hotels also tends to be on a temporary basis, using temporary contracts for as long as they can (2 years), the trade union has reported a tendency towards the use of permanent contracts as a response to recruitment problems (Interview 5). Works councils have even been part of the re-evaluation of using temporary employment in some of the larger hotels, with management and works councillors together approaching the continuous recruitment problem following from the use of temporary employment (*ibid.*). This, again, reflects the more complying nature of employer responses in the hotels, or at least in part of their operations.

²⁹ A regional survey commissioned by the Dehoga in Baden-Württemberg, including 1 794 of its member firms in the hotel and restaurant sector, found that firms prior to the introduction of the SMW in 2015 to a

labour in many instances continue not to access the minimum wage even post-2015, and the FKS as well as the sectoral trade union has continued to uncover cases of non-compliance with the SMW in the employment of migrant labour in restaurants and in hotel room cleaning on a reoccurring basis (Interview 5, 9).³⁰ In conjunction with the introduction of the SMW, the trade union reported that employers in the hotel and restaurants tried by different means to avoid the burden of paying a higher wage, and instead shift it to their workers, for instance, by reducing the official working time while increasing the work intensity.³¹ The main way by which the minimum wage is circumvented in the employment of migrant labour in the restaurants follows a similar procedure as in construction, namely through a discrepancy between the documented working time and the actual working time, and the declared wage and the wage actually paid (Interview 6;

large extent had been paying wages below the minimum level, with 61 percent of the firms having to adapt their wages in relation to the introduction of the SMW (Dehoga Baden-Württemberg 2015). Before the introduction of the SMW, the labour court – using moral as the point of reference in absence of a legal reference – judged that “immorally low” wages, below 3 Euro per hour, had been paid to recipients of Hartz IV working to complement their income (in German referred to as ‘Aufstocker’) in the fast food industry (Berliner Morgenpost, 12 Sep 2013). In relation to this, the NGG reported that particularly GIPS citizens were receiving job offers by restaurant employers of 400 Eur/month and got instructed to get the rest of their income from the employment agency as ‘Aufstocker’ (ibid.). At this point in time, the wages offered to migrant workers were less than 50 percent of the collectively agreed wages; in 2011, the collectively agreed wage in the hotel and restaurant sector were 9.23 Euro for the middle wage category and 6.63 Euro for the lowest wage category (Bispinck and Schulzen 2011: 17).

³⁰ Recent studies have documented continued widespread circumvention of the SMW; in the economy as a whole, it was in 2016 estimated that 9.8 percent of the workers did not receive the minimum wage to which they were entitled – in the hotel and restaurant sector this share was as high as 38 percent (Pusch 2018: 6-7; see also Pusch and Seifert 2017a; Fedorets 2017: 1124). Added to these 38 percent is the share of workers who do not receive paid overtime, which in the hotel and restaurant sector considerably increases the group of workers not receiving the SMW (Pusch 2018: 6-7). Non-compliance with the SMW is even more widespread among workers in the type of marginal employment referred to as minijob; in the restaurant sector 75 percent of the employers continued not to comply with the SMW one year after its introduction (Pusch and Seifert 2017a: 5). A subsequent study arrived at the slightly lower but similar estimates where 70.3 percent of the minijobbers in the hotel and restaurant sector and 45 percent of the minijobbers in the economy on average did not receive the SMW in 2016 (Pusch and Seifert 2017b: 191). While this pertains to all workers, German and foreign alike, and a higher share of German workers relative to foreign workers are employed in minijobs, this nonetheless reveal the widespread practice of non-compliance with minimum wage levels in this sector. If German marginal workers are not receiving it, chances are small that employers would be more compliant in their employment of migrant labour.

³¹ In the first two weeks following the introduction of the SMW, the NGG received more than 200 phone calls from workers whose employers instructed them to sign a new adjusted employment contract in which either the previously agreed benefits including, for instance, holiday payments had been lowered, or in which the working time had been reduced whereby the workers lost hours as a requisite to access the minimum wage, so that the cost level of the employer remained the same even in presence of the SMW (NGG 2015). In such cases, the workers are obliged to intensify their work (i.e., do the same work in fewer hours) and as they are not paid for overtime, in case the work takes longer, the result of such adaptation in practice entails non-compliance with the hourly minimum wage (ibid.; see also Pusch and Seifert 2017a: 3-5). This, in turn, corresponds to the experiences of the trade union consultation office for migrant workers, Fair Mobility, reporting that employers changed the employment contracts and removed part of the hours worked from the working time documentation (Interview 10). Similarly, the consultation office also reported that employers adapted the working conditions of migrant workers following the introduction of the SMW, particularly in terms of working time and work intensity, with longer hours and/or increased work intensity being required from the workers in order to receive the minimum wage (ibid.). In hotel room cleaning, non-compliance with the minimum wage is also done by making use of the wage system in place, where workers in practice are paid based on the number of rooms that they clean whereby the resulting hourly wages often end up being far below the SMW (Interview 5, 6).

see also Pusch 2018: 11).³² While the working time regulations and requirement to document the working time existed already prior to the introduction of the SMW, employers' difficulties to comply with the working time regulations has received more attention following the introduction of the SMW, when control of working time documentation has been placed on the agenda of the FKS.³³ Following the general pattern in the sector, where scholars have previously found a higher incidence of compliance with working time regulations among hotel chains compared to smaller and independent hotel businesses (Jaehrling and Ménhaut 2013: 704), the trade union has reported general compliance in the large hotels, whereas non-compliance with average working time and working time regulations is widespread in the employment of migrant labour in the restaurant part of the sector, resulting in average working times of between 10 to 14 hours a day 6 to 7 days a week (Interview 5, 6). As late as in July 2019, the NGG continued to draw attention to the lack of controls of compliance with the working time legislation and widespread non-compliance with its provisions, including documentation of working time, as well as widespread problems of unpaid overtime in hotels and restaurants, resulting in non-compliance with the SMW (Dräbing, 28 July 2019).³⁴

Assessing the qualitative threshold for set-membership

The threshold defining the presence of employers' opt out response is whether there is widespread and systematic employment of migrant labour without the use of a collective agreement and/or insufficient enforcement of labour standards. In the construction sector, firms' extensive use of posted work and solo (and bogus) self-employment, with which non-use of collective agreements is associated and where low levels of enforcement prevail, has revealed widespread and

³² A recent government report which links the circumvention of the SMW to the sectors in which undeclared work is widespread, including construction work, cleaning work, and work in hotels and restaurants, identify a range of creative ways through which the SMW is circumvented, including, for example, deductions to the wage in exchange for vouchers or products from the firm, such as food leftovers in the restaurants, false documentation of working time, and unpaid labour input before and after the official working time (Bundesregierung 2017: 23; see also Deutscher Bundestag 2013). This corresponds to accounts by the sectoral trade union and media reports, which have highlighted how employers in this sector have demonstrated creativity in quickly finding new ways to circumvent the SMW, for example by removing extra payments for overtime that previously existed, not documenting and thereby not paying for overtime, or by making various deductions from the wage (ARD 5 Feb 2017; NGG 2015).

³³ According to the employer organization, complying with working time regulations is a general challenge for employers in this sector, particularly in relation to the legally permitted maximum daily and weekly working time (Interview 7). A regional survey commissioned by the Dehoga in Baden-Württemberg found that 54 percent of the hotel and restaurant firms were unable to comply with the maximum working time of 8 hours per day and the permitted exception of 10 hours per day (Dehoga Baden-Württemberg 2015), revealing widespread non-compliance with working time regulations in conjunction with the introduction of the SMW.

³⁴ According to a study commissioned by the NGG, the share of paid hours relative to unpaid working time has recently increased somewhat, but the widespread problem of unpaid overtime prevails in the sector as every second hour of overtime is estimated to be unpaid (ibid.). Existing research corresponds to the assessments by the sectoral trade union and refers to the lack of enforcement as explanation for persistent and systematic non-compliance despite the recent re-regulation through the SMW (Fedorets 2017: 1124; Pusch and Seifert 2017a; Pusch 2018: 11).

systematic opt out of dominant employment relations rules and practices. The use of posted and solo self-employed migrant workers most often per definition equals opt out of the applicable sectoral collective agreement, and posted workers at best – to the extent that these conditions are complied with – access minimum standards, rather than equal treatment. Opt out responses have been identified among organized as well as unorganized employers (Interview 5), and in public as well as private, large as well as small, construction projects (Interview 10, 13; Wagner and Lillie 2013; Cremers 2011: 9), unambiguously indicating that opt out practices are not an exception but systematic and widespread. While employers' use of foreign workers in employment liable to social insurance has increased in recent years, and now appears to make up about one third of all migrant workers (undeclared work aside), the available assessments, nevertheless, suggest that posted work and solo self-employment represent the dominant ways through which migrant labour has been used in the German construction sector over the last decade and a half.³⁵ In the hotel and restaurant sector, the combination of data sources deployed suggests that migrant labour has primarily been used via in-house temporary employment, along with subcontracting of cleaning services – both of which have involved widespread opt out from using collective agreements. While the hotel part of the sector appears to demonstrate compliance in terms of using collective agreements in the employment of in-house migrant workers, and migrant workers in the hotels are less exposed to inferior conditions, the employment situation of the majority of migrant workers – that is, those employed in restaurants and hotel room cleaning – is typically characterized by low wages, long working hours, and absence of job security (Interview 5, 6, 13). Food and beverage service activities make up the largest part of the sector, employing approximately 60 percent of the sectoral workforce (German Federal Statistical Office). As the employment in restaurants and hotel room cleaning together are close to representing an absolute majority of the sectoral employment, this reveals widespread opt out in the sector taken together, and places the employer responses to migrant labour in the German hotel and restaurant sector well above the threshold of what constitutes opt out of dominant employment relations rules and practices. In both the construction and hotel and restaurant sectors, the data suggests that all four components by which the extent of firms' enforcement of labour standards are assessed are present; non-compliance with dominant wage levels, average working time, and dominant levels of job security, as well as widespread undeclared work and absence of written employment contracts. In both sectors, there are strong reasons to believe that the dominant ways through which migrant labour is used does not even entail compliance with

³⁵ Moreover, while it is more likely that foreign workers in employment liable to social insurance are covered by the full applicable collective agreement if they are employed in-house in a German construction firm, and thus more plausible that this type of use of migrant labour would entail compliance, potentially both in terms of use of collective agreement and enforcement of labour standards, the fact that they are in employment liable to social insurance does not per se equal compliance *in this* sector where low levels of enforcement prevail.

minimum wages. The empirical uncertainty as to the set-memberships of these cases is low. Although statistically reliable estimates of migrant labour's employment and working conditions are lacking, anecdotal evidence accumulated over the years in the empirical literature along with the empirical findings generated in this investigation are, taken together, fairly strong and unambiguous in the cases of the German construction and hotel and restaurant sectors.

Trade unions' non-effective protection of migrant labour

As the trade unions' protective response in this investigation is defined based on ensuring equal treatment for migrant labour, I argue for the categorization of the unions' responses in the German construction and hotel and restaurant sectors as non-effective protection of migrant labour. The main reasons why the union responses in these two sectors are categorized as largely resulting in non-effective protection pertain to their lack of capacity to achieve effective protection in practice, in combination with their attempted protective efforts being undermined by employers' opt out responses, and their resulting minimum standards approach. The union density rates in both sectors declined drastically right at the same time as strengthened organizational resources were required from the side of the unions to deal with employers' increased use of migrant labour following the market expansions. While all unions part of the DGB have lost members in the course of the last two decades, the union in the construction sector has lost the most in proportion to its member base (Dribbusch et al. 2017: 201). The drastic decline in sectoral employment over the last two decades had far-reaching implications for the construction workers' union, and contributed to a decline in the organizational rate, where IG Bau lost 34.1 percent of its members between 2001 and 2008, and another 18.8 percent between 2008 and 2015 (ibid.). While starting from a lower baseline, union density in the hotel and restaurant sector has seen a similar trend; while the member loss more recently has been halted, with only a 1 percentage loss recorded between 2008 and 2015, 17.9 percent of the union members were lost between 2001 and 2008 (ibid.). In this way, the drastic decline in union density over the last decades and their overall low organizational rates – in the construction sector estimated to range between 10 and 20 percent in 2015 (Interview 13; Arnholtz et al. 2018: 349), in the hotels around 20 percent and in the restaurants about 10 percent (Interview 5, 6) – have hampered the unions' abilities to achieve effective protection of migrant labour in practice.³⁶

³⁶ Trade union density rates remain difficult to estimate, not the least in the construction sector where a large share of workers are either self-employed or posted. In taking into account the share of solo self-employed workers who are not union members, scholars have estimated that the union density rate of IG Bau is slightly less than 10 percent (Arnholtz et al. 2018: 349). OECD estimates aggregating the main construction industry (*Bauhauptgewerbe*) and the finishing trades (*Ausbaugewerbe*) offer an estimated union density rate of 13 percent (ibid.). The estimate of 20 percent union density included here is based on an estimate provided by the union itself.

Not ensuring use of collective agreement to regulate employment of migrant labour

Albeit for slightly different reasons, neither the construction union nor the hotel and restaurant union have as part of their responses actively tried to conclude collective agreements with firms' using migrant labour. In the construction sector, firms' circumvention of collective agreements through the use of subcontracting of foreign firms, including self-employed and posted workers, actively obstructs potential union attempts to ensure the use of the full and applicable sectoral collective agreement beyond firms who are members of an employer organization. In the hotel and restaurant sector, the sectoral structure based on many small workplaces result in a situation in which the union in general does not manage to conclude collective agreements with individual firms (Interview 6). While migrant labour in the hotels to a greater extent tend to be covered by a collective agreement, this is not primarily as a result of an active effort from the union's side to ensure the use of collective agreements, but instead due to the membership of these firms in an employer organization. In the restaurant part of the sector, the union is, from a resource point of view, unable to target the countless number of small restaurants, and face a lack of access to a majority of the workplaces (Interview 5). As migrant workers in small workplaces rarely dare to organize and initiate or support a union demand for a collective agreement, the chances for successfully concluding a collective agreement are small in these workplaces; even if the union manages to recruit the migrant workers, they are typically not prepared to strike if the employer refuses to negotiate (ibid.). In view of low employer density rates and firms' active circumvention of collective agreements in both sectors, the unions' limited organizational capacity to pursue a strategy involving active attempts to conclude collective agreements with individual firms is underlying their inability to ensure the use of collective agreements to regulate the employment of migrant labour.

Insufficient contribution to enforcement of labour standards for migrant labour

The unions' responses to migrant labour in the German construction and hotel and restaurants sectors have taken place in a context in which their enforcement capacities have been weakened over time. Scholars have previously emphasized the weakness of both these trade unions at establishment level (Lillie and Greer 2007: 565; Jaehrling and Ménhaut 2013: 696; Wagner 2014: 696; Schulten and Schulze Buschoff 2015: 8). According to trade union representatives in the construction sector, the union lacks capacity to contribute to enforcement of labour standards in migrant workers' workplaces and there are no longer a sufficient number of full-time union officials working to ensure enforcement of labour standards (Interview 13, 14). The union in the hotel and restaurant sector similarly reported that there are too many workplaces to cover and too few union officials to do the job (Interview 5). As a consequence, more weight is placed on the works councils and union members to fulfil this role (ibid.). With union membership rates and the coverage of works councils ranging between 10 and 20 percent (Ellguth and Kohaut 2016),

the ability of union members and works councillors to fulfil this task is limited.³⁷ Given their limited resources and capacities, the trade unions tend, for logical reasons, to focus on monitoring workplaces where they have members and a works council. This makes controls biased towards larger workplaces where the output of the monitoring efforts is greater as it can contribute to enforcement that covers more workers (Interview 5, 13). The result of a focus on organized and large workplaces is that workplaces where there are no trade union members and where no works council is in place – which is largely the case in workplaces where migrants are employed in the construction and restaurant sectors – systematically receive less monitoring. Rather than actively trying to identify workplaces where employers’ opt out of the dominant rules and practices in their use of migrant labour, the contact between migrant workers and the unions is primarily established once the migrant worker takes the initiative to approach the union with his or her problems (Interview 6). In the hotel and restaurant sector, the consequence of this procedure is that the small firms, where there is a comparatively higher risk of non-compliance, are provided the space to opt out – and the union is less likely to reach the workplaces where problems typically occur.³⁸ In the construction sector, the consequence is that it fails to respond to the changes in work organization that increased use of migrant labour has been associated with, thereby leaving large parts of the workplaces outside of the scope of trade union operations. While the construction workers’ union over the last decade has made efforts to contribute to enforcement of (minimum) standards for migrant labour, the low presence of union members and work councils in subcontracted firms where migrants generally work, along with challenges related to communication problems, lack of access to worksites, and security threats against trade union officials, have severely limited the success of such efforts (see also Wagner and Lillie 2013; Wagner 2014: 700).³⁹

³⁷ While the presence of works councils remains low, the construction union has, nevertheless, attempted to improve the ability of works councillors to extend their enforcement function to also cover migrant labour. For example, when the transitional restrictions came to an end, the IG Bau developed a practical guide for their works councillors, meant to support them in ensuring equal pay for equal work, including for agency workers, solo self-employed, and workers in subcontracted firms (IG Bau, Apr 2011). The campaign directed towards works councillors called upon them to carefully observe any irregularities in the use of these forms of employment among which migrant workers dominate, and to transfer information about suspected violations to the FKS (ibid. 4).

³⁸ The sectoral structure based on small workplaces to which the union has neither access nor overview of contributes to the low coverage of works councils, which are typically only present in larger workplaces and international chains (Interview 5, 6, 7). From the employers’ perspective, the sectoral structure similarly plays a crucial role in explaining the low coverage of work councils in the sector, although for another reason; as the majority of workplaces are small, there is no need for any intermediary worker representation because the workers have direct communication access to their employer (Interview 7). According to the trade union, this rejection of the function of workplace representation in small firms is one of the reasons why there are few works councils in the hotel and restaurant sector; employers prefer not to have a works council in their firm (Interview 6).

³⁹ Despite the absence of a legal right to represent subcontracted workers, IG Bau works councillors in main contracting firms do, to an unknown extent, attempt to monitor their conditions by trying to ask the migrant workers about their wages and working conditions (Interview 13). The means through which works councillors can contribute to enforcement in practice have, however, remained limited: “We (...) only

As enforcement of labour standards must inevitably take place in the workplace, contribution to enforcement is severely hampered in cases where the unions have no access to the migrant workers' workplaces. For this reason, it is a prerequisite for the unions to organize migrant workers in order to successfully contribute to enforcement of labour standards in their employment relationships. While certain organizing efforts have taken place by these trade unions since the time of the market expansions, the efforts appear to be more ad hoc than systematic, and challenges related to organizing migrant labour have not been overcome (Interview 6, 13, 14; see also Bispinck et al. 2010: 23).⁴⁰ The high labour turnover rate (Bosch et al. 2011: 44) and the fact that workers change workplace rather than try to improve their current employment situation (Interview 5) make it difficult for the union to organize (migrant) workers in the hotel and restaurant sector, and also explain the low coverage of works councils (Interview 6). A similar challenge is present in the construction sector, where the temporary nature of posted work makes it difficult for the union to organize these workers and erodes any potential basis for a works council. As pinpointed by Bernaciak et al. (2014), "union efforts face the familiar dilemma that groups of workers with the greatest need for collective representation and solidarity are often hardest to organise" (22). As a response to this situation, the German construction union made a significant attempt to represent the interests of migrant and posted workers more effectively through the establishment of the European Migrant Workers Union (EMWU) in 2004. However, as noted by scholars, "the experiment in organizing migrant workers" (Hardy 2015: 193) proved largely unsuccessful as it did not result in the expected organization, whereby the effort was subsequently largely abandoned (see Greer et al. 2013 for an elaborate account).⁴¹ Furthermore, as a response to the vast growth in the number of solo self-employed, many of whom are migrant workers, IG Bau opened up to organizing self-employed workers in the mid-2000s (Bispinck and Schulten 2011: 47). While this does not represent an active organizing effort, this change in policy from the side of the union at least removed a formal barrier that had previously faced this group of workers. Yet, scholars have reported that only modest numbers of solo self-employed have since joined the union (Schulten and Schulze Buschoff 2015: 16-17).

control that the sub-contractor provides us with the certificate saying that everything complies with the legal requirements but we haven't got the possibilities or the manpower to control whether this is actually the case. We have to trust that the paper work that the sub-contractor gives us is trustworthy" (Interview 14).

⁴⁰ No earmarked positions for organizers with language skills have been established, nor have any durable organizing activities with the use of translators taken place. Aside from communication problems, trade union officials who have attempted to organize migrant workers have noticed how the workers they were trying to organize were immediately removed from the workplace (Interview 5, 14), revealing how employers actively contest the unions' attempts at being protective.

⁴¹ In seeking to make better use of the resources spent on the project, the EMWU was in 2011 placed in the organizational realm of IG Bau and its main function became to contribute to increase public awareness about the working conditions of migrant labour (IG Bau 2011).

Due to these conditions, where contribution to enforcement through organizing and presence of works councils remain challenging and limited in scope, the trade unions' responses have relied more heavily upon pursuing legal cases as a means to enforce labour standards, primarily to make claims for payment of wages (Interview 5, 13; see also Lillie and Greer 2007: 566). There are, however, several problems and limitations to this approach; it is highly resource demanding and the success rate of legal cases is low as it is difficult to prove violations, and even when it is successful it may not result in enforcement as the migrant workers and/or the foreign firms employing them have typically already left the country (Interview 13; see also Cremers 2011: 9). In the hotel and restaurant sector, the pursuit of legal cases has emerged as even more important post-2015, as a means to enforce the SMW (Interview 6).⁴² Yet, both unions recognize that the pursuit, or threat, of legal cases is an unsustainable way to achieve effective protection in practice, leaving the trade union to function as a "debt collector" (Interview 13). In addition to the pursuit of legal cases, both unions have engaged in certain efforts to build the capacity of migrant workers to better enable them to protect their rights and contribute to enforcement.⁴³ Aside from the protective attempts of the sectoral trade unions, a number of migrant workers' consultation offices, offering individual consultations in a number of languages, have under the project of Fair Mobility been established by the DGB (Schulten and Schulze Buschoff 2015: 15-16).⁴⁴

⁴² The new legal provisions have opened up for the possibility to make legal claims for the minimum wage in retrospect up until 3 years after the end of an employment relationship (Interview 6). This improves the possibility for the union to pursue legal cases, as the (migrant) workers are better positioned to make demands vis-à-vis their former rather than current employer.

⁴³ The construction workers' union has engaged in outreach campaigns to raise the awareness of migrant workers. As early as 1999, IG Bau started to distribute outreach material in a number of languages on minimum working conditions and wages to build the capacity of migrant workers (Cremers 2010: 25-26). At the end of the transitional restrictions in 2011, IG Bau distributed outreach material directly targeting migrant labour, informing about the minimum wage levels in six different languages, emphasizing that migrant labour is entitled to equal conditions, and calling upon migrant workers to join the IG Bau, sensibilising the migrant workers about the role of IG Bau and making explicit that the union serves to contribute to enforcement of their labour rights (IG Bau May 2011). The union in the hotel and restaurant sector has, on its side, collaborated with organizations who on a voluntary basis offer German courses, where NGG officials provide information about labour rights in the context of the language course (Interview 5), thereby building the capacity of migrant workers to enable them to protect their rights and play an active role in contributing to enforcement. Furthermore, in response to the introduction of the SMW, the DGB established a "minimum wage hotline" offering information about the SMW in 10 different languages (NGG 2015). According to the NGG, this nation-wide hotline offered support to on average 400 callers, trade union members and non-trade union members per day during the first months of 2015 (Interview 6). According to the same source, only few had made use of the service of receiving support in a foreign language, indicating that this protective effort reached migrant workers only to a limited extent.

⁴⁴ Since the establishment of the consultation offices in 2011, there has been a considerable increase in the number of migrant workers who have been consulted, from roughly 2000 workers during the first year of establishment (2012), to over 9000 workers in 2018 (Fair Mobility 2018: 3). Migrant workers in the construction sector, cleaning industry and hotel and restaurants together represent roughly one third of all consulted migrants (ibid. 6). As noted in chapter 6 on the German manufacturing sector, the protective effort offered through the consultation offices play a minor role in reinforcing a more sustained protective effort based on organizing, and primarily remains restricted to support in cases where violations have already taken place.

Assessing the qualitative threshold for set-membership

Even though the trade unions in the German construction and hotel and restaurant sectors by now have certain activities related to migrant workers, and spend considerable resources as “debt collectors,” particularly so the construction workers’ union, their general weaknesses in terms of organizational rates, a lack of focus on migrant workers in the past preconditioning their current responses, continued absence of efforts specifically targeting migrant workers (Interview 5, 6), in combination with employers’ offensives, including the occurrence of employers who actively contest the unions’ attempts at being protective (see also Wagner and Lillie 2013; Wagner 2014: 701), inhibit their responses from having largely protective results. The critical component of ensuring the use of collective agreements in the employment of migrant labour is largely missing in both cases. Moreover, as the two critical components of organizing migrant workers and ensuring presence of workplace representation in migrant workers’ workplaces are largely missing in both sectors, the trade unions’ abilities to contribute to enforcement of labour standards for migrant labour have also largely been compromised, in spite of efforts to contribute to the enforcement of (minimum) standards for migrant labour by pursuing legal cases and by campaigns seeking to raise the awareness of migrant workers. The empirical uncertainty as to this categorization is low, and this assessment is in line with what has previously been found in existing literature (Lillie and Greer 2007: 564; Wagner 2014: 703-704; Jaehrling and Ménhaut 2013: 694, 706; Arnholtz et al. 2018: 349). While the IG Bau by some scholars have been framed as the union that has “tried to provide special services for migrant workers and to organize them” more than any other German union (Hardy et al. 2012: 357), their response has remained non-effective in practice. In both cases, the unions’ responses must be understood within the broader context of union responses struggling in being protective not only of migrant but also of domestic labour.

2.2 Causal mechanism: Institutional defection in the German construction and hotel and restaurant sectors

Part 1: Challenging the institutions by the introduction of a new logic of action

The employers’ and trade unions’ responses presented in the preceding sections carry causal properties that in conjunction with one another serve as the cause that triggers the first part of the causal mechanism conceptualized as defection from the employment relations institutions. By opting out of the dominant employment relations rules and practices in their use of migrant labour, employers pursue a logic of action that is outside of the scope of dominant rules and practices, from which institutional contestation subsequently follows. The first part of the Defection Mechanism thus pertains to the actions of employers, underpinned by occasionally passive and occasionally active coalitional support from the trade unions and the state, in challenging the

institutions for collective labour regulation. The predicated evidence of what we should see in the empirical records of the German construction and hotel and restaurant sectors – have challenging of the institutions been present – is defined as employers pursuit of change strategies through their employment of migrant labour, or more generally in the pretext of labour and service mobility, and/or push for deregulatory measures and ways to avoid enforcement as a means to maintain space for their logic of action based on opt out of dominant employment relations. When it comes to the prior confidence held in this first part of the mechanism, scholars have previously described how firm practices in relation to subcontracting and the use of migrant labour in the construction sector as well as in hotel cleaning services “undermine” collective bargaining and drive the sectors towards a “low-road” (Lillie and Greer 2007: 552-553, 574; Jaehrling and Ménhaut 2013: 688, 701), which could be interpreted as the introduction of a logic of action that involves a sort of institutional challenging – however, without conceptualizing or articulating it as a component of a causal mechanism. Nonetheless, this informs our prior confidence in that it tells us that it is *plausible* that challenging may be present in these cases, with the implication that evidence with a somewhat stronger probative value is needed for us to update our confidence in this first part of the mechanism.

The empirical records of the German construction and hotel and restaurant sectors reveal that challenging activities have come in multiple modes in both cases. The strongest evidence of challenging is in both cases manifested in employers’ gradual abandonment of collective bargaining, workplace representation, and job security regulations as a consequence of their responses to migrant labour. Employers’ non-use of collective agreements, their obstruction of the establishment of works councils in migrant workers’ workplaces, and their non-compliance with dominant levels of job security serve to challenge the formal structures of all three institutions, namely their coverage.⁴⁵ In the construction sector, the organization of work based on subcontracting of foreign firms, including solo self-employed EU citizens, challenges the coverage of all three institutions by entailing the placement of large parts of the productive activities outside of the scope of the institutions. In the hotel and restaurant sector, employers have additionally pursued a preference for less codetermination in firms, whereby the institution of workplace representation has been challenged by active attempts to obstruct the establishment of works councils in small workplaces, dominant in the restaurant part of the sector (Interview 6).⁴⁶ When it comes to collective bargaining, change strategies challenging the institution from

⁴⁵ That fact that employers in both sectors are pursuing such change strategies in their employment of migrant represent theoretically unique as well as certain evidence of challenging through abandonment: theoretically unique as there is no other plausible explanation for this than that these three institutions are being challenged through the logic of action generating by employers’ opt out response, whether it is done intentionally or unintentionally; theoretically certain as this evidence needs to be present in a mechanism through which causal forces leading to institutional defection are transmitted.

⁴⁶ The logic behind employers’ challenging of workplace representation is, from employers’ perspective, explained by the sectoral structure; as the majority of workplaces are small, there is no need for any

within have also been pursued. In the construction sector, this has been done by contesting the legitimacy of the content of the sectoral collective agreements. The practice of offering inferior conditions to posted workers, even when based on agreed minimum rates, serves to challenge the full – and in other employment relationships – applicable content of the collective agreements.⁴⁷ In the hotel and restaurant sector, employers institutional challenging has involved eroding the content of collective agreement in one occupational area where migrant labour is concentrated: hotel cleaning services. According to the trade union, when improved working conditions have been reached in the collective agreement, the employers continuously find new ways to challenge the content of the agreement in practice, for example, by adding to the workload or changing working hours without adapting the wage levels accordingly (Interview 13).⁴⁸

In the German construction sector, challenging is also manifested in numerous legal disputes that have taken place as a means to oppose the regulation and enforcement of labour standards in the employment of migrant labour. These disputes have partly been pursued by foreign firms posting workers, challenging the validity of the legal extensions of collectively agreed minimum standards and procedures to ensure their enforcement, and partly by German employer organizations, challenging the position of collective agreements and the requirement to comply with regionally agreed minimum wages in publically financed construction projects (e.g. Cremers 2010: 25; Schulten and Pawicki 2008: 189; Dølvik et al. 2014a: 34). Legal disputes over the validity of procedures to legally extend collectively agreed minimum conditions as well as over the content of such legal extensions continue to take place, revealing that it is not only the traditional institutions that are challenged by ongoing firm practices in their use of migrant labour, but that the re-regulation functioning as a minimum legal threshold for permitted practices is continuously targeted (SOKA-Bau, 12 Dec 2017, 21 March 2018).⁴⁹ Moreover, evidence suggests attempted juridification, understood as a process of increasing legal intervention in the employment relationship, of opt out practices as a way to preserve space for the logic of action, where firms use lawyers to identify institutional inconsistencies that can be exploited (Interview

intermediary worker representation because the workers have direct communication access to their employer (Interview 7).

⁴⁷ The minimum conditions specified in legally extended collective agreements provide considerable room for employers to use inferior conditions in their employment of posted workers: there is a great gap between the average collectively agreed conditions and the minimum conditions, and the defined minimum rates are substantially lower than the minimum conditions acceptable to native workers (Lillie 2012: 162).

⁴⁸ In the 2015 bargaining round, for instance, the wage levels were increased, but employers subsequently changed the number of rooms that the workers needed to clean per hour, resulting in a doubling of the working time. What was meant as a wage increase in the collective agreement instead resulted in an increase in the working time and the creation of unsustainable working conditions through increased work intensity (Interview 13).

⁴⁹ In these recent cases, court judgements reiterated that there is no contradiction between national or EU law and the legal extensions of collectively agreed minimum conditions in the German construction sector (SOKA-Bau, 12 Dec 2017, 21 March 2018).

13).⁵⁰ The coalition of institutional challengers in the German construction sector has gained support from the political and judicial branches at EU-level, with the challenging of collective labour regulations being actively pursued at the highest European level through policy developments and judgements in the European Court of Justice (ECJ), including in the areas of posted work and public procurement procedures. For example, the ECJ Rüffert judgement (C-346/06) introduced formal barriers to equal treatment of posted workers in publically financed construction work, with reference to that equal treatment would in itself constitute a formal barrier to the free movement of services as foreign firms would be deprived of their competitive advantage consisting of paying lower wages (Schulten and Pawicki 2008: 184-185). In this way, the position of collective agreements in regulating work was explicitly challenged through the pursuit of legal cases at the highest EU level.⁵¹ The coalition of institutional challengers in the German construction sector is not only driven by foreign firms, and supported by the political and judicial branches at EU-level. German construction firms, particularly those operating as main contractors, and their representative organizations support the practices of disruptive competition generated by firms' opt out responses. Main contractors are generally aware of the opt out practices that takes place within the scope of their construction projects, that is, along the subcontracting chains (Interview 13; Interview 14; Wagner 2014: 698), and by tolerating the practices – as they profit from them (Lillie and Greer 2007: 566; Bernaciak 2012: 26, 2014: 25) – they support the practices that serve to challenge the dominant employment relations rules and practices. When it comes to the role of the employer organizations, a considerable mismatch between their official standpoints and the practices occurring in workplaces, including where their member firms are involved, exists.⁵² Evidence from regional deliberations between trade union and employer representatives indicate that the official standpoints of the two actors when it comes to dealing with ongoing opt out practices are fairly harmonised, but when it comes to actual measures, action from the side of the employer organizations is absent. According to a trade union official “they [the employer organization] officially say “we must do something about it,” but only to get the topic off the table. When I propose concrete measures, they immediately retreat

⁵⁰ While the theoretical certainty of these pieces of evidence is fairly low as we do not need to find evidence of firms pursuing legal cases or a juridification of employment relationships for institutional challenging to be present, the theoretical uniqueness of the evidence is fairly high as there is no other plausible explanation for these legal disputes and active pursuit of space preservation for opt out practices than that they represent a forceful challenging of existing institutions.

⁵¹ Moreover, Hassel and Seikel (2017) have recognized the European Commission (2017)'s policy priority for the *European Pillar of Social Rights* as entailing a move away from collective to individual rights. This suggests general support from the EU in the challenging of collective bargaining and workers' co-determination. Institutional challengers can in this way obtain tacit or active support from the German government with reference to transnational regulations – as expressed by a German trade union official; “do not underestimate the function of the EU and its regulations in providing an excuse for not having to act at the lower levels” (Interview 13).

⁵² The two main sectoral employer organizations in the German construction sector are the *Zentralverband der deutschen Bauindustrie* (ZDB), representing small companies and skilled artisans, and the *Hauptverband der deutschen Bauindustrie* (HDB), representing medium and large companies.

[from the dialogue]” (Interview 13). This suggests that measures to counter opt out practices are actively avoided by employer organizations, and demonstrates a lack of willingness to act against employers opting out in their use of migrant labour. While individual employers have little incentive and ability to take action on their own, the employer organizations play a central role in the coalition of institutional challengers by avoiding to take action to address the ongoing practices, and, in doing so, contribute to the preservation of space for the continuation of the logic of action that generates institutional challenging.

In the hotel and restaurant sector, employers have challenged existing institutions both by actively pushing for deregulatory measures and ways to avoid enforcement. Similar to how the legal extensions of collectively agreed minimum standards have been challenged in the construction sector, the re-regulation through the introduction of the SMW quickly became the subject of systematic challenging from the side of individual employers in their use of migrant labour involving non-compliance with working time regulations, and consequently the SMW. Aside from practices on the ground that constitute challenging, the sectoral employer organization has intervened politically to facilitate this circumvention by actively pushing for the removal of the working time documentation requirements associated with the SMW (Interview 6, 7), which would serve to undermine the SMW in practice as it is not possible to enforce a minimum wage unless the working time is properly documented.⁵³ While the working time documentation requirement existed already prior the introduction of the SMW, it was primarily in relation to the introduction of the SMW and control of its enforcement that this legal requirement was conceived of as a problem by employers, revealing that it was most likely not complied with before (Interview 5, 6).⁵⁴ This contestation is part of a broader offensive against working time regulations, with which employers in this sector are struggling to comply. Attempts to achieve

⁵³ The criticism against the SMW has since its introduction moved away from mainly being concentrating on its potential negative employment and economic consequences, towards criticism that it is highly difficult to cope with in terms of its bureaucracy (Interview 7). In this way, the discourse of the challenging of the SMW has come to centre on the requirement to document working time, rather than the actual minimum wage level itself (Hochschule Heilbronn, 25 March 2015).

⁵⁴ In relation to the introduction of the SMW, the sectoral employer organization commissioned several surveys to assess the experiences and perspectives of their member firms concerning the changed legal situation. According to a German-wide survey of 1 512 firms in the hotel and restaurant sector, about half of the hotel and restaurant firms had a negative view of the SMW, conceiving of it as “unnecessary, senseless, and financially unmanageable,” whereas the remaining half were neutral or positive vis-à-vis the SMW. While the increased labour costs were naturally conceived of as a negative consequence, the main problem with the SMW was identified as the requirement to document the working time, with 70 percent of the hotels and 78 percent of the restaurants experiencing the documentation requirement as a major challenge (Hochschule Heilbronn, 25 March 2015). According to the sectoral employer organization, the enforcement of the SMW imposes considerable challenges for firms in the restaurant sector as regards to the “new” obligation to document and keep a record of the daily working time (Dehoga 23 July 2015). This is closely related to the “rigid” regulation of the maximum working time in the working time legislation, which has come in focus since the introduction of the SMW (ibid.). As a response, the German trade union confederation has called on “opponents of the SMW [to] stop fuel[ling] a mock debate, and to invent things that do not exist, such as the so-called ‘Bureaucracy monster.’ If the working time is not recorded, no one can calculate the wage. This was the situation already in the past” (DGB, 27 Apr 2015).

deregulation of the legal limits on the maximum daily and weekly working hours have, for instance, been pursued in parallel (Interview 7).⁵⁵ While the sectoral union demands the maintenance of the 8 hour working day model (Dräbing, 28 July 2019), the sectoral employer organization demands that the maximum limit of 10 hours per day be raised to 12 hours per day (Interview 5). Thus, while employers' challenging of working time regulations, and through that also wage-setting arrangements, was not a new phenomenon related to the introduction of the SMW (Interview 7), it gained in strength in relation to the SMW. As the SMW was a response towards low wage work, with which employers' use of migrant labour is intertwined, this challenging takes place in direct relation to labour mobility. Moreover, as the regulation of working time is a highly contentious issue in the hotel and restaurant sector (*ibid.*), employers' use of migrant labour has served as a means by which employers can challenge the regulation of working time in practice through creative management strategies juggling to cope with a constant conflict with the working time legislation. The sectoral employer organization has thus played a central role in the coalition of institutional challengers also in the hotel and restaurant sector. Aside from voicing demands for a flexibilization of working time regulations, deregulated working time documentation requirement and its dissatisfaction with the SMW (*ibid.*), the call by the sectoral employer organization for increased labour migration from non-EU countries (Interview 6) despite full access to the common EU labour market reveals the search for further leverage in employers challenging of the institutions. As phrased by a union official, "employers in this sector say that they need labour, but what they mean is that they need cheap labour" (*ibid.*). The distinction between the "need for labour" and the "need for cheap labour" is important because it reveals the support for a logic of action based on non-compliance with the three employment relations institutions as well as the legally established wage levels.

While part of the evidence presented in the case of the hotel and restaurant sector has a relatively low theoretical uniqueness in that the challenging is not only taking place in the context of the employment of migrant labour but labour more broadly, what makes it evidence of employers' challenging of the institutions triggered by the cause investigated here is that it *also* takes place in the context of the use of migrant labour. As competition based on low labour costs has a long history in the hotel and restaurant sector, the use of migrant and non-migrant labour has become so intertwined in this sector that the distinction between employers' challenging of the institutions through their use of migrant and non-migrant labour is also becoming less pertinent. Importantly, employers' pursuit of a logic based on non-compliance with the employment relations institutions in their use of migrant labour makes for a central building block in the process towards institutional defection by reinforcing employers' logic of action based low-

⁵⁵ The contestation around the regulation of working time has also taken place within collective bargaining, whereby the employer organization has challenged the content of collective agreements by demanding a flexibilization of working time arrangements (Interview 5).

wage competition in the hotel and restaurant sector. As both the construction and hotel and restaurant sectors are mainly comprised of many small firms, individual employers facing competing logics of action (here; compliance versus opt out) are prompted to pursue the logic that offers a short-term competitive advantage and increases their chances for survival, offering favourable conditions for employers' challenging to gain ground. It is less important whether this logic of action is new per se, which one may argue is not the case in the hotel and restaurant sector. What matters here is that the logic is elicited and stimulated by employers' responses to migrant labour. Taken together, the inferential weight of the different pieces of evidence provided here allow us to update our confidence in the presence of employers' challenging of the institutions in their use of migrant labour *and* in the pretext of labour migration in these two cases. There is an important qualitative threshold between substantial and non-substantial challenging. In both cases, the available evidence suggest that the challenging is substantial and meaningful enough to have causal powers to drive this process forward.

Part 2: Absence of active support of institutions and spread of a new logic of action

In parallel with the challenging of the institutions in the German construction and hotel and restaurant sectors, absence of sufficient active institutional support has, in turn, allowed the logic of action based on non-compliance with the dominant employment relations rules and practices to spread as more employers are directed towards the logic of action that allows them to maintain competitiveness. Given the context of high pressure for change in the EU open market, the observable manifestations of absence of active support is defined as the situation in which the class actors do not push for re-regulation and/or strengthened enforcement as a response to the increased use of migrant labour. When it comes to the prior confidence held in this part of the mechanism in these two cases, scholars have previously described how the trade unions have pushed for re-regulation in both sectors, whereas employers' positions have generally been described as non-benevolent vis-à-vis the institutions, but occasionally also as supportive (e.g. Lillie and Greer 2007: 574; Bispinck et al. 2010, 2011). While the confidence informed by existing literature partly pull in two opposite directions, leading us to expect presence of active support from the side of the trade unions and with an ambiguous expectation as to the absence of active institutional support from the side of employers, the prior confidence in this part of the mechanism is low. The implication of this is that even not so strong evidence will allow us to update the confidence in that absence of active support has prevailed in these two sectors.

When it comes to the presence or absence of a push for re-regulatory measures as a response to the pressure for change originating from employers' use of migrant labour, the evidential picture is more diverse and less straightforward in the construction sector than in the hotel and restaurant sector. The construction workers' union was the first German union to push for the legal extensions of collectively agreed minimum conditions already from the mid-1990s

onwards (Mabbett 2016: 1250). The legal extensions are institutionalised through the Posted Workers Act (AEntG) and thus directly linked to firms' use of foreign workers. The push was a joint effort with at least a part of the employer side. While the German employer confederation, Bundesvereinigung der Deutschen Arbeitgeberverbände (BDA), has been against and actively obstructed such legal extensions (BDA 2009; Bispinck et al. 2010: 27; Mabbett 2016: 1244), the two main sectoral employer organizations, HDB and ZDB, were in favour of them. Mabbett (2016) considered the rationale for German construction employers' support of the legal extension of minimum conditions to be a protection from external low wage competition (1246; see also Hardy et al. 2012: 358-359). A complementary interpretation of their support is that German construction firms profit from accessing cheaper labour and services from foreign workers and firms, and by supporting an extension of minimum conditions only a certain level of re-regulation is supported, while at the same time setting the threshold at minimum conditions inferior to those accessed by (domestic) workers covered by the full collective agreement, whereby the use of posted workers continue to entail a considerable cost-benefit, from which German construction firms profit. Even though the two sectoral employer organizations have been in favour of legal extensions of collectively agreed minimum conditions, a dividing line exists between the HDB, representing main contractors who profit directly from low costs in the contracting chain and who play an active role in pressuring the price levels of the contracts, and the ZDB, representing smaller firms acting as subcontractors who need to cope with the cost pressure (Bosch et al. 2011: 36). Yet, both sectoral employer organisations have continuously supported renewals of legal extensions.⁵⁶ The BDA, on its side, has continued to hold a sceptical position vis-à-vis the legal extensions of collectively agreed minimum conditions, emphasizing that they should remain an instrument of exception. Moreover, the BDA opposed a legal change to the Collective Bargaining Act (Allgemeinverbindlicherklärung von Tarifnormen, §5 Tarifvertragsgesetz (TVG)) that expanded the legal basis for extending collectively agreed minimum standards based on "the public interest," criticising that the public interest had been interpreted as the protection of workers (BDA 2015a). In the hotel and restaurant sector, the sectoral employer organization has, in contrast, actively opposed the two main re-regulatory measures on the agenda to counter low wage competition, with which employers' use of migrant labour is associated. While the trade union has been pushing for legal extensions of collectively agreed minimum conditions, the sectoral employer organization has continuously refused such legal extensions (Interview 6, 7).⁵⁷

⁵⁶ While the sectoral union and employer organizations support for re-regulation in the shape of legal extensions of collective agreements is theoretically unique evidence of their demonstration of active support by pushing for re-regulation as a direct response to the use of migrant labour, this evidence has low theoretical certainty; as it is a push for a re-regulation extending minimum conditions only, it is not certain that this is evidence of active institutional support for collective bargaining.

⁵⁷ Exceptions here pertain to a small number of legal extensions at the regional levels in the western parts of the country, which exist due to historical legacies, as well as a nation-wide legal extension in the cleaning industry (Interview 5).

While the hotel and restaurant workers' union was the first German union to actively push for the introduction of the SMW as a means to counter the low wage competition resulting from employers' withdrawal from collective agreements and from meagre bargaining outcomes, and as a response to employers' opposition to legally extend collectively agreed minimum conditions, employers were actively against its introduction (Ver.di and NGG, *Dumpinglöhne in der Mitte der Gesellschaft* angekommen; Bispinck and Schäfer 2006; Vanselow 2008: 228; Bispinck and Schulten 2011: 38-39; Mabbett 2016: 1245, 1249; Interview 7) and abstained from demonstrating their active support in meeting the low wage pressure.⁵⁸ As argument for the SMW, the union made explicit connections to employers' use of migrant labour, stating that the SMW would protect against cross-border wage competition and bring wage dumping and exploitation of migrant as well as domestic workers to an end (Ver.di and NGG, *Dumpinglöhne in der Mitte der Gesellschaft* angekommen). In further demonstrating a link between the trade unions' push for the SMW and labour migration, Hardy et al. (2012) noted how the SMW emerged as the most important precondition from the side of unions ahead of the removal of transitional restrictions for EU internal labour migrants (351). Even in presence of the SMW, the sectoral trade union has continued to push for legally extended collectively agreed minimum conditions (Interview 6), although with relatively bleak prospects as the employer organization, with the additional argument that there is "no need for legal extensions of collectively agreed minimum standards" following the introduction of the SMW (Interview 7), has gained further leverage in their opposition of such legal extensions. In opposing legally extended collectively agreed minimum conditions as well as the SMW, the sectoral employer organization has been backed up by the BDA (Mabbett 2016; Bosch and Weinkopf 2010: 20). The BDA's argument for opposing the SMW was made with reference to collective bargaining. According to the BDA, the SMW represented an "encroachment of collective bargaining autonomy," a dangerous interference in collective bargaining, and a means by which existing collective agreements are displaced, particularly those deviating from the SMW (BDA, Oct 2014a). As noted by Thelen, the employer confederation has framed its position as "a spirited defence of existing arrangements" (2014: 56). Indeed, the trade union's push for the re-regulation through an SMW should plausibly not be interpreted as evidence of active support for collective bargaining. At the same time, it is questionable whether employers' opposition of the SMW is evidence of their active support of collective bargaining. The union's push for the SMW is clearly evidence of the support for re-regulation to counter the downward pressure on wages occurring from low wage competition in the hotel and restaurant sector. Scholars have interpreted the union's active support of the SMW as a manifestation of its weakness (Mabbett 2016: 1251; also Interview 2); as the union was

⁵⁸ The employer organization in the cleaning industry, in contrast, supported the SMW as the legal extension of minimum conditions had been ineffective in the sector due to it only covering cleaning firms but no other firms, such as hotels, having in-house cleaners (Mabbett 2016: 1247).

unable to generate sufficient active support of the existing institutions of collective labour regulation, their support was instead manifested in a push for a re-regulatory measure requiring state intervention.⁵⁹

When it comes to demonstration of active support by pushing for strengthened enforcement, the trade unions in both sectors have called for increased personnel resources from 6 000 to approximately 10 000 employees in the state agency responsible for the controls of the legally extended minimum wage and the SMW, to better enable it to contribute to enforcement, noting that the agency is currently understaffed and unable to ensure high levels of enforcement (Interview 6, 12, 13, 14; also Falk and Riedel 2017; Schulten and Schulze Buschoff 2015: 14). As late as in 2017, the DGB continued to criticise the lack of controls of violations of the SMW, and continued to call for increasing the staff of the FKS “so that the agency is finally able to fulfil its control function” (Stefan Körzell, DGB Board Member, Spiegel, 3 July 2017).⁶⁰ While the calls for strengthened enforcement have been fortified in relation to the SMW, IG Bau had been calling for strengthened state contribution to enforcement already around the time of the market expansions (Lillie and Greer 2007: 574; Hardy et al. 2012: 358). Moreover, IG Bau has also pushed for the introduction of construction sector ID-cards containing documentation of working time and social security information as a means to facilitate enforcement (Interview 13; see also Schulten and Schulze Buschoff 2015: 14). Calls for strengthening enforcement have also been made by the employer organizations in the construction sector, where ZDB, HDB as well as ZDH (Zentralverband des Deutschen Handwerks) have continued to consider the resources of the FKS to be insufficient to control compliance with the legally extended minimum wages and the SMW, even in view of an announced addition of 1 600 positions (Bundesregierung 2017: 58). Thus, the employer organizations called on the government to increase the personnel and financial resources allocated to the FKS, and the ZDH also demanded increased resources to the municipal authorities to carry out controls (ibid.). The sectoral employer organization in the hotel and restaurant sector, on the other hand, has not recognized a need for nor called for strengthened enforcement (Interview 7).

In relation to undeclared work, which is not limited to but prevalent in the use of migrant labour, the trade unions and employer organizations in both the construction and hotel and

⁵⁹ Accordingly, while the union’s push for re-regulation in the shape of the SMW is theoretically unique evidence of their demonstration of active support by pushing for re-regulation in relation to low wage work, with which the use of migrant labour is tightly intertwined, it is not certain that this is evidence of active support for the existing institutions.

⁶⁰ In calling for more control of the SMW, the DGB pushed for several measures by which this could be achieved. Aside from an increase in the number of staff of the FKS and installing public prosecutors with a specific focus on the SMW to support the FKS, the unions called for further re-regulation to enable efficient enforcement. This included the introduction of a collective action law that would enable unions to act on behalf of workers’ interests in court, a revision of the Labor Court Act (*Arbeitsgerichtsgesetz*) to reverse the burden of proof for minimum wage claims, placing the burden of proof on employers as opposed to workers (DGB, 22 Apr 2015).

restaurant sectors have, little surprising as it pertains to an illegal practice, demonstrated their joint support together with the state agency FKS in countering undeclared work to ensure a level playing field in the competition between firms and between workers (e.g. IG BAU et al. 2000; Zoll et al. 2009; ZDB et al. 16 Dec 2014; see also Schulten and Schulze Buschoff 2015: 13).⁶¹ In parallel with, and in stark contrast to, the calls for strengthened controls of undeclared work, employer organizations in the construction as well as hotel and restaurant sectors, joined by the employer confederation BDA, have, however, also called for lowering taxes and social security contributions to make it less expensive to comply with the requirements of declared work (Interview 7; ZDB, 6 Feb 2014; ZDB 2015a; Bundesregierung 2017: 57-58). According to the ZDB, “the high burden of regular employment relationships with taxes and social security contributions is one of the main reasons behind undeclared work” (ZDB 2015a), revealing the logic behind the employer demands to lower the threshold and make it easier to comply. In spite of this two-edged strategy, which seriously lowers the credibility of the active support, the employer organizations in the construction sector have continued to call for strengthened enforcement and re-regulation to counter undeclared work as well as bogus self-employment – particularly so the ZDB, representing small- and medium-sized construction firms.⁶² The ZDB has identified the use of undeclared work as a threat to the German construction sector that inhibits

⁶¹ While leaflets and campaigns seeking to counter undeclared work ties in with calls for strengthened enforcement of labour standards to close down space for employers to pursue illegal opt out, this represent weak evidence of active institutional support. In the construction sector, support from both employer organizations and trade unions has been demonstrated in bipartite panels and joint declarations against undeclared work placed in direct relation to ‘unfair’ competition related to foreign service provision (Cremers 2010: 26). In multiple declarations from 2000, 2004, and 2005, the bargaining parties in the German construction sector signed declarations and agreements on jointly combating all forms of undeclared work and to improve the monitoring of minimum wages. Yet, when it came to show, employers withdrew from their initially demonstrated active support as all that was eventually agreed was declarations of intention in the form of voluntary pacts against undeclared work (ibid.). Cremers has explained this as a result of a strong opposition from individual firms (ibid.), whereby the attempted active support from the side of the trade union was opposed by employers in practice.

⁶² In calling for strengthened controls of undeclared work and bogus self-employment, the ZDB has demanded increased resource allocation to the FKS both in terms of personnel and improved information technology, and enhanced coordination between different agencies, for example, involving the trade offices and the Chamber of Handicrafts who should take upon them to systematically scrutinize all new registrations of solo self-employment in order to detect bogus self-employment at an early stage (ZDB, 6 Feb 2014; ZDB, 11 Aug 2014; ZDB 2015a). The ZDB as well as the HDB have also called on the FKS to change its strategies as a means to improve enforcement, expanding the focus on large construction sites to also include smaller construction projects, to carry out controls not only in construction sites where there is a prior suspicion, and to be quicker in deploying controls in suspected workplaces to improve the chances of capturing those pursuing illegal practices (ZDB, 11 Aug 2014; Bundesregierung 2017: 58). Further measures that the ZDB has promoted over the last two decades as a means to facilitate control of undeclared work have included a requirement to directly register new employment relationships, an obligation to always carry an identification card when on a construction site, and the introduction of a main contractor liability covering minimum wages and social security contributions (ZDB 2015a). The calls for re-regulation have focused on revisions of the law to counter undeclared work (*Schwarzarbeitsbekämpfungsgesetz*), the law regulating self-employment (*Gewerbeordnung*), as well as revisions of the criminal law (ZDB, 6 Feb 2014). Moreover, the ZDB, HDB, and the DGB have demanded that public prosecutors with a specific focus on undeclared work be installed to ensure effective punishment of illegal practices (ZDB 2015a; Bundesregierung 2017: 57).

the ability of the class actors to ensure the functioning of collective labour regulations, noting how it results in distorted competition that threatens the existence of firms complying with the legal requirements, and makes *domestic* firms competitively disadvantaged (ZDB 2016; also ZDB 2015a), thus associating the threat of undeclared work and bogus self-employment with foreign firms. Following the deregulation of the German Trade and Crafts Code, which removed master craftsmen certificates for 53 crafts, the ZDB, IG Bau, and associations representing craftsmen have also pushed for re-introduction of the master certificates as a means to counter bogus self-employment (IG BAU and ZDB 2013; ZDB April 2015: 33; Deutsche Handwerks Zeitung, 20 Sep 2013). Furthermore, as part of its focus on countering undeclared work and bogus self-employment, the ZDB has on its own as well as jointly with the sectoral trade union and the employer organization ZDH called for improved public procurement procedures (ZDB, 6 Feb 2014; ZDB, 11 Aug 2014; ZDB 2015a). In identifying public procurement procedures as underpinning opt out practices involving the use of undeclared work and bogus self-employment by offering public contracts to the lowest bidder, the ZDB and ZDH have called upon public agencies to take upon them to critically examine firms before assigning them a public contract, for example, by establishing a register where the reliability of firms is recorded (ZDB, 11 Aug 2014; ZDB 2015a; Bundesregierung 2017: 58). The two employer organizations have also demanded that public agencies be obliged to ensure compliance with the legally binding minimum conditions in construction projects that they commission, and that the main contractor liability applicable to private firms be expanded to cover public contractors (*ibid.*). The former proposition demonstrates support for minimum standards, rather than the full scope of the institutions. Similarly the latter proposition is evidence of absence rather than presence of active support, while being framed as a measure to counter opt out practices, this would in practice most plausibly relieve private firms serving as main contractors from liability – when the main contractor does not pay, the public agency contracting the firm should, based on the proposition from the employer organizations, step in as liable to pay minimum wages and other contributions. The sectoral trade union has, on its side, called for strengthened controls and sanctions by public authorities in the scope of publically financed construction projects (Dälken 2012: 46). In 2011, when the transitional restrictions for the 2004 accession states came to an end, IG Bau called on politicians at the regional levels to improve their public procurement procedures to limit the use of undeclared work and widespread abuse of migrant workers in public construction work sites (IG Bau, 18 Nov 2011). In contrast to the calls from the side of employer organizations, one of the fundamental demands of the union has been that adaptations of public procurement regulations should be based on a requirement for private firms that win public contracts to comply with the applicable collective agreement (IG Bau, 18 Nov 2011; DGB, May 2017) – although not uniformly, as some demands have settled for lower standards based on the introduction of laws stipulating minimum employment conditions for public procurement (Schulten and Schulze

Buschoff 2015: 16). Aside from more expansive demands related to the re-regulation of public procurement procedures, the sectoral trade union has, along with the DGB, also demonstrated their active support by demanding re-regulation of posted work, an extension of the general liability of main contractors, extended co-determination rights covering workers in subcontracted firms, as well as a range of measures to counter bogus self-employment, including a reform of the social security regime for self-employed workers whereby contracting firms should take on a share of the social security contributions of their self-employed workers (Dälken 2012: 1; IG BAU 2013a, 2013b; Schulten and Schulze Buschoff 2015: 16-17).

Taken together, there is a certain discrepancy between the predicted and found evidence of this second part of the mechanism in the empirical records of the German construction and hotel and restaurant sectors, particularly so the former. The found evidence reveals that the trade unions in both sectors have pushed for re-regulation as well as strengthened enforcement. The employer organizations in the construction sector supported re-regulation through legal extensions of collectively agreed minimum conditions, and called for strengthened enforcement in relation to undeclared work and bogus self-employment, whereas the employer organization in the hotel and restaurant sector opposed any re-regulation and abstained from demanding strengthened enforcement. Thus, the most unambiguous evidence of absence of active support is found among employers in the hotel and restaurant sector, along with the German employer confederation trying to disseminate the absence of active support on a cross-sectoral basis. While the employer organizations in the construction sector, and particularly so the ones representing small and medium-sized firms, have demonstrated active support in some aspects, this does, however, not amount to a concerted support of the employment relations institutions from the side of the construction industry as a whole. The primary reason behind the weakness of the demonstrated support is that it largely does not match firm practices on the ground, whereby the leverage generated by the active support has not been enough to counter the coalition of institutional challengers. Moreover, as previously pinpointed by Lillie and Greer (2007), the positions taken by the employer organizations is based on “an uneasy compromise between the contradictory goals of cheap labour and fair competition” (574), resulting in partially inconsistent positions where they support a re-regulation of minimum conditions but not of the full scope of the employment relations institutions, and where they push for certain strengthened enforcement but at the same time call for lowering thresholds to make it easier to comply. On the whole, the evidence of absence of active support is somewhat weaker in the construction sector than in the hotel and restaurant sector, warranting stronger updating of this part of the mechanism to take place in the latter case. Nonetheless, as the unions’ active institutional support in both sectors is actively opposed by individual firms in practice, the process proceeds as the logic of action based on non-compliance with the employment relations rules and practices continues to spread.

Part 3: Defection from institutions and turn to new logic of action as dominant practice

Following the spread of the logic of action in which employers opt out of the employment relations institutions, and absence of active institutional support that would block the logic of action from becoming dominant practice, the process is, in turn, translated into defection from the institutions. As growing numbers of employers defect from collective bargaining, workplace representation, and dominant job security regulations, the practice of opting out gains salience not only at the expense of those complying with the institutions but also at the expense of the institutions themselves (see Streeck and Thelen 2005: 20). In this way, fundamental change ensues through the accumulation of the actions of individual employers who gradually stop adhering to the practices constitutive of and essential to the continuity of the employment relations institutions (see Hall 2010: 218; Thelen and Mahoney 2010). Accordingly, the observable manifestation of defection from the institutions is here defined as the situation in which employers through their logic of action pursued in relation to migrant labour abandon collective bargaining, and/or job security regulations, and/or workplace representation. The prior confidence held in this part of the mechanism is moderately low. While existing literature has given us reason to believe that German construction employers' organization of work based on subcontracting of foreign firms plausibly is associated with defection from collective bargaining (e.g. Lillie and Greer 2007; Wagner 2014), a vast literature has focused on re-regulation that has taken place in the construction as well as in the hotel and restaurant sectors, leaving us with a fairly puzzled expectation.⁶³ Consequently, even moderately weak evidence would allow us to update the confidence in this last and critical part of the causal mechanism in the cases of the German construction and hotel and restaurant sectors.

In the German construction sector, evidence of institutional defection from collective bargaining, workplace representation, and job security regulations is found. By using migrant labour primarily based on the organization of work through foreign subcontractors, including self-employed foreign workers, and to an unknown extent also temporary work agencies disguised as subcontracted construction firms (Interview 13, 14; also Bosch et al. 2011: 45), employers defect from collective bargaining, as the workers in these firms are not covered by the full and applicable sectoral collective agreement.⁶⁴ As this logic of action becomes dominant, it effectively means

⁶³ The prior confidence is also downgraded by the fact that it has not been made explicit what these existing empirical findings are evidence of in relation to the causal processes in the two cases, whereby we are not able to evaluate them as evidence of a causal mechanism.

⁶⁴ Re-regulation of the use of temporary agency work in the German construction sector took place well before the market expansions, and even prior to the surge in the use of posted work in the early 1990s; following demands from the trade union, the use of temporary agency workers was prohibited in 1982. While temporary agency work was strictly prohibited in the German construction sector, the German government decided to partially repeal this regulation right before the market expansions, in 2001, by introducing an exception allowing the transfer of 'temporary personnel' between construction firms

defection from collective bargaining as an institution. Similarly, works councils, serving as the channel for workplace representation in Germany, are defected from through these practices, as there is a low presence of trade union members and works councils in subcontracted firms.⁶⁵ Moreover, as this organization of work is associated with no or low access to job security for posted workers and solo self-employed, a gradual defection from job security regulations are also generated by employers' opt out logic of action in their use of migrant labour. While there is clear evidence of defection from the institutions through management practices and the way that work is organized, certain re-regulatory measures have been taken in the German construction sector. Already in 1997, prior to the market expansions of the 2000s, collectively agreed minimum conditions covering all workers, including posted workers, were legally extended in large parts of the construction sector based on the Posted Workers Act (PWA).⁶⁶ Changes in the organization of work related to extensive use of posted work prompted this re-regulatory measure (Bosch et al. 2011: 49-50), and the legislator's official intention with the law was, aside from regulating cross-border work, to "maintain the collective bargaining system" (Mabbett 2016: 1244). Thus, despite the opposition of the BDA, the sectoral union and employer organizations succeeded, with the active intervention and support of the Ministry of Labour, in pushing through legally extended collectively agreed minimum conditions (Bispinck et al. 2010: 27). However, the opposition by the BDA did not only manage to briefly postpone the introduction of such legal extensions – their intervention in this process turned out to be in favour of the employers at the sectoral level, as it gave them leverage in the negotiations preceding the legal extensions, forcing the union to drop their demand for equal pay for equal work and leading to the adoption of lower minimum wage levels (see Kahmann 2006; Mabbett 2016: 1244).⁶⁷ In this way, the resistance from employers

(Emmenegger 2014: 241), in practice allowing for the supply of temporary agency workers as long as the firms are not registered as temporary work agencies (Interview 13). According to trade union representatives, this deregulation resulted in the provision of space for construction firms to use temporary agency workers, as foreign firms would register as construction firms post their workers, even though they were not carrying out any construction activities in their countries of origin (ibid.).

⁶⁵ Despite the codetermination rights of works councillors in main contractors, their negotiation capacities do not extend to subcontracted workers and their enforcement capacities for subcontracted workers are limited.

⁶⁶ There are two legal possibilities to extend collective agreements in Germany. While the first one, based on the German Collective Bargaining Act (*Tarifvertragsgesetz*), would enable the extension of more than minimum conditions, this procedure is accompanied by the requirement that at least 50 percent of the workers in the sector are already covered by a collective agreement, and has, as a consequence, only been used to a very limited extent (by the end of the 2000s, 1.5 percent of all collective agreements in the German labour market had been extended through this procedure) (Bispinck 2012). Instead, legal extensions in the German construction sector have been done through the second possibility, based on the PWA, which only permits the extension of minimum standards (Schulten and Bispinck 2014: 19).

⁶⁷ While it is not possible to uncover whether this was a coordinated strategy between the BDA and the sectoral employer organizations, the fact that the BDA blocked the first attempt to legally extend collectively agreed minimum conditions gave the sectoral employer organizations the possibility to re-enter negotiations with the union on more favourable conditions, achieving a bargaining outcome resulting in a lower wage level. This meant wage levels considerably below the level of the full sectoral agreements, and additionally excluded several supplementary benefits contained in the sectoral agreements, whereby

outside of the construction sector resulted in a more minimalist regulation of posted work and a successful obstruction of the union's demand for equal treatment of migrant labour (Dølvik et al. 2014a: 20). Thus, while this re-regulation established a minimum threshold, it did not disrupt competition based on labour costs. The extent to which an opt out logic of action has spread and become dominant among individual employers in the German construction sector is revealed by the fact that even though the legal extensions were initially done to establish minimum conditions for migrant workers, this re-regulatory measure has transformed into a general measure to secure minimum wages for migrant as well as domestic workers (Bispinck and Schulten 2011: 40; Bosch et al. 2011: 12-13). In this way, the sectoral union, employer organizations and the state together legitimized opt out of the full sectoral collective agreements and allowed main contractors, who tend to be bound by a collective agreement, to legally use subcontractors offering conditions inferior to the full content of collective agreements. Furthermore, a joint liability was introduced as part of the Posted Workers Act (§14 PWA), through which main contractors can be held liable for payment of the applicable minimum wages and contributions to the holiday fund in subcontracted firms, including foreign firms (Schulten and Schulze Buschoff 2015: 16). Additionally, in 2002, a main contractor liability (*Generalunternehmerhaftung*) was introduced by the German government, aiming to strengthen enforcement of labour standards throughout the production chain by holding main contractors responsible for monitoring the practices of their subcontractors (ibid.).⁶⁸ Scholars have previously suggested that opt out behaviour among subcontracted firms has been partly averted by the main contractor and joint liabilities (Cremers 2010: 25, 56). While the purpose of a joint liability is indeed that main contractors should oblige subcontracted firms to comply with statutory provisions because it is, based on this legislation, in their own interests, it has not yet been well substantiated to what extent these liabilities have contributed to strengthened enforcement from the side of main contractors by creating a deterrent effect on opt out practices (see also Wagner and Hassel 2015a: 211). The main contractor liability does, however, hold the potential to correct opt out practices in retrospect, that is, once they have already been pursued. As noted by trade union representatives, main contractors have – *when* the liability is enforced – ended up paying the wages of the workers in the subcontracted firms (Interview 14; see also Dälken 2012: 31). According to insights from the FKS, the main contractor liability is, however, rarely successfully enforced in practice (Interview 9).⁶⁹

considerable cost advantages continued to exist in using posted work (see Lillie and Greer 2007: 566; Cremers 2010: 21).

⁶⁸ Based on this legislation, main contractors can also be held liable for the payment of social security contributions and accident insurance premiums in subcontracted firms (German Social Code No. 4, § 28e). A re-regulation of this legislation took place in 2009, lowering the threshold for its applicability from contract values of 500 000 Euros to 275 000 Euros (Schulten and Schulze Buschoff 2015: 16).

⁶⁹ In official statements, the sectoral trade union and employer organizations have jointly claimed to be satisfied with the existing joint liability, and that it has proven to be effective and sufficient (HDB et al. 10 July 2012: 4). At the confederal levels, the BDA has remained critical of the main contractor liability, considering it to place an unreasonable burden on firms not directly engaged in the concerned employment

By establishing contextual conditions that have enabled institutional defection to take place in the German construction sector, the German state has played the role of a facilitator, offering partwise passive and occasionally active coalitional support to employers. In conjunction with the market expansion in 2004, the German government actively encouraged workers to engage in self-employment (Hartz II, 2003), removed master certificates for 53 crafts out of 91 crafts by deregulating the German Trade and Crafts Code (2004), and shifted power from workers to employers by making unemployment more difficult to bear for individual workers (Hartz IV, 2005). The subsidies for self-employment introduced in 2003 and the removal of master certificates in 2004 set the stage for the use of bogus and solo self-employment (Interview 13; *Deutsche Handwerks Zeitung*, 20 Sep 2013; Hansen, 19 Feb 2014) as a means to defect from all three employment relations institutions. Scholars have demonstrated how the promotion of solo self-employment through Hartz II triggered a major increase in the number of solo self-employed in the German construction sector, with the number of solo self-employed almost doubling from the end of the 1990s to the end of the 2000s, from 66 000 in 1998 to 129 000 in 2009 (Bispinck and Schulten 2011: 13-14). The removal of master certificates as a requirement for establishing a firm, including for solo self-employed, boosted this development (Interview 13). As this deregulation was introduced right at the time of the market expansion in 2004, it strongly contributed to shifting employers' logic of action towards using migrant labour via solo, and bogus, self-employment, through which defection from collective bargaining, workplace representation, and job security regulations could be pursued. Already at the end of the 2000s, Gross (2009) suggested that the removal of master certificates, and the associated deregulation of the requirements for solo self-employment, had contributed to replace regular construction workers with solo self-employed workers as a means to avoid collective agreements, and to avoid the legally extended minimum conditions. Ten years after the deregulation, testimonies from craftsmen revealed detrimental effects on the dual vocational training system, on the quality of the handicraft trades reflected in a surge in construction related damages, and certain occupational areas being "over flooded by [one-man] firms underbidding each other" (Hansen, 19 Feb 2014).⁷⁰ By simultaneously contributing to the strong reduction in new trained domestic workers, ever more firms are directed to use the foreign labour supply in the EU open market. The German government has rejected calls from individual handicraft workers and craft associations to reintroduce the master certificates or at least some form of requirement to counter the negative effects that the deregulation had brought about (*Deutsche Handwerks Zeitung*, 20 Sep 2013). The latest political rejection to re-regulate the crafts in 2013 was justified with reference to the EU, as

relationship (BDA 2015b), whereas the trade union confederation has called for an expansion of the liability (Dälken 2012: 1).

⁷⁰ It has also led to an increase in the insolvencies of handicraft firms; when the master certificates were still in place, two thirds of all newly established firms survived the first five years – after the removal of the certificates, less than half survived the first five years (Hansen, 19 Feb 2014).

the EU Commission had defined the master certificates as an obstacle to competition in the open market in relation to the freedom to provide services (ibid.). In 2014, the EU Commission continued to call on the member states, including Germany, to remove any remaining ‘obstacles’ in the shape of master certificates (Hansen, 19 Feb 2014).⁷¹ When it comes to the active role of the state and public agencies in supporting opt out practices in publically financed construction projects, certain re-regulation has taken place in the course of the last decade. Most federal states strengthened their public procurement regulations between 2010 and 2014 (e.g. Axnick et al. 2013). By 2019, following the adoption of a law on public procurement procedures in Bavaria, all German *Länder* had put in place some type of regulation requiring the use of collective agreements or at least requirements to comply with collectively agreed minimum wages.⁷² The legislation covering the whole country does not contain any social criteria for tendering processes, but establishes the fundamental principle that tenders should be allocated to the “most economical offer” (*Gesetz gegen Wettbewerbsbeschränkungen*, § 97, Abs. 4–5). As a consequence, the regulatory framework in this area remains complex and patchy due to regional variations (Schulten and Pawicki 2008: 185-186; Schulten and Schulze Buschoff 2015: 16).⁷³ In view of the important role played by the state and public actors as clients of major construction and

⁷¹ While there is a standstill in terms of reintroducing master certificates, the government has recently undertaken certain re-regulatory measures to facilitate controls of bogus self-employment following calls from the sectoral employer organizations and trade union (ZDB et al. 2015). In 2014, the government introduced a law regulating the advertisement of commercial contracts (*Gewerbeanzeigerordnung*) and a revision of the trade registration procedures, to facilitate the detection of bogus self-employment already when market actors attempt to start activities (Bundesregierung 2017: 28). Prior to 2015, there were no requirement to prove the existence of a permanent establishment, or a business account. Registrations of self-employment were just received by the trade offices without any verification of the business activity. Since January 2015, this has changed through the revised trade registration procedure, whereby the approximately 7000 trade offices have been tasked to contribute to counter bogus self-employment. In relation to this, the trade offices were made responsible for verifying all new registrations and convey all suspected cases of bogus self-employment to the FKS (ibid. 9). However, the employer organization ZDB considered the legal revision to be insufficient on its own, and called for further re-regulations to counter bogus self-employment (ZDB, 11 July 2014). As a complementary measure to counter bogus self-employment, a collective agreement was concluded in 2015 establishing that also firms without employees are obliged to pay a minimum contribution to the vocational training system (Bundesregierung 2017: 52). Relatedly, the legal framework underpinning the state’s efforts against undeclared work has been strengthened. In 2017, a law on strengthening the fight against undeclared work was introduced, based upon which the FKS should receive increased staff and technological resources to improve controls (ibid. 53). State agencies have also been legally obliged to strengthen their cooperation in the area of undeclared work, following legal revisions of the law on free movement (*Gesetz zur Änderung des Freizügigkeitsgesetzes/EU*, 2014) (ibid. 30). Additionally, in 2019, the German parliament continued to produce legal revisions to counter undeclared work, reiterating that the FKS should receive increased staff.

⁷² Among the regions who have put in place a “Tariftrueue,” there is some variation as to the projects to which they apply, with some regions only requiring compliance with the procedure in larger construction projects above the costs of 20 000 Euro, some 10 000 Euro, and some regions with no such cost limit (WSI Tarifarchiv 2013).

⁷³ In continued absence of a nation-wide coherent legislation, the German government introduced a law (*Wettbewerbsregistergesetz*) in July 2017 serving as basis for establishing a nation-wide register of firms competing for public contracts, in which it will be recorded whether firms have pursued any illegal practices, in which case they will be excluded from competing in public tenders (Bundesregierung 2017: 56).

infrastructure projects, scholars initially conceived of regulations requiring compliance with collective agreements (*Tariftreueregelungen*) as an important instrument in stabilising collective bargaining coverage (e.g. Schulten and Pawicki 2008: 184). This was later on reduced to be conceived of as an important instrument to enforce compliance with minimum wages (Schulten and Schulze Buschoff 2015: 16). Indeed, “Tariftreue” formulated as a requirement to comply with legally extended collectively agreed minimum standards only – that is, a requirement for firms receiving publically financed contracts not to engage in illegal activities – is not equal to a requirement to comply with the full and applicable collective agreement. As public agencies in most regions are guided by combining the incompatible principles of taking the most economically beneficial offer while simultaneously attempting to adhere to the principle of complying with collective agreements, the absence of a universal requirement to use a collective agreement in publically financed construction work has failed to halt the defection from collective bargaining. To this end, the ECJ court decision from 2008 contributed to reinforce the former principle while making it more difficult to respect the latter principle (e.g. Schulten and Pawicki 2008: 184-185).

In the hotel and restaurant sector, defection has similarly taken place through a gradual abandonment from collective bargaining, workplace representation, and job security regulations. This change is tightly linked to the use of migrant labour as a labour supply characterized by weak negotiating capacities and with a high fear of losing work.⁷⁴ The absence of institutional resilience creation in the employment relations of the hotel and restaurant sector has allowed for a logic of action based on low wage competition to become dominant practice in the course of the last two decades, entailing effective defection from the collective employment relations institutions. This has taken place in a context where the German state through the Hartz reforms, including the introduction of new types of atypical work, in the early 2000s established the conditions that were critical in driving a radical form of liberalization in the low-end service sectors (see e.g. Hassel 2014; Baccaro and Benassi 2016). Yet, attempted institutional resilience creation has recently taken place through the introduction of the SMW in 2015, following the union’s more than a decade long push; as the institutional supporters of collective bargaining, more or less limited to the sectoral trade union, were unable to prevent defection from collective bargaining, they instead opted for the introduction of a new institution in the shape of a statutory minimum wage (see Streeck 2009: 54).⁷⁵ With employers being legally obliged to comply with this new institution, in

⁷⁴ The trade union representing cleaning workers have, for example, experienced aggressive techniques to defect from all three institutions by closing down the firm when the trade union or a state agency attempts to regulate their business and enforce labour standards, to quickly register a new firm and re-employ the same migrant workers (Interview 13). Employers’ access to a labour supply, largely made up of migrant workers, which is desperate enough to accept very poor conditions is a prerequisite for this business strategy.

⁷⁵ The request for, and eventual adoption of, the SMW was a response to low wage work that had been gradually arising ahead of the market expansions, founded upon the insight of the union that it did not

contrast to the voluntary nature of compliance with collective bargaining, this new institution for wage-setting holds the potential to overtake what is left of previously collectively based arrangements. As noted by scholars, “the history of attempts at self-regulation left its mark on the legislation, which is, somewhat paradoxically, entitled “Law to strengthen collective bargaining [autonomy]” (*Tarifautonomiestärkungsgesetz*)” (Mabbett 2016: 1246). Yet, the only direct link between this re-regulation and collective bargaining is that it lowered the legal threshold for legally extending collectively agreed minimum conditions (Interview 6).⁷⁶ Most importantly, the re-regulation through the introduction of the SMW has done little to discontinue the process towards institutional displacement of collective bargaining.

Despite the re-regulatory measures undertaken in response to employers’ use of migrant labour over the last two decades, the major flaw in the attempted resilience creation in the German constructor and hotel and restaurant sectors remains: the enforcement gap – which is one of the main reasons why employers could opt out in their use of migrant labour to begin with – has not been closed. While efforts to strengthen enforcement have been taken by the state in the course of the last decade, including political decisions to increase the number of staff of the FKS, the agency has during the last decade been plagued by a discrepancy between filled and not-filled positions, with the result that low levels of enforcement have prevailed in the construction as well

possess the capacity to counter this development through collective bargaining (e.g. Dribbusch et al. 2017: 211). The problem of low wage work was subsequently strongly reinforced in parallel with the market expansions of the 2000s, leading to a situation described as an “emergency” by a trade union representative; “that the SMW had to be introduced was more or less based on an emergency situation, not because we as a trade union found it nice that legislators got involved in wage-setting, but because it in specific areas was no longer possible for us to conclude a collective agreement with employers or because the employers’ associations are so weak that there are barely any members in them. And so many workers were no longer covered by a collective agreement” (Interview 6). While the sectoral trade union itself does not associate this re-regulation with labour migration (ibid.), the background to the political support for the SMW that emerged over time and was critical to its passing was, in fact, explicitly linked to labour migration. As demonstrated by Mabbett (2016), the support from the CDU/CSU – required for the SMW to be adopted – was in part generated by an “intensified concern about the potential effect of cross-border migration on wages, as transitional restrictions on movement from accession states ended in 2011” (1245; see also Cremers 2010: 21; Dostal 2012: 104; Eldring and Schulten 2012). In the formulation of the new legislation, no “boundary between regulating migrants and regulating internal competition was [...] established” (Mabbett 2016: 1245). Thus, the adoption of the SMW was a response to employers’ use of domestic as well as migrant labour, and the resulting low wage work, reflecting how union efforts to counter widespread low wage work has been interwoven with efforts to establish minimum standards for migrant workers (Dølvik et al. 2014a: 31).

⁷⁶ It may be noted that the feared undermining of the SMW following employers’ challenging of the SMW by demanding a revision of working time documentation requirements seems to largely have been averted. As a response to employers’ demands, the government decided to ease the working time documentation requirements in August 2015. While the first legal provisions introduced in association with the SMW in January 2015 reiterated a working time documentation requirement for all workers earning less than 2 958 Euro a month, the revision established that the working time documentation requirement does not apply to workers earning more than 2000 Euro a month (gross), when the employer can prove that a wage above 2000 Euro a month has been regularly paid over the past 12 months (Bundesregierung 2017: 29). As the 2000 Euro threshold covers most workers in the hotel and restaurant sector, the working time documentation requirement still applies.

as hotel and restaurant sector (Böhlke and Schulten 2014: 32; Pusch 2018: 11).⁷⁷ In fact, the number of FKS officials even slightly declined in the time period when further control efforts would have been required to fulfil the new task of controlling compliance with the SMW (Pusch 2018: 11).⁷⁸ Between 2014 and 2016, which represent a critical period following the introduction of the SMW in 2015, the number of controls carried out declined considerably.⁷⁹ Compared to all sectors of the economy, the declines in the number of employers controlled were greatest in construction and in the restaurant sectors (Falk and Riedel 2017).⁸⁰ The FKS itself has recognized that it lacks staff resources to be able to tighten up the controls of undeclared work, and of

⁷⁷ Despite that 1 600 additional FKS officials were meant to be installed to improve the agency's ability to fulfil the task to control compliance with the SMW, this is yet to be realized. While the number of full-time equivalent positions increased moderately in the years prior to the introduction of the SMW, from 6 002 in 2009 to 6 481 in 2013 (Böhlke and Schulten 2014: 32), an extensive discrepancy between filled and not-filled positions has remained during the last decade; in 2009, the discrepancy was 600, in 2013 it was down to about 400 positions, and in 2017 it increased to more than 780 unfilled positions (ibid. 11). The discrepancy between planned positions and positions actually filled reveals a considerable weakness in efforts to strengthen enforcement. In evaluating the level of enforcement in the German labour market, some scholars have been more alarming than others in their accounts of the lack of strengthened enforcement, referring to the "too few controls, and continuously fewer controls" carried out by the "chronically understaffed customs services," questioning whether the lack of control of the SMW is a planning failure or simply a lack of interest from the side of the government to make the re-regulation effective in practice (Krüsemann, 20 March 2017). Additional efforts to strengthen enforcement have included increased cross-agency collaborations. Within the context of countering undeclared work, a number of collaboration agreements between the FKS and other government and public agencies were concluded between 2006 and 2016, primarily as a means to facilitate information exchange as a means to uncover violations (Bundesregierung 2017: 44-45). Already in 2005, a taskforce to counter abuse of cross-border service provision and freedom of establishment was established, which, according to the government, has contributed to strengthen cross-agency collaborations (ibid. 47). At the same time, the government identified a need to further strengthen cooperation between different agencies to counter undeclared work, as well as to control compliance with minimum wages (ibid. 61). Through their joint agency SOKA-BAU, the trade union and employers in the construction sector have also contributed to facilitate enforcement by increasing the collaboration with the FKS (SOKA-Bau 12 Oct 2017), and by establishing new online portals where firms and workers can report practices that distort competition and violations of labour standards in relation to the use of posted work (SOKA-Bau 21 Feb 2018).

⁷⁸ In December 2017, it was reported that 6 429 positions were filled, compared to 6 481 in 2013 (Pusch 2018: 11). While the 1 600 additional FKS officials have yet to be installed, the German government has also announced that the number of positions should be increased by another 1 400 between 2018 and 2022 (Bundesregierung 2017: 36).

⁷⁹ In 2014, a total of 63 014 employers were controlled, in 2015 the number had declined to 43 637, and in 2016 it was down to 40 374 controls in total (Bundesregierung 2017: 37).

⁸⁰ In the construction sector, the number of controlled employers was more than halved between 2014 and 2016, declining from 30 729 controls in 2014 to 13 473 controls in 2016 (Mindestlohnkommission 2016: 64; Krüsemann, 20 March 2017). In the hotel and restaurant sector, with a considerably larger workforce than the construction sector, only 7 287 controls were carried out in 2015, and 6 030 controls in 2016 (Krüsemann, 20 March 2017). The decline in the numbers of controls carried out has been explained by the adoption of a "risk oriented" strategy from the side of the FKS to focus on "quality over quantity" (Bundesregierung 2017: 38-39; Mindestlohnkommission 2016: 63). The government has also explained the decline in the number of controls with reference to the fact that FKS officials had been instructed by the Ministry of Finance to "enlighten instead of punish" firms violating the SMW in the months following its introduction (Bundesregierung 2017: 22). The change in strategy towards risk oriented controls appears to have had a positive impact in the restaurant sector, with the number of initiated investigations following controls increasing with 79 percent between 2015 and 2016 – revealing that despite the declined number of controls, the FKS officials were able to uncover an increased number of violations (Falk and Riedel 2017). However, in the construction sector, the number of initiated investigations following controls instead declined by 10.2 percent between 2015 and 2016.

compliance with the legally extended minimum wages in the construction sector and with the SMW in the hotel and restaurant sector (ibid.). Thus, while the introduction of the SMW has been recognized as highly important in establishing a wage floor for workers in low-end service sectors, low levels of enforcement hampers the effectiveness of this re-regulation.

The result of low levels of controls is a considerable reliance on self-regulation of firms in terms of their individual compliance, which in the contexts of the German construction and the hotel and restaurant sectors is insufficient to induce a change in the behaviour of firms; in the hotel and restaurant sector, the dominant logic of action had, prior to 2015, been to pay wages below the SMW, and in the construction sector, the absence of a shift from irregular forms of labour migration towards regular labour migration despite the end of the transitional rules has revealed that the opt out logic of action had become well established as dominant practice already at the end of the 2000s.⁸¹ As firms will only start to comply once their competitors do so, active state intervention to strengthen enforcement is – in absence of trade union capacity – needed to change the logic of action and to create a context in which firms are able to rely on that their competitors will also comply. The continued absence of sufficient contribution to enforcement (e.g. Pusch 2018: 11; Fedorets 2017: 1124; Bosch 2016: 1) has thus enabled the processes of institutional defection to proceed in both sectors, with little stopping the direction that employers' logic of action has taken. Against this background, the evidential picture allows us to update our confidence in the presence of institutional defection and the domination of a logic of action based on non-compliance with collective bargaining, workplace representation, and job security regulations in the German construction and hotel and restaurant sectors – in spite of re-regulatory measures, but because of lack of strengthened enforcement. The turn to this logic of action as dominant practice entails a defection from the institutions for collective labour regulation and leads to the outcome of liberalization as deregulation through institutional displacement.

2.3 Outcome: Liberalization as deregulation through institutional displacement in the German construction and hotel and restaurant sectors

With the collective body of evidence pointing towards presence of the Defection Mechanism in the German construction sector as well as in hotel and restaurants, the final step in this analysis is to assess the outcome of these processes in the two cases. An overview of the chronological order of events, summarizing the regulatory changes related to labour migration and in the employment relations, is offered in Appendix VII. Below, I map through the institutional developments in collective bargaining, labour legislation, and workplace representation and make explicit the institutional changes to which I argue that employers' and trade unions' responses to

⁸¹ The turn to the logic of action based on opt out of dominant employment relations rules and practices in the German construction sector started through increased use of posted work in the early 1990's, when the German government decided that quotas should be set for the use of such labour, and special provisions established that their earnings were around 40-50 percent of collective agreement rates (Cremers 2010: 56).

labour migration have contributed. In sum, the findings confirm that the responses by the actors in the German construction sector have triggered a causal process contributing to liberalization as deregulation through the gradual displacement of workplace representation and institutional drift of collective bargaining gradually approaching displacement, whereas compliance with job security regulations continue to be maintained as dominant practice in spite of a gradual drift caused by firms' defection from job security in their use of migrant workers. In the hotel and restaurant sector, the responses by the actors have similarly triggered a causal process contributing to liberalization as deregulation through the gradual displacement of collective bargaining and workplace representation, and job security regulations are, if not already, at the very least at the threshold of being displaced.

Collective bargaining: declined coverage, changed wage-setting systems, and negotiation dynamics shifted in favour of employers

At the time of the EU market expansion in 2004, collective bargaining coverage was still well above 50 percent, and thus dominant practice, in both the German construction and hotel and restaurant sectors. Since then, it has declined considerably in both sectors (Figures 8.3-4). In hotel and restaurants, the decline has meant that the use of collective agreements as of 2009, when the share of workers covered declined below the 50 percent threshold, no longer constitutes dominant practice in the regulation of employment relationships. The declining trend in the hotel and restaurant sector is largely consistent with the declining trend in low-end services more broadly.⁸² In spite of long-standing differences in the coverage of collective bargaining between the eastern and western parts of the country, the coverage in the east as well as west declined by approximately 20 percentage points between 2003 and 2015 (-19 in west, -23 in east), to 39 and 22 percent coverage respectively in the west and east.⁸³ While the use of sectoral agreements was never dominant practice in the eastern parts of the country during the time period under investigation, collective bargaining was in 2009 displaced as dominant practice also in the western parts.

⁸² If considering low-end services, including but not limited to hotel and restaurants, a drastic decline from 71.1 to 45.2 percent took place between 1995 and 2013, revealing the effective institutional displacement of collective bargaining, which since 2011 (46.7 percent) (Baccaro and Benassi 2016: 21) no longer represents the main institution for labour regulation in low-end services.

⁸³ The data presented here is based on the IAB Establishment panel. According to data from the Federal Statistical Office of Germany, the coverage of sectoral agreements in the German hotel and restaurant sector was, instead, 35 percent in 2010 (36 percent in the western parts, 29 percent in the eastern parts) (2013: 16-18). The IAB estimates are considerably higher for the western parts and somewhat lower for the eastern parts; 48 percent in 2010, and 25 percent in the eastern parts. Regardless of which data source one uses, both sources confirm the effective displacement of collective bargaining in this sector since around 2009.

Figures 8.3-4 Collective bargaining coverage in the German construction and hotel and restaurant* sectors (1998-2015), west and east, sectoral and company-level agreements, workforce coverage (percent)

Figure 8.3 German construction sector

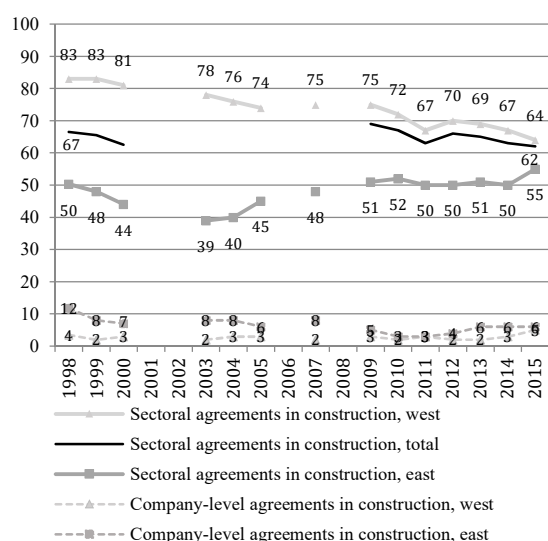
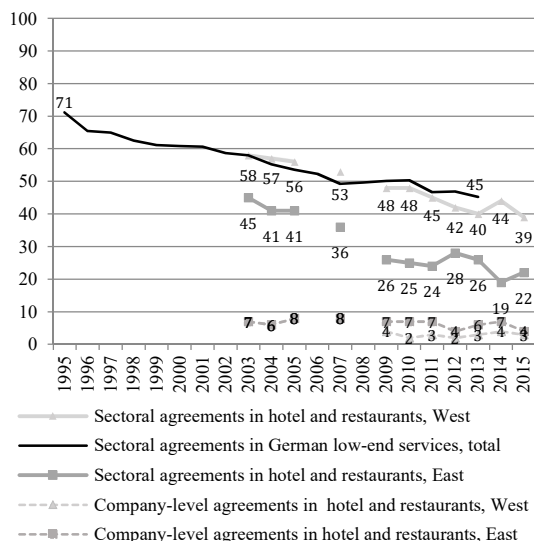


Figure 8.4 German hotel and restaurant sector



Sources: Ellguth and Kohaut (2004: 451; 2005: 399; 2008: 1; 2010: 205; 2011: 243; 2012: 298; 2013: 282; 2014: 287; 2015: 291; 2016: 284), and Kohaut (2007: 95), based on data from the IAB Establishment Panel. Collective bargaining coverage in the German low-end services (total): Baccaro and Benassi (2016: 21), based on data from the IAB Establishment Panel.

Notes: The data includes firms with at least five employees. The estimates of company-level agreements in the construction sector for the years 2013-2015 (East and West 2013, East 2014 and 2015) and in the hotel and restaurant sector for the years 2014-2015 (East only) have lower reliability as there are less than 20 observations in the sample. * There is some variation in the reported sectoral category that includes hotels and restaurants. Estimates for the years 2003-2005 and 2007 cover the category “other services” (*sonstige Dienste*). As of 2009, the estimates cover the category hospitality and other services (*Gastgewerbe und sonstige Dienstleistungen*), which might reflect the considerable difference in the estimated coverage between the 2007 and 2009. The latter category more narrowly captures the hotel and restaurant sector, and the estimates for 2009-2015 are thus plausibly more precise. Moreover, the comparability of collective bargaining coverage in low-end services taken together between 1995 and 1996 is affected by the inclusion of establishments from the new Federal States in the panel. Baccaro and Benassi (2016)’s industrial classification of low-end services, i.e. the category that is not disaggregated by east and west, includes: retail trade, except of motor vehicles and motorcycles; repair of household goods; hotels and restaurants; and “other personal services” (19), and does thus less precisely capture the collective bargaining coverage in the hotel and restaurant sector.

In the construction sector, where collective bargaining coverage has traditionally been considerably higher than in other areas of the German private sector (Bosch et al. 2011: 37), the coverage has also fallen, particularly in the western parts, which account for a majority of the sectoral employment. Between 2003 and 2015, the share of construction workers covered by collective bargaining in the western parts of the country declined from 78 to 64 percent (-14) (Figure 8.3). Paradoxically, the western and eastern parts of the German construction sector have followed opposite trajectories of development, whereby the collective bargaining coverage is slowly converging across the country: in contrast to the considerable decline in the western parts, the coverage in the eastern parts has, following a decline in the end of the 1990s until the mid-2000s, gradually increased and stabilized above 50 percent, and has thereby been established as

dominant practice. While the data presented here, based on the IAB Establishment Panel, suggests that collective bargaining is still the dominant practice in regulating employment relationships in the German construction sector, with coverage well above the 50 percent threshold, data from the Federal Statistical Office of Germany instead indicates institutional displacement of collective bargaining also in the construction sector – and, that this took place around the same time as in the hotel and restaurant sector: in 2010, the registered coverage of sectoral agreements was 45 percent (49 percent in the western parts, 31 percent in the eastern parts) (2013: 16-18).⁸⁴ A cautious interpretation is thus that collective bargaining has been exposed to a gradual process of institutional neglect that – unless institutional resilience creation is mobilized to disrupt the process – is heading towards institutional displacement, if this has not already taken place. As the coverage has continued to decline drastically in the western parts of the country, this reveals that the legal extensions of collectively agreed minimum conditions have *not* served as a resilience creation measure disrupting the process of defection from collective bargaining.⁸⁵ Yet, scholars have over the last two decades continued to conceive of the legal extensions of collectively agreed minimum conditions as a central – and, in many instances, the most central – measure to “re-strengthen” or “re-stabilize” collective bargaining (e.g. Bispinck et al. 2010: 5, 27-28; Bispinck 2012: 496; Schulten 2012: 485; Schulten and Bispinck 2013: 758, 2014: 18; Afonso 2016). Similarly, trade unions also hold this to be their most powerful and promising resilience creation measure. While there in recent years has been an increase in the coverage in the construction sector in the eastern parts of the country, this is – in view of the continuous and gradual decline in the western parts of the sector – alone not enough to halt the declining coverage of collective bargaining in the German construction sector. Similarly to how scholars have conceived of the legal extensions of collectively agreed minimum conditions as a means to “re-strengthen” collective bargaining, scholars have also considered the introduction of the SMW as a measure underpinning collective bargaining and as a means to “re-stabilize collective bargaining from above” because it contains provisions facilitating the legal extension of collectively agreed minimum conditions (Bispinck et al. 2010: 26; Bispinck 2012: 506; Schulten and Bispinck 2014: 18; Dølvik et al. 2014a: 50-51). While the SMW was introduced as late as in 2015, there is, up to date, nothing suggesting that this re-regulation has served to create resilience leading to institutional maintenance of collective bargaining in the hotel and restaurant sector, neither as regards to its coverage nor its practical functioning. Instead, as the norm-setting function of

⁸⁴ The IAB estimates are here, as in the case of the hotel and restaurant sector, considerably higher; 67 percent in total, 72 percent in the western parts, and 52 percent in the eastern parts (2010). This calls for some caution in the interpretation of the IAB data, and opens up for the possibility that the coverage of collective bargaining in the German construction sector may, in fact, be below the 50 percent threshold defining the dominant practice.

⁸⁵ The legal extension of collectively agreed minimum conditions does not imply increased coverage of collective bargaining, as it only implies universal (increased) coverage of minimum standards, and not the full collective agreement.

collective agreements has taken a hard hit and largely been outplayed in the hotel and restaurant sector, the SMW has emerged as a strong candidate to take over this function, and so have the legally extended collectively agreed minimum conditions in the construction sector.⁸⁶ In the construction sector, the process triggered by the class actors' responses to migrant labour has also resulted in formal changes to the wage-setting systems in collective agreements. The introduction of minimum wages ensuing from negotiations between the ZDB and HDB and IG BAU constitutes a formal change to the wage-setting system that was prompted by construction firms' turn to extensive use of subcontracting, and with that, posted work. Being significantly lower than the scale set out in the regular sectoral collective agreement (Eichhorst 2000), this change formally legitimized the use of lower rates. Moreover, as a result of the removal of master certificates, a change in the practical functioning of the wage-setting system has also occurred, increasing the flexibility for employers' in wage-setting, and in practice permitting the application of lower wage rates to a larger group of construction workers – dominated by migrant labour – who in the absence of a master certificate have lost their formal skill recognition.

As the social world is not mono-causal, there are certainly multiple factors contributing to the declined coverage of collective bargaining in the German construction and hotel and restaurant sectors. Based on the evidence of the processes of institutional defection provided in this chapter, I argue that one contributing cause has been the trade unions' non-effective protection of migration labour, which has enabled employers' non-use of collective agreements in their use of foreign labour. In the construction sector and in cleaning services in the hotels, the declined coverage is a result of the placement of large parts of the production outside of the scope of collective bargaining, associated with the use of migrant labour, and the subsequent spread of a logic of action based on non-use of collective agreements. While the contribution to declined collective bargaining coverage in the construction sector is more directly linked to changes in the way that work is organized through the use of migrant labour, the declined coverage in the restaurants is arguably due to the weak union organization of migrant labour resulting from the trade union's non-effective protection, which, in a sectoral context of low employer density rates and challenging conditions for concluding collective agreements with individual firms, has

⁸⁶ Among the share of workers who are not covered by a collective agreement in the German construction, a large majority (between 60-70 percent) are employed in firms who (claim to) orient their wages and/or other conditions towards the sectoral agreement. Except from some fluctuations from year to year, the share of firms orientating their conditions towards the sectoral agreement has remained stable over the last decade. In the hotel and restaurant sector, there has, instead, been a decline in the share of firms orientating their conditions towards the sectoral collective agreement, with a growing majority not orientating their conditions towards the collective agreement; in 2003, 55.7 percent (east) and 55.6 percent (west) of those who did not use a collective agreement oriented their conditions towards a collective agreement; in 2014, the respective shares were 39.2 and 44.8 percent (Ellguth and Kohaut 2004: 451; 2015: 291). This suggests that the norm-setting function of collective bargaining, according to this data – which has its limitations as it is based on firms' *own claims* that they are orienting towards standards set by collective agreements – has been largely maintained in the German construction sector, whereas it has been considerably weakened in the hotel and restaurant sector.

contributed to displace collective agreements. While it is little controversial to claim that the coverage of collective bargaining is negatively affected by non-use of collective agreements, the claim that the functioning of collective bargaining – here measured as negotiation dynamics – has also been affected by employers’ and trade unions’ responses to migrant labour may be more contentious. The evidence of institutional challenging has demonstrated that changes in negotiation dynamics occur when employers have free access to a secondary labour supply, here offered in the context of the EU open market. As the use of migrant labour has expanded employers’ opportunities to defect from the institutions (see also Greer and Doellgast 2017: 198), those who remain within collective bargaining have, by acquiring very strong arguments vis-à-vis their weakened counterpart, gained increased leverage in the negotiations; if the union wants the employers to continue to use a collective agreement, its content must be modified due to the competitive situation of a majority of firms operating outside of its scope – and if it is not adapted to the satisfaction of the firms, the alternative to abandon collective bargaining is very real. In this way, employers’ access to migrant labour has substantially increased their bargaining power, altered the negotiation dynamics, and changed the functioning of collective bargaining. In the hotel and restaurant sector, the trade union has admitted that collective bargaining taking place in the current context makes it very difficult to reach improvements in working conditions (Interview 6). Aside from the negotiation dynamics in collective bargaining having shifted in favour of employers, the defection from collective bargaining has also meant a more general shift in power from workers to employers. No use of collective agreements implies the use of individual agreements only. In the context of the employment relationships in the German construction and hotel and restaurant sectors, this generates a general increase in employers’ power over employment relationships, as individual (migrant) workers stand in a weak negotiation position as counterparts to employers.

The result of the declined collective bargaining coverage is increased employer discretion over wage-determination. The shifted negotiation dynamics and employers’ increased discretion over wage-determination are reflected in the wage developments in both sectors. Empirical research has revealed a stagnated wage growth for construction workers (Lillie and Greer 2007: 564; Federation of the German Construction Industry, March 2018d) and a non-existing wage growth, even slightly declining in real terms, for low-end service sector workers over the last two decades (Hassel 2013: 5, 2014: 72; Baccaro and Benassi 2016: 3; Baccaro and Howell 2017: 118). More than a decade ago, Lillie and Greer (2007) made a causal claim between the stagnated wage developments and the inability of the German construction workers’ union to cope with the increased use of posted workers, describing how the declined union power was reflected in the union’s bargaining policies and in bargaining outcomes (2007: 564, 568, 572). Aside from the stagnated wage growth in the construction sector, the re-regulation through legal extensions of collectively agreed minimum conditions has been accompanied by a decline in the share of

workers higher up on the collectively agreed wage scale and an increase in the share of the workers placed in the minimum wage categories. For construction workers in the eastern parts of the country, the collectively agreed minimum rates have increasingly become the going rate. This development has, however, not been restricted to the eastern parts; an increasing share of construction workers in the western parts are also finding themselves in the minimum wage categories as opposed to higher up on the wage scale (Bosch et al. 2011: 60; see also Schulten and Schulze Buschoff 2015: 14). In the hotel and restaurant sector, where firms' profits have continued to increase following the expansion of the sector, workers have not received their share, and are to a considerable extent not even paid for the labour input performed during overtime hours (German Federal Statistical Office; Dräbing, 28 July 2019). In the interaction between hotel and restaurant employers' continuous push for increased working time flexibilization and the renewed attention to comply with working time regulations in association with the SMW, flexibilization appears to dominate workplace practices, as managers practice a high degree of discretion over working time and work intensity (e.g. Jaehrling and Ménhaut 2013: 702). While it largely remains an open question to what extent the SMW will affect the negotiation dynamics and functioning of collective bargaining, recent empirical research from the Netherlands, where a statutory minimum wage was introduced already in the 1960s, has demonstrated how the gap between the lowest collectively agreed wage scales and the statutory minimum wage has narrowed considerably since the 1990s (de Beer et al. 2017). De Beer et al. (2017)'s findings indicate that negotiation dynamics are likely affected by the presence of a SMW, and suggests that other wage levels over time are steered towards the minimum standards. While recent empirical contributions have demonstrated an increase in the lowest wage categories in collective agreements that contained wage levels below the SMW (Bispinck 2017: 523, 526), where the lowest levels have been adapted not to be below the SMW and thereby reducing the gap between the highest and lowest wage categories in the collective agreements in the hotel and restaurant sector (ibid. 526), de Beer et al. (2017)'s findings suggest that the risk is also real that the SMW will serve as benchmark towards which the lowest wage scales in collective agreements are incrementally geared also in other sectors, such as the construction sector (cf. Bispinck 2017: 532).

Workplace representation: declined coverage, enforcement and negotiation capacities weakened

The construction and hotel and restaurant sectors together represent the two sectors with lowest works council coverage in the German private sector (Bosch et al. 2011: 38). In both sectors, scholars have referred to the sectoral structure based on many small firms as the main explanation for the low coverage (Schulten and Schulze Buschoff 2015: 8). The major decline in sectoral employment in the construction sector over the last two decades contributed to a decline in trade

union density rates and declined coverage of works councils. While workplace representation had effectively been displaced as institution for collective firm-level labour relations from most workplaces in the German construction sector already prior to the market expansions, the decline in the coverage of works councils has since continued. Between 2003 and 2015, the proportion of construction workers covered by a works council declined from 24 to 16 percent (-8 percentage points) (Figure 8.5). In the hotel and restaurant sector, the coverage of works councils has taken an even harder hit, despite that the decline in union density rates has not been as drastic as in the construction sector. With the reservation that the industrial classification reported prior to 2009 covers personal services, which does not only include hotels and restaurants and thus compromises the comparability over time, the coverage declined from 32 percent to 12 percent between 2003 and 2015 (Figure 8.6) – that is, a loss of 62.5 percent of the coverage that existed prior to the EU market expansions. If considering the more recent and more comparable figures, the coverage has remained fairly stable between 2009 and 2015 in the western parts, whereas a continued decline has been recorded in the east. Taken together, the available data, although of a patch-work nature, clearly indicate that workplace representation has effectively been displaced also in the hotel and restaurant sector.

Figures 8.5-6 Workers covered by works councils in the German construction and hotel and restaurant* sectors, 2002-2015 (percent)

Figure 8.5 German construction sector

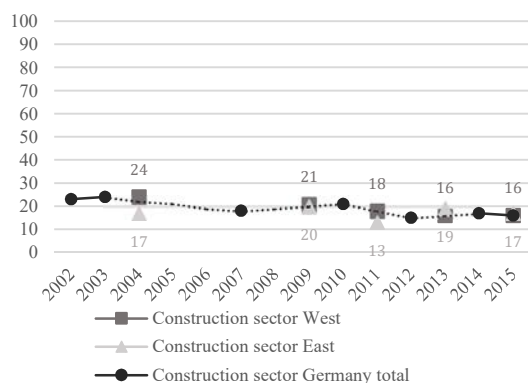
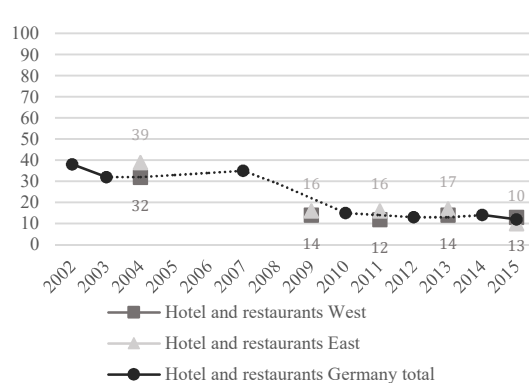


Figure 8.6 German hotel and restaurant sector



Sources: Ellguth (2003: 195), Ellguth and Kohaut (2004: 453; 2005: 402; 2008: 3; 2010: 205; 2011: 246; 2012: 303; 2013: 286; 2014: 294; 2015: 294; 2016: 290), based on data from the IAB Establishment Panel. *Notes:* The data includes firms with at least five employees. Only the full lines and data points, and *not* the dotted lines in-between, represent actual estimates. There is some variation in the reported sectoral category that includes hotels and restaurants. Estimates for the years 2002-2004 and 2007 cover the category ‘other services’ (*sonstige Dienste*). As of 2009, the estimates cover the category hospitality and other services (*Gastgewerbe und sonstige Dienstleistungen*), which might reflect the considerable difference in the estimates between the 2007 and 2009. The latter category more narrowly captures the hotel and restaurant sector, and the estimates for 2009-2015 are thus plausibly more precise.

While the presence of works councils never constituted dominant practice in either of the sectors during the investigated time period, the gradual decline in the coverage of works councils over the last decade has, nevertheless, further contributed to the effective displacement of this corner-

stone institution for the collective regulation of labour relations in the German construction and hotel and restaurant sectors. The class actors' responses to labour migration have together contributed to this outcome. The trade unions have contributed by failing to organize migrant workers and ensuring the presence of works councils in their workplaces, whereby their non-effective protection of migrant labour has contributed to growing proportions of workers in workplaces without a works council. Employers have contributed by their circumvention of this institution – in the construction sector primarily by using subcontracted firms in which works councils are rarely present (e.g. Lillie and Greer 2007: 565), and in the hotel and restaurant sector by actively obstructing the attempts to establish a works council. Together, their responses triggered the Defection Mechanism through which this institution has not only been challenged – it has also not received active support that could have translated into resilience creation halting its displacement. The weakened presence of workplace representation negatively affects the contribution to enforcement of labour standards, and the absence of works councils literally removes the negotiation function held by workplace representatives. Aside from the direct removal of works councils' enforcement function in workplaces where there is no works council in place, the enforcement capacity of the remaining works councils in the construction sector has been weakened due to the complex ways to organize work with which the use of migrant labour is associated. Scholars have previously emphasized how the worker representation deficit at the establishment level in these sectors in turn leads to an enforcement deficit, as the enforcement function held by works councillors is pivotal to the enforcement of collective agreements and labour standards more generally (see e.g. Jaehrling and Ménhaut 2013: 696; Schulten and Schulze Buschoff 2015: 8). The key role held by works councils in enforcing and improving employment and working conditions is revealed by insights from trade union representatives, according to whom the low coverage of works councils makes it very difficult to improve or change the working conditions, not only for migrant workers but also more generally for all workers (Interview 6). Conversely, in the few success cases where migrant workers who have joined the union have managed to establish a works council, they have managed to achieve wage increases (Interview 5). In this way, the effective displacement of works councils in both sectors has entailed increased employer discretion over wage determination and work organization at firm levels.

Labour legislation: declined coverage of job security regulations and an individualization of rights

Compliance with dominant levels of job security maintains a firm position in the employment of the domestic workforce in the German construction sector. No major decline in the share of permanent employment is visible in the micro-census data offered by the German Federal Statistical Office, and in 2015, as many as 87 percent of the German construction workers were

in permanent employment (Seifert 2017: 9). Yet, existing research has indicated a substantial decline in regular employment relationships in the German construction sector (Wagner 2015: 20; Schulten and Schulze Buschoff 2015: 1, 8). The reason for this decline, which is not reflected in the micro-census data, is the increased share of solo self-employment and posted work in this sector – types of employment that offer low or no access to job security (see Schulten and Schulze Buschoff 2015: 9-11). Already a decade ago, scholars cautiously concluded that there were some indications that construction workers in regular employment had been replaced by solo self-employed workers (Gross 2009b; Koch et al. 2011). Given that posted workers and solo self-employed migrant workers by now make up at least around 30-35 percent of the sectoral workforce, this suggests a gradual drift following firms' defection from job security in their use of migrant workers. The process of institutional change thus appears to have come less far in the institutional realm of job security regulations compared to the developments in collective bargaining and workplace representation, with firms following a logic of action based on compliance with the dominant levels of job security in the employment of domestic construction workers. While job security regulations are approaching the threshold of displacement as employers' use of migrant labour increases, the drift in the coverage of job security regulations is currently following a trajectory towards dualization, where the dividing line of access or no access to job security is drawn between domestic and migrant labour. Even though compliance with job security remains the dominant logic of action and job security regulations have yet to be displaced in this sector, the organization of work through subcontracting has offered German construction firms' increased employer discretion over the organization of work, and indirectly over hiring and firing as they increasingly use external labour, through which they also gain leverage in wage negotiations. Firms' increased use of types of employment associated with low or no job security has thus further contributed to shifting negotiation dynamics in favour of employers in collective as well as individual bargaining.

In the hotel and restaurant sector, available data substantiates that employers' shifted logic of action has reached the point at which job security regulations are at the very least at the threshold of being displaced, and according to one data source, have already been displaced. Atypical work has been spreading among low-end service workers since the 1990s, and the trajectory towards institutional displacement of job security regulations through extensive use of atypical forms of employment in this sector was further reinforced by the Hartz reforms in the early 2000s (Eichhorst and Marx 2012: 83; Hassel 2014: 67; Emmenegger 2014: 233; Baccaro and Benassi 2016: 3). Based on data from the German Socio-Economic Panel (SOEP), Baccaro and Benassi have demonstrated how the share of permanent employment among low-end service workers, including but not limited to hotel and restaurant workers, declined from 56 percent prior

to the market expansions in 2003 to 48 percent in 2013 (-8 percentage points) (2016: 22).⁸⁷ By 2013, compliance with job security regulations had, according to this data, been displaced as dominant practice. Compared to the survey data reported by Baccaro and Benassi (2016), the micro-census data provided by the German Federal Statistical Office indicate a higher share of permanent employment in the hospitality sector, *and* a higher share of contingent workers. According to this data, 57 percent of the German hotel and restaurant workers continued to be in permanent employment in 2015, and 35 percent in employment with limited or no access to job security (fixed-term, mini-jobs, and agency work) (Seifert 2017: 9). While it remains unclear whether this is due to a higher share of permanent employment in the hotel and restaurants compared to other low-end service sectors, or whether it is due to the different data sources used (panel survey versus micro-census), the latter which is probably the most plausible, this prompts some caution in inferring that job security regulations have been displaced in the hotel and restaurant sector. If not yet displaced, non-compliance with job security regulations is at least very close to becoming dominant practice. As employers' use of migrant labour is largely based on temporary employment in which the workers have no access to job security, this has been a contributing factor to the decline in the level of job security in this sector, even though the major increase in contingent work in this sector has occurred through employers' use of minijobs, which is considerably more widespread among German than among foreign workers (Baccaro and Benassi 2016: 22; German Federal Employment Agency 2017). This in itself reveals that the defining feature of deregulatory liberalization – namely that all workers, migrants as well as non-migrants – have been exposed to increased levels of employer discretion, here manifested in low levels of job security. When it comes to the spread of non-compliance with job security regulations in the cleaning services in the hotels, scholars have previously reported an increase in atypical employment (Jaehrling and Ménhaut 2013: 688). This can, in turn, also be linked to the use of migrant labour, dominant among hotel room cleaners, through which firms have actively been able to defect from job security regulations. While trade union officials have reported a recent tendency towards an increased use of permanent contracts as a response to recruitment problems for in-house positions in the hotels (Interview 5), there is so far not enough evidence to suggest that this is invoking a change in firms' logic of action away from non-compliance with job security regulations in this part of the sector.

This was the context of far-reaching liberalization when the re-regulation through the introduction of the SMW was established in 2015. Although it is still early days to evaluate the effects of this re-regulatory measure, a growing number of studies have demonstrated improved

⁸⁷ This development has logically been accompanied by an increase in firms' use of types of employment that entail non-compliance with (previously) dominant levels of job security, that is, marginal employment including mini-jobs, fixed-term employment and agency work. Between 2003 and 2013, the share of low-end service workers in contingent employment increased from 18 percent to 29 percent (Baccaro and Benassi 2016: 22).

institutional outcomes in terms of increased wages for the lowest quartile of wage earners, which includes many workers in hotels and restaurants, following the introduction of the SMW (e.g. Amlinger et al. 2016; Bosch 2016: 6; Pusch and Schulten 2017: 472; Pusch and Rehm 2017: 411; Fedorets 2017: 1124).⁸⁸ While the effect of the SMW would have been even stronger in the hotel and restaurant sector if it would not be circumvented in more than every third employment relationship (38 percent) (Pusch 2018: 6), existing data suggests that the primary goal of the SMW in achieving wage growth at the lower end of the wage distribution has been achieved (Fedorets 2017: 1124), despite that its effect is minimized by the prevailing low levels of enforcement. The SMW has made an important contribution to lowering the incidence of low-wage work in the hotel and restaurant sector – and this is how this re-regulation must be understood; the SMW is above all a measure to combat low-wage work, and not a measure to create resilience in the collective employment relations institutions.⁸⁹ In fact, while recent research has demonstrated improved institutional outcomes in terms of increased wages for those earning the least, and the SMW in this regard has functioned as adaptation in that it has improved and restored institutional outcomes, in terms of institutional continuity and change, the introduction of the SMW represents formal institutional change and a disruption with the tradition of collective labour regulation based on collective bargaining in German employment relations (cf. Mabbett 2016: 1242). While the SMW is probably best understood as institutional layering (see Streeck and Thelen 2005: 22), adding a new component to German employment relations institutions, it represents a move towards arrangements based on individualization of rights, and thus introduces an element previously foreign to the institutional complex. Despite being a response to the declined coverage of collective bargaining, framed as “The Act on the Promotion of Collective Bargaining Autonomy,” the SMW represents a formalized move away from collective labour regulations and does little to strengthen collective bargaining as an institution. Paradoxically, this re-regulation fits into the trajectory of liberalization, characterized by a move away from collective labour regulation towards arrangements based on individualization of rights (see Streeck 2009: 54). As argued by Baccaro and Howell (2017), state intervention through direct legal regulation of employment relationships is a response to the collapse of the collective self-regulation by the class actors, whereby labour legislation – here in the shape of the SMW – becomes a substitute

⁸⁸ According to Amlinger et al. (2016) the hourly wages increased particularly in the eastern parts of the country; compared to the average increase in hourly wages of 2 percent in 2015, the increase in the eastern parts of the hotel and restaurant sector was 8.6 percent, whereas the increase in the western part was aligned with average increase in the economy (2.1 percent). More surprisingly, the hourly wages also increased considerably in the eastern parts of the construction sector, even though employers and trade unions in this sector regularly emphasize how the SMW is irrelevant in their sector as the wage levels are (supposed to be) considerably higher than the SMW. In the construction sector in the eastern parts, the hourly wages had increased by 5.6 percent by the end of 2015, and by 2.1 percent in the western parts (ibid.).

⁸⁹ It may be noted that existing literature has found that high collective bargaining coverage is a more effective protection against the occurrence of low wage work and wage inequality than a statutory minimum wage (Dingeldey et al. 2017: 500).

for collective regulation (185). In a German context, where the trade unions play a limited role in contributing to enforcement, this re-regulation further reduces the role of organized labour in the employment relations, while giving a more important role to the state both in setting and enforcing wages. While it is too early to evaluate how the SMW will co-exist with collective bargaining and the logic of action required to maintain collective labour regulations in the longer term, the SMW seems to reinforce rather than halt the process of defection from collective bargaining. Arguably, there is not necessarily a direct link between the two institutions as they cater to different groups of workers (and employers), with the SMW being directed towards the lowest labour segment whereas collective bargaining mainly cater to middle and top labour segments, largely along the lines of dualization between economic sectors in the German political economy. However, the critical issue is what the re-regulatory measure through the SMW does within the context of the sectoral employment relations institutions where it matters, here in the German hotel and restaurant sector. While introducing a means to secure minimum wage levels for the weakest labour segments, its role in creating institutional resilience in a context of high pressure for change is limited. Partly because it was introduced when the change pressure had already resulted in actual change through institutional displacement of collective bargaining in the German hotel and restaurant sector, but mainly because it lacks properties to generate maintenance of collective bargaining and does nothing to reverse the logic of action of employers based on opt out of the collective employment relations institutions (see also Wagner and Refslund 2016: 341-342; Wagner and Hassel 2016: 173-174). Without disregarding the effects that the re-regulation through the SMW, and legal extensions of collectively agreed minimum conditions in the construction sector, have had in terms of providing the weakest labour segments a better chance of receiving minimum rather than unlimitedly low wages, the institutional developments uncovered here suggest that these two re-regulatory measures have not served as resilience creation contributing to institutional maintenance of the institutions for collective labour regulation. Instead, they have introduced a lower threshold of what constitutes compliance, compared to the threshold of compliance with collective agreements. Accordingly, the re-regulation through the SMW and legal extensions of collectively agreed minimum conditions have set a lowest limit for employers' execution of their increased discretion over wage determination, at least among the employers who chose to comply with the minimum wages. Along these lines, Wagner and Hassel (2016a) have interpreted the SMW and legal extensions of collectively agreed minimum wages as measures that establish legally binding minimum wage levels that halt "the race to the bottom" driven by employers' use of migrant labour, with the exception for the use of self-employed migrant workers for whom the bottom is still open (22). As individual employers are the main actors driving these processes of liberalization forward, chances are that the old institutions will eventually be abandoned as more employers turn to the new, more minimal, institutional practices based on individual agreements and the SMW.

3. Conclusion

This chapter has investigated how the employers' and trade unions' responses in the German construction and hotel and restaurant sectors have affected the institutional development of collective bargaining, workplace representation and job security regulations. The first section established with a fairly high degree of certainty that there has been widespread and systematic opt out of employment relations rules and practices in employers use of migrant labour, and that the trade unions' responses have resulted in non-effective protection of migrant labour. Next, I tested empirically whether these responses can be linked to liberalization as deregulation through an Institutional Defection Mechanism. The evidence provided for the presence of the first part of the mechanism – that is, employers' challenging of the institutions – was considered as fairly strong, whereas the evidence of the second part of the mechanism, conceptualized as absence of active institutional support, was somewhat weaker due to a mixed evidential picture, particularly in the case of the German construction sector. Evidence of the third part of the mechanism, capturing institutional defection, was strong in terms of substantiating the absence of strengthened enforcement enabling employers to turn to an opt out logic of action as dominant practice in their use of migrant labour. Yet, the evidence of multiple re-regulatory measures entailed that the evidential picture was not unambiguous. However, in subsequently evaluating the implications of these re-regulatory measures it became clear that these measures had not served as resilience creation halting the process of institutional defection, warranting updated confidence in the overall causal mechanism in the two cases. Having demonstrated the causal pathway triggered by the actors' responses, the chapter ended by linking the last step of the mechanism to the outcome of institutional displacement, associated with deregulatory liberalization. All three core employment relations institutions investigated here – collective bargaining, workplace representation, and job security regulations – have, as a result of the actors' responses, undergone institutional changes following a trajectory towards deregulatory liberalization. The trade unions' non-effective protection of migrant labour in these two sectors, along with the condition of low levels of enforcement to which the German state has contributed, entailed a failure to close down space for employers' opt out of dominant employment relations rules and practices, thus failing to block employers pursuit for change and their turn to a new logic of action which contests – and ultimately abandons – existing collective labour regulations. Under these conditions, employers have turned to a logic of action based on non-compliance with the employment relations rules and practices, triggering a process of institutional defection and ultimately liberalization of the institutions. In the German construction sector, the findings presented in this chapter suggest that the use of migrant labour has not only contributed to but even been *driving* the process of liberalization. While scholars previously have described the trajectory of change in the German construction sector as dualization (e.g. Wagner 2014; Arnholtz et al. 2018), the account offered

here demonstrates that the process of change is well on its way towards a more far-reaching variety of liberalization. Similarly to how Lillie and Greer (2007) concluded more than a decade ago that the re-regulatory efforts that had been taken at the time had largely been unsuccessful in accomplishing a change in firm practices based on low-cost subcontracting (568), the findings in this chapter similarly suggest that the re-regulatory efforts that have taken place in the course of the last decade have done little to reverse the process towards liberalization through displacement of the collective employment relations institutions. While compliance with job security regulations have remained the dominant logic of action in the employment of domestic construction workers, the gradual drift in the coverage of this institution has the potential of evolving into a process in which job security regulations will be displaced unless something disrupts it, in which case it would affect not only migrant workers but also the rest of the sectoral workforce. The general trajectory of change in the employment relations of low-end service sectors, including hotel and restaurants, has over the last two decades been extensive liberalization (Baccaro and Benassi 2016: 17). Consequently, the contribution of the employers' and union's responses to migrant labour in the German hotel and restaurant sector have largely fed into and reinforced ongoing processes of liberalization of the sector's already weak employment relations institutions. As the institutions for collective labour regulation in the hotel and restaurants were weaker to begin with, resting upon a weaker coalition of institutional supporters, they were also more easily set aside in favour of regulation based on individual arrangements.

This chapter has demonstrated how employers in these two sectors, traditionally bound to their domestic markets, have accessed new ways to defect from the employment relations institutions through free access to labour and services in the EU open market. With the share of foreign workers in the German construction sector making up about 40 percent of the sectoral workforce, and at least 30 percent of the sectoral workforce in the hotel and restaurant sector, the class actors' responses to migrant labour hold great causal powers to influence the direction of change.

Chapter 9

Conclusions: Dismantling or maintaining collective labour regulations under free movement of labour and services in the EU open market

1. Introduction

The purpose of this dissertation has been to investigate whether and how the pressure for change originating from free labour and service mobility in the EU open market has led to actual change in the employment relations institutions of three economic sectors – manufacturing, construction, and hotel and restaurants – in three advanced capitalist economies; Germany, Norway, and Sweden. In responding to the question of how political economic actors have promoted or damaged the sustainability of collective labour regulations through their responses to labour and service mobility in an integrated Europe, this dissertation has theorized and assessed empirically how employers' and trade unions' responses have affected the institutional development of collective bargaining, workplace representation, and job security regulations. By studying the German manufacturing sector and the German and Swedish construction and hotel and restaurant sectors, I have demonstrated and explained how the pressure for change created in the EU open market has translated into actual change resulting in liberalization of the employment relations institutions. By studying the Norwegian construction sector, I have offered an explanation of how institutional maintenance can be achieved under high pressure for change.

The dissertation contributes to two literatures: the literature on institutional continuity and change in non-market institutions in advanced capitalist economies, largely situated within Comparative Political Economy (CPE), and the literature on European integration that has sought to evaluate the effects of free labour and service mobility in the EU open market. Labour migration based on the free movement of work and posted work through service provision in the EU open market is a key feature of contemporary European labour markets. The way that employers use the labour supply offered in the EU open market is a critical piece in the puzzle of understanding the evolution of the employment relations institutions central to capitalist development. This dissertation contributes to the CPE literature by analysing the implications of free labour and service mobility in relation to ongoing trajectories of change. The cause that has

been investigated in this dissertation is just one of many causes affecting the institutional development of employment relations, where reinforcing and countervailing factors together shape the trajectories of continuity and change. Nevertheless, the causal theory advanced in this dissertation has offered a framework for analysing institutional impact of employers' and trade unions' responses not only to migrant labour but to *labour* more generally. In recognizing the commonalities in workers' dispossession and the universal nature of the struggle over employment and working conditions, the typology of interactions between employers and trade unions developed in this dissertation, along with the causal mechanisms that reveal the workings of the processes of continuity and change, are applicable more broadly to interactions between political economic actors and the effects that their actions have on institutional evolution. Moreover, this dissertation has shifted the level of analysis from cross-case comparisons of national dynamics, dominant within CPE, to economic sectors, where the investigated causal processes actually play out. These sectoral analyses complement the national focus, and shed new light on the overarching trajectories of institutional change and ongoing processes of liberalization identified across the employment relations of advanced capitalist economies (e.g. Streeck 2009; Baccaro and Howell 2011, 2017; Thelen 2014). This has allowed us to detect sectoral commonalities that cut across national lines, while also uncovering differences between sectors within national political economies. In this way, the sectoral focus builds on existing accounts of liberalization by illustrating the varieties of change occurring *within* national political economies. Substantively, this has offered us the important insight that liberalization in Germany does not follow a single trajectory: based on the case studies of the German manufacturing, construction, and hotel and restaurant sectors, I have demonstrated how sectoral differences in the interactions between employers and trade unions have triggered distinct causal processes, which in turn contribute to different forms of liberalization of collective bargaining, workplace representation, and job security regulations. At the same time, the dissertation has also demonstrated maintained differences across countries, and how specific sectors, namely construction and hotel and restaurants, within the same national political economies – Germany and Sweden – have followed the same causal pathways, bound by the legacies of institutionalised employment relations, including the degree of class organization and types of state interventions establishing the contextual conditions under which the processes generated by the responses to migrant labour have played out.

The dissertation contributes to the literature on the effects of free labour and service mobility in the EU open market by moving beyond statements about pressure for change and underspecified causal claims. This is done by first of all clarifying that labour migration is *context* and not a cause, and secondly by demonstrating theoretically and empirically *how* the pressure for change in the EU open market translates into actual change through employers' use of migrant labour and trade unions' responses thereto. By identifying the causal powers of employers' and

trade unions' responses to migrant labour – that is, by clarifying what it is about employers' use of migrant labour, and trade unions' responses thereto, that can actually cause long or medium-term institutional change – and, by uncovering the causal processes that the actors' responses trigger, I have been able to advance the debate by permitting more robust assessments of the effects on the formal structures and the practical functioning of collective bargaining, workplace representation, and job security regulations. As the causal processes of how increased labour migration affect the institutions governing employment relationships in host labour markets had not been made explicit, only relatively weak causal claims about the effects of employers' increased use of migrant labour were warranted based on existing literature, which had been unable to move beyond potential implications and draw any stronger causal inferences about the extent to which the pressure for change in the EU open market has led to actual change. Teasing out the causal implications of employers' non-compliance with dominant levels of protection and compensation in their use of migrant labour, unpacking these causal processes into their constituent parts and tracing them empirically have enabled us to better make sense of the extensive empirical evidence produced by this literature over the last decade and a half, and permitted stronger causal inferences to be made.

This concluding chapter sums up the key findings of the dissertation and discusses its theoretical and practical contributions. First, I offer an answer to the dissertation's research question by discussing the empirical findings of chapter 5 through 8, including making explicit the scope of the inferences enabled. Next, the theoretical contributions of the dissertation are made explicit. I end by discussing the practical contributions of this dissertation, and future research prompted by the findings.

2. How do employers' and trade unions' responses to labour migration affect the employment relations institutions?

The answer to the research question of how employers' and trade unions' responses to labour migration affect the employment relations institutions is that it depends on whether employers respond by complying with the dominant rules and practices in their use of migrant labour, or abstain from doing so, and whether trade unions are protective or not of migrant labour. In moving away from largely structural explanations of change, the causal explanation advanced in this dissertation has drawn upon what has been referred to as actor-centered institutionalism (Mayntz and Scharpf 1995; Scharpf 1997; Streeck 2009; Jackson 2010), but revived the approach by explicitly terming it action-based institutionalism, and in doing so, specifically emphasizing that it is employers' and trade unions' actions that carry the causal powers to affect the institutions. With the insight that institutions evolve based on how they are used in practice, the dissertation could reliably distinguish between causal and contextual conditions, whereby a conceptual error

that has been underlying much of the existing research and political debates on the topic of labour migration could be corrected; free labour and service mobility in the EU open market is not a cause but a changed context to which the class actors' respond, either by embracing the pressure for change in different ways, or by staving it off. In other words, increased labour migration is not the cause that triggers liberalization of these non-market institutions – it is the class actors' responses that determine the effects that the changed context has on the institutions. Having identified what constitutes the cause that can actually produce something in relation to the institutional development of collective bargaining, workplace representation, and job security regulations, the next task of this dissertation was to uncover plausible causal links whereby the postulated causal relationship between increased labour migration and parallel changes in the employment relations institutions could be assessed. By conceptualizing each step of the causal processes and by uncovering the causal mechanisms through which causal forces are transmitted, the causal explanation offered in this dissertation has directed our attention to what is causally relevant about employers' use of migrant labour and about trade unions' responses towards migrant and other groups of workers in weak power positions. Based on the investigated causal processes, I have proposed that what is causally relevant about employers' use of migrant labour in relation to institutional continuity and change in the employment relations is whether or not they use a collective agreement, based on equal treatment, and whether or not they enforce labour standards in their employment of migrant labour. Conversely, I have made explicit what is causally relevant about trade unions' responses towards employers' use of migrant labour; in short, whether they are effectively protective and thus close down space for employers to pursue change strategies through their use of migrant labour. While existing research on trade unions' responses to migrant and other groups of vulnerably workers within the field of CPE and comparative employment relations have paid considerable attention to outreach activities such as campaigns carried out by trade unions, I propose that what really matters in relation to institutional continuity and change is whether trade unions ensure the use of collective agreements, based on equal treatment, and contribute to enforce labour standards in the employment of migrant labour. In this regard, organizing stands out as the most effective strategy when unions attempt to contribute to enforcement of labour standards in the employment of migrant labour, and, extendedly, in their attempts to ensure that migrant workers are covered by a collective agreement. While a challenging and resource-demanding task, organizing migrant labour creates a sustainable response as it strengthens organized labour as a collective actor in relation to employers and builds the capacity of migrant workers to defend their rights, thereby making it more difficult for employers to exploit workforce divisions. Furthermore, ensuring presence of workplace representatives with ability to fulfil their enforcement function in migrant workers' workplaces was identified as an imperative step in contributing to enforcement of labour standards. Advocacy for legal changes through campaigns, on the other hand, holds the potential

to play a central role in responding to the pressure for change as a means to generate institutional resilience creation and influence the process in a direction towards continuity.

2.1 Summary findings

The six within-case analyses presented in chapter 5 through 8 have demonstrated presence of divergent responses by employers and trade unions in the different economic sectors, and provided evidence of how the actors' responses to labour migration have contributed to institutional continuity or different forms of change in a liberalising direction. In sum, the empirical findings from the investigated cases support the claim that the way the class actors have responded to labour migration have influenced both the functioning and the coverage of the employment relations institutions.

Chapter 5 investigated how employers' and trade unions' responses to migrant labour in the Norwegian construction sector, in presence of the enabling conditions of high levels of enforcement established by the state, had triggered a process of institutional resilience creation endeavouring to contribute to institutional continuity under high pressure for change. The empirical evidence provided in chapter 5 allowed us to upgrade to a certain degree our confidence in the presence of an Institutional Resilience Creation Mechanism in the Norwegian construction sector, with the weakness that a fair degree of empirical uncertainty remained as to whether the employers' responses indeed represented full compliance with the employment relations rules and practices, or rather compliance with minimum standards. The institutional resilience creation generated by the coalition of institutional supporters comprised of trade unions, employers, and the Norwegian state, had indeed staved off pressure for change, but contribution to institutional continuity had by no means been achieved across the institutional realm. While the class' actors responses – in particular the trade unions' effective protection of migrant labour – had contributed to maintaining the coverage and functioning of workplace representation, a partial neglect of dominant levels of job security that signalled dualising tendencies was revealed, and in relation to collective bargaining, the analysis uncovered a general ongoing trajectory beyond institutional neglect towards institutional displacement. It was concluded that a part of employers' use of migrant labour had contributed to this end, in spite of the countervailing forces generated by the trade unions, organized employers, and the state to maintain compliance as dominant practice. The analysis of the Norwegian construction sector also gave further confirmation to a long-standing proposition in the literature on institutional continuity and change, namely that absence of inherent ambiguities in institutional properties is requisite for institutional continuity (e.g. Streeck and Thelen 2005; Mahoney and Thelen 2010). The evidence provided in the chapter suggested presence rather than absence of (minor) inherent ambiguities in collective agreements and in the job security regulations, the latter in particular, whereby one of the contextual conditions requisite for a trajectory towards continuity was plausibly missing from the Norwegian

construction sector. In spite of this potentially omitted contextual condition, and in spite of the empirical uncertainty as to the presence of employers' full compliance with dominant rules and practices in their employment of migrant labour, the Norwegian construction sector, in which unprecedented measures have been taken to meet the pressure for change originating from the free labour and service mobility in the EU open market, has served as a suitable case to investigate how the employment relations institutions can be made resilient to the present pressure, and to investigate *how* and *under what conditions* contribution to institutional continuity can be achieved, and conversely, when attempted resilience creation does not result in contribution to institutional continuity. A decade and a half following the market expansions of the 2000s, the contribution to institutional continuity in the Norwegian construction sector plausibly best described as pressures temporarily and partially staved off, and an ongoing contestation between two logics of action – compliance and non-compliance – continues to take place, in which complying employers are losing majority, especially as regards to collective bargaining.

In stark contrast, chapter 8 investigated the German construction and hotel and restaurant sectors as cases in which processes of institutional defection have taken place. In the case of the German construction sector, it was argued that employers' opt out of dominant employment relations rules and practices in their use of migrant labour have *triggered* a process of gradual institutional defection from collective bargaining, works councils, and job security regulations. In the German hotel and restaurant sector, the evidence instead suggested that employers' use of migrant labour had *reinforced* an ongoing process of institutional defection from the institutions. In both cases, the interaction between employers' opt out practices and trade unions' non-effective protection of migrant labour has contributed to a trajectory towards the most far-reaching variety of liberalization in the shape of deregulation through institutional displacement. This process had come the furthest in the hotel and restaurant sector, where deregulatory liberalization was manifested in the declined coverage of collective bargaining, workplace representation, and job security regulations to the extent that non-compliance with the three institutions had become dominant practice roughly ten years after the 2004 market expansion. Additionally, it was argued that the negotiation dynamics had shifted in favour of employers, and the enforcement and negotiation capacities of works councillors had been weakened as a result of the actors' responses to migrant labour. In the construction sector, the same direction of change was discernible, with the difference that the coverage of collective bargaining and job security regulations was drifting rather than effectively displaced. While re-regulation has taken place through the introduction of the statutory minimum wage (SMW) in 2015, with important implications for wage levels in the hotel and restaurant sector, and legal extensions of collectively agreed minimum conditions have continuously been used in the construction sector since the late 1990s, it was argued that the low levels of enforcement of labour standards along with the limited properties of these measures to generate resilience creation in the institutions for collective labour regulation have inhibited these

measures from successfully serving as countervailing forces that would disrupt a process of institutional defection. In contrast to established wisdom, the empirical findings suggest that the re-regulations through the introduction of the SMW and legal extensions of collectively agreed minimum conditions have not served as resilience creation measures generating institutional maintenance of collective bargaining. Furthermore, the chapter made explicit the active role of the German state in enabling these processes to take place, both in terms of room provided through the regulatory context, and through low levels of enforcement.

The remaining three cases were investigated as cases in which the class actors' responses towards migrant labour have contributed to one out of two intermediate varieties of liberalization; dualization or socially embedded flexibilization (Thelen 2014). Chapter 6 investigated changes in the German manufacturing sector and outlined a process of institutional neglect triggered by employers' compliance with minimum standards in their use of migrant labour as external labour, combined with the trade union's non-effective protection of migrant labour, contributing to dualization through institutional drift. The empirical evidence provided allowed us to update our confidence in the presence of an Institutional Neglect Mechanism in the German manufacturing sector, and unequivocally revealed institutional drift in the coverage of collective bargaining, workplace representation, and job security regulations. What distinguishes this outcome from the more far-reaching deregulatory liberalization is the scope of the declined coverage; while the institutions are becoming less encompassing as a part of the workforce – to which migrant labour belongs – is used as external labour, their coverage remains above 50 percent whereby employer compliance continues to constitute dominant practice. Yet, the scope and speed of the decline in the coverage of collective bargaining in the German manufacturing sector over the last two decades is unprecedented in comparison to the German private sector as a whole. These developments indisputably remove the manufacturing sector from the position of being the stronghold of collective bargaining in the German political economy. Moreover, the chapter demonstrated how the functioning of collective bargaining had been affected as negotiation dynamics shifted in favour of employers due to their free access to a secondary labour supply that the trade union was not effectively protective of. Through the union's non-effective protection of migrant labour, employers were able to intensify competition between workers within the same workplace by employing them under different conditions. The same causal forces also had a negative effect on works councillors' negotiation capacities. Based on this, it was concluded that the employers' and trade union's responses to migrant labour have fed into and reinforced a trajectory of dualization *within* the German manufacturing sector.

Chapter 7 investigated the Swedish construction and hotel and restaurant sectors as cases in which processes of institutional redirection had been triggered by the combination of responses in which employers have opted out of dominant employment relations rules and practices in their use of migrant labour and trade unions' have been effectively protective, contributing to socially

embedded flexibilization through institutional conversion of the wage-setting systems in collective agreements. A fundamental task of the trade unions is to ensure that competition is maintained within the scope of collective bargaining, to the benefit of complying firms as well as workers. The unions in the two Swedish sectors seem to have been successful in fulfilling this task, despite the highly challenging conditions under which they have had to do so. In contrast to the other varieties of liberalization, contribution to maintained coverage of collective bargaining combined with changes in the functioning of the wage-setting systems in collective agreements is defining of this outcome. In both the Swedish construction and hotel and restaurant sectors, employers pursued a strategy in which collective agreements were used to regulate the employment of migrant labour, but where the practical application of the wage-setting system gave migrant workers inferior conditions, and resulted in a conversion of the functioning of the wage-setting systems. Thus, while migrant labour has been incorporated within the scope of collective bargaining and risk is collectivized through the continued use of collective agreements, and by the representational functions, including at workplace level, upheld by the unions, the implication of the conversion of the wage-setting systems is that employers have, through their use of migrant labour, instituted minimum wage levels in practice and abstained from giving migrant labour full access to the content of the agreements. In this way, the chapter offered concrete evidence of how the EU open market has provided new space for the political contestation over how rules should be interpreted and applied. Employers, as institutional challengers, have been able to exploit inherent ambiguities in the properties of the collective agreements in ways that allow them to redirect the wage-setting systems to generate results – lower than average levels of compensation, benchmarked towards minimum standards – that are more favourable from their point of view (see Streeck and Thelen 2005: 26; Mahoney and Thelen 2010: 18). Similar to the other varieties of liberalization, this outcome also involved changes in negotiation dynamics in favour of employers, and declined coverage of job security regulations, whereby employers in both sectors have been able to enhance their discretion and flexibility. The chapter did, however, also identify an absence of re-regulatory measures that would effectively disrupt employers opt out practices, and ensure that the trajectories of change in these cases do not only involve flexibilization but also socially embeddedness. Thus, while the chapter uncovered intriguing countervailing forces generated by the trade unions' protective responses, the active intervention by the Swedish state in shaping the context in which the employment relations take place had, in parallel with employers' increased use of migrant labour, in the course of the last decade strongly shifted power away from workers towards employers, giving bleak prospects for the unions' ability to uphold meaningful socially embedded components in the trajectory of liberalization.

As the situation in which employers do not fully comply with the dominant employment relations rules and practices in their use of migrant labour has been the most common over the

last decade and a half, the pressure for change stemming from the free labour and service mobility in the EU open market has in effect been translated into actual, liberalising, changes in all but one case, and even in this case – the Norwegian construction sector – there are question marks as to the extent to which the pressure for change has been averted in a way that will permit the collective labour regulations to be maintained under free movement of labour and services. The methodological tools deployed in this dissertation does not allow us to determine the strength of the causal relationship between the class actors' responses and the institutional development, nor the size of the causal effects on collective bargaining, workplace representation, and job security regulations. Instead, the general inference enabled based on the empirical analyses in this dissertation is that there is a causal relationship between the actors' responses to migrant labour and the path of institutional development, and that the pressure for change in most instances indeed has translated into actual change across a range of institutional properties. In this way, the causal inferences made in the empirical chapters are that the class actors' responses have *contributed to* triggering, reinforcing, or countervailing ongoing processes of institutional change. As the strength of these causal inferences are based on demonstrating the causal links between the class actors' responses to migrant labour and their impact on the institutions, the strength of the inferences enabled depends on the provision of evidence of the causal mechanisms that makes for plausible links between the causes and outcomes. The strongest causal inferences enabled in this dissertation are those based on the within-case analyses of the German manufacturing sector (chapter 6), and the German construction and hotel and restaurant sectors (chapter 8), whereas the analyses of the Swedish construction and hotel and restaurant sectors (chapter 7) and the Norwegian construction sector (chapter 5) warrant more modest inferences, particularly so the latter. The reasons for this primarily pertains to empirical uncertainties as to whether there is overall compliance, compliance with minimum standards, or outright opt out from the side of employers in these cases, and whether the trade unions have been effectively protective of migrant labour or not. Taken together, the empirical evidence provided in the chapters allows us to update our confidence in the overall hypothesized causal relationship, that is, that there is a causal relationship between how the class actors' respond to labour migration and the institutional development of the employment relations. In sum, the investigated cases demonstrate how sectoral differences in interactions between employers and trade unions have triggered distinct causal processes, which in turn contribute to different outcomes in terms of their impact on the institutions regulating employment relationships.

2.2 European integration as a driver of liberalization: Compliance is contested by the logic of action stimulated in the EU open market

The free movement of workers and cross-border provision of services with posted workers are core parts of the economic freedoms in the EU open market. The findings presented in this dissertation confirm that the process of European integration, through the establishment of free movement of labour and services and subsequent market expansions, has contributed to and reinforced ongoing liberalization of employment relations institutions in countries such as Germany and Sweden, historically placed at the higher ends of collective labour regulation and class organization, and in certain sectors, such as the German and Swedish construction sectors, not only contributed to but has even been driving the processes of liberalization. Existing literature has previously demonstrated how European integration has triggered liberalization in different political economic areas, and identified the EU Commission and the European Court of Justice (ECJ) as engines of liberalization (see particularly Höpner and Schäfer 2010, 2012). This dissertation adds an important dimension to this picture by identifying how individual employers drive liberalization of employment relations institutions through their reactions to the changed market conditions in the EU open market. The findings of this dissertation demonstrate how employers in sectors that traditionally have been bound to their domestic markets, including the construction and hotel and restaurant sectors, through the integration in the open market have accessed new ways to defect from the employment relations institutions that they were previously bound to. In the export-oriented manufacturing sector, the free access to foreign labour supplies have added to previously existing options for employers, offering another means to achieve concessions from workers and subtly challenge the employment relations institutions; in the longer run, potentially less subtly and more forcefully.

A general conclusion of this dissertation, confirming propositions made in existing literature, is that employers by accessing foreign labour supplies in the EU open market have wielded increased power over workers, which has enabled them to challenge the institutions for collective labour regulation. In all investigated cases, employers' free access to foreign labour supplies has decreased their dependence on local workforces and offered enhanced possibilities to exploit exit options, whereby employer power over workers has been enhanced (see Bernaciak 2015; Doellgast and Greer 2017). In the case of the German manufacturing sector, special emphasis has been on exploiting workforce divisions to gain increased power over external labour as well as over regular in-house workers. In this way, the access to foreign labour supplies in the EU open market has served as an instrument of liberalization to employers, and the EU legal framework has served as a formalized way of securing room for employers to challenge collective bargaining, workplace representation, and job security regulations (see Höpner and Schäfer 2010; Cremers 2015). Simultaneously, employers' free access to migrant labour in the EU labour market

has undermined the capacity of organized labour to regulate work and constrain employers' push for change (cf. Dølvik et al. 2014b: 85; Afonso and Devitt 2016: 594). While the dynamics of increased marketization are not unique to European integration, the increased marketization generated by it has powerfully reinforced the dynamics of the globalization of capitalism and exposed workers and firms in all sectors to intensified competition (Baccaro and Howell 2017: 44; Höpner 2018b). Similarly, the causal implications of employers' use of migrant labour are not unique to EU internal labour mobility, but applicable to labour migration more broadly. Yet, the free labour and service mobility in the EU open market has established conditions that are distinct in that they provide employers with new *opportunities* to contest the employment relations institutions, while simultaneously boosting employers' *incentives* to do so as they are prompted to react in certain ways to stand a chance at survival in the open market. The EU open market has emerged as a strategic space offering employers a multitude of possibilities to promote and take advantage of intensified competition between workers, through which employers' power over labour is reinforced (see Offe and Wiesenthal 1980: 77; Lillie 2012: 150-151). While workers stand little to gain from the intensified competition between firms in the open market – especially when the competition is based on lowering expenditure on wages and reducing the quality of the working and employment conditions – employers stand the more to gain from the intensified competition between workers, which in the investigated cases have been demonstrated to be a powerful leverage for employers in negotiations with individual workers as well as with trade unions (see also Doellgast et al. 2018). Free access to migrant labour is in this way different from the creation of outsiders among the native labour supply. By amplifying employers' advantage over labour, the free access to migrant labour yields stronger forces to reshuffle power relations in favour of employers.

In capturing how individual employers through their use of migrant labour are pursuing non-politically controlled change strategies at the workplace level, the findings in this dissertation reveal that employers' logic of action based on compliance with the employment relations rules and practices is explicitly contested by the logic of action stimulated in the EU open market, where competition is placed outside of the scope of the institutions for collective labour regulation. In this way, the findings demonstrate how the dominant employment relations rules and practices of the past, based on collective labour regulations, rather than having laid out an enduring logic of action constitute a highly contested and unstable logic of action in the context of the EU open market. The case studies have offered us the insight that firms, as self-interested market actors, in their use of migrant labour adapt to the changed conditions following the market expansion by pursuing the logic of action that gives them a competitive advantage, or simply enables them to remain competitive, in the open market. Unless compliance with the employment relations rules and practices is maintained as the dominant logic of action, and opt out behaviour is effectively limited by the nation states and trade unions, individual firms cannot be expected to

do otherwise than to follow the logic of action required to maintain competitiveness in the market. In striving for market survival, employers, most prominently in the German construction and hotel and restaurant sectors, have in effect had to conform to a logic of action based on non-compliance with collective labour regulations, urged by the competitive situation resulting from the free movement of labour and services in the EU open market. This finding also draws attention to cleavages between employers; those who maintain compliance as their logic of action, and in doing so run the risk of elimination from the market, and those who opt out of the employment relations rules and practices in striving for competitiveness. The main distinction here is not primarily between organized versus unorganized employers, but instead between those who comply and those who opt out, where those who opt out introduce a logic of action that conflicts with those complying – consequently increasing cleavages between employers, until the deviant logic of action becomes the dominant logic, creating a situation from which neither firms nor workers benefit. More generally, the findings presented in this dissertation have demonstrated how the deepened European integration has created a context in which firms in their pursuit for profit and survival can threaten their social and economic environment, as employers in the open market turn to a logic of action that serves the interest of the individual firm in the short run, but simultaneously leads to negative consequences for the maintenance of the institutions central to the governance of labour markets, serving to distribute power and income between labour and capital. As highly imbalanced employment relations, associated with high levels of inequality, are incompatible with sound social and economic development, the erosion of or defection from the employment relations institutions extendedly reduces capitalist viability and stability, endangering the functioning of the advanced capitalist economies in the long-term (see Bernaciak 2015: 227, 232; Baccaro and Howell 2017: 21). Furthermore, high levels of inequality are also associated with negative politicization (Höpner and Schäfer 2012: 432), reinforcing contemporary undemocratic political currents and social polarization at the national as well as European level.

In substantive terms, these developments have contributed to increased employer discretion over working and employment conditions – in some cases more (the German construction and hotel and restaurant sector) than others. A common trend that can be discerned based on similarities and differences across the sectors and countries is also that these developments represent a move away from collective labour regulations towards an individualization of labour rights, and a turn towards minimum standards. The EU regulatory framework, and the ECJ's shaping thereof, has been central to these developments by privileging individual over collective labour rights and imposing restrictions on collective action seeking to regulate transnational economic activities (Höpner and Schäfer 2012: 444; Höpner 2014; Baccaro and Howell 2017: 188). This is done in the pretext of freeing individuals from collective obligations (Höpner and Schäfer 2012: 432), with the result that the class organization imperative for the collective regulation of employment relations is undermined. To this end, the European

Commission (2017)'s policy priority for the *European Pillar of Social Rights* signals the aim to continue the move away from collective towards individual rights (Hassel and Seikel 2017). Moreover, by establishing that an important group of migrant workers – namely those posted through service provision – are only entitled minimum conditions as opposed to equal treatment, a turn towards minimum standards has been prompted and reinforced across the investigated cases, in the long-term likely not only to affect the levels of compensation of posted workers. Lastly, the empirical analyses of this dissertation also suggest that the developments in the EU open market have reinforced employers' structural demand for migrant labour. This is particularly prevalent in the Norwegian and German construction sectors, where the training of new domestic workers has declined substantively and where the employment growth over the last decade has almost exclusively taken place among foreign workers. A similar tendency is also detectable in the Swedish construction sector, and in the hotel and restaurant sectors in both Sweden and Germany. In the hotel and restaurant sectors, the structural demand for migrant labour appears to be associated with the employment and working conditions offered, which increasingly have lost attraction for domestic workers. Thus, while a general labour market trend in these countries has been a reduced need for human labour following technological innovations, along with a parallel trend of increased educational levels of domestic workforces, employers demand for a migrant labour supply carrying out primarily low- and medium-skilled tasks under inferior conditions has increased significantly. The free labour mobility in the EU open market has in this way fed right into and reinforced employers' structural demand for migrant labour intrinsic to capitalism (see Piore 1979).

3. Theoretical contributions

This dissertation has developed a causal theory of how employers' and trade unions' responses to labour migration affect employment relations institutions. At the core of the theory lies the development of four causal mechanisms – institutional resilience creation, institutional neglect, institutional redirection, and institutional defection (building upon Streeck and Thelen 2005; Mahoney and Thelen 2010) – that make explicit how these causal processes play out and specify what type of change can be caused depending on the responses from employers and trade unions. In unpacking the causal processes leading to change, this dissertation has permitted continued theoretical refinement of the theories of gradual, transformative, institutional change that have been advanced over the last two decades. Moreover, the theorization of the causal processes leading to the distinct outcomes of contribution to institutional continuity or varieties of liberalization also concretely demonstrates how the four causal processes are in fact intimately linked; in the absence of one part of the mechanisms, such as, for example, active institutional support, another causal process is triggered. A central part of the theoretical contribution of this

dissertation has also been the development of a typology of the strategic interactions between employers and trade unions. While the typological theory represents a deliberate simplification of a complex empirical reality, the practical application of it has demonstrated that it serves as a useful analytical tool to distinguish between the responses that contribute to continuity and those that trigger institutional change. At the same time, the typology offers us the important insight that only one out of four paths leads to contribution to institutional continuity in a context of high pressure for change. Notably, the propositions made here can be used as a framework for analysing institutional development outside of the specific scope of responses to labour migration; the typological theory captures the universal implication of compliance and non-compliance by political economic actors in processes of institutional development, and makes explicit what is, in general, required from the side of organized labour to ensure maintenance of a coalition of institutional supporters in order to contribute to institutional continuity.

3.1 Employers are driving the processes but do not alone dictate the outcomes

The causal theory developed in this dissertation has aimed to direct our attention to what is causally relevant for the evolution of the employment relations institutions; how employers use foreign labour supplies, and how trade unions' respond to it, along with the enabling conditions established by the state. In unpacking the causal processes leading to institutional continuity and change, the focus has been on capturing the properties of the class actors' responses that transmit causal forces that have direct implications for continuity and change in the employment relations institutions. In doing so, the theorization offered in this dissertation has made explicit that the causal power to trigger change lies in the hands of employers using the foreign labour to which they have been given access in the EU open market. Fundamentally, a key insight offered by the four causal mechanisms proposed in this dissertation is that employers are the actor driving the processes forward. Advanced capitalist economies are structured in ways that confer some actors with more power to initiate or implement change than other actors (Hall 2010: 209). This insight builds upon the understanding that the class actors are not equal, and seeks to avoid the conceptual error of "equating the unequal" (Offe and Wiesenthal 1980: 71), thereby treating labour and capital as if they are operating at parity with each other (Lindblom 1977: 193). This understanding helps us to recognize that the causal powers of employers and trade unions are not equal, and to acknowledge employers as *dominant change agents*, as termed by Mahoney and Thelen (2010), or, in other words, as *primary movers*, whereas trade unions are subsequently understood as *secondary movers* (Offe and Wiesenthal 1980). This, in turn, implies that the trade unions' responses to migrant labour are conditioned upon the actions of employers. The responses by the class actors are thus not to be equated on the same level; employers' reactions sets the overall direction of the process, and the trade unions' response has to be shaped based on that. While

existing literature has placed emphasis on declined union organizational rates and recognized the declined class power on the side of labour, this fundamental insight largely seems to have been lost in the CPE literature during the last decades. In a context where employers are opting out of dominant employment relations rules and practices in their use of migrant labour, trade unions' responses are in effect not protective in practice. While there may be many preceding reasons for this, such as the weakening of trade unions over time in combination with gradually increased room for employers to circumvent the employment relations institutions, the key point here is that the trade unions' responses are conditioned upon the responses by employers. In making explicit the role of individual employers as drivers of these processes, and drawing our attention to their ability to generate what may analytically be perceived as a coalition of institutional challengers, the theoretical propositions put forward here enable us to grasp endogenous, and potentially far-reaching, changes that largely may be the unintended consequences resulting from the accumulation of actions of individual employers (see Streeck 2009: 4).¹ In paying required attention to the causal powers of employers' use of migrant labour, we are able to recognize that individual employers – being the ones employing migrant labour – are the dominant actor in driving the processes of institutional development forward, and their ability to affect the development of the employment relations institutions is, in general, superior to that of organized labour. This dynamic is further reinforced as employers' access to foreign labour supplies in the EU open market has served as a means for employers to increase their power resources over workers and trade unions.

A second important insight in relation to this is, however, that trade unions, as counterparts to employers, play an indispensable role in determining the scope that employers have to use the migrant labour supply, and to pursue change. In other words, while the causal powers of employers to affect the institutional development is stronger than that of trade unions, both class actors influence the trajectories of continuity and change. Consequently, a central insight of the causal mechanisms developed in this dissertation is not only that the responses by employers and trade unions are highly interrelated, but also that neither of the class actors can dictate the outcomes alone. Lastly, the causal theory introduced in this dissertation recognizes the key role of the nation state in shaping the context in which these fundamentally asymmetrical power relations play out.

¹ The contextual condition pertaining to a coalition of institutional challengers or a coalition of institutional supporters is here understood as a theoretical construct. It does not assume that the coalition underlying a change process, or a process of institutional continuity, is in any way formal or explicit. Instead, we can detect patterns of coalitions based on the actions of the actors that reveal whether a coalition of institutional challengers or supporters have been present in a case. In this way, the ability to form a coalition of institutional challengers has less to do with the role of employer organizations, and more to do with the accumulated actions of individual employers as self-interested market actors.

3.2 Varieties of liberalization – or liberalization as increased employer discretion tout court?

In building upon and seriously engaging with existing accounts of varieties of liberalization (particularly Thelen 2014), this dissertation has offered refined conceptual and operational definitions of dualization, socially embedded flexibilization, and deregulatory liberalization in order to make the varieties of liberalization fit for empirical analysis of the institutional development of employment relations. In doing so, I have, as prompted by Baccaro and Howell (2017)'s contribution, integrated the substantive implication of liberalization when it comes to effects on the level of employer discretion over the terms and conditions of employment.

In teasing out the differences between the varieties of liberalization, and making sure that their definitions remain distinct, the refined conceptual and operational definitions of the three varieties of liberalization have resulted in three central theoretical contributions. First, theorizing these causal processes in parallel has helped us to understand dualization as a more drastic form of liberalization than what has yet been recognized in existing literature, and as a more far-reaching form of liberalization than socially embedded flexibilization. This also implies a greater recognition of the commonalities between dualization and deregulatory liberalization; the difference between the two varieties of liberalization, aside from sheer deregulatory reforms, has in the institutional realm of employment relations been uncovered to foremost be a matter of the extent of the declined coverage of the institutions. Dualization has in this dissertation been specified as a process associated with institutional drift that involves a decline in the coverage of collective bargaining and workplace representation as increasing parts of work are organized outside of the scope of the institutions, and in the coverage of job security regulations as employment protection is maintained for regular in-house workers while the number of irregular workers used as external labour grows – but where the coverage of all three institutions remains above 50 percent and thus maintains the position of dominant practice. Deregulatory liberalization, in contrast, involves a more far-reaching decline where the coverage declines below 50 percent, whereby compliance is not maintained as dominant practice and the institutions in effect are displaced. Accordingly, the two varieties of liberalization are distinguished by the threshold at which the scope of the decline remains above or passes below the 50 percent threshold that defines the dominant practice. Second, dualization is revealed as an unstable outcome as the neglect of the institutions for one labour supply incrementally – unless less something disrupts the process – can lead to institutional displacement as employers expand their use of a secondary labour supply (cf. Piore 1979: 41-42). More specifically, institutional drift and displacement share a similar type of transformation, where drift represents an earlier stage of the change process and displacement represents a completion of the process; the accumulation of employers neglecting the institutions eventually leads to institutional defection and displacement as the logic of action

based on compliance with the institutions is replaced by the logic of action in which individual employers manage their employment relations outside of the scope of the collective employment relations institutions. This confirms what has recently been suggested in existing literature, namely that dualization is a temporary way station on a trajectory towards more far-reaching liberalization (Baccaro and Howell 2017: 120). In understanding dualization as an unstable and intermediate form of liberalization, the extent to which the collective labour regulations will be maintained in the German manufacturing sector – or whether this trajectory of liberalization will continue towards deregulation – ultimately depends on whether institutional support can be re-mobilized from the side of employers as well as workers. This is evidenced by the development in the coverage of collective bargaining in particular, with the consequence that collective bargaining is dangerously close to being displaced as dominant practice in the German manufacturing sector. Third, a central theoretical contribution has been to clearly define socially embedded flexibilization not as flexibilization taking place in a socially embedded context, but as liberalising moves combined with re-regulation that collectivizes and equally distributes the effects of the liberalization across the whole (sectoral) workforce. In doing so, the countervailing forces involved in the process towards socially embedded flexibilization have been made more explicit. While both dualization and socially embedded flexibilization are unstable outcomes and open-ended processes, dualization is more unstable than the latter; socially embedded flexibilization can be maintained as long as the counterforce that pushes for socially embeddedness is maintained, that is, as long as the power relations between the class actors are not altered, whereas a process of continued institutional neglect and drift, associated with dualization, contains causal forces that can transform the process into institutional displacement, as little halts more employers from defecting. Nevertheless, as the expansion of flexibility holds the potential to alter the power relations between employers and workers, particularly when the expanded flexibility is sourced from withholding job security, socially embedded flexibilization may – unless trade unions manage to continue to mobilize resources by being protective of migrant labour, and the state offers its support in re-embedding the flexibilization – also degenerate into a more far-reaching form of liberalization.

In building upon and contributing to the literature that evaluates institutional continuity and change in non-market institutions, this dissertation also offers a general contribution to the longstanding debate on what constitutes institutional continuity, as opposed to change, by transparently operationalizing continuity and change, and advancing an encompassing definition of institutional continuity that allows for adaptation to take place, and by making explicit that the difference between continuity and change lies in the institutional outcomes, with maintained deliverables defining institutional continuity. Aside from making explicit the instrumental changes associated with each of the outcomes investigated in this dissertation – contribution to institutional continuity, dualization, socially embedded flexibilization, and deregulatory

liberalization – we are based on these improved operational definitions also able to discern the substantive effects that the trajectories have on the level of employer discretion over employment and working conditions, capturing the extent to which employers gain power over employment relationships, and the distributive outcomes expected to be associated with the distinct trajectories of liberalization, capturing the effects on the redistributive functions of the institutions. While expansion of employer discretion is associated with all three trajectories of liberalization, they differ in the extent to which they are discretion-enhancing; deregulatory liberalization generates the greatest increase in employer discretion, dualization provides a medium increase, and socially embedded flexibilization offers employers the lowest comparative increase. The increase in the level of employer discretion in deregulatory liberalization involves increased discretion over all workers, whereas dualization involves a direct increase in the level of employer discretion over certain groups of workers only. As employers get increased discretion over certain groups of workers but not over others, pressure for concessions is, however, subsequently likely to be exercised on those not yet exposed to the higher degree of employer discretion, gradually increasing the discretion also over those groups of workers. This again demonstrates how dualization is an unstable and intermediate trajectory, which – unless the process is disrupted – can transform into deregulatory liberalization that affects all workers. The discretion-enhancing effects in socially embedded flexibilization are, in contrast, more limited; as trade unions are protective in the process leading to socially embedded flexibilization and the employment relations are still largely based on collective labour regulation, this limits the scope of the increased discretion and distributes the effect equally across the whole sectoral workforce, and, importantly, does not allow for exploitation of differences between different labour segments, as does dualization. As the discretion-enhancing effects are greater in dualization than in socially embedded flexibilization, and as dualization involves a shift in negotiation dynamics derived from employers' ability to leverage different groups of workers against each another, dualization is revealed to have more detrimental effects in terms of increased employer discretion and distributive consequences than socially embedded flexibilization. Yet, while a conclusion emerging from Thelen (2014)'s exploration of the varieties of liberalization was that liberalization in the shape of socially embedded flexibilization is compatible with maintained levels of social solidarity and egalitarian outcomes (1, 4), the investigation underlying the theoretical contributions of this dissertation suggests the contrary. While socially embedded flexibilization is associated with the lowest increase in employer discretion and the smallest relative redistribution from labour to capital, it remains a variety of liberalization that enhances employers' power over workers and generates outcomes in favour of capital.

To answer the question of whether it is analytically and substantially relevant to distinguish between varieties of liberalization, the answer prompted by this research is yes. Increased employer discretion is, indeed, a key feature of liberalization, irrespective of its

varieties. However, while a substantive part of liberalization of employment relations boils down to increases in the level of employer discretion over the terms and conditions of employment, the analytical framework proposed in this dissertation offers a powerful conceptual tool kit for understanding how the strategic interactions between employers and trade unions affect the institutional development of employment relations in distinct ways, whereby employer discretion is enhanced to different degrees. Moreover, the refined conceptual and operational definitions of dualization, socially embedded flexibilization, and deregulatory liberalization have revealed that the varieties of liberalization indeed remain distinct. While Thelen (2014) used the varieties of liberalization to assess and compare national, rather than intra-sectoral, dynamics of different political economies, I have used these varieties to offer a refined understanding of the multiple modes of change and processes of liberalization that takes place *within* national political economies.

4. Practical contributions

4.1 How to maintain collective labour regulations under free movement of labour and services

The theoretical and empirical contributions of this dissertation offer concrete practical implications. In responding to how collective labour regulations can be maintained under free movement of labour and services in the EU open market, the evidence generated from the case studies suggests that only a specific combination of responses from employers and trade unions – namely employers’ full compliance with dominant employment relations rules and practices in their use of migrant labour, and trade unions’ effective protection of migrant labour – will allow for institutional continuity to be achieved under conditions of free labour and service mobility. The fact that three out of four sets of responses in the proposed typology contribute to institutional change reflects how maintenance of employment relations institutions in contemporary advanced capitalist economies is the exception rather than the norm. Nevertheless, this dissertation not only tells a story about institutional change in a liberalizing direction, but offers insights into a broader story about economic structural determinants of political economic relationships. By clearly identifying the causal powers inherent in the employers’ and trade unions’ responses – that is, identifying and making explicit what it is about the way that they deal with migrant labour that actually carries the causal power to cause change or contribute to continuity – responses can be shaped according to the desired outcome. In this way, the explicit association of causal powers with specific actions from the side of the employers and the trade unions not only helps us to see where the change is coming from, but also what actions are required from all involved parties in order to contribute to institutional maintenance of collective labour regulations. My findings suggest that it is vital that trade unions actively ensure use of collective agreements, based on

equal treatment, in the employment of migrant labour, and that they actively contribute to the enforcement of labour standards as a means to direct employers towards compliance, permitting compliance to be maintained as dominant practice. To this end, organizing migrant workers was identified as the most effective and sustainable means by which trade unions can be protective. Given that intensified worker-to-worker competition thrives on, and to some extent presupposes, the powerlessness of workers, the most promising way for workers – migrant and non-migrant – to counter worker-to-worker competition is to organize in order to overcome their individuality, and, in doing so, partly compensating for the power advantage that capital derives from holding many units of merged labour that has been generated by labour power in the past (Offe and Wiesenthal 1980: 74). While this task is made much more difficult in the competitive situation in the open market, unions play a decisive role in limiting competition among workers – and trade unions’ protection of migrant labour is arguably the only way to counter the intensified competition. Recent research has suggested that when employers frame employment relationships in primarily financial terms – which is likely to be the case under the heightened price-competition in the open market – collective action on the side of workers is challenged as the perception of worker individuality is promoted, while their common identity is undermined (Rothstein 2018: 5; see also Streeck 2005a; Snow et al. 1986). Unless trade unions are protective of migrant labour, whereby the line between solidarity and competition is overcome, the intensified competition between workers will further diminish labour’s capacity to mobilize workers across workforce divisions (see Doellgast et al. 2018: 34; Hardy 2015: 196). Despite its strong potential to generate a protective response that obstructs employers’ non-compliance with the collective labour regulations in their use of migrant labour, organizing has thus far remained weak in many cases. The inability to overcome obstacles associated with organizing migrant workers, and the lack of ability to ensure effective protection is not unique to the German manufacturing, construction and hotel and restaurant sector unions, whose responses in this investigation have been uncovered to result in non-effective protection. Instead, it is part of the broader context of the open market in which trade unions are in various ways, and to different extent, attempting to prevent rule circumvention and abuse of labour rights for migrant workers, but where their abilities to do so have been limited (see e.g. Bernaciak ed. 2015). Because of the difficulties in generating a protective response and achieving equal treatment for migrant workers, some trade unions have tried to deal with the challenges and barriers by ensuring at least minimum standards. However, as revealed by the investigation of the German manufacturing sector, a response ensuring minimum standards as opposed to equal treatment entails non-effective protection due to its causal properties to trigger change by opening up for differential treatment of different groups of workers, initiating a process towards dualization. This dissertation has demonstrated that dualization – which is the result of trade unions’ non-effective protection and employers’ compliance with minimum standards – is an unstable and intermediate process that over time risks

progressing towards a more radical form of liberalization, in which core workers' conditions cannot be maintained. Accordingly, trade unions have multiple interests in protecting migrant workers, coinciding with solidarity-based motives; trade union members' interests in maintaining labour standards and unions' organizational interest to maintain union density rates with which their power resources are associated is, in fact, contingent upon their effective protection of migrant labour (cf. Davidsson and Emmenegger 2012; Dorigatti 2017). Unions thus have clear motivations and interests in protecting migrant labour, and a protective response can be justified to existing constituencies by reference to the goals of maintaining labour standards and avoiding further decline in union density and a weakening of labour power.

Aside from the crucial role of trade unions' responses, which in interaction with employers' responses influence the direction of change, the nation states are revealed as holding a key role in establishing the context that shapes the class actors' responses and determines whether they will be successful defendants or challengers of the employment relations institutions. More specifically, the analyses in this dissertation suggest that contribution to institutional continuity can only be achieved under high levels of enforcement, contingent on state contribution, and through active institutional support from the nation states. In contrast, in absence of high levels of enforcement and active institutional support from the side of the state, institutional resilience creation will fail, and employers will turn to a logic of action based on opt out of dominant rules and practices in their use of migrant labour, triggering institutional change and ultimately liberalization of the employment relations institutions. Concrete policy implications follow from the propositions about the conditions that need to be established by the nation states for the causal power of the class actors' responses to result in contribution to continuity. Based on the findings from the empirical chapters, I propose that strengthened enforcement along with re-regulatory measures are requisite for the maintenance of the collective employment relations institutions, or for adaptation that re-embeds the liberalising changes. While ensuring enforcement of labour standards in a context where opt out of the dominant employment relations rules and practices is encouraged as logic of action in the EU open market is associated with high costs that are placed on the state and trade unions, the findings in this dissertation suggest that employers require a context of high levels of enforcement in order to have confidence in that their competitors will continue to comply with the institutions. Whereas increasing the levels of enforcement is feasible but costly, re-regulation is, given the constraints imposed by the EU legal framework, plausibly more difficult. Re-regulation that enables collective bargaining and workplace representation to maintain their roles as core employment relations institutions is required to be pursued at the national level, where the responsibility over social regulation and the capacity for decisive action are located (cf. Bernaciak 2015; also Streeck 1998: 429; Höpner and Schäfer 2012: 430-431; Neilson 2012: 161; Baccaro and Howell 2017: 23; Höpner 2018b). As noted by Streeck (1998) more than two decades ago, internationalization

does not per se entail denationalization (429) – and, as predicted, national politics and employment relations remain the principal arenas for the regulation of work in the EU. Yet, European integration through law poses continuous and persistent obstacles towards re-regulation at the national level (MacCann 2010: 177; Höpner and Schäfer 2010, 2012; Höpner 2017). Recent research has suggested it to be highly plausible that fundamental revisions to the rules of the game in the EU open market would be required, beyond, for instance, minor adjustments to the Posted Workers Directive or layering directives such as the Enforcement Directive, in order to enable nation states to pursue re-regulation that would create conditions under which employers would comply rather than opt out in their use of migrant labour (see Höpner 2017, 2018b; Grimm 2017). The changed environment related to free labour and service mobility in the EU open market has confronted the class actors and nation states with new contingencies that offer them the opportunity to apply rules and practices differently, or, as in the shadow of decisions taken by the ECJ, force them to reinterpret the practical application of the employment relations institutions in order to comply with the EU legal framework. The case studies in this dissertation have demonstrated that not only the class actors, but also the nation states have pursued divergent responses to the presented challenges and opportunities. Whereas Norway has stretched the boundaries of the national room for maneuver, Sweden has introduced liberalising changes beyond what would have been required. The empirical analysis of the German construction sector, in turn, indicated that the EU legal framework has provided an excuse for not acting at lower levels. More concretely, the analyses presented in this dissertation have suggested that the two main re-regulatory tools used up-to-date, namely legal extensions of collectively agreed minimum conditions and the introduction of a statutory minimum wage, do not hold the causal powers to re-direct employers towards compliance with the collective labour regulations, nor to strengthen the institution of collective bargaining. Given that trade unions' effective protection of (migrant) labour is imperative to processes of institutional maintenance, re-regulation that creates more favourable conditions for trade unions to fulfil their task, whereby active institutional support can be generated and employers' opportunities to exit the institutions and exploit workforce divisions can be limited is required. To this end, re-regulation that addresses current power imbalances between employers and organized labour is, in the context of contemporary employment relations, a precondition for the collective employment relations institutions to function and be maintained. Maintaining the coverage of job security regulations is, in turn, requisite to avoid further enhancing the power imbalance between employers and workers, and extendedly to maintain well-functioning collective bargaining and workplace representation.

4.2 Establishing conditions under which compliance can be maintained as dominant logic of action

This dissertation has also offered an explanation of why employers opt out or comply with the dominant employment relations institutions in their use of migrant labour. In explaining employers' responses, I have argued that employers' compliance, and thereby support of the institutions, is not explained by a preference for maintenance of the collective employment relations institutions, but is instead a matter of presence of contextual conditions under which employers comply. I have proposed that presence of the following conditions explain employers' compliance with the dominant employment relations rules and practices; structural constraints pertaining to presence of high levels of enforcement of existing institutions that encourage compliance and limit provision of room to opt out by creating a situation where the risks and potential costs of not complying are higher than continued compliance, and – importantly – maintaining compliance as dominant logic of action, which contributes to a lack of motivation to pursue change as a level-playing field is upheld by the institutions and employers are not competitively disadvantaged by complying. As long as compliance with the institutions is maintained as dominant practice and competition remains within the scope of the institutions, employers are not pushed to conform to opt out as a competing logic of action in order to be successful in the market. At the core of this explanation lies an understanding of *individual* employers' logics of action, and the argument that employers' overall preferences are fairly homogenous across the investigated sectors (and countries) as they all operate as self-interested market actors in capitalist economies; what differ are the structural constraints that they face, or the room to opt out that is provided to them, along with the motivation that they have – based on the competitive situation – to pursue change versus incentive to settle for status quo. Conversely, I have proposed that employers' opt out responses are explained by the provision of room for manoeuvre generated by the weakening of organized labour, which has made employers less constrained by the need to compromise, the increased marketization in the EU open market that has enhanced employers' motivation to act according to a short-term logic that inhibits long-term commitments, and the declined costs associated with avoiding the institutions in the context of the open market, which in turn generate a self-reinforcing process where more employers turn to opt out. Recognizing the role of individual employers' logic of action and the scope for change in their strategies as they seek to respond to the challenges and opportunities in the open market unveils the malleable balance of maintaining compliance as the dominant logic of action whilst an alternative logic, based on opt out, is continuously present. The case studies in this dissertation have revealed that the rapport between compliance and non-compliance is a dynamic and fragile process, in which maintenance of overall compliance is required to inhibit a self-reinforcing process where the costs associated with opt out decline and more employers turn to opt out as it

gradually shifts to dominant practice. Only to the extent that the institutions are enforced and provision for room to opt out is minimized can compliance remain the dominant logic of action. While the case studies in this dissertation have offered insights into how a previously subordinate logic of action – namely, opt out – gains ground and becomes dominant, they have simultaneously hinted as to how such a process can be reversed by invoking a change in the behaviour of large firms dominating a sector, whereby other firms gradually adapt their behaviour and follow suit – either as a result of influence exercised by dominant firms on subcontracted and supplier firms, or as a result of recruitment problems occurring as the firms dominating the sector set higher standards with which they are able to attract workers. This suggests that improved employment and working conditions can spread through a similar dynamic as that through which deteriorated conditions spread. While the former may occur following the introduction of regulations making main firms accountable for the practices of firms operating in their subcontracting and supplier chains, the latter seems to be strongly conditioned upon a limited access to labour, which is a condition that is out of reach in the context of free movement of labour and services in the EU open market.

4.3 Future research

As a means to address the decade long question in existing literature as to whether the pressure for change from free labour and service mobility has been translated into actual change, this dissertation has made use of novel methodological tools that permit the investigation of complex causal processes. With new methodological standards being well-articulated but not yet widely used, this dissertation has contributed to overcoming the discord between established practices and methodological recommendations. The ambition of this research has not been to prove the correctness of the theory developed, but to offer the best possible explanation of the identified divergent empirical developments across different economic sectors. By taking causality seriously and forcing myself to think hard about process, process-tracing has enabled me to identify the cause of these processes, and to disentangle the causal and contextual conditions from one another, and from the parts of the causal mechanisms that are triggered. This has enabled us to better make sense of the vast empirical literature on the effects on labour migration produced in the course of the last decade, and resulted in a causal theory that improves our understanding of these empirical developments by explicitly conceptualizing the activities that produce change and identifying the causal forces that drives the respective processes forward. However, before discussing potential routes for future research, a minor disclaimer as to the strength of the causal inferences enabled in this dissertation is warranted. While this dissertation is innovative in terms of the theoretical clarity offered through the theorized causal mechanisms, the empirical testing of the mechanisms has in some of the cases (chapters 5 and 7) taken the form of robust and elaborate plausibility probes. There are two reasons for this. First, it is a consequence of facing a

research situation in which these processes had not been theorized before. Second, it is a consequence of the extensive empirical evidence required to enable causal inferences of the theorized mechanisms, combined with investigating a total of six empirical cases. Yet, given the research situation, even the weaker evidence produced has permitted us to learn more about these causal processes in the empirical reality. Taken together, all four causal mechanisms – institutional resilience creation, institutional neglect, institutional conversion, and institutional defection – have passed the tests as theoretically probable mechanisms that merit further practical application.

As these processes had not been systematically theorized before, this dissertation has offered a first contribution to making the causal mechanisms at work explicit, and made a strong case for how pressure for change translates into actual change in a liberalising direction. More robust empirical tests in typical cases would be needed to enable stronger inferences about the institutional impact, specifically as regards to the Institutional Resilience Creation Mechanism and the Institutional Redirection Mechanism, potentially along with continued theory-revision. Moreover, one of the theoretical insights emerging from this work has indicated that a context in which employers are opting out of dominant employment relations rules and practices in their use of migrant labour simultaneously implies that trade unions' responses have in effect not been protective in practice. This insight is critical, and at the same time problematic for the causal process triggered by employers' opt out response and trade union's effective protection, as it suggests that this combination of responses is logically impossible. It reveals a potential theoretical inconsistency that warrants caution in the analyses of the Swedish construction and hotel and restaurant sectors. While the empirical evaluation of the unions' responses in the Swedish construction and hotel and restaurant sectors clearly suggests that these trade unions have pursued responses with effectively protective properties, a puzzle remains as to whether they can really be considered as having been effectively protective when employers have simultaneously opted out of their obligation to enforce labour standards in their employment of migrant labour. This potential theoretical inconsistency possibly prompts further theory-revision of the typological theory, wherein the combination of responses based on employers' opt out of dominant rules and practices and trade unions' effective protection of migrant labour may need to be omitted. Furthermore, while the process-tracing case studies have suggested that presence of high (low) levels of enforcement, a coalition of institutional supporters (challengers), and absence (presence) of inherent ambiguities in the institutions are requisite for the respective processes to take place, a comparative cross-case analysis would be needed to complement these within-case analyses and determine whether the identified contextual conditions are indeed requisite, and to verify that no contextual conditions have been omitted. Furthermore, as the analytical toolkit proposed in this dissertation not only links the empirically identified institutional changes with effects on the level of employer discretion, but also with concrete distributive

outcomes, future research would benefit from engaging in a more robust assessment of the distributive outcomes capturing developments in real wages, firms' profits, and intra-sectoral wage dispersion, as a means to further explore the direction of change in the employment relations institutions and assess the extent to which the discretion-limiting and distributive capacities of the employment relations institutions have been dismantled. Such an analysis, focusing on intra-sectoral dynamics of distributive conflicts, would ideally expand the spectrum of distributive outcomes by integrating developments in productivity, work intensity, and working time, in order to trace the distribution of the value added per hour worked. Existing literature has identified certain factors whereby extensive use of migrant labour may have negative effects on productivity, such as communication problems and a lack of familiarity with local practices (Friberg 2011; Friberg and Haakestad 2015), and noted that the competitive situation in the open market centred on cost reduction entails that the most inefficient and unproductive firms are not necessarily outcompeted; if less effective firms can remain in the market, and expand their market shares, it is probable that productivity will decline in the long-run (Bernaciak 2015). In contrast, the findings generated in this dissertation lead us to expect a positive effect on productivity levels associated with increased use of migrant labour, where maximized working time and work intensity allow employers to extract greater surplus value by increasing productivity without paying more for the labour input. To this end, developments in working time adds an important factor to existing analyses of distributive outcomes (e.g. Baccaro and Benassi 2016; Hassel 2014), as value creation can either be distributed to workers as wages or reduced working time, or to firms as profits. Given the pressing need to better understand how collective labour regulations generating egalitarian outcomes can be maintained in an integrated Europe, and given that wage income is one of the primary redistributive instruments in contemporary capitalist economies, investigating developments in this area is central to the analysis of capitalist development in an integrated Europe, and would uncover a dimension of the distributive consequences of European integration yet to be exposed. Finally, given the propositions about how to maintain the institutions generating egalitarian outcomes made in this dissertation, and the emerging consensus in the literature that there is a need for re-regulation to counter the challenges that have resulted from liberalising changes, a further line of inquiry for future research is to delve more deeply into the question of what shape this re-regulation should take and what the prospects for introducing such re-regulation are in the context of the EU regulatory framework.

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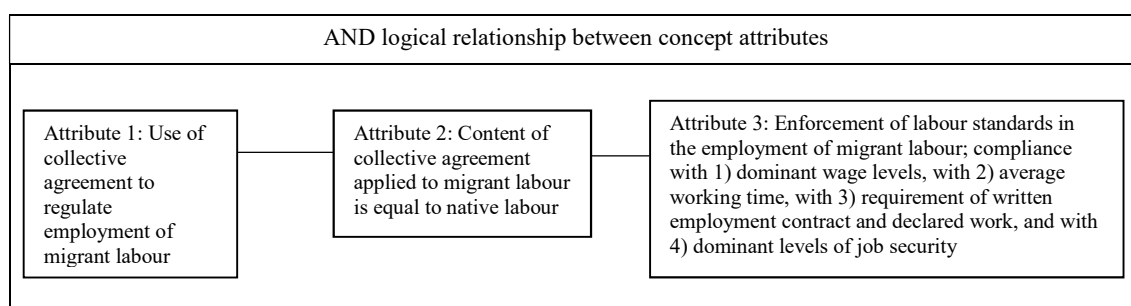
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Appendix I. Measurements of causes

Employers' responses

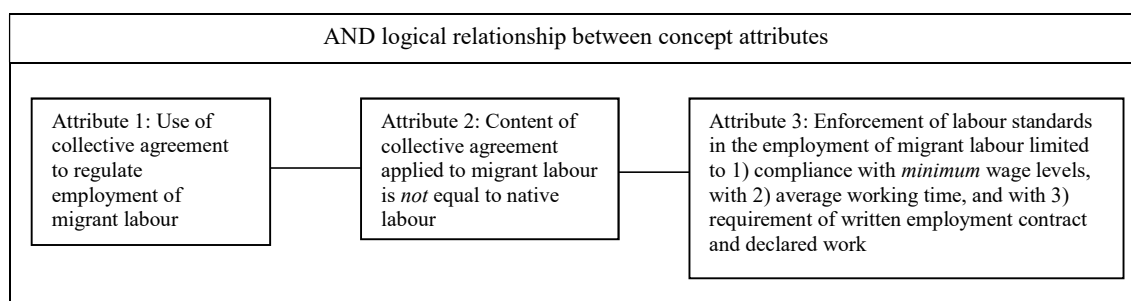
A *full compliance* response requires the presence of all three components defining the response; use of collective agreement (concept attribute 1), content applied to migrant labour equals the full collective agreement (concept attribute 2), and not only minimum or inferior standards, and labour standards are enforced (presence of all components of concept attribute 3). This implies that the concept attributes stand in what can be referred to as an AND logical relationship; for a compliance response to be achieved – and thereby contain the causal properties to contribute to institutional continuity – all three concept attributes need to be present. The concept structure of the full compliance response is presented in Figure A.1 below.

Figure A.1 Concept structure of employers' full compliance response, capturing the AND logical relationship between the concept attributes



In contrast to the full compliance response, *employers' compliance with minimum standards* is present when the content of collective agreements applied to migrant labour is not equal to that of native labour, and when employers do not comply with dominant levels of job security and – instead of complying with dominant wage levels – conforms to minimum wage levels only. The concept structure of employers' compliance with minimum standards is presented in Figure A.2 below.

Figure A.2 Concept structure of employers' compliance with minimum standards, capturing the AND logical relationship between the concept attributes

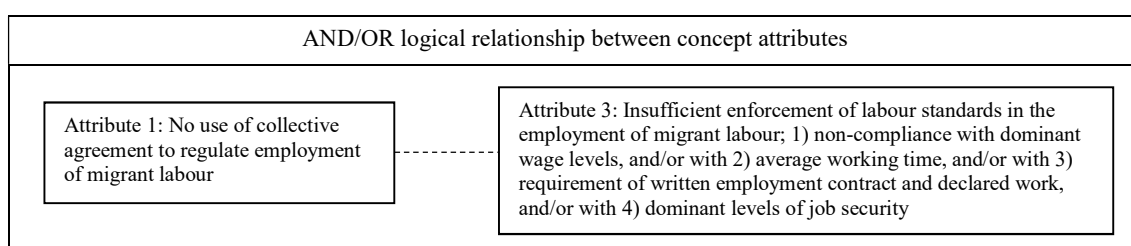


Employers' opt out response is, in turn, based on two concept attributes only; no use of collective agreement (attribute 1) in the employment of migrant labour, and no or insufficient enforcement of labour standards (attribute 3) (Figure A.3).¹ For opt out to be considered as present, it suffices

¹ The reason why the second concept attribute, capturing whether the content of collective agreements applied to migrant labour is equal or not, is excluded from employers' opt out response is because it is

that one of the attributes is present. As a means to distinguish the insufficient enforcement that is present in an opt out response from enforcement that is limited to compliance with minimum wage levels, average working time and the requirement of written employment contracts and declared work, present in a response complying with minimum standards, the definition of what qualifies as insufficient enforcement (i.e. presence of attribute 3 in an opt out response) is based on presence of either non-compliance with the average working time (component 2) *or* non-compliance with the requirement of written employment contracts and declared work (component 3), or a minimum combination of non-compliance with dominant wage levels (component 1) *or* non-compliance with dominant levels of job security (component 4) *and* non-compliance with the average working time *or* non-compliance with the requirement of written employment contracts and declared work (i.e. presence of 2 or 3 or a minimum combination of 1 or 4 plus 2 or 3).

Figure A.3 Concept structure of employers’ opt out response, capturing the logical AND/OR relationship between the concept attributes



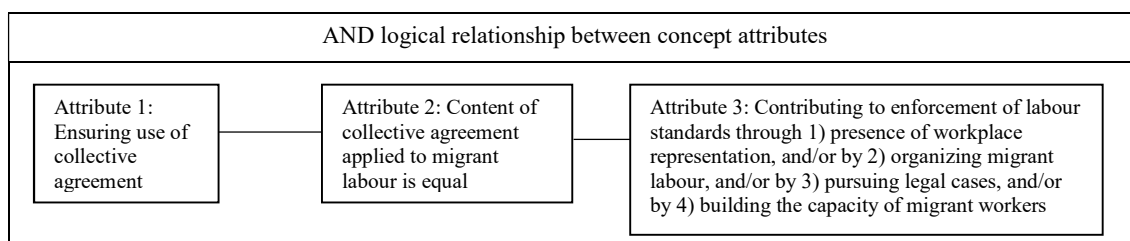
Multiple modes of opt out are accommodated in this concept structure; no use of collective agreement, but enforcement of labour standards (i.e. employers have not signed a collective agreement, but still follow the norm-setting function of it and enforce labour standards), or a collective agreement has been signed, but labour standards are not enforced in practice, or alternatively a combination of the two; no use of collective agreement and insufficient enforcement of labour standards. The concept attributes thus stand in an AND/OR logical relationship; it suffices that one of the attributes is present, but they may also be present in combination with one another.

Trade unions’ responses

In order to ensure equal treatment, a *protective* response requires the presence of all three components defining the response; ensuring use of collective agreement (concept attribute 1) and that the content applied to migrant labour equals the full collective agreement (concept attribute 2), and not only minimum standards, and contributing to enforcement of labour standards (concept attribute 3). This implies that the concept attributes stand in an AND logical relationship; for a protective response to be achieved – and thereby contain the causal properties to contribute to institutional continuity – all three concept attributes need to be present. The concept structure of trade unions’ protective response is presented in Figure A.4 below.

causally irrelevant when either of the other two concept attributes (non-use of collective agreement or insufficient enforcement) are present. Equal content of a collective agreement can only be present in combination with use of a collective agreement – and for it to be considered as opt out, insufficient enforcement would at the same time be present, whereby it is irrelevant if the content of the collective agreement is not equal, as it in the opt out response is not enforced anyway.

Figure A.4 Concept structure of trade unions’ protection of migrant labour, capturing the AND logical relationship between the concept attributes

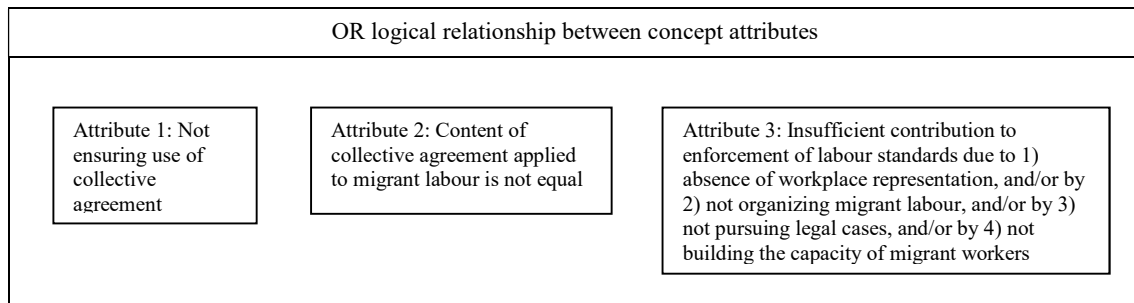


While the assessments of the presence of concept attributes 1 and 2 are fairly straightforward, the extent to which the trade union contributes to enforcement is based on an assessment of the four measures associated with concept attribute 3. The first two components, i.e. ensuring workplace representation in migrant workers’ workplaces and organizing migrant labour, have stronger effects in terms of contributing to enforcement than the latter two components. Workplace representatives have enforcement capacities that are crucial in trade unions’ contribution to enforcement of labour standards, and organizing has been recognized as effective in contributing to enforcement of labour standards for migrant workers. Krings (2014), for example, has argued that the best way for trade unions to ensure that pay and working conditions are protected is to organise migrant workers (3). This is in line with my own empirical findings. Only pursuing legal cases as a means to enforce labour standards, on the other hand, is on its own a largely unsustainable and ineffective way to contribute to enforcement. While the pursuit of legal cases on behalf of migrant workers may contribute to less widespread opt out from the side of employers, to the extent that it is done systematically and has a deterring effect on employers that perceive realistic risks associated with costs following from a legal process, it is a very resource-demanding way to contribute to enforcement of labour standards – and the desired effect that employers should come to recognize it as costly to opt out is hard to achieve. Similarly, only building the capacity of migrant workers to enable them to contribute to enforce and protect their rights without also taking any other measures is a weak way to contribute to enforcement as it in principle places the task to contribute to enforcement on the individual migrant worker. Importantly, however, the components of attribute 3 together reinforce one another by boosting each other’s causal effects; if migrant workers are organized *and* there is workplace representation in place, there is a greater chance of successful contribution to enforcement. More generally, the more of the components that are present, the greater is the contribution to enforcement. Presence of workplace representation *or* organizing migrant labour is requisite for attribute 3 to be considered as present, as these ensures that the trade union actually has access to the workplace – where labour standards in practice are enforced. For concept attribute 3 to be considered as present then, it might – depending on the case-specific context – suffice that component 2 is present (due to its strong effects on contributing to enforcement), or a combination of component 1, 3 and 4.

Trade unions non-effective protection, in contrast, can be described as a situation where the defining attributes of a protective response are absent. As the causal concepts of trade unions’ responses aim to capture what the responses actually achieves in terms of being protective or not achieving effective protection, it suffices that any of the three concept attributes are absent for non-effective protection to be considered as present. The concept attributes thus stand in a logical OR relationship, meaning that it suffices that one of the concept attributes is present for a case to be member of the set (Figure A.5). By not ensuring use of collective agreement, the trade unions’ abstain from ensuring that employers do not defect from collective bargaining through their use of migrant labour (attribute 1). The second concept attribute captures the difference between

ensuring equal treatment and accepting minimum standards; by not ensuring that the content of the collective agreement applied is equal for migrant labour, trade unions enable employers to use migrant labour as a secondary labour supply by which they can circumvent dominant employment relations rules and practices. While potentially appearing intuitively wrong to include *ensuring minimum standards* in the concept capturing trade unions' non-effective protection, doing so creates alignment in the key property of the non-protective response, namely abstaining from providing the necessary active support for collective bargaining as an institution and closing down space to pursue change. Finally, by insufficient, weak, or limited contribution to enforcement of labour standards (attribute 3), the trade union does not contribute to high levels of enforcement that are requisite for employers' compliance and instead enables employers to opt out and pursue change. The causal properties of being protective are thus distinct from the causal implications of a non-protective response.

Figure A.5 Concept structure of trade unions' non-effective protection of migrant labour, capturing the OR logical relationship between concept attributes



Appendix II. Measurements of outcomes: Instrumental changes, effects on the level of employer discretion and distributive outcomes associated with the outcomes

Contribution to institutional continuity

Different configurations of continuity and change are associated with the four outcomes. For contribution to institutional continuity to be considered as present, the formal structures and functions of all three institutions should be maintained in that the institutions continue to deliver similar results, entailing that the institutional outcomes are maintained. As the definition of contribution to institutional continuity is based on institutional *maintenance*, which incorporates institutional adaptation and resilience creation, institutional continuity may, but does not need to, include re-regulation of the formal wage setting-system in collective bargaining, or re-regulation of labour legislation. Depending on the existing institutional context, formal change to the wage-setting system in the shape of re-regulation may be required for institutional continuity to be achieved, as a means to overcome potential institutional ambiguities that otherwise can be used to pursue change. Similarly, re-regulation of labour legislation may be required as a means to stave off pressure for change and achieve institutional maintenance of the collective employment relations as an institutional complex. It should, however, be taken into account that in case of re-regulation of labour legislation, the function of collective bargaining may as a side-effect be affected as negotiation dynamics are potentially changed. The direction of this change can in principle go both ways; it can either weaken or strengthen workers bargaining position by leading to a shift in power from workers to employers, or vice versa. For contribution to institutional continuity to be considered as present, no (major) shift in power from workers to employers should have taken place as a result of the re-regulation. The reason for this is because if negotiation dynamics are affected in a substantive way in that a shift in power from workers to employers takes place, other properties of the institutions are subsequently also likely to be affected, and institutional maintenance is thus threatened. Further side-effects from re-regulation of labour legislation are also possible in that it may entail a shift from collective labour regulations toward individualization of rights. If this is the case, this must be considered as institutional change rather than continuity. Whether the re-regulation represents adaptation rather than change needs to be assessed in individual cases.

Three varieties of liberalization

The three varieties of liberalization are distinguishable by the different configurations of institutional changes associated with them. Dualization is associated with changes in both the formal structures through declined collective bargaining coverage, and/or declined coverage of workplace representation, and in the functioning of the institutions, with negotiation dynamics in collective bargaining, coverage of job security regulations, and/or the enforcement and negotiation capacities of workplace representation being affected. Defined as the situation in which institutions for collective labour regulation are becoming less encompassing and where differential treatment of workers take place either within or outside of the scope of the institutions, dualization is associated with institutional drift through which the coverage of the institutions gradually decline, and with a decline in labour power and union influence as the power of employers is increased by withholding job security from a certain segment of the labour supply and by the ability to leverage different groups of workers against one another. Consequently,

negotiation dynamics are affected as a shift in power from workers to employers takes place. Moreover, workplace representation is exposed to gradual erosion from within as the enforcement and negotiation functions of workplace representatives are weakened when the workforce is divided into two segments through employers' differential treatment; where external labour is used, both the ability and the formal competencies to exercise their representational functions are negatively affected. Moreover, in workplaces where workplace representation is absent as a result of a decline in the coverage, the enforcement and negotiation capacities of workplace representatives are logically also absent. Thus, changes in the formal structures also affect the functioning of the institutions.

Deregulatory liberalization, here defined as the situation in which institutions for collective labour regulation are set aside in favour of arrangements based on individualization of rights, share the same instrumental changes as dualization but differ in that the scope of the change is greater, and additionally involves more wide-ranging changes in the formal structures of the institutions, namely by deregulation of the wage-setting system in collective bargaining and/or deregulation of labour legislation – institutional changes that are unique to this variety of liberalization. Decline in the collective regulation of employment relations is manifested as a decline in collective bargaining coverage, declined coverage of workplace representation, as well as declined coverage of job security regulations, as a result of the gradual defection from the employment relations rules and practices that eventually lead to institutional displacement. Based on these conceptual and operational definitions, the major difference between dualizing and deregulatory liberalization pertains – aside from the formal deregulation taking place in the latter – to the *scope* of the change rather than the *type* of change, in that the same formal structures and functions of the institutions are affected in the two outcomes. Dualization, associated with institutional drift, involves a decline in the coverage of the institutions, but where the coverage remains above the 50 percent threshold and thus maintains the position of dominant practice. In contrast, deregulation, associated with institutional displacement, involves a more far-reaching decline where the coverage declines below 50 percent, and is not maintained as dominant practice, whereby the institutions can be considered as displaced. As both processes are associated with modes of transformation that can, and most often does, proceed incrementally, the pace at which the decline takes place is thus not what distinguishes the two varieties of liberalization. Instead, they are distinguished by the threshold at which the scope of the decline remains above or passes below the 50 percent threshold that defines the dominant practice.

Socially embedded flexibilization, here defined as the situation in which the institutions for collective labour regulation have been adapted to incorporate migrant labour within the scope of the institutions and employers at the same time have redirected their functioning to introduce and/or make use of more flexibility, is associated with institutional conversion and characterized by changes in the functions of the institutions. The main way through which flexibilization is introduced in this variety of liberalization is through increased use of flexible forms of employment that enhances firms' external flexibility, which is associated with a decline in the coverage of job security regulations. The second defining change in this outcome pertains to the functioning of collective bargaining, which is affected in that the wage-setting system is exposed to institutional conversion by employers who make greater use of institutional flexibility to redirect its previous functioning. Change in the functioning of the wage-setting system is unique to this variety of liberalization, and occurs as employers change the practical application of the wage-setting system through their employment of migrant labour, for example, by reinterpreting the wage scale in the collective agreement. Moreover, negotiation dynamics are affected as employers through increased flexibility are offered greater power as workers' job security is withheld in flexible forms of employment, which entails less power for workers in relation to their

employers. Additionally, the conversion of the wage-setting system is most plausibly also linked to effects on negotiation dynamics in favour of employers, as they can re-direct the practical application of the wage-setting system so that it better meets their preference for minimizing labour costs. The effect on negotiation dynamics is, however, comparatively smaller in this variety of liberalization as trade unions are protective of migrant labour, which boosts their power in serving as counterweight to employers. Defining of this outcome is that while employers increase their power over the conditions of employment through increased flexibilization, counter-measures that do not fully re-balance the liberalising effects but avoid a complete altering of the negotiation dynamics are also present. For a trajectory of change to qualify as socially embedded flexibilization, the change must not only contain flexibility-enhancing components, but also adaptive measures that embed the liberalising changes. The embedding component may enhance the level of social protection, or involve measures that at least achieves *maintenance* of the socially embedded context that is exposed to pressure for change. While the instrumental changes that introduce flexibilization involves conversion of the wage-setting system and a decline in the coverage of job security regulations, through which negotiation dynamics are affected, the socially embedding change component is ensured through re-regulation of labour legislation as adaptation to embed the liberalizing changes. As employers' opt out practices, which follow a different logic of action than compliance with the employment relations rules and practices, have the potential to spread and result in more far-reaching liberalization – even as trade unions are protective and thereby limit the space to pursue change – rule makers are prompted to revise the legal framework in order to restore and maintain the socially embedding functions of the employment relations institutions as a complex (cf. Streeck and Thelen 2005: 15). In other words, for socially embedded flexibilization to be the resulting outcome of the interaction of employers' opt out and trade unions' protective responses, state intervention by re-regulation of labour legislation is requisite to ensure that the employment relations remain within the scope of the collective employment relations institutions, and that the change is not extended to other institutional features, such as coverage of collective bargaining and workplace representation. By establishing conditions that allow for maintained coverage of collective bargaining and workplace representation, the employment relations institutions continue to offer a socially embedded context through which risk is collectivized. Moreover, the functioning of workplace representation is, in contrast to the other two varieties of liberalization, intact as a result of trade unions' protective response that means that they fulfil their representative functions and maintain the functioning of workplace representation in practice. A major difference between this variety of liberalization and the two above mentioned ones is thus that the coverage of collective bargaining and workplace representation is maintained, and migrant labour is incorporated within the scope of the institutions. This adaptation share a similarity with the process contributing to institutional continuity, but does not result in resilience creation and contribution to continuity due to the combination of adaptation *and* liberalising changes taking place, leading to a trajectory of change described as socially embedded flexibilization.

In refining the conceptual and operational definitions of the outcomes, a subsequent step in the analytical framework proposed here is to link these *instrumental changes* to the effects they have on the *level of employer discretion* over employment and working conditions, capturing the extent to which employers gain power over employment relationships in the respective outcomes, and make explicit the *distributive outcomes* associated with the respective varieties of liberalization, capturing the effects on the redistributive functions of the employment relations institutions (Table 4.1). By not only making explicit the instrumental changes associated with each of the outcomes, we are in this way also able to assess the substantive effects that the changes have on the level of employer discretion and on distributive outcomes for capital and labour. The

core functions of the employment relations institutions are to distribute power over employment relationships and to (re)distribute income between capital and labour, as well as between different labour segments within and across sectors. The degree of employer discretion captures how the employment relations institutions distribute power over the terms and conditions of employment, whereas the distributive outcomes capture how the institutions distribute resources, most prominently distribution of income between capital and labour.

Effects on the level of employer discretion

For the concept of liberalization to have relevance in the area of employment relations, its links to changes in employer discretion needs to be placed at the centre of analysis. Building upon the recent contribution by Baccaro and Howell (2017), a key step in this analytical framework thus involves linking the varieties of liberalization with the effects that the changes have in terms of being discretion-enhancing versus discretion-limiting. Employers' responses based on opt out from dominant employment relations rules and practices and compliance with minimum standards only, in combination with trade unions' non-effective protection, both have causal effects that serve as discretion-enhancing. Through non-compliance with dominant levels of job security, employers gain power over workers and increase their discretion over hiring and firing. As withholding workers' access to job security alters the power relation in favour of employers, non-compliance with dominant levels of job security is likely also associated with an increase in employers' discretion of wage-determination and work organization as the bargaining position of workers is weakened and the influence of workers over the organization of work is limited when they are deprived of their job security. Similarly, non-compliance with the requirement of written employment contracts and declared work serve as means to allocate power to employers, as workers without a written employment contract or in undeclared work are placed in a very weak position in relation to their employers. This type of opt out is highly discretion-enhancing as employers one-sidedly can manage wage determination, hiring and firing, and how to organize the work. Moreover, non-use of collective agreements means that individual agreements only are used. As individual (migrant) workers stand in a weak negotiation position as counterparts to employers – as opposed to organized labour as counterpart in collective bargaining – the result is an increase in employers' power over the terms and conditions of employment. The extent to which non-use of collective agreements becomes the dominant logic of action of employers is in turn associated with a proportionate decline in collective bargaining coverage, through which individual employers increase their discretion over wage-determination (particularly in cases where wages are only regulated through collective agreements, and not based on statutory provisions), but also over work organization which tends to be regulated in collective agreements, and possibly over hiring and firing, to the extent that it is regulated via collective agreements and not only labour legislation. In absence of workplace representatives, who have codetermination and monitoring rights, employer discretion is further enhanced. Crucially, as individual employers increase their power over employment relationships, the power imbalance in the employment relations more broadly is also extendedly affected, holding further discretion-enhancing potential.

While existing definitions of all three varieties of liberalization reveal little about the substantive implications for the institutional outcomes delivered by the employment relations institutions, the following can, based on my refined conceptualizations, logically be derived. Expansion of employer discretion is associated with all three trajectories of liberalization, and entails greater influence and control on the part of individual employers over wage determination, hiring and firing, and the organization of the workplace (Baccaro and Howell 2017: 1). While all the modes of change associated with the varieties of liberalization pictured in Table 4.1 result in

expansion of employer discretion, they differ in the extent to which they are discretion-enhancing; deregulatory liberalization generates the greatest increase in employer discretion, dualization provides a medium increase, and socially embedded flexibilization offers employers the lowest comparative increase. The increase in the level of employer discretion in deregulatory liberalization involves increased discretion over all workers, whereas dualization involves a direct increase in the level of employer discretion over certain groups of workers only. Subsequently, however, if employers get increased discretion over certain groups of workers but not over others, pressure for concessions can likely be exercised on those not yet exposed to the higher degree of employer discretion, gradually increasing the discretion also over those groups of workers. The major discretion-enhancing effects in socially embedded flexibilization, in contrast, take the form of increased control and influence over hiring and firing and how to organize work, as greater flexibility in the use of temporary employment and external labour is introduced. While employers gain more flexibility in how they organize work and when they hire and fire, the effects are discretion-enhancing only to a certain extent; as trade unions are protective in the process leading to socially embedded flexibilization and the employment relations are still largely based on collective labour regulation, this limits the scope of the increased discretion and distributes the effect equally across the whole sectoral workforce, and, importantly, does not allow for exploitation of differences between different labour segments (as in dualization). Similar to the effects on the level of employer discretion in deregulation, the increased discretion over hiring and firing and work organization affects all workers, but the degree of the increase is smaller. Effects on the level of discretion over wage determination are likely less direct and smaller in scope in socially embedded flexibilization. The reason behind the limited effect on discretion over wage determination has to do with the interaction of the class actors' responses; by effectively protecting migrant labour, trade unions generate a counterforce vis-à-vis employers' push for liberalization, which primarily becomes restricted to an increase in internal and external flexibility, but employers are not able to leverage groups of workers against one another and in doing so boost their discretion over wage-determination. However, as workers' job security is withheld in flexible forms of employment, this in turn entails a certain shift in negotiation dynamics, which is likely to be associated with an increase in employers' discretion over wage determination. Moreover, in cases where socially embedded flexibilization involves institutional conversion of the wage-setting system, wage determination is also affected more directly by an increase in employers' discretion. Institutional continuity is, in turn, associated with no change in the degree of employer discretion as the function of the institutions to limit employer discretion is maintained. Effects of potential adaption, such as re-regulation, involved in institutional maintenance, may also serve as discretion-limiting, and thereby move beyond simply maintaining the same level of employer discretion.

Distributive outcomes associated with the changes

As the employment relations institutions serve to distribute income between capital and labour and regulate the level of inequality between different labour segments by redistributing income between groups of workers within and across sectors (Machin 1997; Rueda and Pontusson 2000), the measures aiming to capture the effects of the changes in distributional terms are real wage developments, developments of firms' profits, and intra-sectoral wage dispersion. The former two aspects serve to capture distribution of income between capital and labour, whereas the latter captures effects on the level of economic inequality between different groups of workers. There are of course a multitude of factors affecting the development of wages. A widespread assumption among neoclassic economists, for example, is that wages reflect productivity in that workers with

higher productivity have higher wages, and workers with lower productivity have lower wages. Scholars working in a political economic tradition instead tend to emphasize the relationship between supply of labour and employers' demand for labour as important in influencing wage levels; if there are many candidates for a job, the employer can offer a lower wage, without necessarily taking productivity levels into account, whereas if there is only one candidate, the employer is in a weaker position to keep the wage level down and may have to offer more attractive conditions. Based on this logic, employers' free access to foreign labour supplies increases employers' bargaining power and give employers' leverage in negotiations, enabling them to keep wages down. Workers' negotiation position is of course not only affected by the proportion between supply and demand; their bargaining power can also be weakened by limiting their access to job security, such as through widespread use of temporary and precarious forms of employment associated with use of migrant labour. Crucially, wage levels are set through *negotiations*, and not mathematically through a ratio between productivity and labour costs or between labour supply and demand – although these factors are naturally used by the actors in the negotiations. Wages thus depend on the power relations between employers and organized labour, and between employers and individual workers. As wages are set through negotiations, wage developments reflect the power imbalance and negotiation dynamics between employers and workers. This means that, as negotiation dynamics are affected through a shift in power from workers to employers in all three varieties of liberalization, it is also highly plausible that wage developments are negatively affected. In other words, if one accepts this line of argument, there is a causal link between the class actors' responses to migrant labour and the development of wages. Placing real wage developments and development of firms' profits in relation to one another gives an overview of the distribution of income between capital and labour. The relationship between wage developments and firms' profits reveal the extent to which, and in what ways, the distributive functions of the institutions have been affected as a result of the four causal processes.

Each of the four outcomes are associated with different distributive outcomes. Institutional continuity is associated with maintained distributive functions of the employment relations institutions, and we should – if the outcome is present – see no shift in the income distribution from labour to capital, nor any increased wage dispersion. To the extent that wage growth is largely intact relative to the growth of firms' profits, the distributive functions of the institutions can be considered as maintained. As the resulting distributive outcomes are also assessed by the extent to which they maintain levels of solidarity and equality, wage compression should in a process of institutional continuity be maintained, meaning that the redistributive functions are maintained and increased levels of inequality through widened wage dispersion between different groups of worker, either along sectoral lines (i.e. manufacturing benefitting from services versus manufacturing redistributing toward service workers) or within a specific sector (which would entail dualization between labour segments within the sector) is avoided.²

Deregulatory liberalization, which involves one or more of the following instrumental changes in which collective bargaining or labour legislation is formally deregulated, coverage of the institutions are declined to the extent that the institutions are displaced and no longer used as dominant practice, negotiation dynamics are altered in favour of employers, and the enforcement and negotiating capacities of workplace representation is weakened, is associated with the greatest redistribution from labour to capital by causing liberalising changes in market regulation that

² If the distributive functions of the employment relations institutions are not simply maintained but also enhanced in that an increased redistribution of income from capital to labour takes place, this would also be considered as institutional maintenance and continuity rather than liberalising change.

support firms' profit extraction and that weakens the employment relations institutions' capacity to distribute income between capital and labour. In this outcome, we should see a strongly disproportionate growth in firms' profits relative to real wage growth, and strongly biased wage dispersion between the top and the rest, not only resulting in the greatest relative redistribution from labour to capital but also in the greatest relative increase in inequality. Wage dispersion in deregulation follows a pattern strongly biased toward the top income holders (which tend to be capital owners rather than labourers), whereas the majority of wage earners are negatively affected by low wage growth, that is, it is not so much a matter of inequality between groups of workers, as most are worse off – but the major shift in distributive outcomes takes place between capital and labour. As the employment relations institutions determine the cost of labour, they affect firms' price competitiveness and profit margins. Procedures related to non-compliance with working conditions, most prominently wages, working time, and work intensity, function as cost saving measures, which have effects on distributive outcomes in that they redistribute income from labour to capital by enhancing firms' ability to increase profit margins by cost reduction. Non-use of collective agreements, in turn, entails a decline in collective bargaining coverage that has consequences for levels and patterns of inequality (Greer and Doellgast 2017: 202). As the collective bargaining coverage declines, the compressed wage structure is threatened. Scholars have made the case for declined collective bargaining being associated with expanding wage inequality through increased wage dispersion and a growth in low-wage work (Thelen 2014: 54; Greer and Doellgast 2017: 203). These effects of declined collective bargaining coverage is associated with both dualising and deregulatory liberalization, although the scope of the effects on distributive outcomes differ; the level of wage inequality is higher in deregulatory than in dualising liberalization, and the patterns of inequality differ in that the latter follows a dual pattern of wage inequality. Effects on distributive outcomes are of course also a consequence of changes in the level of employer discretion. As declined collective bargaining coverage also involves an individualization of wage-setting, employers gain greater discretion over wage-determination. This is likely to have negative effects on wages, and it also entails the loss of other benefits for workers (Thelen 2014: 37), which means that employers take a greater share of the value of labour and production. Thus, a greater redistribution from labour to capital can be expected as a consequence of declined collective bargaining coverage; as employers gain greater influence over wage-determination, and as the power and influence of their counterpart is weakened in absence of collective agreements, the distributive function of collective bargaining is weakened, leading to a redistribution from labour to capital.

Dualization, which – aside from formal deregulation – involves similar instrumental changes as deregulatory liberalization but with a more limited scope, is characterized by declined equality by widened wage dispersion. This has to do with the effects of declined collective bargaining coverage, which disables the preservation of a compressed wage structure, and is associated with a certain growth in low-wage work and with that increased inequality (see e.g. Thelen 2014: 15). Regardless if migrant workers (and non-core workers more generally) perform complementary rather than substituting functions in relation to core workers, their inferior wages and conditions lead to increasing labour market inequality as the presence of this labour segment grows within the sectoral workforce. As the increased inequality between groups of workers follows a different pattern in dualization than in deregulatory liberalization, the increased wage dispersion in dualization has less of a direct effect in terms of redistributing income to capital. Nevertheless, as dualization also involves a shift in negotiation dynamics as the core of the dynamic in this variety of liberalization pertains to employers' ability to leverage different groups of workers against one another, distributive outcomes between capital and labour can be expected to be affected. A shift in negotiation dynamics, along with employers' increased discretion over

wage-determination as collective bargaining coverage declines, is associated with a negative impact on wage developments; directly for the secondary labour supply, but also for core workers and the trade unions representing them, as their position is weakened and they become more prone to make concessions. By leveraging groups of workers against one another, then, employers can gain concession from both core and non-core workers; concessions from core workers, or more concretely in-house workers, affect the distributive outcomes between capital and labour, but workers outside the firm, i.e. external labour (which migrant workers tend to be), can also be pushed to agree to lower wages or abstain from other benefits, and are in an even weaker position to make claims on the firm's profits than in-house workers. While wage repression is notoriously difficult to measure and assumptions about wage repression, or wage restraints, are potentially based on a weak theoretical foundation as it plausibly rather is a matter of trade unions' weakness in negotiations than them explicitly settling for less, suffice it here to recognize that the dynamic inherent in a process of dualization is highly likely to be associated with a shift in income from labour to capital, reflected in a disproportionate growth in firms' profits relative to wage growth.

Socially embedded flexibilization involves no increased wage dispersion, and with that maintained levels of equality (Thelen 2014: 15-16). However, even though socially embedded flexibilization in existing literature has been defined as maintaining levels of equality, there is a possibility that a conversion of the wage-setting system through which wage flexibility at the firm level is increased leads to a certain increase in wage dispersion as well as to a certain redistribution of income from labour to capital, as employers' discretion over wage-determination increases, can also be expected. Moreover, withholding workers' job security in flexible forms of employment also entails a certain shift in negotiation dynamics, which is likely to be associated with an increase in employers' discretion over wage determination that may have negative effects on wage growth. As the flexibilization means that employers to a greater extent use external labour and flexible forms of employment (associated with declined coverage of job security), and have greater power to determine the working time in a way that suits their needs – both of which likely bring flexibility and productivity maximization that contribute to positive effects on capital income – socially embedded flexibilization is most plausibly associated with a somewhat disproportionate growth in firms' profits relative to real wage growth. Accordingly, a moderate effect on the institutions' distributive capacities resulting in a certain redistribution of income from labour to capital also in this third variety of liberalization, with a somewhat disproportionate growth in wages relative to firms' profits. This shift in favour of capital must, however, be limited – otherwise the egalitarian outcomes and equality levels characteristic of socially embedded flexibilization are threatened.

The above discussion has clarified the commonalities and differences between the three varieties of liberalization – and made a clear distinction between what constitutes continuity and change. Aside from making explicit the instrumental changes associated with each of these outcomes, we are through the above proposed measurements also able to assess whether the discretion-limiting and distributive capacities of the employment relations institutions have been maintained. From the perspective of workers, the substantive effects associated with the outcomes pertain to changes in labour standards, including levels of compensation and employment protection, as well as effects on their collective power and possibility to voice influence over their employment and working conditions (see also Greer and Doellgast 2017: 202). Employers, on their side, stand to gain or lose control and influence over the organization of work and the conditions of the employment relationships in which they engage, and experience effects on their profits by changes in the share of income going to capital compared to labour.

Appendix III. Measurements of the parts of the causal mechanisms

As elaborated in chapter 4, a defining feature of process-tracing is that causality is understood in terms of mechanisms as systems that are comprised of integral parts of a productive continuity that transfer causal forces from a cause (or a set of causes) to an outcome (Glennan 1996: 52; Beach and Pedersen 2013: 29, 2016b: 79-81, 305-306; see also Bunge 1997, 2004). The parts of a mechanism are, in turn, comprised of entities – here the class actors – engaging in activities, and the activities are the actual producers of change, i.e. what transmits causal forces through a mechanism (Machamer et al. 2000; Machamer 2004). Based on this understanding, a causal mechanism is a system that is greater than the sum of its parts (Beach and Pedersen 2016b: 321); the parts of a mechanism have “no independent existence (i.e. they are not considered as variables) in relation to producing the outcome [but] are integral parts of a system that transmits causal forces to the outcome”, triggered by the cause (ibid. 306; see also Hernes 1998: 78). The mechanisms presented below contain theoretical expectations about how the respective causes translate into the outcomes, and are conceptualized as a series of parts comprised of entities engaging in activities that transmit causality through the mechanism (Little 1996: 37). The constitution of the causal mechanisms based on the systems understanding of mechanisms guided me to tease out the causal chain and make explicit the parts of the mechanism that I theorize to be required for the process to reach the outcome, with no abundant parts and without any logical gaps (Beach and Pedersen 2013: 30-31). The parts of the causal mechanisms are operationalized by translating the theoretical expectations into clear, case-specific propositions about what empirical fingerprints each of the parts should have left in the empirical record if the mechanism has been present in a case (Beach and Pedersen 2016b: 323-324, 366). The below tables present the theoretical and empirical levels of the causal mechanisms, linking each theoretical component of the causal mechanisms with observable empirical manifestations.

Table A.1 Institutional Resilience Creation Mechanism contributing to institutional continuity

	Contextual conditions	Cause	Causal mechanism			Outcome
			Part 1	Part 2	Part 3	
Theory	High levels of enforcement; Coalition of institutional supporters; Absence of inherent ambiguities in the institutions	Labour migration responses: Employers' compliance and trade unions' protection	No challenging of institutions <i>Actor:</i> Employers	Active support of institutions <i>Actors:</i> Employers and trade unions	Resilience creation <i>Actors:</i> Employers and trade unions	Contribution to institutional continuity
Empirical manifestation		Employers use collective agreement, with equal content, and enforce labour standards Trade unions ensure use of collective agreement, demand equal treatment, and contribute to enforcement of labour standards	Employers do not pursue change strategies through their use of migrant labour or in the pretext of labour or service mobility, and do not push for deregulatory measures and ways to avoid enforcement	Push for re-regulation and/or strengthened enforcement	Re-regulatory measures are introduced and/or enforcement is strengthened	The formal structures and functioning of collective bargaining, labour legislation, and workplace representation remain maintained in that they continue to limit employer discretion and provide distributive outcomes that limit inequality

Table A.2 Institutional Neglect Mechanism contributing to liberalization as dualization

	Contextual conditions	Cause	Causal mechanism			Outcome
			Part 1	Part 2	Part 3	
Theory	High levels of enforcement; Weak coalition of institutional supporters	Labour migration responses: Employers' compliance with minimum standards and trade unions' non-effective protection	Subtle challenging of institutions <i>Actor:</i> Employers	Restricted active support of institutions <i>Actors:</i> Employers and trade unions	Deliberate neglect of institutions <i>Actor:</i> Employers	Dualization through institutional drift
Empirical manifestation		Employers use collective agreement but do not apply equal content and enforce only minimum standards Trade unions accept content of collective agreement that is not equal, and/or do not ensure use of collective agreement or contribute to enforcement of labour standards	Employers pursue change strategies through their use of migrant labour by exploiting a gap between average conditions offered to regular native workers and minimum conditions offered to migrant labour	Collective labour regulations continue to be used as the dominant logic of action in employment of native labour but the actors abstain from actively attempting to extend the scope of the institutions to cover migrant labour; the overall institutional framework is upheld but there is no push for re-regulation or strengthened enforcement to adapt the institutions to the changed context	In absence of institutional resilience creation, employers pursue a dual logic of action by treating the migrant and native labour supplies differently, thus partwise neglecting the institutions and incrementally causing drift, reflected in declining coverage of the institutions	Institutions for collective labour regulation are becoming less encompassing and differential treatment of workers takes place either within or outside of the scope of the institutions, resulting in increased employer discretion over employment and working conditions of certain groups of workers, and widened wage dispersion

Table A.3 Institutional Redirection Mechanism contributing to liberalization as socially embedded flexibilization

	Contextual conditions	Cause	Causal mechanism			Outcome
			Part 1	Part 2	Part 3	
Theory	<p>Low levels of enforcement;</p> <p>Coalition of institutional supporters <i>and</i> challengers;</p> <p>Presence of inherent ambiguities in the institutions</p>	<p>Labour migration responses: Employers' opt out and trade unions' protection</p>	<p>Challenging of institutions</p> <p><i>Actor:</i> Employers</p>	<p>Active support of institutions</p> <p><i>Actor:</i> Trade unions</p>	<p>Redirection and adaption of institutions</p> <p><i>Actors:</i> Employers and trade unions</p>	<p>Socially embedded flexibilization through institutional conversion</p>
Empirical manifestation		<p>Employers do not use collective agreement and do not enforce labour standards</p> <p>Trade unions ensure use of collective agreement, demand equal treatment, and contribute to enforcement of labour standards</p>	<p>Employers pursue change strategies through their use of migrant labour, or in the pretext of labour or service mobility, and/or push for deregulatory measures and ways to avoid enforcement</p>	<p>Trade unions push for re-regulation, potentially in combination with strengthened enforcement</p>	<p>Employers redirect or reinterpret institutional functions related to wage-setting in collective agreements, and/or shift to temporary forms of employment, reflected in declining coverage of job security regulations. In parallel, re-regulatory measures are introduced that collectivize risk and support the continued use of collective labour regulation.</p>	<p>Institutions for collective labour regulation are adapted to incorporate migrant labour within the scope of the institutions, while more flexibility in the area of wage-setting and in the use of temporary forms of employment is introduced in parallel, resulting in declined levels of job security, increased employer discretion over employment and working conditions and maintained equality levels</p>

Table A.4 Institutional Defection Mechanism contributing to liberalization as deregulation

	Contextual conditions	Cause	Causal mechanism			Outcome
			Part 1	Part 2	Part 3	
Theory	Low levels of enforcement; Coalition of institutional challengers	Labour migration responses: Employers' opt out and trade unions' non-effective protection	Challenging of institutions by the introduction of a new logic of action <i>Actor:</i> Employers	Absence of active support of institutions and spread of new logic of action <i>Actors:</i> Employers and trade unions	Defection from institutions and turn to new logic of action as dominant practice <i>Actor:</i> Employers	Deregulation through institutional displacement
Empirical manifestation		Employers do not use collective agreement and do not enforce labour standards Trade unions do not ensure use of collective agreement and do not contribute to enforcement of labour standards	Employers pursue change strategies through their use of migrant labour, or in the pretext of labour or service mobility, and/or push for deregulatory measures and ways to avoid enforcement	No push for re-regulation and strengthened enforcement	In their new logic of action, employers abandon collective bargaining, and/or job security regulations, and/or workplace representation, reflected in declining coverage of the institutions.	Institutions for collective labour regulation are set aside in favour of arrangements based on individualization of rights, resulting in increased employer discretion and redistribution of income from labour to capital

Empirical tests based on Bayesian logic of inference

The predicted evidence – that is, the empirical manifestations of the causal mechanisms in the above presented tables – forms the basis for the empirical testing using a Bayesian inspired inferential framework.³ Aside from specifying the predicted evidence of the parts of the disaggregated causal mechanisms, testing empirically whether the causal mechanisms are present and operates as theorized in the selected cases involves determining the prior confidence held in the presence of the parts of the mechanisms and in the overall hypothesis in the respective cases, comparing the predicted evidence with the evidence that is actually found and evaluating the meaning of the evidence in the case-specific context as well as its accuracy, and then aggregating

³ As noted by Fairfield and Charman (2019), “logical Bayesianism is an aspirational ideal that usually cannot be fully realized in practice without approximations” but that offers an inferential framework for formalizing our thinking in process-tracing (163). Bayesian logic is here used in an informal fashion, following Beach and Pedersen (2016b)’s guidelines that provide the logical foundations for interrogating empirical material to transform it into evidence of causal relationships (ch 6; see also Fairfield and Charman 2019).

all individual pieces of evidence into a collective body of evidence, and based on that determine the posterior confidence held in the hypotheses, with the aim of inferring whether upgraded or downgraded confidence in the mechanisms – and the overall causal relationships – is warranted (Beach and Pedersen 2016b: 156, 329-334).⁴ Inferences through informal Bayesian logic are thus made by updating our degree of confidence in the theory being valid (i.e. estimating the posterior confidence) as a function of the prior confidence in the hypothesis informed by existing research, the theoretical weight of the evidence in relation to the hypothesis, and the trust that can be placed in the evidence being accurate – together determining the inferential weight of the evidence produced (ibid. 172, 174). The theoretical evaluation of the predicted evidence involves assessing what other alternative explanations may account for finding the evidence (referred to as theoretical uniqueness), and whether the evidence needs to be found for the hypothesis to be valid and what it implies not finding the evidence (referred to as theoretical certainty), whereas the empirical evaluation of the evidence found involves thorough source criticism to determine whether the evidence can be trusted (Van Evera 1997; Beach and Pedersen 2016b: 156, 292; Fairfield and Charman 2017: 363).⁵ A key strength of the inferential underpinnings of process-tracing is that both confirmatory *and* disconfirmatory causal inferences are enabled (Beach and Pedersen 2016b: 169). While it in Bayesian terms is logically impossible to fully confirm or disconfirm a theory due to empirical uncertainty (Howson and Urbach 2006: 103-105), the overall aim is to establish beyond reasonable doubt that the causal mechanism is present and functions as expected (Beach and Pedersen 2016b: 174). If the predicted evidence is found for each of the parts of the mechanism and it can be trusted, it can be inferred with a certain degree of confidence that the hypothesized causal mechanism was present in the case (ibid. 324). When dealing with a mixed evidential picture, for example, when some confirmatory and some disconfirmatory pieces of evidence are found – which has often been the situation in the analyses in this dissertation – the task is to compare the inferential weight of the contradictory pieces of evidence, assess in which direction the evidence for each proposition points, and what the patterns of evidence together indicate, whereby one may cautiously be able to conclude that, taken together, there is more disconfirming or more confirming evidence of the respective parts of the causal mechanisms, and ultimately the overall causal relationships (ibid. 159, 204, 207, 213). The extent to which the degree of confidence in the validity of the causal relationship can be upgraded or downgraded based on the evidence that has been produced is determined by the lowest posterior level for each of the parts of the mechanism; the posterior confidence is only as strong as the weakest evidential link (ibid. 180, 213-214). Crucially, when different pieces of evidence point

⁴ The prior confidence represents how confident we are in the validity of a hypothesis based on all relevant initial knowledge, prior to incorporating a certain piece of evidence into the analysis (Beach and Pedersen 2016b: 177; Fairfield and Charman 2019: 158). The prior confidence in the overall hypotheses (that is, the four theorized causal mechanisms), and the prior confidence in the parts of the mechanisms are discussed in the empirical case chapters (ch. 5 through 8) in direct relation to the empirical testing of the respective causal mechanisms.

⁵ In Bayesian terms, theoretical uniqueness represents the confirmatory power of evidence, where one assesses the probability of finding the evidence if the hypothesis is *not* valid, by asking whether finding the evidence can be explained with *any* other plausible explanation (Beach and Pedersen 2016b: 182). If finding the piece of evidence is just as plausible with alternative explanations, the predicted evidence has very low theoretical uniqueness and no confirming causal inferences can be made based on it (Beach and Pedersen 2016a: 17). Theoretical certainty, on the other hand, represents the disconfirmatory power of evidence, where one assesses the probability of finding the evidence if the hypothesis is true; if the predicted evidence has a high theoretical certainty and the evidence is not found, the evidence would disconfirm the validity of the hypothesis (Beach and Pedersen 2016b: 182-183). The theoretical uniqueness and certainty is discussed in the empirical case chapters (ch. 5 through 8) in direct relation to evaluating the evidence found in the respective cases.

in different directions, it is vital that the aggregation of individual pieces of evidence is done in a transparent manner with clear justifications as to why I conclude that the collective body of evidence points more in the direction of confirmation than disconfirmation (ibid. 207), “explicitly addressing the pieces of evidence that on their own run most counter to the overall inference” (Fairfield and Charman 2019: 165). In this way, Bayesian reasoning serves as a means by which we are able to acknowledge and transparently communicate the uncertainty of inferences (ibid. 165) – and, it provides “a clear framework for pinpointing the loci of contention [when scholars disagree about inferences], which may lie in different priors and background information, or different interpretations of evidence” (ibid. 163).

A central insight that the frontline of the methodological debate on iterative research has offered us is pivotal for understanding how causal inferences can be made through iterative within-case analysis. When it comes to the evaluation of evidence based on logical Bayesianism, Fairfield and Charman (2019) have clarified that prior and posterior probabilities as applied to our degree of confidence in whether a proposition is valid are *logical* and not *temporal* notions (154, 157). The implication of this insight, which is solidly grounded in Bayesian probability theory and responds to misunderstandings in the application of Bayesian logic of inference in within-case analyses (e.g. Humphreys et al. 2013; Monogan 2015), is that ‘new’ evidence does not have any special status relative to ‘old’ evidence; what matters for a causal inference is not at what time in the research process a piece of evidence was found, but *all* evidence taken together (Fairfield and Charman 2019: 159; see also Van Evera 1997: 45-46). In making causal inferences, the goal is to assess which hypothesis is most plausible and offers the best explanation of a process in light of all evidence known to us (Fairfield and Charman 2019: 162). The point of attaining new evidence is to strengthen the inference by providing additional inferential weight; new evidence does not supplant but supplement existing evidence that served to inspire and refine the hypothesis at an earlier point in the research process (ibid. 162-163).⁶ Process-tracing in practice

⁶ While the standard norm in social sciences is still that new evidence has more inferential weight than old evidence – a norm that also holds that we are supposed to only test a hypothesis with *new* evidence – Fairfield and Charman (2019) make a strong case for why this norm is wrong in iterative qualitative research based on Bayesian logical foundations. In explaining that prior and posterior are purely logical concepts that “refer to degrees of belief before and after a piece of evidence is incorporated into our analysis – not to the timing of when we happened to learn or obtain that evidence” (ibid. 159), the authors reveal that such existing standards are based on a false dichotomy between new and old evidence (ibid. 155). The implication of this insight is that prescriptions that claim that theory-testing requires new data that did not contribute to inspiring hypotheses (e.g. Humphreys et al. 2013: 1; Monogan 2015) are inapplicable to process-tracing based on logical Bayesianism. This is important because it explains why it is not a problem that I have built my theories not only on existing theoretical literature but also on my own empirical material; process-tracing, being fundamentally iterative, inevitably moves back-and-forth between theory construction and evaluation (Fairfield and Charman 2019: 156). Accordingly, the fact that the development of the four causal mechanisms in this dissertation involved empirical probing of the cases before clear theoretical predictions of evidence could be defined is not a problem when following Bayesian logic; just because we through the probing have an idea of “what empirical material we will find before we evaluate the evidence does not mean we cannot use it as evidence to make inferences” (Beach and Pedersen 2016b: 171). As explained by the authors, “probability theory [only] requires keeping track of *what* information has been incorporated into our analysis, not *when* that information was acquired”[, whereas] “the relative timing of when we stated the hypothesis, worked out its implications, and gathered data” is logically irrelevant (ibid. 160). The reason for this is because a central rule in logical Bayesianism is that “information incorporated in equivalent ways should lead to the same conclusions” (ibid. 160). Logical Bayesianism thus mandates that evidence can be incorporated into the analysis in any order without actually affecting the posterior probabilities. In fact, if the conclusions differ depending on the order in which a piece of evidence was incorporated into the analysis, logical Bayesianism tells us that this reveals an error in our reasoning that should be corrected (ibid. 160). This is reflected in how we more generally assess or scrutinizing scientific inferences; one is assessing how warranted the inferences are against the evidence presented, and not based on “the temporal trajectory of authors’ thought processes” (ibid. 163).

entails gaining new insights through a research process that moves back-and-forth between revising and refining theory, analysing data differently or more deeply, and collecting new evidence if need be (ibid. 156). By understanding inference as being always provisional in that theories are continually amended in light of new theoretical insights and empirical evidence, logical Bayesianism mandates this iteration and allows us to assess the weight of evidence regardless of when in the research process it was detected (ibid.). By providing a prescription for rational reasoning under incomplete knowledge that mitigates confirmation bias through analytical transparency and serves to systematize the evaluation of alternative explanations, Bayesian probability offers a sound methodological foundation for process-tracing (ibid. 154, 157, 364).

The production of mechanistic evidence

When it comes to the empirical material that is used to make causal inferences by testing the presence and functioning of the causal mechanisms, the raw empirical observations gained from the semi-structured interviews, text-based sources, and descriptive statistics need to go through a process of evaluation before they can be adopted as evidence. The production of mechanistic evidence involves the *theoretical* and *empirical evaluation* of observations that result in a statement about the inferential weight of individual pieces of evidence and how the different pieces of evidence affect the confidence in the step-wise chain of theoretical claims that constitutes the causal mechanisms. With the tools provided by the Bayesian logic, the empirical observations are evaluated to determine the probability and accuracy of each piece of evidence. The theoretical evaluation involves interpreting what the empirical finding means in the case-specific context, and thus what it can be evidence of in the specific case, whereby one assesses what it tells us about the theoretical hypothesis being investigated and whether the empirical finding is evidence that confirms or disconfirms to some degree a given proposition (Beach and Pedersen 2016b: 157, 182-183). Concretely, this means that when presenting evidence in the empirical chapters, justifications as to what the empirical observation tells us in the context in which it was found and why a piece of evidence means what I claim it to mean will be provided. The empirical evaluation, in turn, involves engaging in source criticism and evaluation of measurement accuracy, for example, by taking into account whether the source is primary or secondary, if the source is reliable, and what potential motives to distort the content the source may have (ibid. 195-200). Evaluating evidence for measurement accuracy – in Bayesian terms, assessing the probability that the measures are accurate – is thus about evaluating the observations in a source critical fashion to determine whether they can be trusted and used as evidence, and identifying potential sources of measurement error, including assessing the size and direction of bias contained in the sources (ibid. 194). The estimated measurement error associated with each piece of evidence is then taken into account when determining the inferential weight of the pieces of evidence. As a means to increase the confidence in measurement accuracy and to minimize non-systematic errors, I have, aside from engaging in thorough source criticism, corroborated the observations with other independent sources through a process of triangulation (ibid. 157), both when it comes to triangulating different types of data sources, and by including actors representing different sides (whose accounts plausibly include biases that point in *different* directions). My case-specific knowledge here plays a crucial role; depending on the case context, all of the actors – including representatives of trade unions, employer organizations, and state agencies – may be keen on downplaying potential mistreatment or unsatisfying behaviour from one of the other parties not to damage the climate of consensus or cooperation. In a different context, the opposite situation may, however, be present in that the environment is conflictual and the actors explicitly

want to defame their opponent. For me to be able to determine in which situation the evidence has been produced, and to evaluate the size and direction of inaccuracy, it is thus crucial that I possess sufficient case-specific knowledge, and that I am source critical and able to demonstrate that the sources are independent and that there are no plausible reasons that the source is not telling the truth – and other independent sources tell me the same thing.

In recognizing that making inferences about the four theorized causal processes requires a rich empirical record, the decisive point in the analyses has not been the number of interviews or documents evaluated, but the extent to which the uncovered information is weighing in favour or against the propositions associated with the parts of the causal mechanisms, and ultimately the overall hypotheses. What matters in Bayesian logic is that even a modest number of highly relevant empirical findings can provide enough evidence to make inferences about the respective parts of the causal mechanisms (Beach and Pedersen 2016b: 169). As revealed in the empirical case chapters (ch. 5-8), I have in some cases uncovered strong evidence that directly substantiates the theoretical claims, whereas I in other cases have had to settle for more modest inferences due to mixed evidential pictures and/or due to the fact that I was only able to acquire less decisive evidence of parts of the processes. When dealing with pieces of evidence that alone are not conclusive, I have attempted to add multiple pieces of evidence that together provides a body of evidence with stronger probative value (Beach and Pedersen 2016a: 18; see also Bennett 2014). In following the Bayesian logic, I seek to make the best inferences possible based on the available evidence and given existing background knowledge of each of the cases. As the focus in the causal case studies presented in the four empirical chapters is on investigating *causal processes*, the presentation of the empirical evidence of the mechanisms does not necessarily follow a chronological order or read as conventional empirical narratives. Instead, the presentation follows the theoretical argument, where I first substantiate the presence of the cause in the respective cases, followed by the evaluation of the mechanistic evidence of the parts of the causal mechanism, and end by providing the data based on which the direction of continuity and change in the employment relations institutions is assessed.

The logical foundations underlying process-tracing

In following the principle of methodological alignment (Hall 2003: 374) that ensures that the method used is aligned with the deeper ontological and epistemological assumptions underlying the research, this research is based on a deterministic ontology and a probabilistic epistemology that accounts for empirical uncertainty, as is required by the mechanistic understanding of causality underpinning process-tracing (Beach and Pedersen 2016b: 19-26, 170). The reason why ontological determinism as a logical foundation is required in case-based research is because there is no within-case probability; in any individual case, a causal process either took place or it did not take place (Mahoney 2008; Beach and Pedersen 2016a: 21, 2016b: 17-18). As probability does not manifest itself at the case-level, ontological determinism is the only logical assumption if we are to be able to make any inferences in case-based research (Beach and Pedersen 2016b: 22-23). In fact, as there is no within-case probability, this means that we *can* make deterministic claims – and this is one of the advantages of causal case study methods such as process-tracing, as the implication of such deterministic claims is that either a theory works in a specific case, or it does not work (ibid. 22-23, 170). The implication of ontological determinism is thus that we can learn something from case research because making ontologically deterministic claims forces us to tackle anomalies head on, and leads us to revise and refine our theories instead of just rejecting a case as an exception from an otherwise strong trend, as research based on ontologically

probabilistic claims would do (ibid. 22-23).⁷ The asymmetry of the causal claims about mechanisms in process-tracing, in turn, implies that – in contrast to variance-based research where symmetric causal claims are made – the type of causal claims made in this dissertation are asymmetric in that I only claim something about the effect of the presence of a cause on an outcome, and not what the absence of the cause would do (ibid. 24-26). Finally, when it comes to the understanding of how knowledge is generated this method requires a probabilistic epistemology, as opposed to a deterministic epistemology underlying variance-based research. A probabilistic epistemology holds that our evidence-based knowledge about causal relationships will never be certain as the confidence that one can have in inferences made based on empirical evidence will always be associated with a degree of uncertainty (ibid. 170). Operating with degrees of confidence in a causal relationship being valid is required for the Bayesian logic of inference underpinning this method, and the degree of confidence depends on the quality of the mechanistic evidence provided (ibid. 20, 170-171). The strength of using Bayesian logic as the inferential underpinnings of process-tracing is that this uncertainty is made explicit (Beach and Pedersen 2016b: 170; Fairfield and Charman 2019: 157). The implication of the logical foundations underlying process-tracing is thus that the type of causal claims that are made in this dissertation are deterministic and asymmetric, and the causal inferences are based on degrees of confidence in a causal relationship being valid. Below, three clarifying points merit attention to avoid misunderstandings originating from dominant methodological assumptions.

Invariant causal claims

While many scholars continue to believe that causal inferences can only be made based on difference-making evidence, where the covariation of values of variables across cases enables causal inferences, the position underlying this research is that strong confirmatory within-case causal inferences can be made by using mechanistic evidence, without assessing patterns of variation across cases (see Beach and Pedersen 2016b: ch. 6). In order to understand why we through process-tracing can make causal inferences within a single case without any variation in the research design, one, first of all, needs to recognize the difference between mechanisms and counterfactuals, which entails that the types of causal relationships investigated in process-tracing differ from those assessed in variance-based analyses, and consequently that the type of evidence used to make inferences differs from variance-based evidence of difference-making (ibid. 1-2, 7). In variance-based research, causal claims are typically made about trends at the population-level where mean causal effects are estimated, whereas in case-based research, case-level causal claims are made using mechanistic, within-case evidence about causal processes.⁸ As a focus on cross-case variation would mean that the focus on the actual causal process itself is lost, as we are no longer interested in how it unfolds in individual cases (ibid. 304), I instead investigate and provide evidence of processes in single cases; what enables causal inferences in process-tracing is not variation but the match between the predicted evidence and evidence actually found (ibid. 99). The mechanistic evidence produced in process-tracing does not contain any variation because the predicted evidence is either present or not present in any given case (the probability of actually

⁷ As argued by Beach and Pedersen (2016b), studying probabilistic causal relationships at the case level does not make sense as we would never know whether a deviant case represents an exception from an otherwise strong causal trend, or whether the causal relationship is spurious (22).

⁸ Mean causal effects mean that there by definition is not necessarily any effect in the single case, because in a single case, a causal relationship is either present or not – there is no mean causal effect at the case level.

finding the evidence is an empirical question) (ibid. 169).⁹ I am thus making invariant causal claims where variation is irrelevant (ibid. 99).

Isolating the workings of a mechanism – ‘controlling for other causes’ at the level of evidence

Bayesian logic as applied in the production of mechanistic evidence through process-tracing enables us to control empirically for other potential causes, eliminating the need to control for other causes through case selection (Beach and Pedersen 2016b: 3-4). The implication of this is that, in using process-tracing, we do not need to make sure that the typical cases selected do not have other potential causes present, because the workings of particular mechanisms can be isolated empirically by evaluating the theoretical uniqueness of the mechanistic evidence (ibid. 314). The impact of the cause in focus is isolated by evaluating the uniqueness of the evidence in thoroughly thinking about what other plausible explanations there may be for the particular finding; the more unique evidence, the more it is possible to control (Beach and Pedersen 2016a: 17). Control for other causes is thus at the evidence level within a case, thereby matching the level at which causal inferences are made (ibid.). In this study, I investigate how the class actors’ responses to migrant labour contributes to institutional continuity or different forms of change. There are of course a multitude of causes affecting the development of the employment relations institutions, and I argue that the class actors’ responses to migrant labour is one of them. For the sake of inference and ‘control for other causes’, it does, however, not matter whether there are other causes present, as long as the specific cause identified in this study can be isolated empirically using the analytical tools offered by process-tracing that enables control for other causes at the level of evidence (ibid. 16-17).

Why overdetermination of cases is not applicable to this research design

Overdetermination is defined as multiple sufficient causes being present in a case. Given the type of causal claims that are made in this dissertation - where I am claiming that there is a causal link between the class actors’ responses to labour migration and the institutional development of collective bargaining, labour legislation, and workplace representation, and I am *not* claiming that I am providing a sufficient explanation – a case cannot be overdetermined in this research design. As the theoretical understanding of my causes is that they are *contributing to* the outcome, there are no individually sufficient causes present in this investigation. While there are other causes present that contribute to institutional continuity or change, those are causes that I am not investigating. Overdetermination is a relevant concern in a comparativist design; if a case is overdetermined, “variance-based designs are unable to disentangle which cause actually produced the outcome because there are more than one possible cause of difference, making control for other causes through case selection” central to the analysis (Beach and Pedersen 2016a: 17). However, when operating at the level of within-case mechanistic evidence, an underlying expectation is that “different causes will be linked to outcomes through different mechanisms that would leave empirical fingerprints that can be distinguished from each other” (ibid.; see also Rohlfing 2014). Overdetermination is therefore “not a serious problem when studying mechanisms as systems because of the procedure of isolating the workings of individual mechanisms *empirically* from each other through the evaluation of the theoretical uniqueness of *each piece* of mechanistic evidence” (ibid.). This theoretical evaluation involves systematically

⁹ Put differently, things do not vary within a case, then it is a cross-case comparison – and, importantly, it is not the variance that is the cause, it is the presence of the cause that is the cause.

assessing and transparently showing whether any other plausible explanation may account for finding the evidence (ibid.). Consequently, selecting a case where multiple potentially sufficient causes are present does not matter for the within-case analysis of causal processes, as process-tracing offers tools to empirically distinguish between the workings of mechanisms triggered by different causes (ibid.).

Appendix IV. Measurement reliability and validity

The aim of measurements presented in Chapter 4 has been to develop reliable and valid measures that are transparent and systematic, and that capture the causally relevant aspects of the defined concepts. In developing the measures, I have taken advantage of one of the strengths of case-based research, namely the opportunity to develop more valid measures through an iterative process of measurement development that takes the case-specific contexts into account, whereby more contextually sensitive, and thus more precise and more valid, measures can be developed (George and Bennett 2005: 220; Beach and Pedersen 2016b: 122-123, 146). In achieving high measurement validity by developing contextually sensitive measurements that capture what they are intended to in the empirical context in which they are deployed, I have, however, had to take caution to avoid compromising with measurement reliability, as context-specific measures tend to require considerable case-specific knowledge and interpretation when applied in practice. To this end, the transparent and systematic presentation of the measures contributes to improve measurement reliability by increasing the odds that other researchers using the same operational definitions would reach the same results when assessing the set memberships of the cases (Beach and Pedersen 2016b: 122-123). Similarly, the explicit theorization of the parts of the causal mechanisms and the clearly specified observable manifestations of the theoretical processes contribute to analytic transparency and reliability by enabling other researchers to evaluate the inferential claims made within the scope of this dissertation. In striving towards adherence with the disciplinary norm of research transparency (see e.g. Moravcsik 2014), a detailed presentation of the data sources used to determine whether the observable manifestations are present or not in a case (presented in ch. 4, section 6) and the transparent evaluation of actual empirical evidence in the case chapters (ch. 5-8), where justifications for the assessment of cases' set memberships are offered, is meant to further improve inter-researcher reliability of the measurements. As the conceptual and operational definitions of the concepts in this dissertation had to take the shape of multi-attribute concepts for the sake of validity, an important part in contributing to measurement reliability has also been to be explicit about the logical relationships between the different attributes (see Appendix I-II), offering transparency about when the respective attributes are categorized as present, and what is required for the overall concept to be considered as present in a case. More generally, I have placed considerable thought as to the choice of terms used to describe the observable manifestations, both to ensure that the terms capture well what they are intended to measure (contributing to validity), and to ensure that they are specific enough to allow myself and other researchers to identify them in empirical cases and to distinguish empirical referents from one another, thereby contributing to increase the measurement reliability, even though different degrees of interpretation inevitably remain when measuring the attributes of the concepts (Beach and Pedersen 2016b: 138; see also Sartori 2009). In this regard, negotiation dynamics, which is part of the measurements of the outcome concepts, is likely the least reliable measure as it involves a fair amount of interpretation from my side when it comes to assessing whether it has been affected or not. Assessing shifts in enforcement and negotiation capacities of workplace representatives share similar challenges. However, in view of the central role of negotiation dynamics in the practical functioning of collective bargaining, and the critical functions held by workplace representatives, I settled for accepting this trade-off – and provide, in the case analyses, transparent justifications for why and when I consider negotiation dynamics, and enforcement and negotiation capacities of workplace representatives, to have been affected or not in the respective cases.

In the iterative process of developing the measurements, I have evaluated the pros and cons of each one of them, and chosen the observable manifestations that I think best capture the

causally relevant aspects of the respective concepts. While I claim the measurement validity of the measurements to be generally high, as congruence between the defined concepts and their empirical measures has been achieved, this possibly comes at the price of making the empirical task of measuring the concepts challenging, as a large amount of empirical evidence is required. Choosing to develop such robust measures that are challenging to apply in practical research as they rely on extensive data availability plausibly represents the greatest trade-off that I have made as regards to operationalizations. The result of the endeavour to clearly specifying the causal properties of the class actors' responses to migrant labour and systematically identifying the properties of the employment relations institutions that can actually be affected, along with meticulously attempting to define measures that capture all causally relevant aspects of the respective concepts, is, nonetheless, better measurements that will enable more robust inferences to be made. When it comes to measurement validity of the outcomes, the encompassing operationalizations incorporating both formal structures and functions of the institutions, as well as institutional outcomes pertaining to the level of employer discretion and distributive outcomes, are meant to minimize the risk that institutional change is overlooked as continuity, and that different forms of change – and thus the varieties of liberalization – are conflated.¹⁰

Finally, the clearly stated logical relationships between the concept attributes also contribute to measurement reliability of the qualitative thresholds between the different concepts capturing employer responses, trade union responses, and the four distinct outcomes, by making transparent and systematic when cases are categorized as being above or below the thresholds, and thus when a case is a member or not of the respective concepts. Aside from providing transparent and specified thresholds, the sections on the measurements of the qualitative thresholds in chapter 4 offer arguments as to why I believe the thresholds to be theoretically justified. Yet, while the qualitative thresholds have been clearly specified, and arbitrary cut-off points have been avoided by basing the thresholds on theoretical and empirical assessments of when the respective causal relationships are possible, and what defines institutional continuity as opposed to change, as well as what distinguishes the varieties of liberalization from one another, a certain degree of theoretical and empirical uncertainty about exactly where the thresholds go most plausibly remains (see Beach and Pedersen 2016b: 129, 152). That being said, the systematic measures of the qualitative thresholds provided in chapter 4, nevertheless, minimize the potential problem of empirical uncertainty originating from interpretation as to whether an empirical case is above or below the thresholds. Again, this plausibly comes at the expense of potentially causing problems in practical research as the measures rely on considerable data availability. A further trade-off here relates to the fact that some of the conceptual definitions have entailed restrictive rather than permissive thresholds (see Beach and Pedersen 2016b: 129-131), for the sake of ensuring measurement validity. While being aware of this, and the practical implications following from it (namely that there may be few empirical cases that are members of those sets),

¹⁰ Another important aspect of the conceptualization and operationalization of the outcomes has been to make sure that the conceptual and operational definitions of the outcomes do not in any way tap into the same or similar observable manifestations as those linked to the causally relevant aspects of the causal conditions (Munck and Verkuilen 2002: 9; Beach and Pedersen 2016b: 114, 135). To this end, I have ensured that the attributes and measurements of the outcomes are distinct from those of the causes; while the causes capture how employers and trade unions deal with the employment of migrant labour, the outcomes instead capture the institutional impact on the sectoral employment relations institutions following from the causes. Similarly, the observable manifestations of the causes and the outcomes are also distinct from those of the causal mechanisms. The causes capture how employers and trade unions concretely deal with the employment of migrant labour, whereas the causal mechanisms capture how the actors respond to the pressure for change originating from increased labour migration, and the outcomes, in turn, capture the institutional impact that follows.

this trade-off was necessary in order to keep the causal conditions causally distinct, for example, as full compliance carry different causal properties than compliance with minimum standards only, and trade unions' equal treatment approach is causally distinct from accepting minimum conditions, here defined as non-effective protection. While running the risk that employers' full compliance and trade unions' effective protection may be difficult to identify in the current empirical reality, the restrictive thresholds of those concepts were required, as they would otherwise incorporate causal properties that theoretically do not lead to contribution to institutional continuity. This trade-off between using what must be seen as narrow definitions would otherwise have involved using a permissive threshold that risks creating causally heterogeneous populations by including causally dissimilar cases, ultimately resulting in flawed inferences (Beach and Pedersen 2016b: 130). The same applies to the threshold defining institutional continuity, which is also restrictive in view of the empirical reality, but required for one to justifiably be able to argue that contribution to continuity is really present.

Appendix V. List of interviews

- Interview 1. Managing Director, Department of Politics, Education and the Labor Market, Association of the Metal and Electrical Industry Baden-Württemberg (Verband der Metall- und Elektroindustrie Baden-Württemberg e. V., Südwestmetall), 29.06.2015, Stuttgart.
- Interview 2. Head of the Migration Department, German Metalworkers' Union (Industriegewerkschaft Metall, IG Metall), 08.07.2015, Frankfurt.
- Interview 3. Trade union secretary, IG Metall Baden-Württemberg, 02.07.2015, Heidelberg.
- Interview 4. IG Metall affiliated works councilor in an automobile firm (Daimler), 02.07.2015, Stuttgart.
- Interview 5. Local trade union representative, Region Rhine-Main, Food, Beverages and Catering Union (Gewerkschaft Nahrung-Genuss-Gaststätten, NGG), 07.07.2015, Frankfurt.
- Interview 6. Trade union secretary, NGG, 24.06.2015, Berlin.
- Interview 7. Managing Director, German Hotel and Restaurant Association (Deutscher Hotel- und Gaststättenverband, DEHOGA), 27.07.2015, Berlin.
- Interview 8. Representative Labour Market Department, Confederation of German Employers' Association (Bundesvereinigung der Deutschen Arbeitgeberverbände, BDA), 15.07.2015, Berlin.
- Interview 9. Two senior officials from the custom service department for undeclared work (Finanzkontrolle Schwarzarbeit, FKS) and the tax investigation authority (Steuerfahndung), 03.07.2015, Stuttgart.
- Interview 10. Head of the counselling office, Faire Mobility, 30.06.2015, Stuttgart.
- Interview 11. Lawyer, Division of Social and Collective Bargaining Policy, Central Association of the German Construction Industry (Zentralverband Deutsches Baugewerbe, ZDB), 24.08.2015, Berlin.
- Interview 12. Head of the International, Europe, Migration Department, IG Bauen-Agrar-Umwelt (IG Bau), 15.07.2015, Berlin.
- Interview 13. Deputy Regional Manager, IG Bau Region Hesse, 09.07.2015, Frankfurt.
- Interview 14. IG Bau affiliated works councilor in a major construction firm (Züblin), 02.07.2015, Stuttgart.
- Interview 15. General Manager, Norwegian Master Builders Association (Byggmesterforbundet), 21.05.2015, Oslo.
- Interview 16. Quality Manager, Association of Norwegian Housing Producers (Boligprodusentene), 22.05.2015, Oslo.
- Interview 17. Production Manager in a main contractor firm (JM Entreprenør), 29.05.2015, Oslo.
- Interview 18. Two union secretaries covering construction and cleaning work, Norwegian Union of General Workers (Norsk Arbeidsmandsforbund, NAF), 21.05.2015, Oslo.
- Interview 19. Manager, United Federation of Trade Unions, section for construction workers, (Fellesforbundet Byggfag), 20.05.2015, Oslo.
- Interview 20. Adviser and Director, Department of Employer Policy and Occupational Safety and Health, Federation of Norwegian Construction Industries (Byggenæringens Landsforening, BNL), 20.05.2015, Oslo.
- Interview 21. Local trade union representative, Fellesforbundet Byggfag, 28.05.2015, Oslo.
- Interview 22. Manager, Fellesforbundet, section for hotel and restaurant workers, 27.05.2015, Oslo.

Interview 23. Director of Business Policy, Confederation of Norwegian Enterprise (Næringslivets Hovedorganisasjon, NHO) Service, 29.05.2015, Oslo.

Interview 24. Chief Advisor Business Policy, Norwegian Hospitality Association (NHO Reiseliv), 27.05.2015, Oslo.

Interview 25. Manager, Service Center for Foreign Workers (SUA), 29.05.2015, Oslo.

Interview 26. Senior Advisor, Norwegian Labour Inspection Authority (Arbeidstilsynet), 19.05.2015, Oslo.

Interview 27. Two senior researchers, L. Eldring and A. M. Ødegård, Fafo Institute for Labour and Social Research, 22.05.2015, Oslo.

Interview 28. Investigation Manager and Adviser, Department of Negotiations and Occupational Safety and Health, Norwegian Trade Union Confederation LO, 19.05.2015, Oslo.

Interview 29. Special Adviser, NHO, 25.05.2015, Oslo.

Interview 30. Senior Adviser Labour Market Policy, Enterprise Federation of Norway (Virke), 26.05.2015, Oslo.

Interview 31. Agreement Secretary, Swedish Building Workers' Union (Byggnads), 21.04.2015, Stockholm.

Interview 32. Local trade union representative, Byggnads, 29.04.2015, Stockholm.

Interview 33. Chief Negotiator and Deputy Chief Negotiator, Sweden's Construction Industries (Sveriges Bygginindustrier, BI), 24.04.2015, Stockholm.

Interview 34. Vice-chairman and local trade union representative, Swedish Hotel and Restaurant Workers' Union (Hotell- och Restaurangfacket, HRF), 17.04.2015, Stockholm.

Interview 35. Regional Safety and Health Officer (HRF), 28.04.2015, Stockholm.

Interview 36. Local trade union representative, Building Maintenance Workers' Union (Fastighetsanställdas Förbund), 29.04.2015, Stockholm.

Interview 37. Chief Negotiator, employer organization hotels and restaurants, Employer Association of the Swedish Hospitality Sector (Visita), 24.04.2015, Stockholm.

Interview 38. General Secretary, Swedish National Mediation Office (Medlingsinstitutet), 22.04.2015, Stockholm.

Interview 39. Acting General Director, Swedish Work Environment Authority (Arbetsmiljöverket), 27.04.2015, Stockholm.

Interview 40. Senior Research Officer Migration, Swedish Trade Union Confederation LO, 16.04.2015, Stockholm.

Interview 41. Labour Market Expert, Confederation of Swedish Enterprise (Svenskt Näringsliv), 23.04.2015, Stockholm.

Interview 42: Two trade union officials, Negotiation Department, Swedish Industrial Workers' Union (IF Metall), 27.04.2015, Stockholm.

Interview 43: Chief Negotiator, Swedish Association of Industrial Employers (Industriarbetsgivarna), 17.04.2015, Stockholm.

Interview 44: Labour lawyer, Association of Swedish Engineering Industries (Teknikföretagen), 23.04.2015, Stockholm.

Appendix VI. Extended empirical base for the set-membership of employer responses

Employers' response in the Norwegian construction sector

In the first decade following the market expansion, the composition of the sectoral workforce in the Norwegian construction sector changed drastically as the share of migrant workers, including settled, temporary, and posted migrant workers, employed in the sector increased from just below 10 percent in 2000 to almost 30 percent in 2012 (Bjørnstad 2015: 44). If taking migrant workers employed as agency workers into account, the share of migrant workers in the sector is, by now, well above 40 percent (see Nergaard 2017). Free movement workers choosing to register as settled has accounted for the main part of the increase, raising their share of the sectoral workforce from approximately 4 percent in 2000 to 20 percent in 2012. In the same period, the share of temporary, non-settled, migrant workers increased their share of the sectoral workforce from approximately 4 to 7 percent, whereas the share of posted workers remained at low levels, according to available estimates increasing from approximately 1 percent in 2000 to 2 percent in 2012 (Bjørnstad 2015: 44, based on data from Frischsentret/Bratsberg). The great increase in the use of migrant workers in the sector has primarily occurred within the handicraft occupational area and in occupations without any qualification requirement (Jordfald 2018: 13).¹¹ In parallel, the share of Norwegian workers has drastically declined within these occupational areas. In 2008, Norwegian workers represented 82 percent of the workers in handicraft occupations and 60 percent of the workers in occupations without any qualification requirement. In 2014, the shares had declined to 68 and 40 percent respectively (-14 and -20 percentage points), entailing that migrant workers have come to make up a majority of the workers in occupations without any qualification requirement (*ibid.*).¹² Although there has been a substantive increase in the number of migrant workers in the Norwegian construction sector, the share of construction firms using migrant labour has remained stable since 2009; following an increase from 19 percent of the firms using migrant labour in 2006 to 33 percent in 2009, 34 percent indicated that they were using migrant labour in 2017 (Andersen and Ødegård 2017: 6-7).

While an important part of firms' use of migrant labour has involved regular in-house employment, firms in the Norwegian construction sector did, nevertheless, also change their hiring strategies in conjunction with the market expansions. These changes in the organization of work resulted in more widespread use of temporary agency work and subcontracting involving posted work (Nergaard 2014b: 14). Most posted workers in the Norwegian construction sector are employed by foreign construction firms and not by foreign temporary work agencies.¹³ Yet, temporary agency work has played an important role in Norwegian construction firms' use of migrant labour. While the use of temporary agency work remained limited prior to the EU market

¹¹ While the composition of the sectoral workforce has changed considerably in the course of the last decade and a half, the occupational structure in the Norwegian construction sector has largely remained stable, with 65 percent of the sectoral workforce being in handicraft occupations (Jordfald 2018: 13).

¹² Construction workers provided by temporary work agencies, among whom there is a strong overrepresentation of CEE labour migrants, are excluded from these figures (Jordfald 2018: 14). If taking agency workers into account, the share of migrant workers vis-à-vis Norwegian workers would be even higher.

¹³ A survey of Polish construction workers in the capital of Norway found that nine percent of the migrant workers in the Norwegian construction sector in 2006 were posted by a temporary work agency, compared to 23 percent who were posted by a foreign construction firm (Friberg and Eldring 2011: 40). In 2010, survey results indicated that the share of foreign construction workers employed in a foreign temporary work agency had declined to two percent (*ibid.*).

expansion, temporary work agencies experienced a considerable growth in the Norwegian labour market after 2004, and gained a more prominent role in the construction sector in particular (Nergaard et al. 2011: 5). In 2016, one third of all agency work catered to the construction sector, and the capital region was the greatest market (Elstad and Ullmann 2017: 7). Between 2006 and 2014, the number of working hours sold by temporary work agencies to construction firms quadrupled, from approximately 700 000 hours in 2006 to more than four million hours in 2016 (Friberg and Haakestad 2015: 189; Elstad and Ullmann 2017: 6). The inability of migrant agency workers to make demands about their employment and working conditions was, according to a trade union representative, a precondition for the rapid growth of the temporary work agency sector in Norway (Interview 21). Norwegian construction firms' increased use of temporary agency work has in the course of the last decade impelled several studies seeking to estimate its scope and its links to the use of migrant labour. According to the surveys with Polish construction workers in Oslo in 2006 and 2010, the share of Polish construction workers employed in a temporary work agency declined from 34 percent in 2006 to 22 percent in 2010 (Friberg and Eldring 2011: 40). A more recent assessment, capturing main contractors' use of temporary agency work in the capital region, found that the use of agency workers almost tripled between 2013 and 2017. In 2017, almost 4 out of 10 (38 percent) construction workers used by the main contractors were agency workers (Elstad and Ullman 2017: 11).¹⁴ In 2018, the trade unions carried out a similar investigation in construction sites in a city in central Norway, Trondheim.¹⁵ The investigation in Trondheim found that 18 percent of the construction workers were agency workers (Nergaard 2019: 13).¹⁶ However, agency workers were used in less than half of the investigated worksites, entailing a concentration of agency work in specific worksites. In these worksites, agency workers on average made up 30 percent of the workforce (ibid. 6). Given the concentration of agency workers in specific worksites, the overall share of agency workers in the construction workforce is, however, considerably lower than in the workforces of specific main contractors. According to an assessment based on a combination of sources, between 14 and 18 percent of all construction workers in the Oslo region were, in 2017, agency workers (Nergaard 2017). In the rest of the country, the shares were between 8 and 11 percent (ibid.). As we know that migrant workers are dominant among agency workers in the Norwegian construction sector, these estimates offer a proxy for firms' use of migrant labour via agency work. The overall share

¹⁴ Elstad and Ullman (2017)'s findings suggested a peak in the use of agency work in 2011, followed by a decline in 2012 and 2013, in turn, followed by an increase in recent years. The reduction in the use of agency work in 2012 and 2013 occurred in parallel with the introduction of the Equal Treatment Principle for agency workers. However, while some expected that this legal change would continue to limit the use of agency work, as it was thought to be less profitable when equal treatment applied, the subsequent years saw a return to the high levels prior to 2013. The investigation was based on trade union officials mapping the use of agency work in the ten largest main contractors bound by collective agreements in the capital region, and scholars mapping construction sites that involved main contractors not bound by a collective agreement. In total, 59 construction sites, employing 2 920 workers, were covered by the investigation (Elstad and Ullmann 2017: 11). The use of agency work was somewhat lower in main contractors bound by collective agreements compared to main contractors not bound by a collective agreement (ibid.).

¹⁵ The investigation covered 85 percent of the construction sites in Trondheim, including 135 construction sites with 1 831 workers.

¹⁶ Both investigations found that agency workers were used by construction firms using collective agreements as well as those not using a collective agreement. While the share of agency workers in the workforces of main contractors not bound by a collective agreement was higher than those using a collective agreement in Oslo, firms bound by a collective agreement accounted for 55 percent of the use of agency workers in Trondheim (Nergaard 2019: 6). The proportion of temporary agency workers in construction sites in Trondheim was lower than in the Oslo area, but higher than in other regional areas (ibid. 8). On the whole, the use of agency work has been documented to be more widespread in construction sites in Oslo than in other parts of the country (ibid. 9).

of agency workers in the construction workforce is thus most plausibly less than one fifth, and corresponds well to the finding from 2010 that 22 percent of the Polish construction workers in Oslo were agency workers. While we are unable to tell whether the share of migrant workers employed as agency workers has increased in the course of the last decade, available data suggests that it has remained fairly stable.¹⁷ Scholars have based on surveys with construction managers as well as migrant workers also estimated the extent to which firms' use of migrant labour involves posted work and how great a share of the migrant workers who are posted. By combining different registers, Bjørnstad (2015: 44) found a peak in the use of posted workers in 2007 and 2008, followed by a considerable decline up until 2012, when the number of posted workers was similar to pre-market expansion levels.¹⁸ According to the surveys with construction managers, there has been a minor increase in the share of construction firms using migrant labour via subcontracting. In 2009, 28 percent of the firms using migrant labour were doing so via subcontracting (Andersen et al. 2009: 16). In 2017, the share had increased to 34 percent (Andersen and Ødegård 2017: 10).¹⁹ In offering a snapshot of the organization of work, encompassing Norwegian as well as migrant workers, the two recent investigations of construction sites in Oslo (2017) and Trondheim (2018) found that a majority of the workforces were employed in subcontracted firms (44 percent in Oslo, 48 percent in Trondheim) (Elstad and Ullmann 2017: 11; Nergaard 2019: 13).²⁰ The share of agency workers was considerably greater in Oslo than in Trondheim (38 and 18 percent respectively), whereas the share of workers employed in-house was considerably greater in Trondheim than in Oslo (34 and 18 percent respectively) (ibid.). This suggest an organization of work largely based on subcontracting, and

¹⁷ Complementary data even suggests that the importance of agency work vis-à-vis other employment channels for migrant workers has declined in the course of the last decade: in 2009, 54 percent of the construction firms using migrant labour stated that they were doing so via agency work (Andersen et al. 2009: 16). In 2017, the share of firms using migrant labour via temporary agency work had declined to 45 percent (Andersen and Ødegård 2017: 10).

¹⁸ Before the 2004 market expansion, the number of posted workers were approximately 1 000. Following the market expansion in 2004, it quickly increased, peaking at around 5 000 posted workers in 2007 and 2008. The number of posted workers in the Norwegian construction sector then declined considerably, and in 2012, 1 500 posted workers were recorded (Bjørnstad 2015: 44, based on data from Frischsentret/Bratsberg). Migrant workers posted by foreign temporary work agencies are here excluded. As we know that most agency workers in the Norwegian construction sector are employed in Norwegian temporary work agencies, this ought not to substantively affect the estimates of posted workers.

¹⁹ Another type of subcontracting involves the use of self-employed workers. While the use of solo self-employed migrant workers has played an important role in construction sectors in other European countries, representatives of the trade union and labour inspectorate have identified the use of solo and bogus self-employment as a limited phenomenon in the employment of migrant workers in the Norwegian construction sector (Interview 19; Interview 26). Register data reveal that the number of non-settled migrant workers registered as solo self-employed in the Norwegian construction sector increased following the EU market expansion in 2004, from 414 in 2004 to 1 336 when peaking in 2007, with self-employed migrant workers accounting for the main increase (Statistics Norway). Since then, the number of non-settled migrant workers registered as solo self-employed has slightly declined but remained overall stable (ibid.). Survey data from 2010 indicated that 7 percent of the Polish migrants in the Norwegian construction sector were self-employed (Friberg and Eldring 2013a: 70-71). While there has been a minor increase in the share of construction firms using migrant labour as self-employed, from 3 percent in 2009 to 7 percent in 2017 (Andersen et al. 2009: 16; Andersen and Ødegård 2017: 10), the use of migrant workers as self-employed remains at low levels. According to a manager in a major construction firm, the use of self-employed workers is unattractive in comparison to using temporary agency workers or subcontracting, as it involves much more administration (Interview 17). For this reason, this particular firm does not use self-employed workers at all, because "it is so much easier to use a sub-contracted firm or temporary work agencies who offer the exact number of workers" that they need for a specific period of time (ibid.).

²⁰ These findings are also in line with an investigation of 63 construction sites in the capital region carried out by trade union representatives in 2015, which found that 45 percent of the workers were employed in subcontracted firms (Marsdal 2015: 1).

while agency work plays an important role in Oslo, agency workers accounted for a smaller share of the workforces compared to subcontracted workers. Importantly, the low share of workers employed in-house in the main contractors, especially in the capital region, reveals that the migrant workers are doing comparatively well in terms of accessing in-house employment in Norwegian construction firms – in 2010, 45 percent of the Polish labour migrants in Oslo stated that they had in-house employment in a Norwegian construction firm (Friberg and Eldring 2013a: 71), and in 2017, 67 percent of the construction firms using migrant labour stated that they were doing so through regular in-house employment (Andersen and Ødegård 2017: 10).

Enforcement of labour standards in the employment of migrant labour

The assessment of migrant workers' wages, working time, access to written employment contracts, declared work, and job security is notoriously difficult. In the area of wages, analyses based on the surveys with the biggest group of East European labour migrants – Polish citizens – in the capital of Norway found that the average wage among Polish construction workers, according to survey responses from 2010, was 73 percent of the average hourly wage in construction firms bound by collective agreements was the average hourly wages of posted workers 63 percent (Eldring et al. 2011: 124-126).²¹ The Polish construction workers with permanent employment in a Norwegian construction firm had the highest average hourly wage, which amounted to approximately 77 percent of average hourly wage in construction firms bound by collective agreements, followed by Polish construction workers employed as agency workers, who had an average hourly wage of 74 percent (ibid.).²² Accordingly, Eldring et al. (2011) concluded that the Polish construction workers received wages well below the dominant wage levels in the sector, in spite of a somewhat stronger wage growth among the Polish construction workers (20 percent) compared to the average wage growth in the sector (15.8 percent) between 2006 and 2010 (127-128). According to the survey results, 19 percent of the Polish construction workers in Oslo earned less than the legally extended minimum wage for unskilled work in 2010 (Friberg and Eldring 2011: 58).²³ Non-compliance with the minimum wage for unskilled workers

²¹ Fairly in line with the survey results, analyses of register data have shown that male migrant workers from Poland and the Baltic countries, who we know are mainly employed in the construction sector, had 34 per cent less income on average than comparable Norwegian men of the same age in 2012 (Bratsberg et al. 2014: 189).

²² The average hourly wage in construction firms bound by collective agreements in the Norwegian construction sector was, in 2009, 202-204 NOK/h. According to the 2010 survey results, the average hourly wage for Polish construction workers was 146 NOK/h (73 percent). For Polish workers employed in a Norwegian firm, the average was 156 NOK/h (77 percent). Polish construction workers employed as agency workers had an average hourly wage of 150 NOK (74 percent), whereas those on temporary employment in a Norwegian construction firm had an average wage of 136 NOK/h (67 percent). Polish construction workers posted in the construction sector in Oslo had an average of 127 NOK/h (63 percent). The Polish construction workers who earned the least were those without a written employment contract and in undeclared work (102 NOK/h) (50 percent) (Eldring et al. 2011: 124-126).

²³ When it comes to discerning whether the migrant construction workers ought to belong to the skilled rather than unskilled wage categories, existing research is ambiguous. Friberg and Eldring (2011) claimed that a majority of the workers had relevant qualifications and long work experience (58). Accordingly, the scholars concluded that the actual share of workers not receiving the legally extended wages that they were entitled to was higher than 19 percent. When taking their qualifications and work experience into account, Friberg and Eldring instead found that 28 percent of the surveyed workers received below the minimum wage level for unskilled workers with at least 1 year work experience, and that 45 percent of the workers received below the legally extended minimum wage for skilled work (ibid.). Yet, as the application of these wage categories are not only a matter of the qualifications and experience stated by the workers themselves, but based on what has been documented and recognized by Norwegian authorities, it is difficult to tell the extent to which employers were in fact opting out of the higher minimum wage levels. Moreover, more

was more widespread among posted workers, whereas all workers with permanent employment in a Norwegian construction firm earned the minimum wage or more (Eldring et al. 2011: 126-127).²⁴ Non-compliance with the unskilled minimum wage was also low among agency workers (6 percent) (ibid.). As a complement to the surveys with Polish construction workers, scholars have evaluated the official wage statistics, and found results that are broadly in line with the survey results. When evaluating these findings, it should be noted that the official wage statistics only capture the migrant workers employed in Norwegian construction firms, whereas the surveys with Polish construction workers also served to capture those migrant workers who are not included in official registers, as well as agency workers active in the construction sector.²⁵ During the period 2000 to 2012, Bjørnstad (2015) found that the CEE migrant workers in the construction sector were mainly placed in the lower part of the wage distribution, around and slightly above the minimum wage levels, whereas Norwegian construction workers remained higher up in the wage distribution (8). In 2012, six out of ten CEE labour migrants had a wage within the lowest quartile, whereas one out of five had a wage higher than the median wage (ibid. 46).²⁶ A more recent analysis found that almost half (48 percent) of the CEE labour migrants received a wage corresponding to or slightly above the minimum wage levels for unskilled *and* skilled work (170-194 NOK/h) in 2016, and 39 percent belonged to the middle (195-210 NOK/h) and highest (211-400 NOK/h) wage categories (Jordfald 2018: 19).²⁷ Among the workers who are included in the official wage statistics, the share of CEE labour migrants who did not even receive the minimum wage has remained a small minority throughout the investigated time period.²⁸ Scholars have

recent research has demonstrated that a large part of the CEE labour migrants in the Norwegian construction sector is concentrated in occupations without any formal qualification (Jordfald 2018: 14), and found that many of the agency workers active in the construction sector, among whom migrant workers are dominant, are unskilled workers (Nergaard 2019: 8).

²⁴ Among posted workers, 38 percent reported that they received a wage below the minimum wage for unskilled work (Eldring et al. 2011: 126-127). Temporary employment in a Norwegian firm was also associated with lower compliance, with 23 percent being below the minimum wage for unskilled work (ibid.)

²⁵ As noted by Eldring et al. (2011), newly arrived labour migrants are a difficult target group for quantitative assessments; there is no complete register of the population, and the workers are highly mobile and difficult to reach (124). Following the continuous increase in the share of workers registering as settled, a larger share of the foreign workers have, nevertheless, with time come to be included in the registered wage statistics, and settled migrant workers have made up the majority of labour migrants in the Norwegian construction sector throughout the investigated time period.

²⁶ In 2012, 21 percent of the CEE labour migrants had a wage within the lowest decile (i.e., were placed in the lowest 10 percent of the wage distribution), and 59 percent had a wage within the lowest quartile (i.e., were placed in the lowest 25 percent of the wage distribution). 22 percent were placed at the median wage (compared to 25 percent of the Norwegian workers), and 19 percent belonged to the category above the median wage (compared to 56 percent of the Norwegian workers). Thus, while a majority of the Norwegian workers belonged to the category above the median wage, only 19 percent of the CEE labour migrants belonged to this category (Bjørnstad 2015: 46).

²⁷ In 2016, the minimum wage level for unskilled workers without work experience was 168.80 NOK/h, 176 NOK/h for those with at least one year proven professional experience, and 187.80 NOK/h for skilled workers (Jordfald 2018: 18). While as many as 48 percent of the CEE labour migrants received a wage in line with the established minimum wages for skilled and unskilled work, only 10 percent of the Norwegian construction workers were placed in this part of the wage distribution (ibid. 19). The majority (65 percent) of the Norwegian manual construction workers belonged to the highest wage category (211-400 NOK/h), and 17 percent belonged to the mid-category (195-210 NOK/h). Among CEE labour migrants the respective shares for CEE labour migrants were 20 and 19 percent (Jordfald 2018: 19).

²⁸ The share of in-house construction workers receiving a wage below the lowest minimum wage category for unskilled manual construction work remained at fairly stable levels in the first decade following the market expansions, with just above 6 percent receiving below the minimum wage in 2004, and, following a minor decline and subsequent increase, 8 percent had a registered wage lower than the hourly minimum wage in 2012 (Bjørnstad 2015: 46-47). Jordfald (2018) subsequently reported a somewhat higher share of

continued to hold that “the vast majority of labour migrants from Eastern Europe often do not receive more than the legally extended minimum wage” (Andersen and Ødegård 2017: 16; also Dølvik and Marginson 2018: 30), and demonstrated a considerable pay gap of 30 to 40 percent between those who access minimum and average wages in the construction sector, noting that “migrant workers will seldom enter local negotiations to increase their wages beyond the minimum level” (Arnholtz and Eldring 2015: 84). Yet, the descriptive inference enabled by the available data is that a bit less than half of the use of migrant labour has been associated with compliance with wages close to or slightly above the minimum wages for skilled and unskilled work, whereas more than one third of the use has involved compliance with dominant wage levels. When it comes to employers’ compliance with the requirement of a written employment contract and declared work in their use of migrant labour, available data suggests overall compliance, even though undeclared work seems to have been more widespread among migrant workers than Norwegian workers at the end of the 2000s.²⁹

The continued non-enforcement, and concerns about potential non-enforcement, of labour standards occurring in relation to some firms’ use of migrant labour is also evidenced by the reports serving as basis for the continued renewal of the legal extensions of collectively agreed minimum conditions throughout the last decade. As the legal extension requires documentation that foreign workers has performed *or* may come to perform work under conditions that are below the applicable sectoral collective agreement, or otherwise dominant conditions (Eldring 2011: 59-68), the trade unions, and research specifically generated to support the extension processes, have inevitably focused on uncovering cases of unequal treatment of migrant workers and placed emphasis on practices of non-enforcement of dominant labour standards to substantiate the continued pressure for change.³⁰ While the politically elected Collective Bargaining Board

workers who received below the legally permitted minimum wage in 2016. According to this data, 14 percent of the manual construction workers originating from CEE countries received a wage below the legally permitted minimum wage for workers without formal qualification (ibid. 32). The corresponding figure among Norwegian manual construction workers was 7 percent (ibid. 19). Taken together, 10 percent of the manual construction workers received a wage below the legally permitted minimum wage for workers without formal qualification (ibid. 32). Non-compliance with the minimum wage was, however, more widespread among non-settled migrant workers (ibid.). In 2016, 20 percent of the non-settled migrant workers received under the minimum wage level (compared to 14 percent among CEE labour migrants including settled and non-settled). When it comes to the workers receiving wages in line with the minimum wage levels, there was no difference between non-settled and CEE labour migrants taken together (48 percent). The non-settled workers did, however, more rarely reach the higher wage categories than CEE labour migrants taken together (31 percent of the non-settled, compared to 39 percent of the CEE labour migrants). The non-settled workers accounted for 13 percent of the workers included in official wage statistics for manual construction workers. A majority of the 13 percent were CEE labour migrants (ibid.).²⁹ The majority of the Polish construction workers in Oslo had, according to the survey results access to written employment contracts (77 percent in 2006 and 73 percent in 2010) (Friberg and Eldring 2011: 41). All of the Polish workers employed in-house in Norwegian construction firms had access to written employment contracts, and 90 percent of the workers in Norwegian temporary work agencies. Non-compliance with the requirement of a written employment contract was the more widespread in foreign subcontracted firms (61 percent), and – surprisingly enough – among workers with temporary employment in a Norwegian construction firm (57 percent) (ibid.). Taken together, a majority of the migrant workers had access to written employment contracts. The scholars also found that undeclared work was quite widespread in 2006, with 35 percent of the Polish workers not paying any taxes. In 2010, the share had declined to 26 percent. Undeclared work was more common among the temporary workers in Norwegian firms and among posted workers. Thus, while a majority of the Polish construction workers were also in declared work (65 percent in 2006, 74 percent in 2010), undeclared work was considerably more widespread among them than among Norwegian construction workers (ibid.).

³⁰ The basis for the legal extension round in 2018, for instance, was by the trade unions framed as a required response to ongoing struggles against “unserious practices, labour market crime, undeclared work [...], and] a continued strong low wage pressure in the sector” (Tariffnemnda 2018). Wage statistics were used to

(*Tariffnemnda*), including employer and trade union representatives, for the purpose of approving the continued legal extensions of collectively agreed minimum conditions, throughout the last decade has concluded that there is a significant number of violations of the regulations, the larger picture is, nonetheless, that such practices only account for a minor part employers' use of migrant labour in the Norwegian construction sector. Between 2016 and 2018, the labour inspectorate found violations of the legally extended minimum wages and expenses related to board and lodging in about one fourth of their inspections (*ibid.*). Given the inspectorate's risk-based strategy, where inspection targets are selected based on expected risk of violations, the uncovered violations in 25 percent of the cases reveal that such practices remain limited, and do not represent general opt out from the side of firms in their use of migrant labour. While problems remain in relation to a part of the use of migrant labour, the continued extensions, along with the presence of high levels of enforcement, have limited the space for employers to pursue opt out practices and ensured that illegal practices have not expanded – even as the threat of such practices in the use of migrant labour continues to be present, and continues to be used to justify the continuation of the legal extensions.

claim that “a large share of the foreign workers receive a wage in line with the minimum wage or somewhat below,” and reports from the labour inspectorate stated that a large share of foreign workers, including agency workers and posted workers, had wages and working conditions inferior to those of Norwegian construction workers (*ibid.*).

Appendix VII. Timelines of empirical cases

Figure A.6 Timeline of the Norwegian construction sector

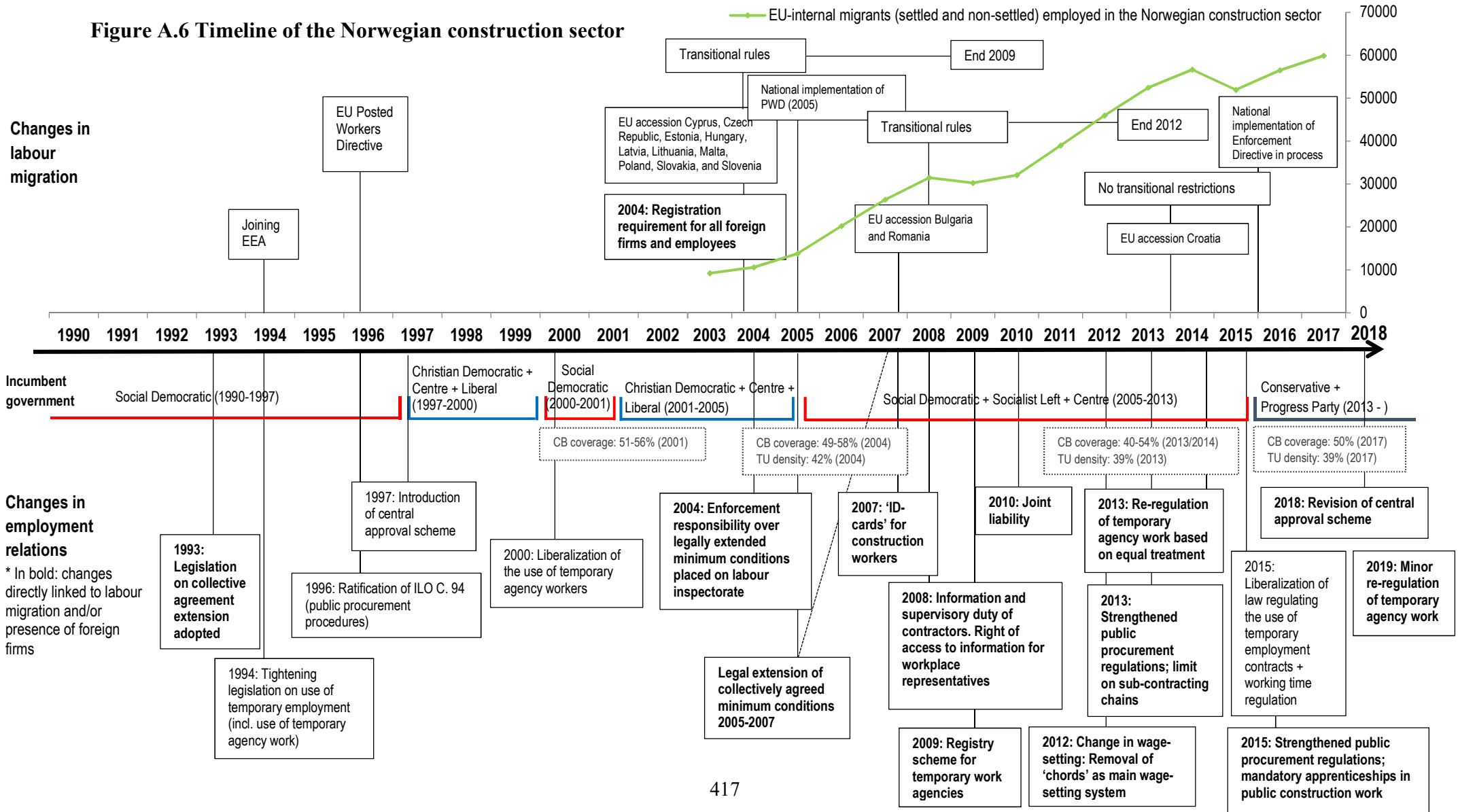
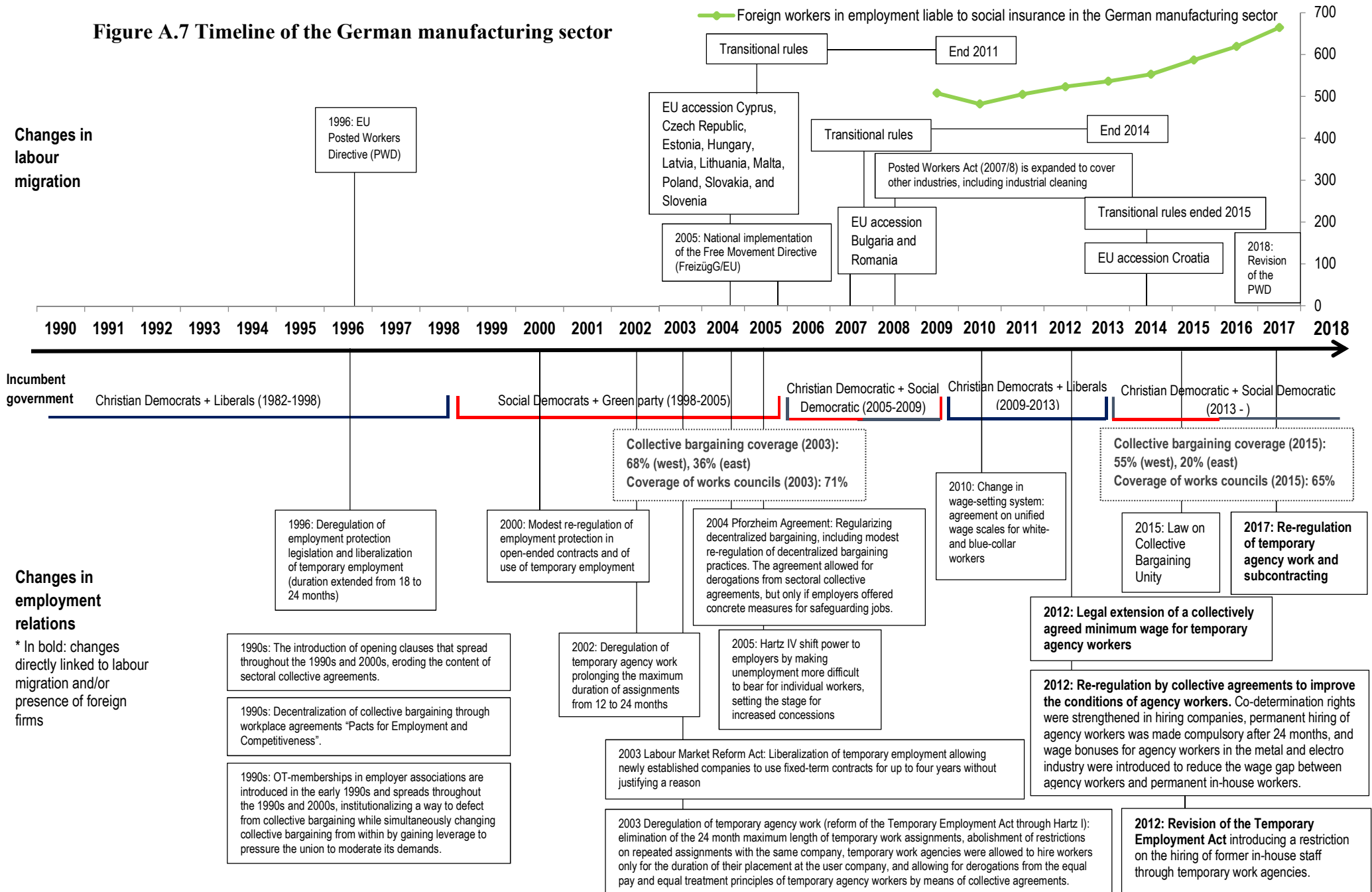


Figure A.7 Timeline of the German manufacturing sector



* In bold: changes directly linked to labour migration and/or presence of foreign firms

Figure A.8 Timeline of the Swedish construction sector

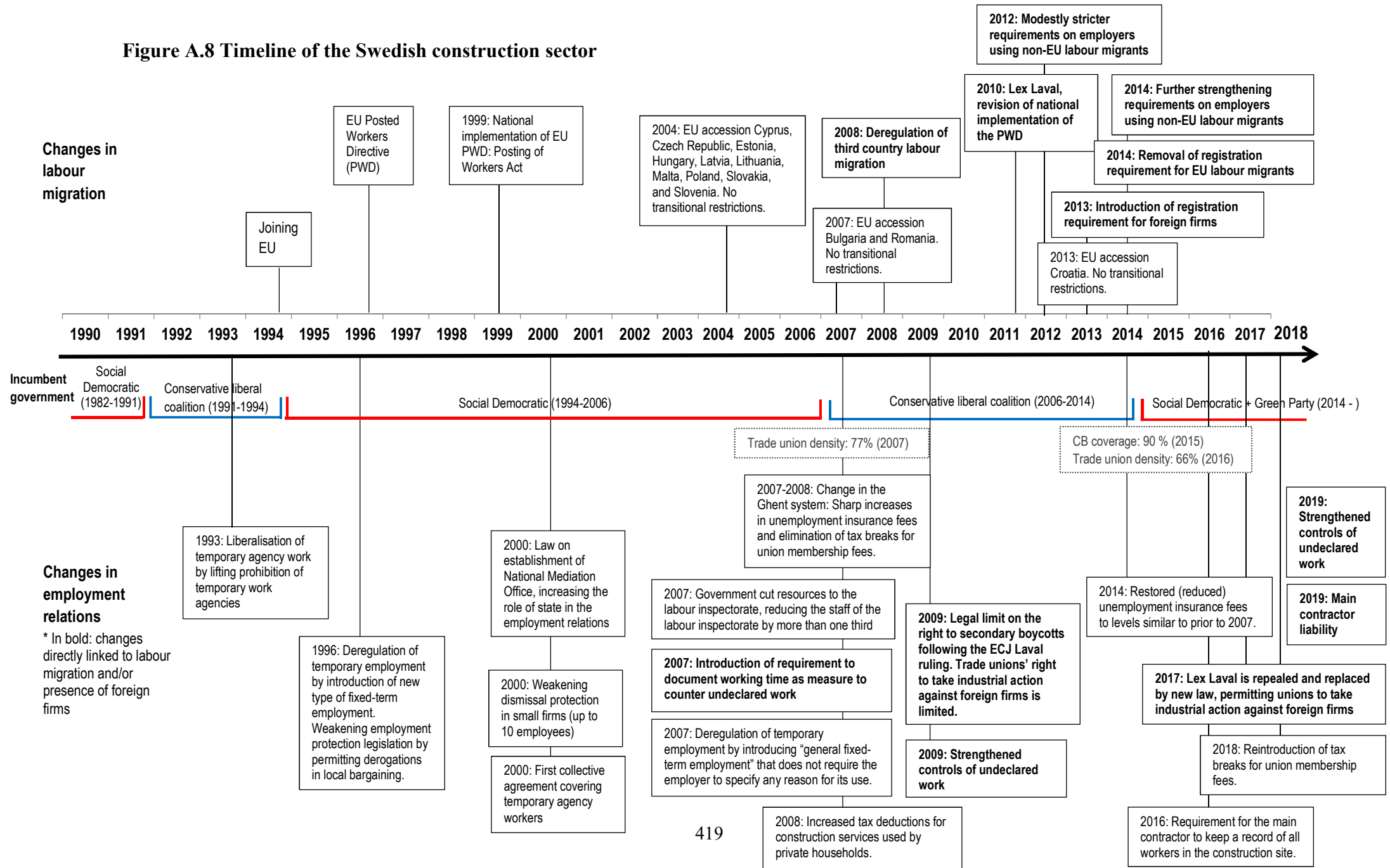


Figure A.9 Timeline of the Swedish hotel and restaurant sector

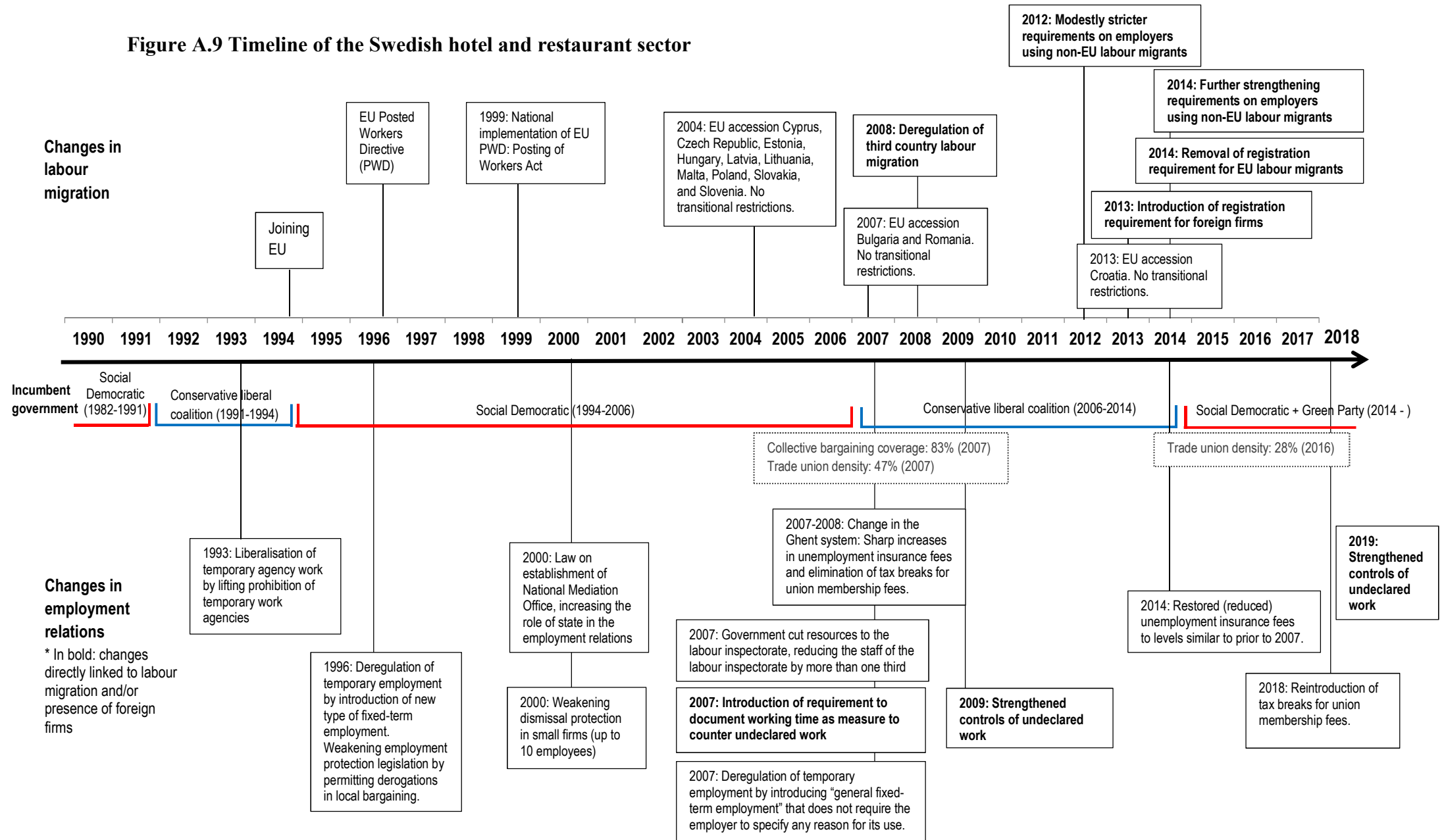


Figure A.10 Timeline of the German construction sector

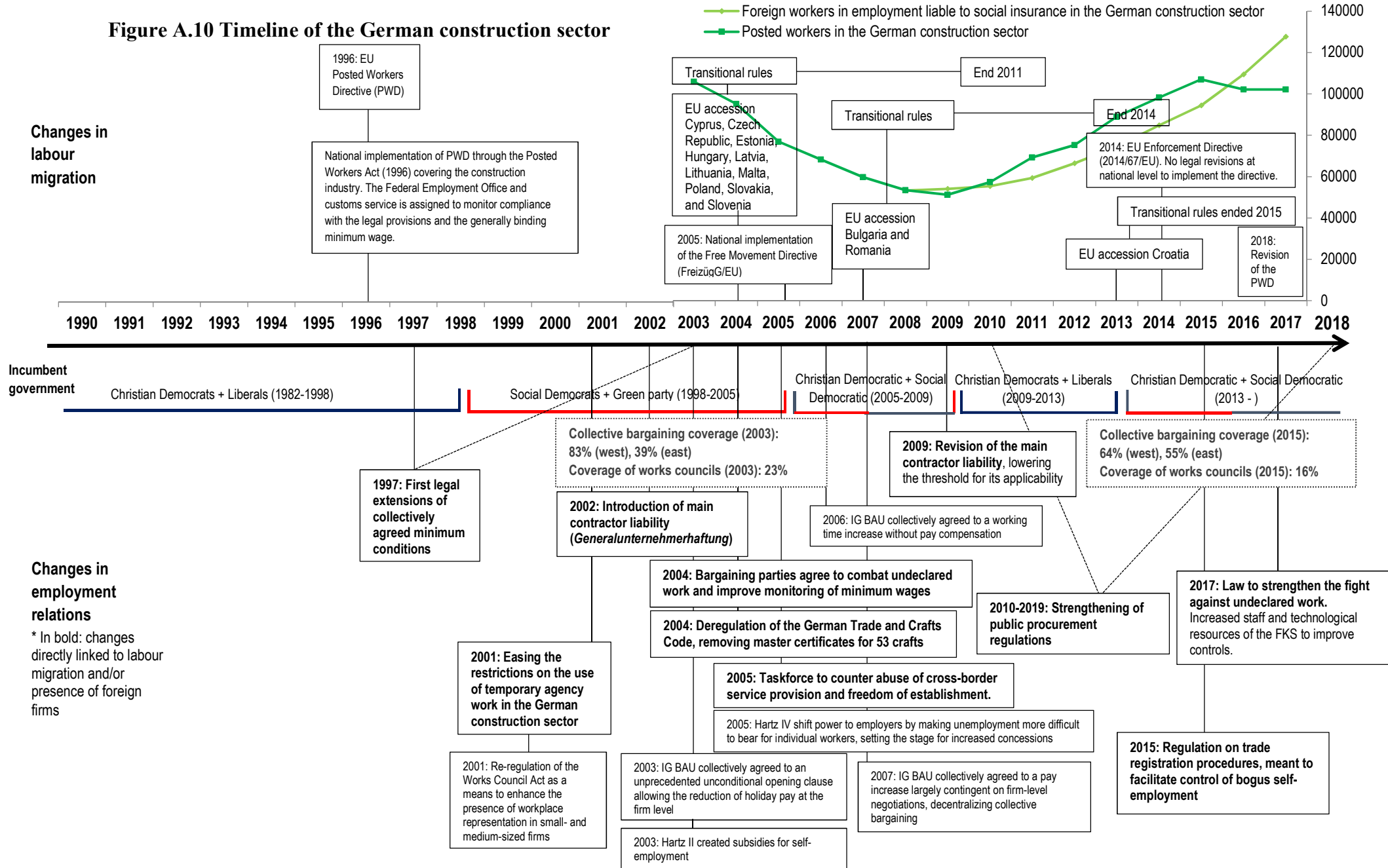


Figure A.11 Timeline of the German hotel and restaurant sector

